

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Corey Offineer,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. 2:09-cv-0493
Detective Roger Kelly, et al.,	:	JUDGE MARBLEY
	:	
Defendants.	:	

ORDER

This matter is before the Court on the motion to strike plaintiff Corey Offineer’s cross motion for partial summary judgment filed by defendants Detective Roger Kelly and Muskingum County Sheriff Matt Lutz. The motion has been fully briefed. For the following reasons, the motion (#53) will be granted in part and denied in part.

I. The Motion for Partial Summary Judgment

As discussed in this Court’s recent order addressing the motion to stay discovery filed by the same defendants who have filed the motion to strike, this §1983 case arises out of events surrounding Mr. Offineer’s prosecution for rape of a minor. Mr. Offineer has asserted violations of the Fourth, Fifth, and Fourteenth Amendments, a claim for municipal liability and a state law claim for malicious prosecution. The focus of his claims involves allegations that Defendant Kelly knowingly took a confession from a delusional, mentally ill man, withheld information about the circumstances of the confession, and then used the confession as the basis for the filing of a criminal charge. Mr. Offineer has moved for summary judgment on only his Fifth Amendment claim.

II. The Motion to Strike

In their motion, defendants raise various arguments not all

strictly related to striking or staying Mr. Offineer's summary judgment motion. In support of their motion to strike or stay, they claim that Mr. Offineer's motion is premature in light of their pending motion for summary judgment asserting qualified immunity. Further, they contend that if the Court does not find that they are entitled to qualified immunity, they are entitled to full discovery before responding to Mr. Offineer's motion. They have submitted an affidavit of counsel pursuant to Rule 56(f) setting forth the discovery they believe is necessary to enable them to respond. Finally, they address the merits of the cross motion.

Specifically, defendants assert that the following discovery is necessary.

- a. The deposition of Mr. Offineer;
- b. Written discovery regarding his mental state and medications prior to his arrest by the City of Zanesville;
- c. Written discovery and depositions of individuals with information of Mr. Offineer's malingering;
- d. The deposition of the medical professionals upon whose testimony Mr. Offineer relies in his motion.

Mr. Offineer has filed two responses - one directed to the motion and one directed to the affidavit of counsel. In his response to the motion, he argues that the motion to strike should be denied because there is no authority for prioritizing defendants' qualified immunity motion over his own dispositive motion. Further, Mr. Offineer notes that the Federal Rules of Civil Procedure do not provide for such a remedy under the circumstances presented here. Additionally, Mr. Offineer responds to the defendants' merit arguments while questioning

their decision to challenge the substance of his motion at the same time they contend that they are unable to address it without full discovery.

With respect to the Rule 56(f) affidavit, Mr. Offineer argues at length that the defendants have not sufficiently detailed their discovery requests. Further, he claims that the affidavit does not explain why the discovery is necessary before the defendants can file a response. Moreover, Mr. Offineer argues that he cannot imagine why any discovery would be necessary when his motion for summary judgment relies exclusively on defendant Kelly's version of the facts.

In their reply, defendants maintain their position with respect to the impact of their qualified immunity argument on the posture of this case. However, they seem to have reframed their position on discovery to contend that they are seeking only very limited discovery as outlined in paragraph 4 of their Rule 56(f) affidavit. They assert that this discovery is necessary to address the issue of what Detective Kelly knew or believed regarding Mr. Offineer's mental state at the time of the confession. According to defendants, this information will allow them to prove that defendant Kelly did not have reason to believe that Mr. Offineer's confession resulted from mental illness.

The defendants also offer more explanation as to the nature of their discovery requests. With respect to the deposition of Mr. Offineer, they assert that they should be able to depose him before responding to his motion, that he does not dispute this, and that the deposition will take less than one day. Further, they contend that their request for written discovery directed to the issue of his mental state is necessary to learn what his last known mental state was, and what medications he was taking to address it, prior to his arrest by the Zanesville police. They indicate that, at this point, they are able only to submit such

written requests to Mr. Offineer because they do not have the identities of his physicians.

Further, defendants assert that they have identified Kristen Haskins, Psy.D. as the individual to be deposed regarding what they allege to be Mr. Offineer's malingering. There is some suggestion that her testimony may also be necessary to authenticate certain medical records. The defendants also mention in passing Darcy Stephens, a named defendant and nurse, but do not indicate what specific discovery they seek from her. They state, however, that the Court has already ordered that Mr. Offineer may take her deposition. With respect to the fourth category of information, defendants do not specify the information they seek to obtain through the deposition of the medical professionals relied upon by Mr. Offineer in support of his motion.

III. Analysis

The Court agrees that there is no authority for striking or staying Mr. Offineer's motion for partial summary judgment simply because a qualified immunity motion is pending. The Court can easily decide the issues presented in both motions in a way that preserves the qualified immunity defense, if it is meritorious. Consequently, to the extent that defendants seek either of these two remedies, their motion will be denied. Further, the Court will not consider any arguments raised by defendants directed to the merits of Mr. Offineer's motion.

The Court will address the defendants' alternative request for discovery as set forth in their Rule 56(f) affidavit. The Court is mindful that an affidavit supporting a request for discovery under these circumstances must not contain merely "[b]are allegations or vague assertions of the need for discovery" Summers v. Leis, 368 F.3d 881, 887 (6th Cir. 2004).

As Mr. Offineer has pointed out, the affidavit as filed may

not have contained the level of specificity generally contemplated by Rule 56(f). However, the Court finds that, based on the more detailed explanation set forth in their reply, the defendants have satisfied the requirements of Rule 56(f) with respect to some of the discovery they are seeking. Consequently, the Court will grant their request as follows.

Turning first to defendants' second category of discovery requests, there is no question that Mr. Offineer's mental state is a critical component of his Fifth Amendment claim. Defendants seek information relating to his mental state and medications prior to his arrest in Zanesville. This arrest for inducing panic, as alleged in the complaint, involved Mr. Offineer's behaving irrationally in public and happened within days of Detective Kelly's investigation. Defendants contend that this information is relevant to whether Mr. Offineer was suffering from a mental illness when he was interviewed by Detective Kelly. The Court agrees that this information may have some relevance to what Detective Kelly may have known about Mr. Offineer's mental state or whether Mr. Offineer appeared to be mentally ill during his interview and what that appearance may have caused Detective Kelly to believe about Mr. Offineer's mental state. Consequently, defendants are entitled to direct written discovery to Mr. Offineer on this subject.

With respect to defendants' third category of requests, defendants have indicated that they intend to challenge Mr. Offineer's characterization of his mental state under the theory that it may have been fabricated. To this end, they would like to depose Dr. Haskins. Dr. Haskins, an expert in forensic psychology, conducted a psychological review of Mr. Offineer and, according to defendants, made certain observations regarding his ability to be truthful. The Court finds that the deposition of Dr. Haskins falls within the permissible scope of discovery.

Consequently, defendants will be permitted to take her deposition prior to responding to Mr. Offineer's motion.

To the extent that defendants seek to undertake any discovery beyond that set forth above, their Rule 56(f) affidavit as filed, even as supported by their reply, does not provide sufficient information from which the Court could fairly conclude that such discovery is required to be undertaken before defendants can fully address Mr. Offineer's motion. With respect to Mr. Offineer's deposition, defendants have made no effort to clarify its parameters, apparently because they believe that he does not object to being deposed. The defendants are mistaken in this belief. Mr. Offineer claims that defendants have not explained why they need to take his deposition in order to respond to his motion. Moreover, Mr. Offineer disputes the need for him to be deposed when he has not provided any support for his motion by affidavit or deposition but instead has relied exclusively on defendant Kelly's testimony and documents. Without more information from the defendants regarding the scope of the proposed deposition and why it is necessary to their opposition, the Court does not believe they need to depose Mr. Offineer in connection with their response to the motion. Of course, it does not appear that there is any reason they cannot depose him as part of normal discovery - the Court simply rules that the timing of the deposition should not affect the timing of defendants' response to the motion.

Further, while defendants reference Darcy Stephens, as noted above, they do not indicate, as they did with Dr. Haskins, the nature of the discovery sought. Further, the Court can find no record in this case of having ordered that Mr. Offineer may take her deposition. Finally, with respect to defendants' fourth category of discovery relating to the depositions of medical professionals relied upon by Mr. Offineer, the Court is not clear

as to why these individuals could not be identified specifically or why there is no explanation of how their testimony is necessary to the defendants' response. Presumably, the term "medical professionals" could include any of the individuals who treated Mr. Offineer's alleged victim to the extent they are mentioned in his partial summary judgment motion. The defendants have not explained how these individuals would shed any light on the issue of Mr. Offineer's mental capacity as it relates to his Fifth Amendment claim. Absent any more specific information from the defendants, the Court is not inclined to condition defendants' response to the motion on any discovery beyond that set forth above.

IV. Disposition

For the foregoing reasons, the defendants' motion to strike (#53) is granted in part and denied in part as set forth above. Defendants are permitted to conduct the discovery described in this Order prior to responding to the pending cross motion for summary judgment. The parties shall work cooperatively to schedule that discovery and shall, within twenty-one days, submit a proposed order that sets forth a completion date for this discovery and a date by which defendants' response to Mr. Offineer's motion for partial summary judgment must be filed.

V. Appeal Procedure

Any party may, within fourteen days after this Order is filed, file and serve on the opposing party a motion for reconsideration by a District Judge. 28 U.S.C. §636(b)(1)(A), Rule 72(a), Fed. R. Civ. P.; Eastern Division Order No. 91-3, pt. I., F., 5. The motion must specifically designate the order or part in question and the basis for any objection. Responses to objections are due fourteen days after objections are filed and replies by the objecting party are due seven days thereafter. The District Judge, upon consideration of the motion, shall set

aside any part of this Order found to be clearly erroneous or contrary to law.

This order is in full force and effect, notwithstanding the filing of any objections, unless stayed by the Magistrate Judge or District Judge. S.D. Ohio L.R. 72.4.

/s/ Terence P. Kemp
United States Magistrate Judge