

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

KIMBERLY A. BARNHART

Plaintiff,

vs.

Civil Action 2:09-CV-1073
Judge Sargus
Magistrate Judge King

DETECTIVE DUSTIN MOWRY, *et al.*,

Defendants.

OPINION AND ORDER

This is a civil rights action under 42 U.S.C. § 1983 in which plaintiff alleges that she was subjected to an unlawful arrest and excessive force and was denied equal protection and due process in violation of her constitutional rights. Plaintiff also asserts state law claims of false arrest, personal injury and infliction of emotional distress. This matter is before the Court on *Defendants' Motion for Rule 37 Sanctions*, Doc. No. 42 ("*Motion for Sanctions*"). For the reasons that follow, the *Motion for Sanctions* is **GRANTED**.

On August 25, 2010, defendants filed a motion asking the Court to require that plaintiff submit to a physical examination by Joseph Schlonsky, M.D. Doc. No. 37. After plaintiff failed to respond to that motion,¹ the Court granted defendants' motion and ordered plaintiff to submit to a physical examination by Dr. Schlonsky at his office in Columbus, Ohio, on September 21, 2010. *Order*, Doc. No. 39.

Plaintiff failed to appear for this examination. *Motion for*

¹The Court specifically advised plaintiff that, if she intended to respond to the motion, she must do so no later than September 9, 2010. *Order*, Doc. No. 38.

Sanctions, p. 2; *Exhibit 1*, attached thereto. Dr. Schlonsky assessed a \$350.00 "no-show" fee. *Id.* Plaintiff's counsel did not advise defense counsel that plaintiff would not appear for her court-ordered examination. *Affidavit of Robert H. Stoffers* at ¶ 3, attached as *Exhibit 2* to *Motion for Sanctions* ("*Stoffers Affidavit*"). Thereafter, defendants filed the *Motion for Sanctions*, seeking an order requiring plaintiff (1) to pay the \$350.00 no-show fee, (2) to pay the attorney's fees associated with the current *Motion for Sanctions*, and (3) to appear for a physical examination by Dr. Schlonsky at the next available date. *Motion for Sanctions*, p. 2. Plaintiff did not file a response to defendants' motion.

Rule 37 of the Federal Rules of Civil Procedure authorizes the imposition of sanctions where a party fails to obey a discovery order. Fed. R. Civ. P. 37(b)(2)(A). There is undisputed evidence that plaintiff failed to obey the Court's *Order*, Doc. No. 39. Plaintiff has likewise failed to submit any evidence to explain or excuse her failure to appear for the court-ordered examination. Accordingly, the Court concludes that the sanctions requested by defendants are appropriate based on the current record.

WHEREUPON, *Defendants' Motion for Rule 37 Sanctions*, Doc. No. 42, is **GRANTED**. The Court **ORDERS** plaintiff to pay the \$350.00 no-show fee assessed by Dr. Schlonsky within ten (10) days of the date of this *Opinion and Order*. Plaintiff is further **ORDERED** to pay the reasonable attorney's fees and costs that the defendants incurred as a result of filing their *Motion for Sanctions*. The defendants are **ORDERED** to provide to plaintiff within ten (10) days of the date of this *Opinion*

and Order a copy of their billing records that reflect their fees and expenses associated with the filing of the *Motion for Sanctions*.

Plaintiff is **ORDERED** to submit payment to the moving defendants no later than November 15, 2010. In addition, plaintiff is **ORDERED** to submit to a physical examination by Dr. Schlonsky at his office located at 5969 East Broad Street, Suite 402, Columbus, Ohio, at the next available date.

Finally, the Court is concerned that plaintiff is not participating in this litigation. Plaintiff is **ADVISED** that her failure to participate in this litigation may result in the dismissal of her claims for want of prosecution.

October 22, 2010

s/Norah McCann King
Norah M^cCann King
United States Magistrate Judge