

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

JACQUIN CLIFFORD, *et al.*,

Plaintiffs,

vs.

Civil Action 2:13-cv-853  
Judge Watson  
Magistrate Judge King

CHURCH MUTUAL INSURANCE COMPANY,

Defendant.

OPINION AND ORDER

This matter is before the Court on *Plaintiffs' Motion for Fed. R. Civ. P. 56(d) Relief*, ECF 69 ("*Rule 56(d) Motion*"). For the reasons that follow, the *Rule 56(d) Motion* is **GRANTED**.

By way of brief background, defendant Church Mutual Insurance Company ("defendant" or "Church Mutual") issued policies of insurance to Licking Baptist Church of Hebron, Ohio, ("the church") for the period December 2001 through December 2007. *Complaint*, ECF 4, ¶¶ 26-58;<sup>1</sup> *Exhibits B, C* attached thereto. Lonnie J. Aleshire, Jr., ("Mr. Aleshire, Jr.") was an associate pastor of the church in 2003 and 2004. *Complaint*, ¶ 9. Plaintiffs allege that, during that time, Mr. Aleshire, Jr., committed acts of sexual misconduct on plaintiffs Sandra Cottrell and Jacquin Clifford. *Id.* at ¶¶ 13-18. On November 28, 2005, Mr. Aleshire, Jr. was convicted on multiple criminal counts arising from these incidents. *Id.* at ¶ 20.

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<sup>1</sup> The original document filed in a state court action in the Court of Common Pleas for Licking County that was removed to this Court is captioned "*Supplemental Complaint*." This Court will refer to that pleading as the *Complaint*.

Thereafter, in 2007 and in 2010, plaintiffs filed two civil actions in the Court of Common Pleas for Licking County ("the state court") apparently arising out of criminal conduct of Mr. Aleshire, Jr. *Id.* at ¶ 1. Following a jury trial in the 2010 state court action as against Mr. Aleshire, Jr., the state court entered final judgment on August 31, 2012 against Mr. Aleshire, Jr., awarding plaintiffs \$4.35 million in damages for assault, battery, intentional infliction of emotional distress, false imprisonment, and loss of consortium as well as \$51,354.37 in attorney's fees ("the money judgment"). *Complaint*, ¶¶ 1, 21-25, 63, 76, 83; *Exhibit A*, attached thereto (Final Judgment Entry).

The action presently before this Court was originally filed in the Court of Common Pleas for Licking County, *Jacquie Clifford fka Cottrell, et al. v. Church Mutual Insurance Company*, Case No. 13CV0736, seeking a declaratory judgment that the policies issued by defendant cover the injury or loss caused by defendant's alleged insured, Mr. Aleshire, Jr. (and as reflected in the money judgment). *See Complaint*. On August 29, 2013, defendant removed the action to this Court as one arising under this Court's diversity jurisdiction. *Notice of Removal*, ECF 1.<sup>2</sup>

Following the close of discovery, the parties filed motions for summary judgment on September 17, 2014. ECF 61, 64. On the same day, plaintiffs filed their *Rule 56(d) Motion*, arguing that they are unable to present facts essential to their response to defendant's motion for

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<sup>2</sup>On September 26, 2014, the Court denied plaintiffs' motion to remand this action. *Opinion and Order*, ECF 74. *See also Report and Recommendation*, ECF 19.

summary judgment because certain discovery remained outstanding. *Rule 56(d) Motion*, pp. 3-6 (citing *Affidavit of Beverly J. Farlow in Support of Plaintiffs' Motion for Fed. R. Civ. P. 56(d) Relief*, attached thereto) ("*Farlow Affidavit*"). The *Rule 56(d) Motion* refers to plaintiffs' motion to compel and for sanctions, ECF 40, and to their motion for *in camera* review, ECF 47, which were pending at the time the *Rule 56(d) Motion* was filed. Plaintiffs' memorandum in opposition to defendant's motion for summary judgment was before resolution of the discovery motions. ECF 73. All parties thereafter filed reply memoranda in support of their motions for summary judgment. ECF 75, 78. Plaintiffs nevertheless persist in their request for relief under Rule 56(d).

On October 21, 2014, the Court granted in part and denied in part plaintiffs' motion to compel and denied their motion for *in camera* review. *Opinion and Order*, ECF 80. More specifically, the Court ordered defendant to produce, within ten days, any deposition or trial transcripts generated in the underlying state litigation and in defendant's possession or control ("state court transcripts"). *Id.* at 30. Plaintiffs' motion to compel was denied in all other respects. *Id.*

Rule 56(d) of the Federal Rules of Civil Procedure establishes the proper procedure to be followed when a party concludes that additional discovery is necessary to respond to a motion for summary judgment:

When Facts Are Unavailable to the Nonmovant. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

- (1) defer considering the motion or deny it;
- (2) allow time to obtain affidavits or declarations or to take discovery; or
- (3) issue any other appropriate order.

Fed. R. Civ. P. 56(d). The affidavit or declaration required by the rule must "indicate to the district court [the party's] need for discovery, what material facts [the party] hopes to uncover, and why [the party] has not previously discovered the information." *Cacevic v. City of Hazel Park*, 226 F.3d 483, 488 (6th Cir. 2000) (citing *Radich v. Goode*, 886 F.2d 1391, 1393-94 (3d Cir. 1989)). A motion under Rule 56(d) may be properly denied where the requesting party "makes only general and conclusory statements [in the supporting affidavit or declaration] regarding the need for more discovery and does not show how an extension of time would have allowed information related to the truth or falsity of the [information sought] to be discovered," *Ball v. Union Carbide Corp.*, 385 F.3d 713, 720 (6th Cir. 2004) (quoting *Ironside v. Simi Valley Hosp.*, 188 F.3d 350, 354 (6th Cir. 1999)), or where the affidavit or declaration "lacks 'any details' or 'specificity.'" *Id.* (quoting *Emmons v. McLaughlin*, 874 F.2d 351, 357 (6th Cir. 1989)). The importance of complying with the specific requirements of Rule 56(d) cannot be over-emphasized. See *Cacevic*, 226 F.3d at 488. Finally, whether or not to grant a request for additional discovery falls within the trial court's discretion. *Egerer v. Woodland Realty, Inc.*, 556 F.3d 415, 426 (6th Cir. 2009).

Plaintiffs contend that the state court transcripts are necessary to enable them to better "explain how Aleshire Jr. was, in fact, an insured, and being an insured involves not only whether he was acting

in the scope of his employment, but also whether the acts occurred while he was performing duties related to the conduct of Licking Baptist Church business.” *Farlow Affidavit*, ¶¶ 11, 13. Plaintiffs also contend that “any additional facts within the transcripts that distinguish the false imprisonment and counseling incidents and injuries from the sexual misconduct also would be material.” *Rule 56(d) Motion*, p. 3 (citing *Farlow Affidavit*, ¶ 12).

Defendant opposes the *Rule 56(d) Motion*, arguing, *inter alia*, that plaintiffs have not established the need for additional discovery. *Church Mutual Insurance Company’s Memorandum in Opposition to Plaintiffs’ Motion for Fed. R. Civ. P. Rule 56(d) Relief*, ECF 76 (“*Memo. in Opp.*”). In any event, defendant contends, plaintiffs were able to file their own motion for summary judgment and oppose defendant’s motion without the requested discovery. *Id.* Defendant also argues that the state court transcripts are and have been readily accessible to plaintiffs. *Memo. in Opp.*, p. 3. Plaintiffs reply that requiring them to incur the expense of procuring the state court transcripts from the state court is unreasonable where defendants can easily produce those transcripts for plaintiffs’ inspection and copying. *Reply*, p. 2 (citing *Farlow Affidavit*, ¶ 13).

Plaintiffs’ arguments are well-taken. This Court has concluded that the state court transcripts within defendant’s possession are discoverable by plaintiffs. *Opinion and Order*, ECF 80, pp. 17-18, 30. Moreover, plaintiffs have established that these transcripts are relevant and necessary to plaintiffs’ response to defendant’s motion for summary judgment. The Court is therefore persuaded that its

discretion is better exercised in granting plaintiffs relief under Rule 56(d). See, e.g., *Egerer*, 556 F.3d at 426.

**WHEREUPON, Plaintiffs' Motion for Fed. R. Civ. P. 56(d) Relief, ECF 69, is GRANTED.** Plaintiffs, if they choose to do so, may supplement their opposition to defendant's motion for summary judgment, ECF 64, no later than November 17, 2014. This supplemental filing must not exceed ten (10) pages length and may address only information reflected in the state court transcripts produced by defendant. If defendant intends to respond to plaintiffs' supplemental brief, it shall do so no later than November 24, 2014. **No other additional briefing on the pending motions for summary judgment shall be permitted, unless upon order by the District Judge.**

November 3, 2014

*s/Norah McCann King*  
Norah M<sup>c</sup>Cann King  
United States Magistrate Judge