

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

LELAND LEE BROWN,

Plaintiff,

v.

Civil Action 2:14-cv-0333

Judge Gregory L. Frost

Magistrate Judge Elizabeth P. Deavers

ROSS COUNTY, *et al.*,

Defendants.

OPINION AND ORDER

This matter is before the Court for consideration of Plaintiff's Motion for the Court to Direct the United States Marshal to Serve Subpoenas (ECF No. 20), Defendants' Responses in Opposition to Plaintiff's Motion (ECF Nos. 21, 24), and Plaintiff's Reply (ECF No. 29).

Specifically, Plaintiff requests that the Court order the United States Marshals Service to serve a subpoena *duces tecum* on Dr. William Strauch to render the following opinions:

(1) the comparative differences of Oxycodone and Methadone versus Tramadol as pain relievers, and (2) known risks associated with withdrawing from high doses of pain relievers, equivalent to 180 mg and 30 mg of Methadone daily, for a person with a pre-existing condition of hypertension who is not being monitored by a medical professional.

(ECF No. 29.) For the reasons that follow, Plaintiff's Motion is **DENIED**. (ECF No. 20.)

As set forth in the Court's August 28, 2014 Order (ECF No. 19), because Plaintiff is proceeding *in forma pauperis*, "[t]he officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases." 28 U.S.C. § 1915(d). This provision requires the Marshals Service to serve an indigent party's subpoena *duces tecum*. A

court, however, may exercise its discretion to screen such a subpoena request, relieving the Marshals Service of its duty when appropriate. *See* 9A C. Wright & A. Miller, Federal Practice and Procedure § 2454, p. 244-46 n. 21 (3d ed. 2010) (citations omitted).

In the instant case, the Court finds circumstances warranting an exception to the Marshals Service's statutory duty under Section 1915(d). Federal Rule of Civil Procedure 45(d)(3)(B)(ii) provides as follows:

To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires . . . disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

Fed. R. Civ. P. 45(d)(3)(B)(ii). The purpose of this rule is to protect unretained experts from compulsion to provide expert opinions without compensation. *See* Fed. R. Civ. P. 45 advisory committee's note (1991) ("A growing problem has been the use of subpoenas to compel the giving of evidence and information by unretained experts. . . . Arguably the compulsion to testify can be regarded as a "taking" of intellectual property."). Rule 45(d)(3)(B)(ii) allows unretained experts to withhold their expertise until the party seeking information shows that he has substantial need for the information and cannot, without undue hardship, obtain its substantial equivalent by other means. *Id.*

In the instant case, Plaintiff asserts that Dr. Strauch was his treating physician and that he has personal knowledge of the facts of this case. Plaintiff's subpoena requests, however, are wholly unrelated to Dr. Strauch's first-hand knowledge of the facts of this case. (*See* ECF Nos. 20, 29.) Rather, Plaintiff seeks medical opinions that only an expert witness is capable of providing. Notably, Plaintiff has not retained Dr. Strauch as an expert in this case. Thus, Dr.

Strauch's specialized knowledge regarding "the comparative differences of Oxycodone and Methadone versus Tramadol" and the "known risks associated with withdrawing from high doses of pain relievers" is protected under Rule 45(d)(3)(B)(ii). Further, Plaintiff has failed to demonstrate that he has a substantial need for this information and that he cannot, without undue hardship, obtain its substantial equivalent by other means. Accordingly, Plaintiff's Motion to Serve Subpoenas is **DENIED**.

IT IS SO ORDERED.

Date: October 1, 2014

/s/ Elizabeth A. Preston Deavers
Elizabeth A. Preston Deavers
United States Magistrate Judge