

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

TED MARCUM,	:	
Plaintiff,	:	
v.	:	Case No. 3:17-cv-437
SHERIFF DAVE DUCHAK,	:	JUDGE WALTER H. RICE
Defendant.	:	

DECISION AND ENTRY OVERRULING DEFENDANT SHERIFF DAVE DUCHAK’S MOTION TO STRIKE (DOC. #83); SUSTAINING PLAINTIFF’S MOTION FOR RELIEF FROM JUDGMENT (DOC. #84), WHICH THE COURT CONSTRUES AS A MOTION TO MODIFY THE PRELIMINARY PRETRIAL ORDER; VACATING PRELIMINARY PRETRIAL ORDER (DOC. #79); DIRECTING PARTIES TO CONFER AND FILE JOINT RULE 26(f) REPORT WITHIN 21 DAYS OF THE DATE OF THIS DECISION AND ENTRY

This matter is currently before the Court on Defendant Sheriff Dave Duchak’s Motion to Strike, Doc. #83. He asks the Court to strike the Rule 26(f) Report filed unilaterally by Plaintiff Ted Marcum on January 9, 2019, Doc. #82. This matter is also before the Court on Plaintiff’s “Motion for Relief from Judgment, Civ. R. 60(b)(5),” Doc. #84, which the Court construes as a motion to modify the December 17, 2018, Preliminary Pretrial Order, Doc. #79, under Fed. R. Civ. P. 16(b)(4).

According to Defendant, the parties conferred by telephone on October 8, 2018, to draft a Joint Rule 26(f) Report. Defendant emailed a copy of the

proposed Report to Plaintiff and requested suggested changes. When Plaintiff failed to respond, Defendant filed the Report without Plaintiff's signature. Doc. #76. Magistrate Judge Ovington held an Initial Pretrial Conference on October 29, 2018, and directed her Courtroom Deputy to send Plaintiff a blank Rule 26(f) form.

On December 17, 2018, Magistrate Judge Ovington issued a Preliminary Pretrial Order, Doc. #79. On the same date, Magistrate Judge Ovington noted that Plaintiff had withdrawn consent to the exercise of jurisdiction by the Magistrate Judge. Doc. #80.

On December 26, 2018, Plaintiff asked the Court to direct the Clerk to send him another blank Rule 26(f) form and asked for an extension of time to file it. Doc. #81. On December 28, 2018, the Court sustained his motion via notation order, and directed Plaintiff to file the Rule 26(f) Report no later than January 15, 2019. Plaintiff filed his Rule 26(f) Report on January 9, 2019, suggesting different deadlines than Defendant had. Doc. #82.

Defendant then filed a Motion to Strike Plaintiff's Rule 26(f) Report, noting that Defendant had not agreed to any of the deadlines or discovery plans contained therein, and did not consent to his signature being included on that Report. Doc. #83.

Plaintiff objected and filed a Motion for Relief from Judgment under Fed. R. Civ. P. 60(b), asking that the Court vacate the dates set in the Preliminary Pretrial Order to enable him sufficient time to seek counsel and to meet deadlines after his release from the Butler County Jail, currently scheduled for March 9, 2019. Doc.

#84. The Court construes this as a motion to modify the scheduling order under Fed. R. Civ. P. 16(b)(4).

Given that the Court expressly granted Plaintiff leave to file a delayed Rule 26(f) Report, the Court OVERRULES Defendant's Motion to Strike, Doc. #83. The Court, however, ORDERS the parties to hold another Rule 26(f) conference and to submit a Joint Rule 26(f) Report within 21 days of the date of this Decision and Entry.

The Court finds that Plaintiff has established good cause for modifying the Preliminary Pretrial Order, Doc. #79. Accordingly, the Court SUSTAINS Plaintiff's Motion for Relief from Judgment, Doc. #84, which the Court construes as a motion to modify the scheduling order under Fed. R. Civ. P. 16(b)(4), and VACATES the dates set in the Preliminary Pretrial Order.

Upon receiving the parties' Joint Rule 26(f) Report, the Court will set a date for another Preliminary Pretrial Conference and establish new deadlines.

Date: March 12, 2019



WALTER H. RICE
UNITED STATES DISTRICT JUDGE