

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

**TAUNYA PERRY and  
JENNIFER MILLER,** )  
 )  
 )  
 **Plaintiff,** )  
 )  
 **v.** )  
 )  
 **TERRY DURBOROW, SHERIFF )  
OF OTTAWA COUNTY, in his )  
Individual and Official )  
Capacities; and DANIEL )  
CLEMENTS,** )  
 )  
 **Defendant.** )

**Case No. 15-CV-95-CVE-FHM**

**OPINION AND ORDER**

Defendant Durborow’s *Motion to Compel and for Fees/Costs as to Plaintiff Miller*, [Dkt. 21], is before the court for decision. Plaintiff Miller has filed a response. [Dkt. 22]. No reply was filed.

Plaintiff Miller failed to timely respond to Defendant’s discovery requests. When defense counsel conferred with Plaintiff’s counsel, Plaintiff’s counsel explained that he was having difficulty contacting Plaintiff but would continue his efforts. Defendant subsequently filed the motion to compel, Plaintiff’s attorney was able to contact Plaintiff who had been incarcerated, and the discovery responses have now been provided. The motion to compel is therefore moot and the remaining issue is whether Plaintiff should pay Defendant’s attorney fees and expenses for having to file the motion to compel.

Based upon the relatively short period of time Plaintiff’s responses were delinquent, approximately 30 days, Plaintiff’s attorney’s difficulty in contacting Plaintiff because she resides out of state and at times does not have access to a telephone, and Plaintiff’s lack

of financial resources, the court finds it would be unjust to require Plaintiff to pay Defendant's attorney fees and expenses. Fed. R. Civ. P. 37(a)(5)(A)(iii). The request for attorney fees and expenses is therefore DENIED.

IT IS SO ORDERED this 28th day of September, 2015.

  
FRANK H. McCARTHY  
UNITED STATES MAGISTRATE JUDGE