

UNITED STATE DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

ESTATE OF DUSTIN BARNWELL, )  
by next of kin, S.C.B. a minor, b/n/f, )  
SHASTA LASHAY GILMORE, )  
 )  
Plaintiff, )  
 ) No. 3:13-CV-124-PLR-HBG  
 )  
v. )  
 )  
ROANE COUNTY, TENN., *et al.*, )  
 )  
Defendants. )

**ORDER**

This case is before the undersigned pursuant to 28 U.S.C. § 636, the Rules of this Court, and Standing Order 13-02.

Now before the Court is the Defendants' Motion to Strike the Affidavit of Steven Perlaky, M.D. [Doc. 220], filed on March 28, 2016. The Plaintiff filed a Response [Doc. 226] objecting to the Defendants' Motion.<sup>1</sup> The parties appeared before the Court telephonically on April 4, 2016. Attorney John Wolfe was present on behalf of the Plaintiff, and Attorneys Gina Sarli and Jeffrey Thompson were present on behalf of the Defendants. For the reasons explained below, the Court **GRANTS IN PART AND DENIES IN PART** the Motion to Strike the Affidavit of Steven Perlaky, M.D. [Doc. 220].

The Defendants' Motion [Doc. 220] requests that the Court strike Dr. Perlaky's Affidavit because it is untimely and impermissible. In addition, the Defendants argue that the Affidavit will prejudice them because they will be forced to confront an array of new expert opinions that

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<sup>1</sup> The Plaintiff filed its Response on April 3, 2016, but the deadline to file was April 1, 2016. The Plaintiff has repeatedly been admonished for its untimely filings. Although the Court has considered the Plaintiff's Response, the Court will not continue to review untimely filings absent extraordinary circumstances.

are used to bolster Plaintiff's opposition to Defendants' Daubert motion. The Defendants submit that Federal Rule of Civil Procedure 26(a)(2)(B)(i) requires parties to disclose a complete statement of all the opinions the expert witness will express and the basis and reasons for them. The Defendants argue that Dr. Perlaky's Affidavit is untimely and an improper rebuttal because it sets forth new opinions after the close of expert discovery, on or about December 18, 2015.

The Plaintiff's Response [Doc. 226] argues that the Defendants do not dispute the truth or relevancy of the Affidavit and that the Defendants' single objection is to Dr. Perlaky's opinion regarding the Defendants' state of mind. In addition, the Plaintiff submits that Dr. Perlaky has reviewed a "big stack of material" and that Dr. Cogswell only talked to one person before making the autopsy report. Finally, the Plaintiff submits that bias should not be a disqualifying factor with respect to Dr. Perlaky's opinions.

The Court has reviewed the Affidavit of Dr. Perlaky [Doc. 218-2] that was filed on March 22, 2016. The Court finds that it will not strike paragraphs 1 through 6 from Dr. Perlaky's Affidavit because they involve factual issues that are directly related to Dr. Perlaky's creditability—an issue raised in the Defendants' Daubert challenge. However, the Court finds that paragraphs 7 through 11 represent an effort to expand on Dr. Perlaky's previously disclosed opinions. Pursuant to the Scheduling Order [Doc. 170], expert disclosures were due in December 2015. Dr. Perlaky's Affidavit was filed on March 22, 2016, approximately three months later. Thus, the information provided in paragraphs 7 through 11 of Dr. Perlaky's deposition were disclosed too late. Such untimely disclosures are unfairly prejudicial to the Defendants, and therefore, Dr. Perlaky is limited to his opinions as stated in his initial disclosures and during his deposition. Accordingly, the Court finds that the Motion to Strike the Affidavit of Steven

Perlaky, M.D. [Doc. 220] is **GRANTED IN PART AND DENIED IN PART**. Paragraphs 7 through 11 of Dr. Perlaky's Affidavit [Doc. 218-2] are **STRICKEN**.

**IT IS SO ORDERED.**

ENTER:

  
United States Magistrate Judge