

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

GARY R. PRINCE REVOCABLE TRUST,)
GARY R. PRINCE TRUSTEE, GARY PRINCE,)
CHRISTOPHER CAMPBELL, and)
WILLIAM LISTON and wife DIANA L. LISTON,)

Plaintiffs,)

v.)

Civil Action No. 3:09-cv-475

CHRIS BLACKWELL, personally and D/B/A)
BLACKWELL CONSTRUCTION, and)
WILLIAM BLACKWELL and)
DBS & ASSOCIATES OF CLARKSVILLE, INC.,)

Judge Thomas A. Wiseman, Jr.

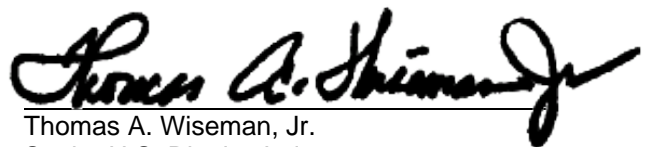
Defendants.)

ORDER

Before the Court is the Motion to Dismiss for Failure to Respond to Discovery (Doc. No. 94) filed by defendants Chris Blackwell, personally and d/b/a Blackwell Construction, and William Blackwell ("Defendants"). The basis for the motion is that, as of the date the motion was filed (October 26, 2010), Plaintiffs had not yet served their responses to Defendants' last round of discovery requests, which were due October 20, 2010 pursuant to court order. Plaintiffs have apparently now served their discovery responses and requested, to no avail, that Defendants strike their motion.

The Court is sympathetic to the Defendants' frustration with Plaintiffs' apparent inability to comply with the scheduling order in place. Defendants, however, have not demonstrated actual prejudice as a result of the most recent infraction, and certainly have not shown that dismissal is an appropriate sanction at this time. Moreover, although the motion, being styled as a motion to dismiss rather than a motion to compel or for sanctions, was not technically subject to the requirements of Rule 37(d)(1)(B) of the Federal Rules of Civil Procedure or Local Rule 37.01(b)(3), the Court finds that Defendants' failure to make a concerted effort to resolve this dispute before seeking Court intervention undermines their position. In short, the motion to dismiss is wholly disproportionate to the offense in question. The motion to dismiss is hereby **DENIED** as is the request for attorneys' fees.

It is so **ORDERED**.



Thomas A. Wiseman, Jr.
Senior U.S. District Judge