UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

Shawn K. Odneal, Plaintiff, v. Paul Schnell, et al., Defendants.

Case No. 22-CV-3107 (JRT/JFD)

ORDER

and REPORT AND RECOMMENDATION

This matter is before the Court on Plaintiff Shawn K. Odneal's Motion for Summary Judgment (Dkt. No. 31) and Defendants Celest Aileru, Guy Bosch, Jenny Carufel, Eric Hennen, Stephanie Huppert, Leigh McCoy, Paul Schnell, and Marrisa Williams's Motion for Extension of Time to File Response (Dkt. No. 33). The motions have been referred to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636 and District of Minnesota Local Rule 72.1.

Under the Pretrial Scheduling Order entered in this case, discovery is currently underway and will end on December 11, 2023. (Dkt. No. 28 at 2.) The deadline for dispositive motions is February 12, 2024. (Id.) Plaintiff filed his motion for summary judgment on June 23, 2023—a mere two months into the discovery period and more than six months before the dispositive motion deadline.

The Pretrial Scheduling Order also describes when documents are deemed served and filed: "The date documents are mailed is the date of service and filing." (Id. at 3.) Plaintiff mailed his summary judgment motion on June 20, 2023, making that the date of service. The Pretrial Scheduling Order provides that responses to dispositive motions are due 25 days after the date of service. (Id. at 2.) Thus, Defendants' response to Plaintiff's summary judgment motion is due on July 15, 2023—25 days after June 20, 2023. However, July 15, 2023 is a Saturday, so Defendants' response is actually due on July 17, 2023.

Defendants have asked for an extension of time until December 11, 2023 to respond to Plaintiff's summary judgment motion. Defendants give good reasons for the request. They intend to serve discovery requests on Plaintiff and will need most of the discovery period to conduct discovery and to respond to Plaintiff's anticipated discovery requests. (Wright Decl. ¶¶ 3–4, Dkt. No. 36.) In addition,

Defendants propose filing a combined response to Plaintiff's summary judgment motion and a summary judgment motion of their own.

The Court cannot approve Defendants' proposal, however, due to the motion reporting requirements of the Civil Justice Reform Act. "Under the Civil Justice Reform Act of 1990 ('CJRA'), each federal judicial officer must report 'the number of motions that have been pending for more than six months and the name of each case in which such motion has been pending.'" Hageman v. Morrison Cnty., No. 19-CV-3019 (JRT/HB), 2021 WL 2792386, at *4 (D. Minn. Apr. 30, 2021), R. & R. adopted, 2021 WL 2680194 (D. Minn. June 30, 2021) (quoting 28 U.S.C. § 476(a)(1)). Based on the filing date of June 20, 2023, Plaintiff's motion for summary judgment will be reportable on March 31, 2024, and, if not resolved, "will be included on the semiannual published CJRA report." Id. "The purpose of the CJRA is to reduce costs and delays in civil litigation, see Civil Justice Reform Act of 1990, Pub. L. 101-650, § 102, 104 Stat. 5089 (1990), and thus having to report a motion on the CJRA report is undesirable." Hageman, 2021 WL 2792386, at *4.

But the reportable date of March 31, 2024 is not the deadline for this Court's report and recommendation on the motion for summary judgment.

District of Minnesota Local Rule 72.2 governs a district judge's consideration of a magistrate judge's rulings. When a motion is referred to magistrate judge for a report and recommendation, Local Rule 72.2(b) allows any party to file a written objection to the report and recommendation within 14 days of being served with it, and any other party may respond to the objection within 14 days of service. Thus, the earliest a district judge could rule on a report and recommendation would be 28 days after it is issued, and that timeline does not account for delays caused by mail or docketing, requests for extensions, substantive review of the report and recommendation, and writing an order resolving any objections and ruling on the report and recommendation. Id. To account for the above time constraints, this Court would aim to issue its report and recommendation no later than February 1, 2024. Were Defendants to file their cross-motion for summary judgment on December 11, Plaintiff would have 25 days to respond (January 5, 2024), and Defendants would have 14 days to file a reply (January 19, 2024). Unfortunately, that timeline would not give this Court sufficient time to issue a report and recommendation. Defendants' desire to conduct discovery before responding to Plaintiff's summary judgment motion or bringing a cross-motion is valid. It is undisputable that "summary judgment is proper only if the nonmovant has had adequate time for discovery." Robinson v. Terex Corp., 439 F.3d 465, 467 (8th Cir. 2006). For this reason, and because Plaintiff's summary judgment motion cannot remain pending until discovery is complete due to the CJRA time constraints, the Court will recommend that Plaintiff's summary judgment motion be denied without prejudice. The Court will correspondingly order that (1) Defendants' motion for an extension of time is denied as moot, and (2) Defendants need not respond to Plaintiff's summary judgment motion while this Report and Recommendation is pending. Finally, if this Report and Recommendation is not adopted, Defendants' response to Plaintiffs' summary judgment motion shall be due 25 days after the entry of the District Court's order.

Accordingly, based on all the filings, records, and proceedings herein,

IT IS HEREBY RECOMMENDED that Plaintiff's Motion for Summary Judgment (Dkt. No. 31) be DENIED WITHOUT PREJUDICE; and

IT IS HEREBY ORDERED that Defendants Celest Aileru, Guy Bosch, Jenny Carufel, Eric Hennen, Stephanie Huppert, Leigh McCoy, Paul Schnell, and Marrisa Williams's Motion for Extension of Time to File Response (Dkt. No. 33) is DENIED AS MOOT. Defendants need not respond to Plaintiff's summary judgment motion while the Court's Report and Recommendation is pending. If the Report and Recommendation is not adopted, Defendants' response to Plaintiff's summary judgment motion is due 25 days after the entry of the District Court's order.

Date: July 7, 2023 s/ John F. Docherty John F. Docherty United States Magistrate Judge

NOTICE Filing Objections: This Court's Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals. Pursuant to D. Minn. LR 72.2(b)(1), a party may file and serve specific written objections to this Report and Recommendation within 14 days. A party may respond to objections within 14 days after being served a copy of the objections. All objections and responses must comply with the word or line limits set forth in LR 72.2(c).