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IN THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF ILLINOIS

CURTIS LOVELACE, et. al.,	)	
	)	
Plaintiffs,	)	
	)	1:17-cv-01201-JES-JEH
v.	)	
	)	
	)	
DET. ADAM GIBSON, et. al.,	)	Judge Myerscough
	)	
Defendants.	)	
	)	Mag. Judge Schanzle-Haskins
	)	
	)	

PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTIONS TO COMPEL ADDITIONAL DEPOSITION TESTIMONY FROM CURTIS LOVELACE

Now come Plaintiffs, Curtis Lovelace, Logan Lovelace, Lincoln Lovelace, & Christine Lovelace on behalf of her minor son, Larson Lovelace, by and through their attorneys, LOEVY & LOEVY, and hereby respond to the Defendants' Motions to compel further deposition of Curtis Lovelace (Dckt. Nos. 61 and 62) as follows:

Introduction

On July 6, 2018, Curtis Lovelace sat for a deposition that went beyond the presumptive seven hours afforded for depositions by the Federal Rules of Civil Procedure. During this deposition Mr. Lovelace endured questions about topics such as how extended questioning on how he pronounces his name, whether he kept any mementos of his dead wife more than a decade after her passing, the mechanism for him to obtain his JAG commission, details of his football-playing career, including whether Plaintiff ever considered an NFL career, and the denominations of various churches he has attended in his life. Plaintiff answered all of these

questions patiently and, when Defendants complained mid-afternoon that they thought they would not finish, offered to stay late to keep answering questions. Defendants declined that offer, made no attempt to extend the reporter for that evening, and instead asked Mr. Lovelace at the end of the deposition to return for several more hours of questioning at another date.

Then, as now, Defendants could articulate no specific topics they were unable to cover with Mr. Lovelace, and have always only vaguely asserted that this case is complicated and they have additional questions. And, disingenuously, Defendants now claim that they adjourned Mr. Lovelace's deposition "in deference to the court reporter" when the record from the deposition makes clear that Defendants made no effort to ask the court reporter to stay until the very end of the day, even though they knew earlier in the day that they might want to seek additional time. There is nothing about the circumstances of this deposition or the circumstances of this case that warrant Defendants getting additional time to depose Mr. Lovelace. This Court should deny Defendants' motions, and further deny Defendants' request for sanctions.

Factual Background

As Defendants' motions admit, Plaintiff's deposition began at 9:24 a.m. It was scheduled to begin at 9:00 a.m. and Mr. Lovelace and his counsel were present and ready to begin, but defense counsel did not convene the deposition on time. (Dckt. No. 61.6 at 4, 61.2 at 34.)

Mr. Lovelace complied fully with the deposition process and made every effort to allow the deposition to finish in one day – he took minimal breaks and a very hurried lunch so that the parties could complete the deposition on time. Although Defendants now claim that Mr. Lovelace's answers were unusually long, counsel did not assert during the deposition that Mr. Lovelace had been obstructionist in his answers in the deposition. (Dckt. No. 61.2 at 34.)

Defendants' counsel waited until at break at 2:52 p.m. to inform Plaintiff that they believed this was a complicated case and that the parties were not sure they could finish that day. At this time, the deposition had been going for approximately five hours. Counsel for Mr. Lovelace told the parties that Plaintiff would be happy to confer with counsel, but that Plaintiff did not agree that the Defendants were entitled to more than 7 hours. (Dckt. No. 61.2 at 14.) At the break at that time, Plaintiff's counsel also told Defendants that Mr. Lovelace would be willing to stay longer than seven hours that day to answer reasonable questions, but that he would not agree to return at another date. (Dckt. No. 61.4 at 2.) At that time, defense counsel took no steps to ensure the deposition could be completed that day; defense counsel did not confer with the court reporter, see if another court reporter was available to finish the deposition (the deposition was taken at a court reporter's office), or take any logistical steps to try to extend the deposition.

Instead, after a short break, counsel for the Quincy Defendants ceded his time to the Adams County counsel, who asked questions for another two and a half hours. (from approximately 3:00 pm to 5:35 p.m.). At a break at approximately 4:50 p.m., counsel for the Plaintiff again told the defense counsel that Plaintiff would be willing to stay beyond seven hours as long as the questions were appropriate. (Dckt. No. 61.2 at 34-35.) At this time, defense counsel acknowledged one possible way to resolve this was to extend the deposition into the evening (*Id.*) but again, defense counsel took no steps to ensure the deposition could go late. At that time, one of the defendant's counsel also indicated, in candor, that one reason he did not want to finish the deposition that evening was because of another event he had to attend that evening. (Dckt. No. 61.2 at 33.)

During that examination, the court reporter announced that the deposition had hit the seven-hour mark, and Plaintiffs' counsel again told defense counsel that Mr. Lovelace would be willing to stay. Counsel for the Adams County Defendants then chose to stop his questions at 5:31 p.m. (Dckt. No. 61.3 at 2.) At that point, although it is off the record, defense counsel again asked Mr. Lovelace if he would be willing to come back. Plaintiff's counsel indicated that Mr. Lovelace would stay for reasonable additional questions, but would not agree to return. (Dckt. No. 61.4 at 2.) At this point, defense counsel finally asked the court reporter about her schedule, and she indicated she could not stay late. (Dckt. No. 61.3 at 3.) Defense counsel then chose to end the deposition. (*Id.*)

During the deposition, Mr. Lovelace patiently answered questions about topics including (1) how to pronounce his name, and whether he had pronounced his name differently at some point in his life (Dckt. No. 61.1 at 4-5); (2) the origin of his children's middle names and whether those names were changed after he re-married (Dckt. No. 62 at 14-15); (3) how he became a commissioned officer in the JAG and his responsibilities in JAG (Dckt. No. 61.2 at 2-3); (4) extensive questions about how he and his current wife, Christine Lovelace, met (Dckt. No. 61.2 at 7-8, 15); (5) questions about whether a couple named the Crickards were involved in his children's lives (Dckt. No. 61.2 at 18); (6) why he chose to send certain of his children to private school in Quincy, Illinois rather than public school (including a specific question about whether public school was not good enough for Mr. Lovelace and his family) (Dckt. No. 61.2 at 27); (7) the denomination of churches he has attended at various times in his life (Dckt. No. 61.2 at 26-27); and (8) details of his football playing career (Dckt. No. 61.1 at 11-12). Mr. Lovelace also re-answered many questions that were already asked of him during his lengthy trial testimony in the criminal trial of this matter.

Moreover, as the deposition transcript indicates, counsel was also able to cover, in detail, Mr. Lovelace's relationship with Cory Lovelace, his entire work history and political activity and aspirations, details about the day of his wife's death, details of his other marriages, extensive information about his children's lives and his relationship with them and various family members, details about his experiences in jail awaiting trial, and questions about his interactions with various defendants during the course of these events.

On Tuesday, July 10, 2018, counsel for the Quincy Defendants sent counsel for Plaintiffs an email asking counsel to re-produce Mr. Lovelace for an additional 2 hours. Counsel declined, explaining many of the same facts set forth in this response. (Dckt. No. 61.4.) Counsel for the Adams County Defendants has never conferred with Plaintiff's counsel about a need to re-depose Mr. Lovelace, and did not confer as required by Rule 37 before the filing of its motion.

ARGUMENT

Although neither of Defendants' motions cite it, there is a standard for motions to extend depositions. The Federal Rules of Civil Procedure provide that witnesses, including the parties, sit for a single deposition. Fed. R. Civ. P. 30(a)(2). In considering a motion for a second deposition, this Court should consider whether: "(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or (iii) the proposed discovery is outside the scope permitted by Rule 26(b)(1)." Fed. R. Civ. P. 26(b)(2)(C)(ii); *Innomed Labs, LLC v. Alza Corp.*, 211 F.R.D. 237, 239 (S.D.N.Y. 2002); *Powell v. United Parcel Serv., Inc.*, No. 1:08-CV-1621-TWP-TAB, 2011 WL 124600, at *1 (S.D. Ind. Jan. 13, 2011). It is the party requesting the

second deposition who bears the burden to demonstrate that their request is permissible under Rule 26(b)(2)(C). *Innomed Labs*, 211 F.R.D. at 239.

Courts should deny leave to re-depose witnesses in situations like this if any one of the following is true: "the party seeking discovery has had ample opportunity to obtain the information;" the new deposition would be "unreasonably duplicative;" or "the burden of the proposed discovery outweighs its likely benefit." *Powell v. United Parcel Serv., Inc.*, No. 1:08-CV-1621-TWP-TAB, 2011 WL 124600, at *1 (S.D. Ind. Jan. 13, 2011); Fed. R. Civ. P. 26(b)(2)(c).

In this case, neither Defendant has ever articulated, either during the deposition, in the Quincy Defendants effort to confer with Plaintiff's counsel about this issue, or in either motion, what topics remain or what information Defendants still seek from Plaintiff. This in and of itself should be fatal to the Defendants' motions. Simply put, there is no way for this Court to evaluate whether the information sought is unreasonably duplicative or burdensome, whether Defendants have had the opportunity to obtain that information already, or whether the information falls within the proportionality requirement of Rule 26(b)(1) without *any* details about the information the Defendants purportedly needs. This also hamstrings Plaintiffs in responding to Defendants' request. Even absent the required specificity, however, the record demonstrates that Defendants have no need for an additional three hours with Mr. Lovelace.

I. Defendants Had Ample Opportunity Gather Information from Mr. Lovelace

Defendants already had more than seven hours to question Mr. Lovelace, and indeed could have asked him additional questions to finish his deposition on July 6 had counsel truly wanted to ask further questions. The record reflects that counsel took no serious steps to try to extend the deposition the day it was being taken. Counsel did not, for instance, ask the court

reporter prior to 5:30 p.m. if she could stay longer, did not try to get another court reporter, or do anything other than assume all along that counsel would have more time if counsel wanted it.

During those seven hours, as described above, Mr. Lovelace answered every question posed to him, was not obstructionist (as counsel admitted), and facilitated the deposition by arriving on time (the late start of the deposition was due to defense counsel's tardiness, not his own), taking very short breaks, and doing his best to answer questions. As described above, counsel chose to use that time to ask about irrelevant topics, which may be an indicator that counsel truly had no other critical questions to pose rather than an indicator that those questions were central to the litigation. The Quincy Defendants argue in their motion that some of these questions (about the children's middle names, Plaintiff's football career, and Plaintiff's religious affiliation, among others) were relevant. (Dckt. No. 61 at 5-6.) It is certainly Defendants' prerogative to defend this case as they see fit, but the reaching nature of these questions is an indicator of how Defendants chose to prioritize their time during this deposition, and suggest that if defense counsel had time to ask about these topics, it was not saving its more pressing questions for a future deposition it might never get to take.

Moreover, Mr. Lovelace previously answered interrogatories from both parties and has responded to document requests (and has produced more than 13,000 pages in this litigation). Defendants have not demonstrated that they can meet their burden under Rule 26(b)(2)(c), particularly given the extensive amount of paper discovery already conducted in this case.

Both Defendants assert that a reason for needing additional time in Mr. Lovelace's deposition is that his interrogatory answers are supposedly "evasive and incomplete." (Dckt. No. 61 at 7; Dckt. No. 62 at 4.) Neither set of Defendants ever filed a motion to compel additional answers in response to their interrogatories, and that is for good reason. Defendants' citation to

Plaintiff's answer to Interrogatory Number 5 is misleading and unavailing. The full question and answer is as follows:

5. Identify and describe the "pieces of exculpatory information" that were revealed to Detective Gibson, as alleged in Paragraph 36 of the Complaint, and identify each person with knowledge of this information and each document which relates to this information.

ANSWER: Plaintiff objects to this Interrogatory as impermissibly vague in asking Plaintiff to identify documents which "relate to" this information. Plaintiff further objects that this Interrogatory is premature; Plaintiff has not yet deposed Defendants or received discovery responses from Defendants in this case. Finally, Plaintiff objects to the extent this Interrogatory calls for information protected by the attorney-client or work-product privileges. Subject to and without waiving these objections, Plaintiff incorporates his answers to Interrogatories 5 through 18 in this answer. Plaintiff further answers as follows:

Defendant Adam Gibson's investigation revealed that numerous medical experts concluded that there was not a sufficient scientific basis to conclude that Cory Lovelace had been murdered. This information came from, among other sources, Dr. Ezra Pounder, Dr. Jessica Bowman, Dr. Scott Denton, and Dr. Shaku Teas. Defendant Gibson's investigation, including speaking with firefighters and coroner personnel on the scene also revealed that Cory Lovelace was not the victim of murder. Defendant Adam Gibson also interviewed all of the Lovelace children, who confirmed that they saw their mother alive before they went to school that morning. Finally, Defendant Gibson was aware that Erika Gomez, the source of purported inculpatory evidence as to Mr. Lovelace's guilt, was a wholly incredible witness.

Plaintiff states that the people with present knowledge of some or all of this exculpatory information includes but is not limited to the individuals listed in Plaintiffs Rule 26(a)(l) disclosures, Defendants, and the above-identified individuals. Plaintiff also refers Defendants to

Plaintiffs Rule 26(a)(l) document disclosures, Bates Plaintiff 1 through 9747 previously produced in this litigation. Investigation continues.

(Dckt. No. 61.5 at 3-4.)

* * *

Defendants have not explained why Plaintiff's answer to this Interrogatory is deficient, and it is not. It is a contention Interrogatory asked at the outset of litigation, before Plaintiff has had a chance to review all available documentary discovery or even to depose all Defendants, and Plaintiff answered the question as best he could. As other courts have recognized, "The general policy is to defer contention interrogatories until discovery is near an end, in order to promote efficiency and fairness." *Ziemack v. Centel Corp.*, No. 92 C 3551, 1995 WL 729295, at *2 (N.D. Ill. Dec. 7, 1995). *See also Whitchurch v. Canton Marine Towing Co.*, No. 16-CV-3278, 2017 WL 1165988, at *2 (C.D. Ill. Mar. 23, 2017) (citing *Ziemack* and *Logan v. Burge,* 2010 WL 4074150, at *4 (N.D. Ill. October 12, 2010)) ("Contention interrogatories are often better answered after parties are near the end of discovery because they are better able to give complete responses."). In response to a request to identify "each person with knowledge of this information" and "each document which relates to this information" Plaintiff made a broad response because at this point in the litigation it is simply not possible to be more specific. By the end of this litigation, Plaintiff will be able to give a more specific response.

Finally, Defendants have not explained why this or any other answer Mr. Lovelace has given to Interrogatories would require additional time for a deposition. Indeed, if Defendants are seeking three additional hours of deposition with Mr. Lovelace to pose impossibly broad contention interrogatories to him, that would be a true waste of time.

II. An Additional Three-Hour Deposition of Mr. Lovelace Would Be Unreasonably Duplicative

Defendants' motion argues that this case is complicated, and covers diverse topics such as "Cory Lovelace's death in 2006, plaintiff's life, career, health and marriages between her death and his arrest in 2014, plaintiff's incarceration, two murder trials, post-trial life and career to the present." (Dckt. No. 61 at 7; Dckt. No. 62 at 3-4.) What both of Defendants' motions ignore is that in the lengthy deposition already conducted of Mr. Lovelace, counsel asked numerous questions about each of these topics; between them, counsel covered numerous aspects of Cory Lovelace's death, discussed Mr. Lovelace's career, marriages, and life extensively, asked questions about Mr. Lovelace seeking counseling, addressed Mr. Lovelace's other marriages, his incarceration, his trials, and his post-trial life and career. Defendants have not and cannot point to any specific topics or questions they have not had an opportunity to cover.

Additionally, because this is a § 1983 case that stems from Plaintiff being tried, twice, for the supposed murder of his wife, counsel has not only the record from Plaintiff's first deposition, but also Plaintiff's answers to interrogatories, Plaintiff's lengthy testimony from his second criminal trial, and Plaintiff's video-taped statement during the police investigation, all of which are statements by Plaintiff about various issues in this case. Moreover, Defendants have available to them other discovery mechanisms including Requests to Admit, additional interrogatories and document requests, and other potential discovery mechanisms to answer whatever additional questions they have about this case. Defendants should not be able to obtain a highly-unusual second deposition when any questions it might want to pose have already been asked or can be answered by other means. Counsel has not identified a single question it needs to ask Mr. Lovelace that would not be duplicative of other discovery in this case.

III. Sanctions are Inappropriate

In the event this Court concludes that further deposition time is appropriate in this case, sanctions are wholly inappropriate. Plaintiff did his best to confer with Defendants about these issues during the deposition, offered to stay later, and articulated in detail (as reflected in the deposition transcript and counsel's subsequent email included in Dckt. No. 61.4) his reasons for opposing a second deposition. Counsel for the Adams County Defendants never even conferred with Plaintiff, and neither party ever set forth, as required by Rule 26, the basis for their request for additional time. Plaintiff has acted in good faith in addressing this discovery dispute, and if this Court believes Defendants are right, Plaintiff should not be punished for asserting, in good faith, his position. Defendants cannot and have not explained how they have been harmed by Plaintiff taking a good faith position on this issue, and any sanctions would therefore be inappropriate and unnecessary.

Conclusion

Defendants had upwards of seven hours to question Mr. Lovelace in a case about which he previously testified. Defendants could have stayed later on July 6, 2018, to ask him more questions but chose not to, and more importantly chose not to make any arrangements that would have made that possible. Mr. Lovelace's case is no more complicated than any other piece of civil rights litigation (and does not have an unusually high number of Defendants), the vast majority of which do not require the second deposition of a Plaintiff. And if Defendants truly do have remaining questions, Defendants knew in advance of this deposition the issues to be covered in the deposition and simply did not use their time wisely. These circumstances lack the exigency required for an additional deposition, particularly given Defendants' total failure to demonstrate any need under Fed. R. Civ. P. 26(b)(2(c) for further time.

WHEREFORE, for all the reasons stated herein, Plaintiffs respectfully request that this Court deny Defendants' Motions to Compel.

Respectfully submitted,

CURTIS LOVELACE, LOGAN LOVELACE, & LINCOLN LOVELACE

/s/ Tara Thompson
One of Plaintiffs' Attorneys

Jon Loevy
Tara Thompson
LOEVY & LOEVY
311 N. Aberdeen, 3rd Floor
Chicago, IL 60607
(312) 243-5900

CERTIFICATE OF SERVICE

I, Tara Thompson, an attorney, hereby certify that on August 6, 2018, I filed the foregoing Response via the Court's CM/ECF system and thereby served a copy on all counsel of record.

/s/ Tara Thompson