

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

LARRY MARSHALL,)
)
 Plaintiff,)
)
 v.)
)
 DECATUR COUNTY GENERAL)
 HOSPITAL,)
 and JASON SCOTT,)
)
 Defendants.)

Case No. 08-01159-JDB

JURY DEMANDED

ORDER DENYING DEFENDANT JASON SCOTT’S MOTION TO STAY DISCOVERY

Before the Court is Defendant Jason Scott’s Motion to Stay Discovery (Doc. 19). Defendant Scott has moved the Court to stay discovery in this matter pending the resolution of whether he is entitled to qualified immunity and seeks an order from the Court quashing a notice to take his deposition served upon his counsel by Plaintiff. Plaintiff Larry Marshall has filed a response (Doc. 20). On January 29, 2008, this Court held a conference call in order to allow Plaintiff and Defendant Scott an additional opportunity to argue their positions. For the following reasons, Defendant Scott’s Motion to Stay Discovery is DENIED.

Plaintiff Larry Marshall brought this § 1983 civil rights action against Defendants Decatur County General Hospital and Jason Scott, the Mayor of Decatur County, Tennessee. Plaintiff also has a claim for intentional interference with his employment relationship against Defendant Scott. Plaintiff alleges that he was terminated from his position as an employee of the Decatur County General Hospital as retaliation for exercising his First Amendment Right to Free Speech and Political Participation in making comments critical to the management of the

Decatur County government. In his Answer to Plaintiff's First Amended Complaint, Defendant Scott denied all allegations of wrongdoing and asserted the affirmative defense of qualified immunity. On January 7, 2009, Plaintiff served upon Defendant Scott a Notice to Take Deposition in which Plaintiff seeks to depose Defendant Scott on January 30, 2009.

The Supreme Court has recognized that the qualified immunity defense is intended to shield a defendant from "unnecessary and burdensome discovery." *Crawford-El v. Britton*, 523 U.S. 574, 598 (1998). Staying discovery during the resolution of a qualified immunity issue "is to prevent the unnecessary expenditure of resources by defendants who otherwise would not be subject to liability where there was no constitutional right violated by an officer's actions." *Carlson v. Lunsford*, 2006 U.S. Dist. LEXIS 60221, 2-3 (W.D. Tenn. Aug. 24, 2006). The defense of qualified immunity does not necessarily bar all discovery; rather, limited discovery may be appropriate in some instances. *Rome v. Romero*, 225 F.R.D. 640, 644 (D. Colo. 2004); *see also Anderson v. Creighton*, 483 U.S. 635, 646 n. 6 (1987). For example, discovery may be allowed when the plaintiff and the defendant allege differing versions of the underlying incident and the discovery "relates directly to the specific conduct underlying the claims and the defense of immunity." *Rome*, 225 F.R.D. at 644, *Anderson*, 483 U.S. at 646 n. 6.

Here, Plaintiff and Defendant Scott maintain differing versions of the underlying incident. Accordingly, Plaintiff is entitled to depose Defendant Scott regarding the specific conduct underlying the Plaintiff's claims and regarding Defendant Scott's defense of qualified immunity. Such discovery is narrowly tailored, necessary and not unduly burdensome.

For the reasons set forth herein the Court is of the opinion that Defendant Scott's Motion should be DENIED. It is further ORDERED that pending resolution of whether Defendant Scott is entitled to qualified immunity, Plaintiff's discovery against Defendant Scott is limited to one

deposition, not to exceed two hours, the scope of which is limited to questions regarding the specific conduct underlying Plaintiff's claims and questions regarding Defendant Scott's defense of qualified immunity.

IT IS SO ORDERED.

Entered this the 30th day of January, 2009.

_s/ Edward G. Bryant _
Edward G. Bryant
UNITED STATES MAGISTRATE JUDGE