

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

BRENDA C. CUTLER,

Plaintiff,

vs.

Case No. 1:09-cv-1238-JDB-egb

JASON SCOTT, *et al.*

Defendants.

ORDER

Before the Court are two motions referred for determination. These are (1) Defendant DeJesus' motion to quash notice to take deposition of DeJesus [D.E. 42] and (2) a motion for protective order and request for hearing filed by Defendants Roy Wyatt and Daryl Allen [D.E. 44]. On February 16, 2011, this Court held a telephonic status conference to discuss these matters with attorneys Carthel L. Smith, Jr., Jon A. York, and Dr. Bede Anyanwu representing their respective clients. Based on the pleadings and the entire record in this matter, these motions are GRANTED as set forth below.

PROCEDURAL HISTORY

Plaintiff filed her lawsuit in this Court on October 29, 2009 [D.E. 1], asserting federal and state claims among various Defendants: Decatur County, Decatur County Mayor Jason Scott, Decatur County Sheriff Roy Wyatt, Decatur County Sheriff's Investigator Daryl G. Allen, and Ilian DeJesus, a private citizen and resident of Decatur County. The Defendants associated with Decatur County filed a Motion for Partial Dismissal and Motion to Strike [D.E. 10]. Defendant DeJesus filed her Motion for Partial Dismissal and Motion to Strike [D.E. 17].

This Court adopts, as additional background in this case, the *Introduction* contained in the District Court's Order Granting Motions For Partial Dismissal And To Strike [D.E. 32].

Specifically, this Order provided relief to the Defendants as follows:

1. The Order dismissed Plaintiff's federal civil rights claims relating to 2007 arrests (Paragraphs 1- 6 of the Complaint) as time-barred;
2. it dismissed all claims against Defendant Mayor Scott;
3. it dismissed without prejudice all state law claims against Defendants County, Scott, Wyatt and Allen; and
4. it dismissed state law claims against Defendant DeJesus as time-barred.

Based upon these findings and the pleadings in Plaintiff's lawsuit, there are no claims left against Defendant DeJesus. A review of the balance of Plaintiff's Complaint reveals only factual allegations against the County Defendants. These allegations concern the April 25, 2008 arrest of Plaintiff described in Paragraphs 7-14 of her Complaint. These paragraphs are directed against Defendant Allen and make no allegation against Defendant DeJesus. Plaintiff states in Paragraph 8 that she "at no time has been subject to an Order of Protection as required by law." She pleads further that Defendant Allen made the allegations of stalking under oath, which consisted of "parking on public roadways of the property of the respective parties" and prompted her arrest.

As this Court reads Plaintiff's Complaint, Defendant DeJesus simply is not associated with, nor does Plaintiff make any claim, state or federal, against her based upon the April 25, 2008 arrest. Thus, the Court determines that Defendant DeJesus effectively has been removed from this lawsuit by the District Court's Order Granting Motions For Partial Dismissal And To Strike [D.E.32]. Consequently her present Motion to Quash Notice to Take Deposition is appropriate and is hereby GRANTED, to the extent it is not otherwise MOOT based upon said Order.

It appears to this Court that what remains of Plaintiff's lawsuit are her claims against Decatur County, Sheriff Wyatt and Investigator Allen and arise from her factual assertions made in

Paragraphs 7, 8, 9, 10¹, 12, 13 and 14 of her Complaint. As noted, these relate to her arrest on April 25, 2008. In Paragraph 7, she alleges she was arrested for allegedly stalking Defendant DeJesus, and violating an “Order of Protection and No Contact Order.” She asserts that she was never subject to such an order, and further, that according to Defendant Investigator Allen, the facts supporting these stalking allegations consisted of “parking on the public roadways of the property of the respective parties.” Further, she alleges in Paragraph 10 that Defendant Sheriff Wyatt was catching “a lot of heat from upstairs” and insisted Plaintiff was to be carried to the jail that evening of April 25th and not allowed to self-surrender the next day.

DETERMINATION

This Court is in general agreement with these Defendants’ posture on the issue of first resolving the qualified immunity issues raised in their defense. The cited cases are recognized principles in qualified immunity litigation. Discovery should be stayed until the issue of whether a public official is entitled to qualified immunity is resolved. *Mitchell v. Forsyth*, 472 U.S. 511, 525-26 (1985); *Harlow v. Fitzgerald*, 457 U.S. 800, 817-18 (1982). “The purpose of a qualified immunity defense is not protection from civil damages but protection from the rigors of litigation itself, including the potential disruptiveness of discovery.” *Philpott v. City of Portage*, 2006 U.S. Dist. LEXIS 19697 (S.D. Mich. April 14, 2006). 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).

¹ Paragraph 11 was stricken by the District Court Order [D.E. 32].

However, two issues concern this Court. First is the passage of some fifteen months since this lawsuit was re-filed by Plaintiff on October 29, 2009, with no resolution or pending motion in an effort to determine the qualified immunity issue.² Given the potential disruption and costs, courts consistently have said this defense should be resolved at the earliest time in the lawsuit. “For this reason, we have emphasized that qualified immunity questions should be resolved at the earliest possible state of a litigation.” *Anderson v. Creighton*, 483 U.S. 635, 646 (1987).

The second issue of concern is Defendant Allen³ who apparently is no longer employed by Defendant Decatur County. Given this change of circumstance, it is not likely there would be disruption to the operation of the Decatur County Sheriff’s office should he be subject to discovery. Since it appears he is being provided a defense by Decatur County, however, there still would be a need to avoid any unnecessary expense or resources of Defendant County. This is particularly true if he continues to reside in Florida.

Based upon all of the above, Defendants’ present Motion for Protective Order is GRANTED, but Defendants shall have fourteen (14) days from the date of this Order to file pleadings necessary to bring their issue of qualified immunity before the U.S. District Court for determination.⁴

IT IS SO ORDERED.

s/Edward G. Bryant
EDWARD G. BRYANT
UNITED STATES MAGISTRATE JUDGE

Date: **March 9, 2011**

² Defendant’s Rule 12 pleading [D.E. 10] did not address the qualified immunity defense.

³ From the record it is apparent that Defendant Allen is no longer employed by the Decatur County Sheriff’s Office, and that some difficulty occurred with serving him process. Apparently, he moved on several occasions, and possibly re-located in Florida before being served with process [D.E. 25].

⁴ Defendants’ second part of their pleading [D.E. 44] requested a hearing which, in effect, was granted by holding the telephonic Status Conference on February 16, 2011.