

claims. The Court granted Defendant's summary judgment motion on Plaintiff's claims of intentional infliction of emotional distress and breach of contract. (Order Granting in Part & Den. in Part Def.'s Mot. for Summ. J., Doc. No. 39.) Only Plaintiff's negligent infliction of emotional distress claim remains.

The original scheduling order in this cause set June 30, 2003, as Plaintiff's expert disclosure deadline. The Court's order dated January 30, 2004, extended the discovery deadline to February 29, 2004, and the summary judgment motion deadline to March 31, 2004. All other deadlines remained unchanged.

On June 1, 2004, Plaintiff supplemented his initial disclosures, identifying, for the first time, Dr. Rickey Hudson as an expert who will testify that it "is not uncommon for African-Americans to not seek medical care for psychological or emotional injuries." (Def.'s Mot. to Strike Pl.'s Supplemental Expert Disclosures at 2.) Plaintiff did not provide Defendant with a written report signed by Dr. Hudson, the basis for Dr. Hudson's opinion, the data and information considered in forming his opinion, his qualifications as an expert, the compensation to be paid to Dr. Hudson, or a list of his testimony in the last four years.

Defendant moved the Court to exclude the testimony of Dr. Hudson and to strike Plaintiff's Rule 26 disclosures regarding Dr. Hudson. Finding that Plaintiff failed to comply with Rule 26(a)(2)(B), the magistrate judge struck the disclosures pertaining to Dr. Hudson and excluded his testimony on July 20, 2004. (Order at 4.) Plaintiff filed exceptions to the Order on July 30, 2004.

II. STANDARD OF REVIEW

Title 28, Section 636(b)(1)(A) permits a judge to "designate a magistrate to hear and determine any pretrial matter pending before the court" except those matters that are dispositive. A

district court may reconsider any pretrial matter ruled upon by a magistrate judge “where it has been shown that the magistrate’s order is clearly erroneous or contrary to law.” 28 U.S.C. § 636(b)(1)(A). When reviewing a magistrate judge’s ruling made pursuant to 28 U.S.C. § 636(b)(1)(A), “the district court is not permitted to receive further evidence; it is bound by the clearly erroneous rule in reviewing questions of fact.” *Haines v. Liggett Group, Inc.*, 975 F.2d 81, 91 (3d Cir. 1992).

III. ANALYSIS

Plaintiff’s remaining claim is based on a theory of negligent infliction of emotional distress. In denying Defendant’s summary judgment motion, the Court held that Plaintiff would need to prove that he suffered physical injury in order to prevail at trial. (Order Granting in Part & Den. in Part Def.’s Mot. for Summ. J. at 11.)

Plaintiff proffers the testimony of Dr. Hudson to support his required showing of injury. He argues that he did not designate Dr. Hudson before the expiration of discovery deadlines due to the “very delicate and personal” nature of the issue. (Exceptions to the Magistrate’s Order Granting Def.’s Mot. to Strike Pl.’s Second Supplemental Rule 26 Disclosure at 1-2.) He argues that he was “ashamed, embarrassed, and/or unable fully [to] articulate why he did not seek professional attention for his emotional problems.” (*Id.* at 2.) Plaintiff asserts no justification under the Federal Rules of Civil Procedure or relevant case law for his delay. It is well-settled in the Sixth Circuit that Rule 37(c)(1) “mandates that a trial court punish a party for discovery violations in connection with Rule 26 unless the violation was harmless or is substantially justified.” *Roberts v. Galen, Inc.*, 325 F.3d 776, 782 (6th Cir. 2003) (citation omitted). Rule 26 requires parties to disclose all experts in a timely manner with a variety of supporting documents. Fed. R. Civ. P. 26(a)(2). Plaintiff failed in both respects, by revealing Dr. Hudson much past the discovery deadlines and not providing

documentation of his conclusions and professional background. As the magistrate judge held, Plaintiff's alleged embarrassment does not substantially justify his noncompliance with Rule 26.

Plaintiff also argues that Defendant would not be harmed or prejudiced by allowing Dr. Hudson to testify. He states, "[i]f Plaintiff is allowed to attempt to qualify Dr. Hudson, obviously, Defendant should be given all the reasonable time necessary to analyze Dr. Hudson's opinions, and to introduce any counterveiling [sic] opinion testimony." (Exceptions to the Magistrate's Order Granting Def.'s Mot. to Strike Pl.'s Second Supplemental Rule 26 Disclosure at 2.) He makes no legal argument why Defendant would not be prejudiced. Moreover, Plaintiff implicitly concedes that Defendant would be put at a disadvantage by Dr. Hudson testifying, when he argues that the Court should continue the case and extend the expert discovery cutoff so that Defendant may properly prepare. (*Id.* at 3.) Rule 26 requires disclosure of experts in a timely fashion with documents supporting that expert's testimony and professional background. The Court will not ignore the Rule's dictates and the prejudice to Defendant because Plaintiff requests time "to attempt to qualify Dr. Hudson."

Having reviewed the Order and the applicable case law, the Court concludes that the magistrate judge's Order was not clearly erroneous or contrary to law. Accordingly, the Court **AFFIRMS** the magistrate judge's July 20, 2004, Order Granting Defendant's Motion to Strike Plaintiff's Second Supplemental Rule 26 Disclosure.

IV. CONCLUSION

For the reasons stated herein, the Court finds that the magistrate judge's Order is not clearly erroneous or contrary to law. Accordingly, the Court **AFFIRMS** the magistrate judge's July 20, 2004, Order.

IT IS SO ORDERED this _____ day of _____ 2004.

BERNICE BOUIE DONALD
UNITED STATES DISTRICT JUDGE