

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

DAVINA TREADWELL,)	
)	
Plaintiff,)	
)	
v.)	No. 2:09-cv-02371-BBD-cgc
)	
AMERICA AIRLINES, INC.,)	
)	
Defendant.)	

**ORDER DENYING MOTION TO TAKE DEPOSITIONS OUTSIDE THE DISCOVERY
DEADLINE**

Before the Court is Plaintiff Davina Treadwell’s Motion to Take Deposition Outside the Discovery Deadline. (D.E. #19). Plaintiff asserts that the discovery deadline in this matter expired on March 2, 2010 but that she now wishes to take two depositions of fact witnesses that “may be essential to the prosecution of her case.” Plaintiff asserts that her counsel was recently a “victim of fraud, which has caused, and is causing, extraordinary amounts of time to deal with.” While she has requested that Defendant consent to the late-requested depositions, Plaintiff states that Defendant refuses to allow the depositions to be taken outside the discovery deadline. With respect to the delay or prejudice that this request may cause, Plaintiff states that she does not expect the depositions to exceed two hours each and will work to accommodate Defendant’s counsel’s schedule.

Defendant American Airlines, Inc. responds that Plaintiff’s request for an extension was inexcusably made after the expiration of the discovery deadline. Defendant asserts that Plaintiff has

never attempted to take any depositions or serve any written discovery in this matter prior to the expiration of the discovery deadline. Defendant further argues that the dispositive motion deadline is set at April 1, 2010 and that it would be “highly unlikely that the depositions could be taken, transcribed, and available for use” by that date. Thus, Defendant requests that the instant motion be denied.

Upon review, the Court finds that Plaintiff’s motion was indeed filed after the discovery deadline had expired. Under such circumstances, Rule 6(b) of the Federal Rules of Civil Procedure provides that the Court may, for good cause, extend the time within which any act may or must be done “on motion made after the time has expired if the party failed to act because of excusable neglect.” F.R.Civ. P. 6(b). In order to determine whether Plaintiff committed excusable neglect, the Court is required to balance five factors: (1) the danger of prejudice to the non-moving party, (2) the length of the delay and its impact on the case, (3) the reason for the delay, (4) whether the delay was within the reasonable control of the moving party, and (5) whether the moving party acted in good faith despite the delay. Nafziger v. McDermott Int’l, Inc., 467 F.3d 514, 522 (6th Cir. 2006).

Although the Court finds no evidence of bad faith on the part of Plaintiff or Plaintiff’s counsel, it is clear that prejudice will result to Defendant should this Court permit these two additional depositions within days of the dispositive motion deadline. As for the length of the delay and its impact on the proceedings, Plaintiff waited approximately one week after the deadline for depositions passed before requesting the extension. Furthermore, Plaintiff provides no explanation for failing to take any depositions or serve any written discovery requests in the year that this case has been pending. As to the reasons for the delay, Plaintiff’s counsel states generally that he was

“recently a victim of fraud, which has caused, and is causing, extraordinary amounts of time to deal with.” Albeit unfortunate, these reasons carry little weight in view of all of the relevant circumstances and provide no insight into the reason that Plaintiff’s counsel could not have requested an extension prior to the expiration of the deadline. As such, the Court finds that the delay was entirely within the control of Plaintiff and her counsel, who could have moved for an extension in a timely fashion but failed to do so.

Based upon the foregoing, the Court finds that Plaintiff has failed as a matter of law to demonstrate excusable neglect, which is required under Rule 6(b) of the Federal Rules of Civil Procedure to obtain an extension after the deadline to act has expired. Accordingly, Plaintiff’s Motion to Take Depositions Outside the Discovery Deadline is hereby DENIED.

IT IS SO ORDERED this 26th day of March, 2010.

s/ Charmiane G. Claxton
CHARMIANE G. CLAXTON
UNITED STATES MAGISTRATE JUDGE