

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

ANTHONY ALEXANDER, JR.,)	
a minor, by his father)	
and next of friend)	
ANTHONY ALEXANDER, SR.,)	
)	
Plaintiffs,)	
)	
vs.)	No. 02-2523 GV
)	
A.C. GILLESS, SHERIFF OF)	
SHELBY COUNTY, TENNESSEE,)	
JIM ROUT, MAYOR OF)	
SHELBY COUNTY, TENNESSEE, AND)	
UNKNOWN DEPUTY JAILERS,)	
)	
Defendants.)	

ORDER GRANTING DEFENDANTS' MOTION FOR DISCOVERY SANCTIONS

Before the court is the defendants' motion, filed June 4, 2002, for sanctions pursuant to Federal Rule of Civil Procedure 37 because of the refusal of the plaintiff, Anthony Alexander, Jr., to participate in a deposition. The motion was referred to the United States Magistrate Judge for determination.

Alexander brought this § 1983 action claiming violation of his rights under the Eighth and Fourteenth Amendments. He alleges that while he was a resident inmate at the Shelby County Jail, the defendants failed to protect him causing him to be physically attacked and raped by two other inmates. He alleges also that the

defendants failed to render necessary medical care after the assault. Alexander's complaint was filed on June 28, 2002.

In the instant motion, the defendants aver that on May 16, 2003, defendants' counsel traveled to the Northwest Correctional Facility in Tipton, Tennessee, where Alexander currently is incarcerated, to take Alexander's deposition. The defendants duly had requested and received the court's permission to depose Alexander pursuant to Federal Rule of Civil Procedure 30(a)(2) and had duly noticed his deposition. According to the defendants, Alexander came into the deposition room but refused to answer questions or participate in the deposition in any way.

Federal Rule of Civil Procedure 30 authorizes a party to take the deposition of another. Under Federal Rule of Civil Procedure 37, a party may move for sanctions, including the sanction of dismissal, if the responding party has failed to answer questions propounded under Rule 30. FED. R. CIV. P. 37(a)(2)(B). Further, Local Rule 7.2(a)(2) requires that responses to civil motions be filed within fifteen days of service and provides that "[f]ailure to respond timely to any motion . . . may be deemed good grounds for granting the motion."

Alexander has not filed a response to the defendants' motion, and the time for responding has now expired. In the absence of a response and in light of the defendants' statements, the court

concludes that Alexander wilfully refused to participate in his deposition and that sanctions under Rule 37 therefore are appropriate. The court further finds that the sanction of dismissal, although severe, is warranted in this case because without the plaintiff's deposition testimony the defendants will be unable to formulate a full defense in this cause. Accordingly, the defendants' motion is granted, and Alexander's claim is dismissed with prejudice. Each side shall bear its own costs.

IT IS SO ORDERED this 26th day of June, 2003.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE