

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

J.A.W.,)	
)	
Plaintiff,)	
)	
v.)	Cause No. 3:18-cv-00037-TWP-MPB
)	
EVANSVILLE VANDERBURGH SCHOOL)	
CORPORATION,)	
Defendant.)	

**DEFENDANT’S REPLY IN SUPPORT OF MOTION TO MODIFY CASE
MANAGEMENT PLAN**

In his Response in Partial Opposition to Defendant’s Motion to Modify Case Management Plan, Plaintiff focuses almost exclusively on the proffered reasons for EVSC’s delay in seeking the requested relief, which Plaintiff deems insufficient. As an initial matter, the Seventh Circuit has expressly held that “[n]eglect is excusable . . . if there is a reason, *which needn’t be a compelling reason*, to overlook it.” *United States v. McLaughlin*, 470 F.3d 698, 700 (7th Cir. 2006) (emphasis supplied). But even if the court accepts Plaintiff’s argument in this regard, the reason for the delay is only one of four factors to consider when determining whether excusable neglect exists. *Raymond v. Ameritech Corp.*, 442 F.3d 600, 606 (7th Cir. 2006). EVSC stands by its argument with respect to these factors and, in the interest of brevity, will not repeat them here.

EVSC must, however, correct certain misstatements concerning EVSC’s purported violation of its ongoing duty to supplement disclosures.¹ As an initial matter, Plaintiff seems to suggest that he does not have access to EVSC’s Preliminary Witness and Exhibit Lists (the

¹ It bears noting that Plaintiff’s initial disclosures did not contain a computation of damages as required by Fed. R. Civ. P. 26(a)(1)(A)(iii); instead, he simply stated the categories of damages he sought to recover. Plaintiff has never supplemented this disclosure and EVSC remains in the dark as to the damages he will seek. This is why EVSC wishes to depose the witnesses Plaintiff has recently disclosed on the issue of damages.

“Preliminary List”), noting that it has been sealed² and that “a hard-copy of this list was never served on the plaintiff’s attorneys.” Those statements may be true as far as they go and at the time they were made,³ but they are misleading to the extent they suggest Plaintiff never received the Preliminary List. Pursuant to INSD Local Rule 5-4, the Preliminary List was electronically served on Plaintiff’s counsel at the time it was filed. *See* Dkt. No. 43 at 4. If Plaintiff was unable to electronically access the preliminary witness and exhibit list before it was sealed, it would have taken nothing more than a phone call or email to EVSC’s counsel to obtain it.

Despite apparently not having access to the Preliminary List, Plaintiff asserts that certain witnesses were not named therein. Specifically, Plaintiff claims that his mother, Tammy Work, was not identified in either EVSC’s preliminary witness list or in EVSC’s initial disclosures. This is incorrect. EVSC listed “Plaintiff’s parents” in its initial disclosures. Further, although Ms. Work was not listed by name in EVSC’s preliminary witness and exhibit list, EVSC named “[a]ll witnesses designated by Plaintiff in Plaintiff’s Initial Disclosures or in Plaintiff’s Preliminary Witness List.” Dkt. No. 43 at 2, ¶ 24. Plaintiff listed Ms. Work by name in both his initial disclosures and his preliminary witness list.

² Neither EVSC nor Plaintiff filed a motion to file the Preliminary List under seal. The undersigned counsel is unable to recall in detail the circumstances leading to the Preliminary List being sealed; however, a review of the document reveals that Plaintiff’s first name was inadvertently included in the list. Because Plaintiff was under eighteen years old at the time, it appears that the document was sealed to avoid an unintentional disclosure of information deemed confidential pursuant to FRCP 5.2(a).

³ Counsel contacted the office of the district court clerk’s office in an attempt to determine how and when the document was ordered sealed, but staff was unable to provide an answer. EVSC did not request that the document be unsealed at that time, but EVSC’s counsel discovered on today’s date that the document is now accessible on PACER. Although EVSC has no objection to the document remaining under seal, unsealing the document does not present a problem under FCRP 5.2 because Plaintiff has turned eighteen. *See Doe v. USD No. 237*, No. 16-cv-2801-JWL-TJJ, 2017 U.S. Dist. LEXIS 142435, at *28 (D. Kan. Sep. 1, 2017) (“[s]ince Doe has attained the age of majority, the protections of Rule 5.2(a) no longer apply”)

Plaintiff also suggests that Katy Elmer may not have been listed on EVSC's preliminary witness and exhibit list. This too is incorrect. Ms. Elmer was listed by name therein. Dkt. No. 43 at 2, ¶ 12.

In light of the foregoing, the notion that Plaintiff is somehow surprised by the disclosure of either of these witnesses is dubious at best. Furthermore, even if Plaintiff was surprised, he has still made no effort to explain how the disclosure of these witnesses is any more prejudicial now than it would have been on the July 8, 2019 deadline. Instead, he suggests that EVSC should be punished for nonexistent violations of its duty to supplement its initial disclosures. Because Plaintiff has implicitly conceded that he will not be harmed by the belated filing of EVSC's Final Witness & Exhibit List, the court should permit the same.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 21st day of August, 2019, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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