

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Aimee Maddonna,)	
)	
Plaintiff,)	
)	Civil Action No. 6:19-cv-03551-JD
v.)	
)	<u>Consent Motion to Stay Discovery</u> ¹
United States Department of Health and)	
Human Services et al.,)	
)	
Defendants.)	

Pursuant to Local Civil Rule 16.00(C) (D.S.C.), Defendant Henry McMaster (“Governor McMaster” or “the Governor”), in his official capacity as Governor of the State of South Carolina, and Defendant Michael Leach (“Director Leach”), in his official capacity as the Director of the South Carolina Department of Social Services (“SCDSS”) (collectively the “State Defendants”), move the Court to stay discovery until this Court decides Governor McMaster’s and Director Leach’s Motion for Judgment on the Pleadings (ECF No. 79). Counsel for the Plaintiff has consented to the stay of discovery requested in this Motion. The Federal Defendants take no position on this Motion.

State Defendants’ Motion for Judgment on the Pleadings summarizes the nature of this case, the alleged facts giving rise to it, and the suit’s procedural history.² It further explains that Plaintiff’s claims should be dismissed as a matter of law in light of the Supreme Court’s holding in *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021), which demonstrates that Plaintiff has

¹ A full explanation of this motion to stay discovery is provided herein, thus Governor McMaster does not file a separate supporting memorandum as it would serve no useful purpose. Local Civ. Rules 7.04, 16.00(C) (D.S.C.).

² This Motion incorporates that summary by reference rather than repeating it in full herein. *See* Local Civ. Rule 7.05 (D.S.C.).

failed to state claims on which relief can be granted, and, further, that the relief she requests is foreclosed by *Fulton*.

Because *Fulton* is dispositive of the issues in this case, Governor McMaster and Director Leach ask this Court to stay discovery. Allowing further discovery before ruling on State Defendants' Motion for Judgment on the Pleadings would waste the Court's time, the parties' time and resources, and the time and resources of non-parties to this litigation who may be served with discovery. Therefore, State Defendants ask this Court to hold all discovery-related matters in abeyance until it rules on State Defendants' Motion for Judgment on the Pleadings.

Argument

A district court “has an inherent power and ‘broad discretion’ to stay proceedings ‘as an incident to its power to control its own docket.’” *Herring v. Lapolla Industries, Inc.*, No. 2:12-cv-02705-RMG, 2013 WL 12148769 at *2 (D.S.C. Aug. 30, 2013) (citing *Clinton v. Jones*, 520 U.S. 681, 706 (1997)). “This Court’s power to stay its proceedings is well established,” for that power is “‘incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.’” *Impulse Monitoring, Inc. v. Aetna Health, Inc.*, No. 3:14-CV-02041-MGL, 2014 WL 4748598, at *1 (D.S.C. Sept. 23, 2014) (Lewis, J.) (quoting *Landis v. North American Co.*, 299 U.S. 248, 254 (1936)).

In deciding whether a stay should be granted, courts “consider[] a number of factors including [1] the breadth of discovery and burden of responding to it, [2] the risk of unfair prejudice to a party opposing the stay, [3] the nature and complexity of the action, [4] the posture or stage of the litigation, and [5] any other relevant circumstances.” *Herring*, No. 2:12-cv-02705-RMG, 2013 WL 12148769, at *1. Moving for a stay is “tantamount” to a request for a protective order under Fed. R. Civ. P. 26(c). *Borwn-Thomas v. Hynie*, No. 1-18-cv-02191-JMC, 2019 WL 1043724,

at *4 (D.S.C. Mar. 5, 2019). Because in this litigation the totality of factors weighs in favor of the Court staying discovery, the Court should grant this Motion.

A. Breadth of discovery and the burden of responding to it.

Thus far, the discovery phase of this litigation has involved only document discovery and expert witness reports. Plaintiff and the State Defendants have served and responded to a collective total of 45 interrogatories (plus the Local Rule 26.01 Interrogatories) and 85 requests for production of documents.³ The parties have produced thousands of pages of documents. Expert reports and rebuttal reports have been served. Depositions remain to be taken. If the companion litigation (*Rogers v. U.S. Dept. of Health & Human Servs. et al.*, No. 6:19-cv-01567-JD (D.S.C)) is any guide, there could be a dozen or more depositions to be taken, involving many hundreds of hours of collective time invested by the parties' attorneys and the deponents. And supplemental written discovery requests or subpoenas to third parties could still be served.

All parties (and non-parties) have devoted substantial time and resources to responding to discovery and, in the absence of a stay of discovery, the parties will continue to incur additional time and expense in conducting discovery. Staying discovery in this litigation pending the Court's ruling on the impact of *Fulton v. City of Philadelphia* would spare the parties from the time and expense of unnecessary discovery that would be futile if this Court grants the State Defendants' Motion for Judgment on the Pleadings, thereby dismissing Plaintiff's claims. *Cuyler v. Dep't of the Army*, Civil Action No. 3:08-3261-CMC-JRM, 2009 WL 1749604 at *8 (D.S.C. June 22, 2009) ("Defendant could and should have avoided the discovery-related concerns by filing a motion to

³ In addition, Plaintiff served interrogatories and requests for production on the Federal Defendants, who responded by objecting to each of them and by seeking and obtaining a Protective Order limiting discovery against the Federal Defendants to the production of an Administrative Record.

stay deadlines and discovery at the same time it filed its motion to dismiss”); *Burks v. Rushton*, Civil Action No. 3:08-3025-HMH-JRM, 2009 WL 10703167 at *1 (D.S.C. June 8, 2009) (“[T]he motion to dismiss has the potential to dispose of the case on the issues . . . without need for discovery such that it is within the court’s discretion to stay discovery pending resolution of the dispositive motion on that basis”).

B. Risk of unfair prejudice to the party opposing the stay.

There is no risk of unfair prejudice to any party if the Court grants the State Defendants’ motion for a stay of discovery. If the stay is granted and the Motion for Judgment on the Pleadings is granted, Plaintiff has suffered no prejudice by being unable to complete discovery in this case, for a party who fails to assert a claim on which relief can be granted has no right to conduct discovery. Similarly, if the stay is granted and the Motion for Judgment on the Pleadings is denied, Plaintiff has suffered no prejudice, as the effect of the stay is merely that the parties temporarily postponed discovery while the Court considered and ruled on the Motion for Judgment on the Pleadings. The parties have consented to postponing the discovery deadlines previously, and Plaintiffs have consented to the stay sought by this Motion. In the event that the Court were to deny the pending Motion for Judgment on the Pleadings, the witnesses that the parties may wish to depose could still be available. A delay in conducting the depositions therefore would not constitute unfair prejudice.

C. Nature and complexity of the case.

This case presents issues that, from the start, the State Defendants argued could and should be resolved as matters of law without the need for extensive factual discovery. As explained in the State Defendants’ Motion for Judgment on the Pleadings, the Supreme Court’s recent ruling in *Fulton v. City of Philadelphia* confirms what they have argued previously and what this Court has

tacitly recognized, namely that this Court can and should dismiss this litigation as a matter of law with no need for discovery because Plaintiff has failed to state claims on which relief can be granted. The case is not a complex one, and because it can be decided on a preliminary, dispositive issue, no further discovery should be allowed. *See Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982) (holding in an analogous context that “discovery should not be allowed” until a preliminary and potentially dispositive issue—in *Harlow*, the government officials’ qualified immunity—had been decided).

D. Posture or stage of the litigation.

Although document discovery has been had in this suit, there is still much discovery remaining to be done, including all the depositions, which, if the *Rogers* lawsuit is any guide, could be a dozen or more and could include multiple non-party depositions and subpoenas giving rise to motions to quash or motions for protective orders.⁴ Because the discovery remaining to be conducted is extensive, at this stage in the litigation the Court should grant the stay of discovery until it rules on the State Defendants’ Motion for Judgment on the Pleadings. When a court determines that a motion is potentially dispositive such that no further discovery is necessary, the court may stay all discovery. *Boudreaux Grp., Inc. v. Clark Nexsen, Owen, Barbieri, Gibson, P.C.*, Civil Action No. 8:18-cv-1498-TMC, 2018 WL 9785308 at *5 (D.S.C. Nov. 20, 2018); *see also Wood v. McEwen*, 644 F.2d 797, 801 (9th Cir. 1981) (good cause to stay discovery may exist where a court is “convinced that the plaintiff will be unable to state a claim for relief”).

⁴ The depositions to be conducted would presumably include the Plaintiff’s deposition, the parties’ three expert witnesses, witnesses from SCDSS (likely including multiple fact witnesses and multiple 30(b)(6) witnesses), and witnesses from Miracle Hill (the third-party whose alleged practices gave rise to the Defendants’ actions challenged in this lawsuit). In addition, any attempt by Plaintiff to depose Governor McMaster, Director Leach, or employees of the non-party Office of the Governor would be met with motions to quash or motions for protective orders.

CONCLUSION

Here, the totality of the factors weighs in favor of granting the stay of discovery pending the Court's ruling on State Defendants' Motion for Judgment on the Pleadings. There is still much discovery left in this action—discovery that will be burdensome on the parties and potentially the Court and non-parties as well. In contrast, staying such discovery would not be unfairly prejudicial to any party. The Supreme Court's unanimous reversal in *Fulton v. City of Philadelphia* clarified the issues in this action such that it is unnecessary to conduct further discovery and would be an inefficient use of the Court's and the parties' resources to proceed with burdensome, likely irrelevant discovery without first considering and ruling on the State Defendants' Motion for Judgment on the Pleadings. Because staying discovery until the Court rules on the Motion for Judgment on the Pleadings would be the best use of the Court's and the parties' resources, Governor McMaster and Director Leach request that this Court stay discovery until it rules on the Motion for Judgment on the Pleadings.

Respectfully submitted,

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