

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

MICHAEL D. VAN DEELEN, )  
 )  
 Plaintiff, )  
 )  
 v. ) Case No. 05-4039-SAC  
 )  
 MARION JOHNSON, et al., )  
 )  
 Defendants. )

**ORDER**

This matter comes before the court upon defendants' motion for an order lifting the stay of the court's earlier order denying plaintiff's oral motions for protective order (Doc. 39). As the relief requested by this motion is simply a confirmation that the stay imposed by the court on its own prior order has expired, no party will be prejudiced by the court taking up the matter without awaiting any response by plaintiff, and the court will do so in the interests of efficiency.

On July 15, 2005, the court entered its order denying plaintiff's two oral motions for protective order (Doc. 29). As part of that order, the court stayed the effect of its rulings to permit plaintiff an opportunity to seek review of those rulings by the trial judge prior to being required to provide the discovery at issue. The relevant language from the earlier order provided: "This order shall be stayed in effect pending the earlier of a ruling by the trial judge on any objection made to this order by plaintiff, or the expiration of plaintiff's time to file an objection to this order if no such objection is filed during that time period."

Plaintiff's time to seek review of the court's rulings on his two oral motions for protective order, as specified by Fed. R. Civ. P. 72(a) and computed pursuant to Fed. R. Civ. P. 6, expired on August 3,

2005, without any such review having been sought. Therefore, under the terms of the court's earlier order (Doc. 29), the stay of the court's rulings denying plaintiff's two oral motions for protective order has expired and defendants are now at liberty to pursue the discovery allowed as a result of the court's denial of those oral motions for protective order. As such, the court finds that the instant motion should be granted as it relates to lifting the stay of the court's earlier rulings on plaintiff's oral motions for protective order.

In the instant motion, defendants also request an award of costs and attorney fees to the extent that plaintiff's request for time to seek a review of the court's rulings on the oral motions for protective order was made in bad faith and solely for the purpose of delaying discovery. The court does not believe that plaintiff's request for time to seek review was made in bad faith and finds that an award of costs and attorney fees as a sanction is not appropriate in this circumstance. As such, the court finds that the instant motion should be denied as it relates to the imposition of sanctions upon plaintiff.

While the court declines to order sanctions against the plaintiff at this time, it recognizes that defendants may renew their motion for sanctions should the plaintiff fail to comply with the court's prior order denying his oral motions for protective order or his discovery obligations under the Federal Rules of Civil Procedure in the future. The court warns the plaintiff that any such noncompliance may result in the imposition of stern sanctions, including, but not limited to, an award of defendant's attorneys fees and dismissal of the case with prejudice.

**IT IS THEREFORE ORDERED** that defendants' motion for order lifting stay (Doc. 39) is hereby granted in part and denied in part.

**IT IS FURTHER ORDERED** that defendants may proceed with all discovery permitted by the court's July 15, 2005-order denying plaintiff's oral motions for protective order (Doc. 29).

**IT IS SO ORDERED.**

Dated this 15th day of August, 2005, at Topeka, Kansas.

s/K. Gary Sebelius  
K. Gary Sebelius  
U.S. Magistrate Judge