

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

ERIC M. MUATHE, ET AL.,

Plaintiffs,

v.

LORI B. FLEMING, ET AL.

Defendant.

Case No. 16-2108-JAR

MEMORANDUM AND ORDER

This matter comes before the Court on Plaintiffs' Motion to File Response to Defendants Fleming and Loy's Motion to Dismiss Out of Time (Doc. 19). The motion is fully briefed and the Court is prepared to rule. For the reasons stated below, the Court denies Plaintiffs' motion to file out of time.

I. Procedural Background

On June 29, 2016, Defendants Lori B. Fleming and Kurtis Loy filed a Motion to Dismiss and a Motion to Stay Discovery in this case.¹ Defendants Joe Manns and My Town Media, Inc. filed a Motion for Lack of Jurisdiction and For Failure to State a Claim on July 25, 2016.² Plaintiffs filed a Motion for Extension of time to respond to Defendants Fleming and Loy's motions on July 14, 2016.³ The motion did not state whether there had been prior consultation with other parties before the filing of the motion, as required by the Local Rules.⁴ Defendants filed a response to the motion on July 28, 2016. The Court granted Plaintiffs' motion in part, and

¹Docs. 7 & 9.

²Doc. 12.

³Doc. 11.

⁴*Id.*; D. Kan. Rule 6.1(a)(1).

extended Plaintiffs' response deadline until July 29, 2016.⁵ In granting the extension, the Court noted that Plaintiffs' motion did not state whether there had been prior consultation with other parties before the filing of the motion, and reminded Plaintiffs of their obligation to comply with the Local Rules.⁶

Plaintiffs did not file a response by the July 29, 2016 deadline. Instead, Plaintiffs filed the instant motion on August 1, 2016, seeking leave to file the response out of time.⁷ Plaintiffs' counsel explained that he had left the country because of a death in the family on July 27 and could not access the internet on July 29 to request another extension of time. Defendants responded to the motion on August 12, 2016.⁸ Plaintiffs filed their proposed response to the motion to dismiss on August 14, 2016.⁹

II. Discussion

D. Kan. Rule 6.1 provides that a motion for an extension of time must be filed before the specified time expires, absent a showing of "excusable neglect."¹⁰ Here, Plaintiffs did not file the instant motion until the deadline to file a response had passed. The Court previously granted Plaintiffs an extension of time to respond until July 29, 2016. In granting the motion, the Court noted Plaintiffs' failure to comply with the Local Rules in regards to a request to extend the same response deadline at issue here.¹¹ While the Court recognizes the challenges posed by a death in

⁵Doc. 18.

⁶*Id.*

⁷Doc. 19.

⁸Doc. 20.

⁹Doc. 21. The filing was also docketed as a response to the motion to stay discovery and to Defendants Joe Manns and My Town Media, Inc.'s motion to dismiss. However, the proposed response does not appear to respond to these motions in substance. *See id.* To the extent Plaintiffs are attempting to respond to the motion to stay, this response is out of time pursuant to the Court's previous ruling denying an extension of time to respond to this motion. Doc. 18.

¹⁰D. Kan. Rule 6.1(a).

¹¹Doc. 18.

the family and access to Internet abroad, the Court is not persuaded that the previous extension of time was insufficient. Plaintiffs had more than two weeks after filing the motion for extension of time to file a response in compliance with the extended deadline.¹² In light of the Court's previous extension of time, Plaintiffs' failure to meet this extended deadline, and Plaintiffs' history of noncompliance with the Local Rules in relation to the filing of their response, the Court denies Plaintiffs' motion to file out of time.

IT IS THEREFORE ORDERED BY THE COURT that Plaintiffs' Motion to File Response to Defendants Fleming and Loy's Motion to Dismiss Out of Time (Doc. 19) is **denied**. The Court will not consider Plaintiffs' proposed response in ruling on Defendants Fleming and Loy's Motion to Dismiss.

IT IS SO ORDERED.

Dated: August 18, 2016

S/ Julie A. Robinson
JULIE A. ROBINSON
UNITED STATES DISTRICT JUDGE

¹²Plaintiffs filed the motion for extension of time on July 14. Doc. 11. The Court granted the extension until July 29. Doc. 18.