

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

TERRI GORDON,

Plaintiff,

v.

No. 08-2834

**UT MEDICAL GROUP, INC.,
and STEWART WILKINSON,**

Defendants.

ORDER DENYING DEFENDANTS' MOTION TO COMPEL

Before the Court is Defendants' Motion to Compel. (D.E. #16). The instant motion was referred to United States Magistrate Judge Charmiane G. Claxton for determination. For the reasons set forth herein, Defendants' Motion to Compel is DENIED.

I. Introduction

This case arises from allegations that Defendants engaged in unlawful and discriminatory employment practices in violation of Tennessee and federal law. Plaintiff filed her Complaint in the Circuit Court of Shelby County on October 31, 2008. Defendants removed the action to this Court on December 4, 2008.

On February 2, 2009, Defendants served their First Set of Interrogatories and First Requests for Production upon Plaintiff. Plaintiff's responses were due on or before March 4, 2009. When Defendants had not received Plaintiff's responses by March 26, 2009, Defendants contacted Plaintiff to ask when the responses would be provided. Plaintiff responded that the responses would be

forthcoming.

On April 13, 2009, Defendants had not yet received Plaintiff's responses. Defendants sent Plaintiff a letter advising that they would file a motion to compel if no responses were received by April 17, 2009. Plaintiff's counsel contacted Defendants on April 13, 2009 to request another copy of the First Set of Interrogatories and First Requests for Production, which Defendants provided on the same day. As of April 27, 2009, Defendants had not received any responses, and Defendants contacted Plaintiff to advise that Defendants would file a motion to compel at the end of the week. On May 4, 2009, Plaintiff advised that the responses would be provided by the end of that week. Defendants advised that this extension until May 8, 2009 would be the last extension to which Defendants would consent. As of May 11, 2009, Defendants had not received any responses to the First Set of Interrogatories or First Requests for Production, and therefore Defendants filed the instant Motion to Compel.

On May 28, 2009, Plaintiff filed a Response to the Motion to Compel. Plaintiff affirmed that, as of the date of the filing of the Response, Plaintiff had fully responded to the First Set of Interrogatories and First Requests for Production. Plaintiff further explained the delay in responding by informing the Court that Plaintiff had been involved in an automobile accident on January 29, 2009. Plaintiff was pregnant at the time of her automobile accident, and the collision caused her to deliver her child on February 2, 2009. Plaintiff's delivery required an episiotomy, and due to the complications with her delivery and the injuries sustained in the automobile accident, Plaintiff was restricted to bed rest for six weeks. Thus, Plaintiff states that she was unable to assist in the timely preparation of the discovery requests.

On June 2, 2009, Defendants filed a Reply stating that they had never been informed of

Plaintiff's medical issues at any point before the filing of Plaintiff's response. Defendants maintain that Plaintiff should have notified them of the issues, and that Plaintiff should have been able to respond once her medical issues were resolved, which by Plaintiff's admission was approximately March 15, 2009. Further, Defendants assert that an award of attorneys' fees and costs remains appropriate in this case.

II. Analysis

The first issue presented in Defendants' Motion to Compel is whether Plaintiff should be ordered to provide responses to Defendants' First Set of Interrogatories and First Requests for Production. Since the filing of the instant motion, Plaintiff has advised that she has responded to all discovery requests. Accordingly, the Court finds that the instant Motion to Compel is DENIED AS MOOT.

The next issue presented in Defendants' Motion to Compel is whether Defendants should be awarded reasonable attorneys' fees and costs incurred in the filing of the instant motion. If the Court finds that a party failed to respond to properly served discovery, the Court must require "the party failing to act, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust." Fed. R. Civ. P. 37(d)(3).

In the instant case, it is undisputed that Plaintiff did not respond to the First Set of Interrogatories and First Request for Production within thirty days as required by Rule 33(b)(2) and 34(b)(2)(A) of the Federal Rules of Civil Procedure. However, the Court finds that the failure to respond was substantially justified by Plaintiff's serious medical concerns. Furthermore, the Court finds that an award of expenses would be unjust under the circumstances of the present case.

Accordingly, Defendants' request for reasonable attorneys' fees and costs is DENIED.

III. Conclusion

For the reasons set forth herein, Defendants' Motion to Compel is hereby DENIED.

IT IS SO ORDERED this 2nd day of July, 2009.

s/ Charmiane G. Claxton
CHARMIANE G. CLAXTON
UNITED STATES MAGISTRATE JUDGE