

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

BRYAN SAMUEL MOONEY, a minor
by and through his parent,
LISA MOONEY, and LISA MOONEY,
Individually,

Plaintiffs,

vs.

SUSAN WALLACE, Individually,
and HENDERSON COUNTY BOARD OF
EDUCATION,

Defendants.

Civ. No. 04-1190-T/P

JACOB RHODES, a minor, by and
through his parent, DIANA RAY
MOORE, and DIANA RAY MOORE,
Individually,

Plaintiffs,

vs.

SUSAN WALLACE, Individually,
and HENDERSON COUNTY BOARD OF
EDUCATION,

Defendants.

Civ. No. 04-1191-T/P

DALTON DYER, a minor, by and
through his parents, JOSH DYER
and NICHOLE DYER, and JOSH
DYER and NICHOLE DYER,
Individually,

Plaintiffs,

vs.

SUSAN WALLACE, Individually,
and HENDERSON COUNTY BOARD OF
EDUCATION,

Defendants.

Civ. No. 05-1004-T/P

HALEY NICOLE RHODES, a minor,)
and BRANDON MATTHEW RHODES, a)
minor, by and through their)
parents, WANDA MARIE RHODES)
and BUSTER LEE RHODES, and)
WANDA MARIE RHODES and BUSTER)
LEE RHODES, Individually,)

Plaintiffs,)

vs.)

Civ. No. 05-1020-T/P

SUSAN WALLACE, Individually,)
and HENDERSON COUNTY BOARD OF)
EDUCATION,)

Defendants.)

ZACHARY ROBBINS, a minor, by)
and through his parents,)
YVONNE ROBBINS and DANNY)
ROBBINS, and YVONNE ROBBINS)
and DANNY ROBBINS,)
Individually,)

Plaintiffs.)

vs.)

Civ. No. 04-1294-T/P

SUSAN WALLACE, Individually,)
and HENDERSON COUNTY BOARD OF)
EDUCATION,)

Defendants.)

**ORDER DENYING PLAINTIFFS' MOTIONS FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT**

Before the court are the plaintiffs' Motions for Leave to File
Second Amended Complaint, filed June 6, 2006.¹ Defendant Susan

¹An identical motion to amend complaint was filed in each of
these related cases.

Wallace filed a response in opposition on June 20, 2006.² With leave of court, Wallace filed a supplemental response to the motion on July 6, 2006.

On June 22, 2006, the court held a hearing on pending motions, at which time the court allowed counsel for all parties to be heard on plaintiffs' motions to amend the complaint. For the reasons below, plaintiffs' Motions for Leave to File Second Amended Complaint are DENIED.

I. BACKGROUND

These five lawsuits (hereinafter the "Wallace cases") stem from allegations that defendant Susan Wallace physically and, in the case of Bryan Mooney, sexually abused the minor plaintiffs while they were special education students at Beaver Elementary School in Henderson County, Tennessee, and that the Henderson County Board of Education ("the Board") acted with deliberate indifference to the abuse. The students and their parents filed these lawsuits in state court alleging various state and federal claims against Wallace and the Board for injuries and damages sustained as a result of the abuse. Specifically, Wallace is sued for negligence, assault, battery, and negligent and intentional infliction of emotional distress. The complaint also alleges deprivation of the plaintiffs' Fourth and Fourteenth Amendment

²As the proposed amendment to the complaint does not pertain to defendant Henderson County Board of Education, this defendant did not file a response to the motion. According to the Certificate of Consultation attached to plaintiffs' motions, the Board "takes no position with respect to the Motion."

rights.³ The Board is sued under the Tennessee Governmental Tort Liability Act and 42 U.S.C. § 1983. Defendants subsequently removed the cases to federal court, with jurisdiction premised upon plaintiffs' claims arising under section 1983. All of the plaintiffs are represented by the same counsel.

In the present motions, plaintiffs seek leave of court to file a second amended complaint to add a new cause of action against Wallace for violations of T.C.A. § 49-6-4016. This statute, cited in the proposed Second Amended Complaints, provides as follows:

In addition to criminal penalties provided by law, there is created a civil cause of action for an intentional assault, personal injury or injury to the personal property of students or school employees when such assault occurs during school hours, on school property, or during school functions, including travel to and from school on school buses. The person who commits such an assault or injury shall be liable to the victim for all damages resulting therefrom, including compensatory and punitive damages. Upon prevailing, the victim shall be entitled to treble damages and reasonable attorney fees and costs.

T.C.A. § 49-6-4016 (1996). The proposed complaints allege the following violations of the statute:

In addition to Plaintiffs' claims for damages for assault, negligence and the other causes of action presented in this Complaint, Plaintiffs also assert and demand that Defendant Wallace be held liable to [plaintiffs] for all damages resulting from her abuse of [plaintiffs] T.C.A. § 49-6-4016, including all compensatory and punitive damages extending from her intentional assault and other wrongful actions against [plaintiffs] resulting in serious personal injury.

Plaintiffs further submit that Defendant Wallace is liable to [plaintiffs] for treble damages and reasonable attorney fees

³The court previously dismissed plaintiffs' Eighth Amendment claims.

and costs pursuant to § 49-6-4016.

(See, e.g., Proposed Second Amended Complaint for Dalton Dyer ¶¶ 93-94).

In her response, Wallace argues that the motions should be denied because (1) plaintiffs have failed to demonstrate good cause for filing this motion nine months after the deadline for amending pleadings, as required by Fed. R. Civ. P. 16 and this court's scheduling order; and (2) the amendment would be futile because the proposed new claim - like plaintiffs' existing claims against Wallace for assault and battery - would not survive a Rule 12(b)(6) motion to dismiss.⁴

II. ANALYSIS

Federal Rule of Civil Procedure 15 governs the use of amended pleadings and provides that leave to amend "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). Rule 16 authorizes the court to enter a scheduling order which limits the time a party has to join parties, amend pleadings, file motions, and complete discovery. Rule 16 provides that a scheduling order "shall not be modified except upon a showing of good cause. . . ." Fed. R. Civ. P. 16(b). Addressing the interplay between the liberal standards of Rule 15(a) and the good cause requirement of Rule 16(b), the Sixth Circuit has held that "once a scheduling order's deadline passes, a party must first show good cause under

⁴Wallace has filed a motion for partial dismissal of plaintiffs' assault and battery claims in all five of these cases.

Rule 16(b) for the failure to seek leave to amend prior to the expiration of the deadline before a court will consider whether the amendment is proper under Rule 15(a)." Hill v. Banks, 85 Fed. Appx. 432, 433 (6th Cir. 2003) (citing Leary v. Daeschner, 349 F.3d 888 (6th Cir. 2003)). Good cause exists when a deadline "cannot reasonably be met despite the diligence of the party seeking the extension." Fed. R. Civ. P. 16 advisory committee notes (1983). In deciding whether the moving party has shown sufficient good cause to modify the scheduling order, the court considers two factors: the movant's diligence in attempting to meet the scheduling order's deadlines and the potential prejudice to the opposing party if the scheduling order is amended. Leary, 349 F.3d at 906 (citations omitted).

On May 26, 2005, the undersigned Magistrate Judge entered scheduling orders in all of these cases. These orders set the deadline for plaintiffs to file motions to amend pleadings and join parties for August 31, 2005. The orders further set the deadline for completing written discovery for January 31, 2006, and completing depositions by May 19, 2006. The orders further stated, consistent with Rule 16(b), that "[a]bsent good cause shown, the scheduling dates set by this Order will not be modified or extended." All of the plaintiffs timely filed their first motions to amend the complaint on August 31, 2005, which the court granted on September 30, 2005. Now, nine months after the expiration of that deadline, and after the court allowed plaintiffs to amend their complaints, they seek leave of court to again amend the

complaints.

This court has recently reiterated the importance of complying with a scheduling order in Birge v. Dollar General Corp., no. 04-2531, 2006 WL 133480 (W.D. Tenn. Jan. 12, 2006) (Breen, J.) (unpublished), where the court denied the defendant's motion for judgment on the pleadings filed three months after the deadline for filing dispositive motions:

Rule 16(b), which governs the . . . scheduling order, states that "[a] schedule shall not be modified except upon a showing of good cause and by leave of the district judge" Fed. R. Civ. P. 16(b). "Because a court's scheduling order is not a frivolous piece of paper, idly entered, which can be cavalierly disregarded . . . without peril, a movant must demonstrate that the reasons for the tardiness of his motion justify a departure from the rules set by the court in its scheduling order." . . . Because of burgeoning caseloads and clogged court calendars, it is imperative that district courts be allowed to manage litigation. Scheduling orders are critical in moving cases to a just outcome in an efficient manner. . . . In order to accomplish this end, deadlines "must have teeth" and must be enforced by the courts.

The linchpin of Rule 16(b)'s good cause standard is the diligence of the party seeking to deviate from the scheduling order's deadlines. . . . "Lack of diligence and carelessness are hallmarks of failure to meet the good cause standard. . . . *If that party is not diligent, the inquiry should end.*" . . . "A litigant's inattention or error is not good cause by any standard.
. . .

Birge, 2006 WL 133480, at *1 (internal citations omitted) (emphasis in original).

Here, the court concludes that plaintiffs have not shown good cause to excuse their failure to seek leave to amend the complaint before the deadline to do so expired. In their motions, the plaintiffs do not explain why they did not or could not file the

motions before August 31, 2005. The motions do not mention Rule 16(b) or the good cause requirement. At the June 22 hearing, plaintiffs' counsel stated to the court that the reason they did not file the motions earlier was because they only recently became aware of this statute. The court finds that this does not constitute good cause, and that plaintiffs have not shown why the deadline could not reasonably be met despite the diligence of the plaintiffs. See Birge, 2006 WL 133480, at *1.

Moreover, the court finds that Wallace would be substantially prejudiced if the motions were to be granted. The motions were filed after the January 31, 2006 deadline for completing written discovery and the original May 19, 2006 deadline for completing depositions.⁵ At this point, granting the motion would require that written discovery be reopened and the deadline for depositions be extended to allow the parties to conduct discovery on this new allegation. Although some of the discovery, as plaintiffs argue, may very well overlap with discovery already taken on the existing assault allegations, the proposed complaints also include additional allegations that Wallace is liable for "other wrongful actions against [plaintiffs] resulting in serious personal injury" under T.C.A. § 49-6-4016. Moreover, the jury trials in these cases, which the parties expect will last between ten to fifteen

⁵Although the court later granted the parties' joint motion to extend the deadline for completing depositions to July 31, 2006, the basis for this request, as set forth in the parties' joint motion filed May 18, 2006, was that due to scheduling conflicts with the attorneys and witnesses, the parties needed another month to finish up the remaining depositions.

days per case, are scheduled to begin September 11, 2006, and continue every month until the last one is completed in January 2007. As a result, the parties will either be in trial, or preparing for the upcoming trials, over a six-month period. Thus, although it may be theoretically possible to extend the discovery deadline (without continuing the trials) for those plaintiffs whose trials are scheduled later in the year, this would unfairly force the defendants to participate in discovery while they are engaged in trial or trial preparation. Wallace would be prejudiced because she cannot defend against this new claim without amending the scheduling order to reopen discovery, extending the time to file or amend pending dispositive motions, and continuing the trials.⁶

III. CONCLUSION

For the reasons above, plaintiffs' Motions for Leave to File Second Amended Complaint are DENIED.

IT IS SO ORDERED.

S/ Tu M. Pham

TU M. PHAM
United States Magistrate Judge

July 18, 2006

Date

⁶Because the motion is denied under Rule 16(b), the court does not reach the issue of whether the amendment would be futile.