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

JIMMY LYNN PORTER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
CITY OF DYERSBURG, TENNESSEE, BOBBY WILLIAMSON, and TERRY LEDBETTER,	)	**No. 07-2638 B/P**
	)	
	)	
	)	
Defendants.	)	
	)	

ORDER DENYING PLAINTIFF'S MOTION FOR LEAVE TO PERMIT DISCOVERY PRIOR TO RESPONDING TO DEFENDANT TERRY LEDBETTER'S MOTION FOR SUMMARY JUDGMENT

Before the court by order of reference is plaintiff Jimmy Lynn Porter's Motion for Leave to Permit Discovery Prior to Responding to Defendant Terry Ledbetter's Motion for Summary Judgment, filed January 4, 2008. (D.E. 26). For the reasons below, the motion is DENIED.

On October 10, 2007, Porter, a former Lieutenant with the police department for the City of Dyersburg (the "City"), filed a complaint under 42 U.S.C. § 1983 against the City, its former Chief of Police Bobby Williamson, and its current Chief of Police Terry Ledbetter, alleging that the defendants violated his federal and state constitutional rights in connection with his termination from the police department. On December 5, 2007, defendant Ledbetter

filed a Motion to Dismiss and/or for Summary Judgment, and in the motion Ledbetter argued that he is entitled to qualified immunity. On January 4, 2008, Porter filed a response in opposition to the motion. In his response, Porter stated that his response was without the benefit of any discovery, and that he would supplement his response after he had an opportunity to engage in discovery. On that same day, Porter also filed the instant motion for leave to permit discovery, and attached in support of the motion his own affidavit as well as an affidavit from his attorney, John D. Richardson. On January 8, 2008, Ledbetter filed a response in opposition to Porter's motion for leave to permit discovery, arguing that discovery should be stayed until such time that the court decides the threshold issue of whether he (Ledbetter) is entitled to qualified immunity.

It is well established that "[t]he entitlement to qualified immunity involves immunity from suit rather than a mere defense to liability." Skousen v. Brighton High School, 305 F.3d 520, 526 (6th Cir. 2002) (citing Siegert v. Gilley, 500 U.S. 226, 233 (1991)). "Government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). "Until this threshold immunity question is resolved, discovery should not

be allowed." Id. As the Sixth Circuit explained in Skousen,

> The philosophy behind the doctrine of qualified immunity "is a desire to avoid the substantial costs imposed on government, and society, by subjecting officials to the risks of trial." . . . Such burdens include "distraction of officials from their governmental duties, inhibition of discretionary action, and deterrence of able people from public office."[] Moreover, "[t]o avoid imposing needless discovery costs upon government officials, the determination of qualified immunity must be made at an early stage in the litigation."[] And although there is no question that Johnson v. Jones curtailed to some extent the reach of Mitchell v. Forsyth, there is also no question that Mitchell's principle that "[u]nless the plaintiff's allegations state a claim of violation of clearly established law, a defendant pleading qualified immunity is entitled to dismissal before the commencement of discovery," [] still stands at the threshold of the qualified immunity analysis. . . . Finally, it is clear that before addressing the substance of a claim of qualified immunity, the court must first determine whether the plaintiff has stated a claim of a constitutional violation at all. . . .

Skousen, 305 F.3d at 526 (internal citations and quotations omitted); see also Monroe v. McNairy County, 520 F. Supp. 2d 917, 919 (W.D. Tenn. 2007) (treating defendant's motion for summary judgment as a motion to dismiss on the ground of qualified immunity where plaintiff argued that he could not adequately respond to the motion without discovery); Reyst v. Lanis, No. 06-15468, 2007 WL 1544394, at *1 (E.D. Mich. May 25, 2007) (denying plaintiff's motion to compel discovery and staying discovery pending resolution of immunity issues); Sulfridge v. Huff, No. 05-188, 2007 WL 1319278, at *1 (E.D. Tenn. May 3, 2007) (granting defendant's motion to quash and motion for protective order and staying

discovery pending resolution of qualified immunity issue raised in defendant's summary judgment motion).

Here, Ledbetter has raised the qualified immunity defense in his motion to dismiss and/or for summary judgment, and unless Porter's allegations state a claim of violation of clearly established law, Ledbetter is entitled to dismissal before the commencement of discovery. Skousen, 305 F.3d at 527. If the District Judge before whom the motion to dismiss and/or for summary judgment is pending decides to address the qualified immunity issue under Fed. R. Civ. P. 12(b)(6), then the discovery sought by Porter would have no impact on the court's analysis.[1] See Monroe, 520 F. Supp. 2d at 919.

Moreover, although "limited discovery may sometimes be necessary before the district court can resolve a motion for summary judgment based on qualified immunity," Crawford-El v. Britton, 523 U.S. 574, 598 n.14 (1998), neither the motion for leave to permit discovery nor the affidavits from Porter and attorney Richardson set forth with any particularity the "limited" discovery that Porter needs to address the qualified immunity defense. Instead, Porter asks that the court allow him to proceed

[1]Of course, the District Judge may also decide to dismiss all or part of Porter's complaint against Ledbetter under Rule 12(b)(6) on other grounds raised in Ledbetter's motion. The court notes that in his response to Ledbetter's motion to dismiss and/or for summary judgment, Porter concedes that the complaint fails to state a claim under the Tennessee Constitution and the Fifth Amendment to the United States Constitution under current case law.

to engage in discovery relating essentially to all issues in this litigation. See Richardson Aff. ¶ 11 (requesting discovery to "the underlying facts pertaining to, among other things, . . . all facts and circumstances regarding the Plaintiff's termination [and] all facts and circumstances regarding the composition, selection, deliberations and decisions of the Personnel Merit Board."). Thus, the motion for leave to permit discovery and supporting affidavits fail to demonstrate "that any of the requested discovery is 'tailored specifically' to the issue of qualified immunity." Sulfridge, 2007 WL 1319278, at *1 n.1 (citing Anderson v. Creighton, 483 U.S. 635, 646 n.6 (1987)); see also Fed. R. Civ. P. 56(f) (requiring a party opposing a motion for summary judgment to show by affidavit that "for specified reasons" it cannot present facts essential to justify its position).

For these reasons, the motion for leave to permit discovery is DENIED, and all discovery in this matter is STAYED until the court decides the issue of qualified immunity.

IT IS SO ORDERED.

s/ Tu M. Pham

TU M. PHAM
United States Magistrate Judge

April 2, 2008

Date