

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

Case No. 1:19-CV-386

MARY SMITH and GEORGE SMITH,
Individually, and MARY SMITH, as
Administrator of the ESTATE OF
MARCUS DEON SMITH, deceased,

Plaintiffs,

v.

CITY OF GREENSBORO, Greensboro
Police Officers JUSTIN PAYNE,
ROBERT DUNCAN, MICHAEL
MONTALVO, ALFRED LEWIS,
CHRISTOPHER BRADSHAW, LEE
ANDREWS, DOUGLAS STRADER, and
JORDAN BAILEY, and Guilford EMS
Paramedics ASHLEY ABBOTT and
DYLAN ALLING,

Defendants.

**DEFENDANTS' JOINT MOTION
TO TEMPORARILY STAY THE
START OF DISCOVERY**

Pursuant to Local Rule 7.3, Defendant City of Greensboro (the "City"), Defendants Justin Payne, Robert Duncan, Michael Montalvo, Alfred Lewis, Christopher Bradshaw, Lee Andrews, Douglas Strader, and Jordan Bailey, in their individual capacities (the "GPD Officers"), and Defendants Ashley Abbott and Dylan Alling (the "Emergency Medical Providers") jointly and respectfully move to temporarily stay discovery in this matter until such time as (1) Marcus Smith's heirs are properly determined in the parallel estate proceeding and (2) there is a ruling on Defendants'

pending motion for judgment on the pleadings. In support of this Motion, Defendants show the Court the following:

1. Mary Smith and George Smith, individually, and Mary Smith as Administrator of the Estate of Marcus Deon Smith, commenced this action with the filing of a Complaint on 10 April 2019. (D.E. 1.)

2. On 13 June 2019, Defendants moved to dismiss the Complaint in its entirety. (D.E. 20, 22, 25.)

3. On 25 March 2020, the Court partially granted the motions to dismiss, dismissing Counts 3, 5, 7, and 8. (D.E. 58.)

4. Four claims remain against Defendants: (1) 42 U.S.C. § 1983 – Wrongful Death; (2) 42 U.S.C. § 1983 – Survival Action; (4) 42 U.S.C. § 1983 – *Monell* Liability (limited to the failure-to-train theory); and (6) State Law – Wrongful Death. (*Id.*)

5. On 8 May 2020, Defendants moved for judgment on the pleadings as to Counts 1, 2, 4, and 6 of the Complaint to the extent Plaintiffs Mary Smith and George Smith sought to pursue those claims in their individual capacities. (D.E. 62.)

6. On 29 May 2020, Plaintiffs responded to Defendants' motion and conceded that the remaining claims were only brought by Mrs. Smith in her representative capacity. (D.E. 65 at 2-3.) Defendants' motion for judgment on the pleadings is therefore proper, uncontested, and should be granted.

7. Also on 29 May 2020, Mrs. Smith, as Administrator of Mr. Smith's estate, filed a Petition for Declaratory Ruling in the parallel estate proceeding, *In the Matter of the Estate of Marcus Deon Smith, Deceased* (Guilford, 19 E 1350). (D.E. 65-1.) For the first time in the Petition, Mrs. Smith acknowledges that Mr. Smith may have three children, including one child whose mother filed two letters with the Clerk of Superior Court about her then-minor son in May and August 2019, and two other minor children who live in Greensboro and Raleigh. (D.E. 65-1 ¶¶ 4-6, 8.) The Petition seeks a ruling from the Clerk determining Mr. Smith's heirs and, as part of that process, the appointment of a Guardian ad Litem for any minor heirs. (*Id.* at 3-4.)

8. The start of discovery in this matter should be temporarily stayed until the Court rules on Defendants' motion for judgment on the pleadings, clarifying the parties and issues in the lawsuit, and until Mrs. Smith's pending Petition for Declaratory Ruling to determine Marcus Smith's heirs is resolved.

9. "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936).

10. In evaluating whether to issue a discovery stay, courts consider multiple factors including, "the length of the requested stay, the hardship that that the movant would face if the motion were denied, the burden a stay would impose on the nonmovant, and whether the stay would promote judicial economy by avoiding duplicative litigation."

In re Mut. Funds Inv. Litig., No. 04-MD-15862, 2011 WL 3819608, at *1 (D. Md. Aug. 25, 2011).

11. A ruling on Defendants' motion for judgment on the pleadings will settle the identity of the actual parties and claims remaining in this case. Similarly, a ruling in the estate proceeding identifying Mr. Smith's heir(s) will settle the identity of the real parties in interest. Knowing the real parties in interest is particularly important to place Defendants on an equal footing to Plaintiffs at the start of discovery. The requested temporary stay to the start of discovery will therefore promote judicial economy as well as practical and efficient discovery.

12. Temporarily staying the start of discovery will not prejudice Plaintiffs. Despite receiving information that Mr. Smith may have at least one child and potential heir, Mrs. Smith waited over a year to file a Petition requesting the determination of Mr. Smith's heirs. Any delay related to the outcome from this determination is due to the timing that was determined by Mrs. Smith in her representative capacity.

13. The requested temporary stay will likely be short because as Plaintiffs admit, there will "presumably" be a ruling regarding Mr. Smith's heirship "in the near future." (D.E. 65 at 3.)

14. Defendants' counsel have discussed the issue of a temporary stay of discovery with Plaintiffs' counsel, and are advised that Plaintiffs oppose this request.

15. Additional support for this motion is set forth in the accompanying brief.

WHEREFORE, for the reasons stated herein and in the accompanying brief, Defendants jointly and respectfully request that the Court temporarily stay discovery pending (1) the determination of Mr. Smith's heirs in the parallel estate proceeding and (2) the Court's ruling on Defendants' pending Motion for Judgment on the Pleadings.

This the 12th day of June, 2020.

/s/ Alan W. Duncan

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was electronically filed with the Clerk of Court through the CM/ECF system, which will send notice of filing to counsel of record.

This the 12th day of June, 2020.

/s/ Alan W. Duncan _____
Alan W. Duncan