

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

STEVEN M. VOSEN and LORETTA VOSEN,

Plaintiffs,

v.

ORDER

LARRY WARREN, KENNETH F. BITSKY,
BRENT YORK, COUNTY OF ADAMS and
WISCONSIN COUNTY MUTUAL
INSURANCE CORPORATION,

04-C-064-C

Defendants,

and

UNITY HEALTH PLANS and BLUE CROSS
BLUE SHIELD OF MASSACHUSETTS,

Subrogated Parties.

The heart of this lawsuit is plaintiff Steven Vosen's claim that Adams County Undersheriff Kenneth Bitsky and Deputy Sheriff Brent York assaulted him in 2001 while Vosen was in their custody at the county jail, then engaged in a cover-up along with Sheriff Larry Warren. Vosen's wife Loretta has added a claim for loss of society and companionship under state law. This case is the civil sequel to state and federal prosecutions in 2002-03 against Bitsky for his conduct during and after the incident. Bitsky ultimately was convicted in federal court of witness intimidation and in state court of disorderly conduct.

Before the court is defendant York's motion to compel plaintiffs to provide more complete responses to his contention interrogatories (namely Nos. 11, 12 and 14-19 of

York's First Set of Interrogatories and Request for Production of Documents). No. 12 is a representative sample:

Please state the basis of your contention and all facts upon which you rely to support thereof that Deputy York used more force than was reasonably necessary on February 11, 2001; identify all documents in your possession, custody and control which you contend support this contention, and identify by name and address all witnesses with knowledge or information which you contend support this contention.

Plaintiffs objected to this interrogatory and others like it on the ground that it calls for a legal conclusion, invades the work product or attorney-client privileges, and calls for responding counsel to speculate about the subject of the request. Notwithstanding their objections, plaintiffs responded by directing defendant to the complaint and the two sets of materials they had previously provided to defendant. (As part of their initial pretrial disclosures, plaintiffs provided defendants with a copy of the records generated by the Wisconsin Department of Justice from its investigation of the incident. They also provided copies of medical records and bills relating to injuries allegedly sustained by Steven Vosen as a result of the assault).

Unsatisfied, York wants this court to order plaintiffs to provide more complete answers. York argues that contention interrogatories are authorized specifically by Fed. R. Civ. P. 33 and have to be answered just like any other interrogatory. He asserts that obtaining the requested information through contention interrogatories is cheaper than

through deposition questioning; in the next breath, however, York asserts that he needs answers to these interrogatories in order to prepare for the plaintiffs' depositions on September 14 and 15, 2004.

In response, plaintiffs acknowledge that contention interrogatories are a proper form of discovery but object to responding to them before they obtain certain discovery from defendants. Plaintiffs ask this court to enter a protective order delaying their obligation to respond to the contention interrogatories until specified discovery is complete: plaintiffs assert that they will supplement their answers after the depositions of the named individual defendants have been taken, transcripts of those depositions are available, and the personnel files and citizen complaint files regarding all named individual defendants have been produced by defendant Adams County.

Plaintiffs' responses are sufficient for the time being. York has received a fairly detailed complaint along with investigative reports from law enforcement agencies. York can obtain interstitial detail when he deposes the plaintiffs. Furthermore, plaintiffs have not yet obtained discovery from the defendants. Although plaintiffs likely possess most of the information they would need to answer completely York's contention interrogatories, it is too early in the case to lock parties tightly into theories that might change a bit with the discovery of additional facts. *See* Fed. R. Civ. P. 33, Advisory Committee Note (expressly authorizing court to defer answers to contention interrogatories until after discovery complete).

Put another way, granting York's motion to compel at this juncture would not advance the ball. Ordering supplemental answers this early would not reveal any salient information, and plaintiffs likely would move to supplement these supplemental answers after conducting more discovery of their own. The defendants already possess ample information with which to prepare for plaintiffs' depositions. The events underlying this lawsuit have been prosecuted twice, so defendant cannot claim to have no idea what plaintiffs are going to say when deposed.

So for now plaintiffs's responses are sufficient, but plaintiffs must promptly supplement them and provide the requested information after obtaining the information they have specified.

ORDER

Accordingly, it is ORDERED that defendant York's motion to compel plaintiffs to provide more complete responses to Interrogatory Nos. 11, 12, 14-19 of Defendant's First Set of Interrogatories and Request for Production of Documents is denied in part and granted in part as explained above.

Each side shall bear its own costs on this motion.

Dated this 31st day of August, 2004.

BY THE COURT:

STEPHEN L. CROCKER
Magistrate Judge