IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

CHARLES E. SPARRGROVE, III and
JANE M. SPARRGROVE,

Plaintiff,

ORDER

04-C-0021-C

v.

CLIFFORD WACHTER, TRUDY WACHTER, CLARK KEPPLINGER, ANDREA L. BAKER, DEAN HOULBERG and BANK OF MONTICELLO,

Defendants.

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

Plaintiffs Charles E. Sparrgrove, III, and Jane M. Sparrgrove have filed "An Ancillary Motion to Stay Proceedings upon Proof of Courts Finding of Fact and Conclusion of Law, objecting to the order entered herein by the United States Magistrate Judge on April 29, 2004. Although plaintiffs do not identify their filing as one brought pursuant to 28 U.S.C. § 636(b)(1)(A), that is their only vehicle they can use to obtain reconsideration of an order entered by the magistrate judge. See § 636(b)(1)(A) ("A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law.")

Section 636 gives litigants ten days from the date of entry of a magistrate judge's order in which to seek reconsideration. Plaintiffs did not file their motion within ten days of the order, even when the intermediate Saturdays and Sundays are excluded pursuant to Fed. R. Civ. P. 6. Therefore, it would be unnecessary to address the objections. Nevertheless, I will do so, if only to disabuse plaintiffs of the notion that the magistrate judge did not act according to the law when he directed them to appear at new depositions, answer all questions put to them, pay the costs defendants incurred for the useless depositions and refrain from seeking any discovery from defendants until after their new depositions have been taken and they have paid defendants the costs of the first round of depositions.

The exact nature of plaintiffs' objections to the magistrate judge's order is not entirely clear. I believe that they are objecting to the magistrate judge's determination that they are required to give full and complete answers to questions put to them at their depositions, rather than refuse to answer on the grounds that they "are in want of counsel." Also, they seem to think that because they did not receive notice of their depositions by subpoena, they have the right to ignore the notice of their deposition and perhaps, to refuse to answer questions at the depositions.

Plaintiffs were advised in the order I entered on April 12, 2004, that they had no right to notice by subpoena. Why they are still arguing that point is a mystery. The rule is

clear. See 8A Charles Alan Wright et al., Federal Practice & Procedure § 2106 ("If a party is to be examined, the notice under [Rule 30(b)(2)(C)] is sufficient to require the party's attendance; if the deponent is not a party, he or she must be subpoenaed.").

Not only do the parties have an obligation to attend a deposition if they are given notice of the deposition, they have the obligation to answer the questions put to them. As the magistrate judge explained, plaintiffs do not have the right to refuse to answer questions on the ground that they are "in want of counsel." Plaintiffs seem to think that they have a right to counsel in their civil action that is equivalent to the right they would have if they were being questioned while in the custody of the state. They are wrong. They have no such right. Defendants are entitled to complete answers from plaintiffs whether or not plaintiffs have counsel.

The magistrate judge was well within his discretion to enter the order permitting defendants to depose plaintiffs a second time and directing plaintiffs to answer all questions put to them at the second depositions at the risk of being held in contempt of court pursuant to Fed. R. Civ. P. 37(b)(1) or incurring other sanctions, including the dismissal of their case. It was proper for him to require plaintiffs to pay the costs that defendants incurred as a result of plaintiffs' recalcitrance and to refrain from seeking any discovery of their own until they had made this payment and cooperated in their depositions.

ORDER

Plaintiffs' request for a stay of proceedings "until there is a finding of fact and conclusion of law to Judge Crocker's order dated April 20, 2004" is DENIED.

Plaintiffs' request for a stay of proceedings until there has been a determination that the magistrate judge's order was based on court rules is DENIED as moot now that I have determined that the order was entirely proper and supported by the Federal Rules of Civil Procedure.

Plaintiffs' motion for a "specific declaratory judgment that whereas Defendants are not complying with the rules of court then of courts [sic] Plaintiffs are not required to comply with the rules of court nor can the Plaintiffs be compelled to so comply nor be held accountable for not so complying" is DENIED. Plaintiffs have not shown that defendants are not complying with the rules.

Finally, plaintiffs' request for a stay of the deposition set for May 25, 2004, is DENIED. Plaintiffs are free to seek the agreement of defendants to change the date if they have a true

conflict but they are not relieved of the obligation to attend if defendants refuse to agree.

Entered this 18th day of May, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge