IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BRIAN P. CARR, RUEANGRONG CARR, and BUAKHAO VON KRAMER, Plaintiffs, v. UNITED STATES OF AMERICA, et al., Defendants.	Civil Action No. 3:23-CV-02875-S-BT

DEFENDANTS' RESPONSE TO PLAINTIFFS'
MOTION FOR RECONSIDERATION AND BRIEF IN OPPOSITION

Plaintiffs have filed a motion requesting that the Court reconsider its order denying Plaintiffs' motion for partial summary judgment, filed before Defendants' deadline to answer, as premature. Because the Court's order was both procedurally and substantively proper, Plaintiffs' motion should be denied.

I. Procedural History

Plaintiffs Brian P. Carr, Rueangrong Carr, and Buakhao Von Kramer filed this lawsuit arising out of their attempts to gain various immigration benefits on December 29, 2023. Defendants filed a timely motion to dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). (Doc. 8).

A few weeks later, Plaintiffs filed a document entitled "Response to Defendants' Motion to Dismiss" which included a response to the motion to dismiss, a motion to amend the complaint, and a motion for partial summary judgment. (Doc. 18, at 1, 51-52).

Counsel for Defendants later conferred with Mr. Carr, informing him Defendants were unopposed to the request to file an amended complaint and such filing would render the Defendants' then-pending motion to dismiss moot. (Doc. 21).

In response to Plaintiffs' motion for partial summary judgment, Defendants filed a motion to deny Plaintiffs' motion for partial summary judgment as premature under Federal Rule of Civil Procedure 56(d) on April 17, 2024. (Doc. 22).[1] Five days later, on April 22, 2024, the Court entered an order denying Plaintiffs' motion for partial summary judgment as premature, denying Defendants' motion to dismiss as moot, and issuing a schedule for the filing of Plaintiffs' amended complaint and responsive pleadings. (Doc. 26). The following day, Plaintiffs filed a "Reply in Support of Motion for Partial Summary Judgment and Response Opposing Defective Motion to Continue Consideration" regarding the already ruled-upon motions. Pursuant to the deadlines in the Court's order, Defendants have since timely filed a motion to dismiss Plaintiffs' amended complaint, and Plaintiffs have filed a response. (*See* Docs. 29 and 31).

Recently, Plaintiffs filed a motion for reconsideration of the Court's order granting Defendants' Rule 56(d) motion.[2]

In their motion for reconsideration, Plaintiffs request that the Court: (1) review

[1] These specific dates matter because Plaintiffs suggest that counsel for the government engaged in ex parte contacts with the Court, citing the proximity between the government's notice of substitution of counsel and the Court's order denying Plaintiffs' motion for partial summary judgment (Doc. 32, at 3–4), which is discussed *infra*.

[2] Plaintiffs also filed a second motion for partial summary judgment on the following day, and Defendants' deadline to respond has not yet expired. (Doc. 33).

Plaintiffs' response to Defendants' Rule 56(d) motion and "so note on the record"; (2) amend its April 22, 2024 order (Doc. 26) to "conform with" the original complaint and the amended complaint; and (3) "[r]ule on the legality of 56(d) [m]otions." (Doc. 32, at 6).

II. Argument & Authorities

The Court should deny Plaintiffs' motion for reconsideration because Defendants' motion was proper, and the Court's order granting that motion was both appropriately timed and substantively accurate. Further, even if the Court does decide to consider Plaintiffs' response filed after the order was entered, Defendants' Rule 56(d) motion should still prevail, and Plaintiffs' motion for reconsideration should be denied.

A. Defendants properly filed a Rule 56(d) motion.

Although Plaintiffs complain about various aspects of Defendants' Rule 56(d) motion, Defendants appropriately moved for relief under Rule 56(d), and the motion complied with all requirements under the Federal Rules of Civil Procedure and Local Rules of the Northern District of Texas.

Plaintiffs first allege that Defendants' Rule 56(d) motion did not contain a certificate of conference. This is false. A certificate of conference noting a lack of response to an attempt to confer is included on the final page of Defendants' motion. (Doc. 22, at 12).

Additionally, Plaintiffs argue Defendants improperly filed their request for relief under Rule 56(d) as a motion rather than as a response to Plaintiffs' motion for partial summary judgment. But courts regularly treat a motion as the proper vehicle for bringing

a Rule 56(d) request. *E.g. Am. Family Life Assur. Co. of Columbus v. Biles*, 714 F.3d 887, 894 (5th Cir. 2013) ("We review a district court's denial of a Rule 56(d) motion for abuse of discretion"); *Bassknight v. Deutsche Bank Nat. Trust Co.*, 3:12-cv-1412-M (BF) 2013 WL 1245563 at *1 (N.D. Tex. Mar. 4, 2013), *R&R adopted*, 2013 WL 1249580 at *1 (N.D. Tex. Mar. 26, 2013) (recommending request in joint status report be treated as Rule 56(d) motion notwithstanding failure to adhere to procedural requirements). And Plaintiffs have not cited to any authority suggesting this practice is incorrect. Defendants' Rule 56(d) motion was therefore procedurally proper.

B. The timing of the Court's order was appropriate.

Plaintiffs claim the Court's order granting Defendants' Rule 56(d) motion was premature, creating "serious [d]ue [p]rocess concerns." (Doc. 32, at 3). However, they cite to no authority to support this statement. There certainly are situations where a litigant is guaranteed an opportunity to respond. For example, the Second Circuit has determined a court abuses its discretion when it *sua sponte* dismisses a case after declining to exercise discretionary jurisdiction without providing notice. *Catzin v. Thank You & Good Luck Corp.*, 899 F.3d 77, 84 (2nd Cir. 2018). And a court may not sanction a party without providing an opportunity to respond. *Childs v. State Farm Mut. Auto. Ins. Co.*, 29 F.3d 1018, 1027 (5th Cir. 1994). Other procedural, non-case-dispositive orders, such as orders setting hearings or mandating reports or other submissions by certain deadlines, are regularly issued without notice.

Here, the order complained of does not dispose of any portion of Plaintiffs' case or issue any sanction. Instead, it merely denies Plaintiffs' motion for partial summary

judgment, filed before discovery is even allowed to begin, as premature. As a result, Plaintiffs' case will simply continue to move forward. The Court acted appropriately in issuing its order prior to Plaintiffs filing a response.

Plaintiffs also use the proximate timing of the Court's order (Doc. 26) and Defendants' notice of substitution of counsel (Doc. 27) to suggest the Court and counsel for Defendants had *ex parte* communications about "manag[ing] the transition between counsel." (Doc. 32, at 3). Defendants unequivocally deny any of their current or previous counsel have had any communication with the Court—oral, written, or otherwise—outside of the pleadings filed in this case, all of which have been served on Plaintiffs.

C. Even considering Plaintiffs' response, Defendants' Rule 56(d) motion was appropriately granted.

If the Court decides to reconsider its decision by reviewing Plaintiffs' response to Defendants' Rule 56(d) motion, the outcome should remain the same. "Rule 56(d) motions for additional discovery are broadly favored and should be liberally granted because the rule is designed to safeguard non-moving parties from summary judgment motions that they cannot adequately oppose." *Am. Family Life Assur. Co.*, 714 F.3d 887 at 894 (quoting *Raby v. Lingingston*, 600 F.3d 552, 561 (5th Cir. 2010)) (internal quotation marks omitted). And the Fifth Circuit has repeatedly explained that summary judgment is generally appropriate only after a non-movant has had a full opportunity to conduct relevant discovery. *See, e.g.*, *Bailey v. KS Mgmt. Servs., L.L.C.*, 35 F.4th 397, 401 (5th Cir. 2022). In fact, a 56(d) motion should generally be granted "almost as a

matter of course." *Wichita Falls Off. Assocs. v. Banc One Corp.*, 978 F.2d 915, 919 n.4 (5th Cir. 1992). To obtain relief, the party invoking Rule 56(d) must show "(A) that additional discovery will create a genuine issue of material fact"; and "(B) that [it] diligently pursued discovery." *Bailey*, 35 F.4th at 401.

As explained in Defendants' Rule 56(d) motion, discovery, if this case reaches that stage, will create a genuine issue of material fact. *See* App. 002–03, ¶¶ 3–5.[3] Additionally, Defendants' have not lacked diligence in pursuing discovery. Defendants have filed a motion to dismiss, and the threshold questions of subject matter jurisdiction and whether Plaintiffs have failed to state a claim upon which relief can be granted are currently pending in this Court. (Doc. 31). Defendants' deadline to file an answer has therefore not yet occurred. The parties therefore have not yet conferred in accordance with Rule 26(f), given that such conferences generally occur after the defendant files a response to the complaint. *See* Fed. R. Civ. P. 26(f)(2)–(3). But "[a] party may not seek discovery from any source" before the Rule 26(f) conference occurs, except for limited exceptions such as by stipulation or a court order. Fed. R. Civ. P. 26(d). Thus, discovery is not allowed under the Federal Rules of Civil Procedure at this time, and Defendants have not been dilatory by virtue of their compliance with the Federal Rules of Civil Procedure. Defendants' met their burden under Rule 56(d), and the Court properly granted their motion.

[3] App. in this document refers to the Appendix filed with Defendants' Rule 56(d) motion.

D. Corrections to the language in the Court's order are unwarranted.

Plaintiffs also request that the Court revise the language in its order. Specifically, they seek to have the phrase "various attempts by Ms. Carr and Ms. Von Kramer to obtain immigration benefits" replaced with a three-paragraph summary that includes multiple, unsupported assertions of law. The language complained of is contained in an introductory paragraph of the Court's order, characterizing Plaintiffs' (now-superseded) original complaint providing relevant procedural background to the Court's decision. (*See* Doc. 26, at 1). Plaintiffs' requested change would only serve to add unsupported statements of law to the Court's order. This change is therefore unwarranted, and Plaintiffs' request should be denied.

III. Conclusion

Defendants filed a procedurally proper Rule 56(d) motion showing good cause to deny Plaintiffs' motion for partial summary judgment as premature. Additionally, the Court entered an order that was both procedurally and substantively appropriate, consistent with the Fifth Circuit's instruction that, in these circumstances, Rule 56(d) motions should typically be granted "almost as a matter of course." *See Wichita Falls Off. Assocs.*, 978 F.2d at 919 n.4. For all of these reasons, Plaintiffs' motion for reconsideration should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On June 4, 2024, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Emily H. Owen
Emily H. Owen