

1986 WL 6426

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United States District Court, N.D. Illinois, Eastern
Division.

CALVIN R., Plaintiffs,
v.
MICHAEL LANE, et al., Defendants.

No. 82 C 1955. | May 23, 1986.

MEMORANDUM OPINION AND ORDER

WILLIAMS, District Judge.

*1 Defendant's motion for reconsideration of this court's order of January 23, 1986, or, in the alternative to certify the question for interlocutory appeal is denied.

In their arguments in support of this motion, defendants have assiduously ignored that part of the court's order which preserves defendants' right to preclude Dr. McConville from using information obtained from objected to questioning until such time as the court rules upon the objection. The court believes this provision of its order significantly distinguishes the situation here from that in Belcher v. Bassett Furniture Industries, Inc., 588 F.2d 904 (4th Cir. 1978), a case so heavily relied upon by defendants. Defendants have proposed no solution to the

problems encountered during Dr. McConville's previous inspections. In contrast, the court has devised what it believes to be a workable solution which strikes the appropriate balance between the rights of defendants on the one hand and the rights of plaintiffs on the other.

Defendants ask that the order be clarified to exclude questioning on 'policies and procedures.' But it is impossible to define in a vacuum those questions that can be characterized as policy and procedure questions and those which cannot be so characterized. The only fair way to deal with the problem is to allow the question, allow defendants' counsel to assert their objections and the grounds therefore, followed by the employee's answer to the question. Upon reading the transcript the court can decide whether the question was proper or not. If the question was not proper, Dr. McConville cannot use its answer as a basis for his opinion. To clarify, plaintiffs' expert may not ask questions concerning 'policies and procedures.' But if he does, rather than having the lawyers fight about it during the inspection, the procedure just outlined should be followed.

The issue presented here does not meet the requirements of 28 U.S.C. § 1292(b). Rather, appeal of this interlocutory order will delay, not advance, this litigation. Therefore, the motion to certify the question for appeal is also denied.

All Citations

Not Reported in F.Supp., 1986 WL 6426