UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

PRISON LEGAL NEWS, a project of the HUMAN RIGHTS DEFENSE CENTER,	)	
Plaintiff,	)	
v.	)	No.: 3:15-CV-452-TAV-CCS
KNOX COUNTY, TENNESSEE,	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

This civil action is before the Court on the two motions of defendant Knox County, Tennessee,[1] to compel a judicial settlement conference [Docs. 50, 59]. The Court previously stayed these proceedings to permit the parties to engage in private mediation, which was unsuccessful [Doc. 34]. On July 11, 2017, however, defendant filed a motion requesting that the Court order the parties to participate in mediation before a United States Magistrate Judge and stay these proceedings pending the outcome of that mediation [Doc. 50]. Plaintiff responded in opposition, claiming that a judicial settlement conference is unlikely to prove fruitful [Doc. 52]. Then, apparently dissatisfied with the speed at which the Court was considering its motion, defendant filed yet another motion seeking identical relief—i.e., an order staying these proceedings and directing the parties to participate in

[1] The Court notes that former defendants James "J.J." Jones and Rodney Bivens, sued both in their individual and official capacities, have been dismissed from this action by stipulation of the parties [Doc. 48 ¶ 1], pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii). Thus, Knox County is the only remaining defendant at the time of entry of this opinion.

judicial mediation [Doc. 59]. Plaintiff responded once more in opposition, on the same grounds [Doc. 64].[2] The Court has carefully considered the matter and, for the reasons explained below, will deny defendant's motions.

Eastern District of Tennessee Local Rule 16.4(a) provides that, "[w]ith or without the agreement of the parties in any civil action . . . , the Court may refer all or part of the underlying dispute to [m]ediation." That authority is discretionary, unless the parties show that the action is "not suitable for mediation" under Local Rule 16.3. *AquaShield, Inc. v. Sonitec Vortisand, Inc.*, No. 1:13-cv-119, 2014 WL 12704705, at *2 (E.D. Tenn. Mar. 3, 2014). In making this determination, the Court should consider its prior rulings, the best interests of all parties, and the need to promote judicial economy and the efficient resolution of the controversy. *See AMC Demolition Specialists, Inc. v. Bechtel Jacobs Co.*, No. 3:04-cv-466, 2006 WL 2792401, at *24 (E.D. Tenn. Sept. 26, 2006). Ultimately, however, the decision whether to order mediation rests within the Court's discretion.

In support of its motions, defendant submits that the entire posture of this matter has changed since the last, unsuccessful attempt at mediation. Notably, the parties have now stipulated that: (1) plaintiff's claims against all defendants but Knox County should be

[2] The Court notes that, due to the disruption Hurricane Irma caused plaintiff's counsel's operations in Florida, the Court previously granted an extension of time [Doc. 61] for plaintiff to respond to both defendant's renewed motion to compel [Doc. 59] and its pending motion for summary judgment [Doc. 58]. Plaintiff filed a response to the latter motion within the extended time permitted by the Court, but neglected to respond to the former until October 16, 2017 [Doc. 64]. Plaintiff apologizes for the late filing and submits that, because its response raises no new legal or factual arguments, defendant will not be prejudiced by its tardiness [*Id.* at 2 n.1]. The Court agrees and will thus consider plaintiff's response timely filed.

dismissed with prejudice; (2) plaintiff sustained compensatory damages in the amount of $25,000 due to defendant's actions; and (3) the first two stipulations resolve all issues in this litigation except for plaintiff's entitlement to injunctive relief, attorney's fees, and costs [Doc. 48]. Defendant asserts that it is ready and willing to attempt to resolve these remaining issues in good faith. Furthermore, defendant asserts that, because of an earlier offer of judgment under Federal Rule of Civil Procedure 68, the resolution of plaintiff's pending motion for a permanent injunction [Doc. 49] "will have a great impact upon the amount of [plaintiff's] attorney fee claim" [Doc. 50 p. 2]. Defendant thus asserts—without further elaboration—that it has reason to believe that a conflict between the interests of plaintiff and its counsel may be preventing a successful resolution of this dispute. As such, defendant argues that a U.S. Magistrate Judge could serve as an effective neutral.

Plaintiff responds that defendant has failed to articulate any compelling reason to stay these proceedings and order another round of mediation. Plaintiff submits that the parties remain unchanged in their positions concerning injunctive relief despite multiple attempts to reach agreement. Specifically, plaintiff submits that defendant has refused to be subject to a court order enjoining it from reverting to its unconstitutional practices in the future, while plaintiff is unwilling to terminate this litigation without such an order. Plaintiff notes that it has already provided a stipulated injunction to defendant, which was squarely rejected. To that end, plaintiff has filed a motion for a permanent injunction [Doc. 49], which it asserts turns solely on the issue whether the voluntary cessation exception to mootness applies here. *See City News & Novelty, Inc. v. City of Waukesha*, 531 U.S. 278,

284 n.1 (2001) (noting "the principle that a party should not be able to evade judicial review, or to defeat a judgment, by temporarily altering questionable behavior").

In addition, regarding defendant's allegation of a conflict of interest, plaintiff asserts that to make such a serious accusation of a breach of ethical duty without any evidence is both inappropriate and unprofessional. Moreover, plaintiff submits that no such conflict exists—it has always taken the position that injunctive relief is necessary to prevent defendant from returning to its unconstitutional practices. Plaintiff also notes that this issue is ancillary to the issue of attorney's fees, to which plaintiff is entitled under 42 U.S.C. § 1988 as the "prevailing party" regardless whether a permanent injunction enters. Indeed, plaintiff argues that "the Supreme Court has read [§ 1988] as mandatory where the plaintiff prevails and special circumstances are absent." *Déjà Vu of Nashville, Inc. v. Metro. Gov't of Nashville & Davidson Cty.*, 421 F.3d 417, 420 (6th Cir. 2005).

After carefully considering the parties' arguments, and in light of plaintiff's opposition to mediation, the Court will not order that the case be mediated at this time, although this conclusion does not preclude future consideration of such an order. The Court finds that compelled mediation before a U.S. Magistrate Judge is unlikely to prove fruitful, given that the parties appear to remain fundamentally at odds regarding plaintiff's entitlement to injunctive relief, attorney's fees, and costs. Furthermore, the Court has already stayed these proceedings once to permit mediation, and, while the posture of the case has changed somewhat since that time, the Court finds that the need for a prompt and efficient resolution of this controversy outweighs the possibility of a successful resolution

through mediation. Indeed, the parties' pending motions for a permanent injunction [Doc. 49] and for summary judgment [Doc. 58] present distinct legal issues appropriate for the Court to resolve as a matter of law. And finally, the Court finds that defendant has provided no evidence to substantiate its claim that plaintiff's counsel has experienced a conflict of interest that is actually impeding the settlement of this dispute. Nonetheless, the Court would strongly encourage the parties to continue to pursue methods of settlement negotiation, including private mediation, as a settlement reached through their mutual cooperation will ultimately be more palatable than one imposed by the Court.

Accordingly, for the reasons stated above, defendant's two motions to compel a judicial settlement conference [Docs. 50, 59] are hereby **DENIED**. The Scheduling Order in this matter [Doc. 44] will thus remain fully in effect.

IT IS SO ORDERED.

s/ Thomas A. Varlan
CHIEF UNITED STATES DISTRICT JUDGE