

Reid v. Simmons, et al.

CV-89-152-M 12/03/97

UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

Gordon C. Reid

v.

Civil No. 89-152-M

Officers Gary Simmons, Ronald Paul,  
James Ahern, and Richard Gilman

**O R D E R**

Defendants filed a motion for summary judgment on October 6, 1997. When plaintiff did not file a response, or request extra time within which to respond, within the time provided by rule, the court, sua sponte, granted plaintiff additional time. The additional twenty-day period allowed will expire on December 8, 1997, when plaintiff will have had approximately twice the amount of time allowed by rule to respond to a motion for summary judgment. In the meantime, on November 24, plaintiff filed a motion for leave to file a brief in excess of twenty-five pages and a motion for further discovery.

Plaintiff's request to file a brief longer than twenty-five pages is granted. As the twenty-day period is about to expire and plaintiff may have delayed his response in anticipation of the court's action on his motions, the court anticipates that a further extension may be necessary. Accordingly, the court grants plaintiff ten additional days within which to file his response to defendants motion for summary judgment. **The filing**

**deadline is Thursday, December 18, 1997. NO FURTHER EXTENSIONS OF TIME WILL BE GRANTED.**

In his motion for further discovery, plaintiff asks that defendants be ordered to provide him with copies of "all pre-appeal discovery documents and responses given to the plaintiff prior to the appeal in the matter of Reid v. New Hampshire to the extent that each . . . individual document has not been provided to the plaintiff in the post-appeal discovery process." Plaintiff also requests copies of all of defendants' responses to his requests for admissions made before his appeal. In response, defendants object to plaintiff's motion but include copies of all of plaintiff's requests for admissions and for production of documents and their responses.

Plaintiff seeks the protection of Federal Rule of Civil Procedure 56(f).<sup>1</sup> To avoid summary judgment under Rule 56(f), however, the objecting party must "(1) articulate a plausible basis for the belief that discoverable materials exist which would raise a trialworthy issue and (2) demonstrate good cause for failure to have conducted discovery earlier." Reid v. State of New Hampshire, 56 F.3d 332, 341 (1st Cir. 1995) (internal quotation omitted). Reid has failed to meet either prong of the Rule 56(f) standard.

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<sup>1</sup>Although plaintiff's discovery motion was filed after the time allowed to respond to defendants' motion for summary judgment, it was still within a "reasonable time" after receiving the motion. See Resolution Trust v. North Bridge Ass'n, 22 F.3d 1198, 1204 (1st Cir. 1994).

During the course of the past year, this court has issued a series of orders addressing discovery issues in this case including Reid's access to discovery materials acquired prior to his appeal in 1993. The last order was issued in July. The court has heard nothing further indicating that defendants did not subsequently fully comply with Reid's discovery requests as modified by the court's orders. Based on the record, the court concludes that plaintiff has been provided with all discoverable materials including any pre-appeal discovery materials that he did not already have. Plaintiff's motion for further discovery does not provide any reason to believe that additional discoverable materials exist, which have not already been provided to him, nor does it explain why he did not seek these materials during the past year (if indeed he was missing materials that were not then provided to him) when he vigorously pursued discovery in this case.

#### **Conclusion**

Plaintiff's motion to file a brief in excess of twenty-five pages (document no. 248) is granted. Plaintiffs motion for discovery (document no. 247) is denied. **The deadline for response to defendants' motion for summary judgment is extended to Thursday, December 18, 1997, and will not be extended further.**

**SO ORDERED.**

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Steven J. McAuliffe  
United States District Judge

December 3, 1997

cc: Robert G. Whaland, Esq.  
Gordon C. Reid  
Ann F. Larney, Esq.