UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MYLISSA FARMER,

Plaintiff,

vs.

THE UNIVERSITY OF KANSAS HOSPITAL AUTHORITY,

Defendant.

Case No. 2:24-CV-02335-HLT

PLAINTIFF MYLISSA FARMER'S OPPOSITION TO DEFENDANT'S MOTION TO STAY DISCOVERY

Plaintiff Mylissa Farmer respectfully opposes, and requests that the Court deny, the University of Kansas Hospital Authority's ("Defendant") motion for an Order to stay discovery and related Fed. R. Civ. P. 26 activities until the Court has issued its ruling on the pending Motion to Dismiss ("MTD"), ECF No. 18.

I. Procedural History

In accordance with the District of Kansas' standard practice, on September 5, 2024, Judge Severson issued an "Initial Order Regarding Planning and Scheduling". ECF No. 24. That Order set a Fed. R. Civ. P. 16 scheduling conference for October 16, 2024, and instructed the parties to confer in a Fed. R. Civ. P. 26(f) initial planning conference by September 25, 2024. *Id.* at 1. Pursuant to Judge Severson's Order, on September 6, 2024, the parties jointly agreed to participate in an initial planning conference on September 23, 2024. Without conferring with Plaintiff, on September 17, 2024, Defendant unilaterally moved to stay discovery until the resolution of its pending Motion to Dismiss.

II. Legal Standard

The Tenth Circuit has made clear that "the right to proceed in court should not be denied except under the most extreme circumstances." *Commodity Futures Trading Comm'n v. Chilcott Portfolio Mgmt., Inc.*, 713 F.2d 1477, 1484 (10th Cir. 1983). Thus, "the longstanding general policy in this district is not to stay discovery even though dispositive motions are pending." *Gragg v. Maximus*, K.C., No. 22-CV-2292-JWB-TJJ, 2022 WL 10426365, at *1 (D. Kan. Oct. 18, 2022) (internal citation omitted); *see also, e.g.*, *Wolf v. United States*, 157 F.R.D. 494, 495 (D. Kan. 1994) (denying motion to stay discovery). Indeed, every case that Defendant cites in its Motion to Stay recognizes this District's "general policy" against staying discovery.

Defendant misleadingly presents the "*exceptions* to this general rule" as if they are the rule itself. *Gragg*, 2022 WL 10426365, at *1 (emphasis added). A stay may be appropriate when a dispositive motion is pending only where (1) "the case is likely to be finally concluded as a result of the ruling thereon;" (2) "the facts sought through uncompleted discovery would not affect the resolution of the motion;" or (3) "discovery on all issues of the broad complaint would be wasteful and burdensome." *Wolf*, 157 F.R.D. at 495 (citing *Kutilek v. Gannon*, 132 F.R.D. 296, 297 (D. Kan. 1990)). Defendant has not shown that any of these narrow exceptions are applicable here. Thus, it has not carried its "burden to clearly show a compelling reason for the court to issue a stay." *Gale v. Mentor Worldwide, LLC*, No. 19-CV-2088-KHV-TJJ, 2019 WL 2567790, at *2 (D. Kan. June 21, 2019) (citing *Evello Invs. N.V. v. Printed Media Servs., Inc.*, No. 94-2254-EEO, 1995 WL 135613, at *3 (D. Kan. Mar. 28, 1995)).

III. Defendant has not shown that its motion to dismiss is unusually likely to succeed.

Defendant first claims that it is entitled to a stay because the case is likely to be resolved by its Motion to Dismiss. *See* Motion to Stay ("MTS") at 2–3, ECF No. 27. To be entitled to a

stay, a motion to dismiss must appear more likely to fully resolve the issues in the case than other dispositive motions that the court typically reviews. *See, e.g.*, *Ketonatural Pet Foods, Inc. v. Hill's Pet Nutrition, Inc.*, No. 24-CV-2046-KHV-ADM, 2024 WL 4274891, at *2 (D. Kan. Sept. 24, 2024) (court not persuaded that the case was likely to be fully resolved via the pending motion to dismiss, "at least not any more so than when reviewing motions to dismiss filed in other cases"); *In re Winter Storm Uri Nat. Gas Litig.*, No. 24-1073-DDC-ADM, 2024 WL 3771779, at *2 (D. Kan. Aug. 13, 2024) ("Quite simply, the pending motion to dismiss does not appear to be any more meritorious (and hence likely to end the case) than motions to dismiss regularly filed in this court."); *Yellow Corp. v. Int'l Bhd. of Teamsters*, No. 23-1131-JAR-ADM, 2023 WL 7407679, at *3 (D. Kan. Nov. 9, 2023) (same).

As an initial matter, Defendant does not even attempt to conform its arguments to the district's standard for granting a discovery stay under this exception: Defendant does not point to any unique or extraordinary aspect of its Motion to Dismiss that makes it "any more meritorious" than regularly filed motions to dismiss. Instead, Defendant simply regurgitates the arguments levied in its opening motion, highlights that its motion could dispose of each of Plaintiff's claims, and expresses its opinion that these arguments will prevail. MTS at 2–3; *see also* MTD at 13–24.

Moreover, Defendant is wrong that its Motion to Dismiss is likely to succeed. Notably, the U.S. Centers for Medicare and Medicaid Services ("CMS") has already determined that Plaintiff's EMTALA claim is meritorious, issuing a statement of deficiency to Defendant on April 10, 2023. ECF No. 18-5. Additionally, as Plaintiff explains in further detail in her Opposition to the Motion to Dismiss ("Opp."), Defendant's assertion that Plaintiff cannot bring a screening claim and stabilization claim is both factually and legally incorrect. Opp. at 16–17, ECF No. 32. Defendant ignores the factual allegations that it failed to provide an appropriate screening examination for

some EMCs (preterm labor and infection), while failing to stabilize a *separate* EMC that it correctly diagnosed (previable PPROM). Opp. at 2. Furthermore, as a matter of law, Plaintiff can bring screening and stabilization claims for the same EMC. Opp. at 17 (citing *Griffith v. Mt. Caramel Med. Ctr.*, 831 F. Supp. 1532, 1538–44 (D. Kan. 1993)).

Defendant is also wrong that controlling Kansas law fully disposes of Plaintiff's KAAD claim. Defendant cites outdated case law to support its incorrect proposition that pregnant individuals do not qualify as a protected class under the KAAD. Opp. at 21–22; MTD at 23–24. In quoting that outdated law, Defendant incorrectly attributes excerpts from a trial court decision to the Kansas Supreme Court. Opp. at 20–21. Subsequent Kansas Supreme Court precedent and binding regulations recognize that pregnancy discrimination is sex discrimination under the KAAD. Opp. at 21–24 (collecting cases). Thus, Defendant is far from likely to prevail on this argument.

Nor does any of Defendant's cited case law counsel in favor of a stay in the present matter. In *Vann v. Fewell*, the court ordered a discovery stay based on its finding that *other* exceptions to the general policy against such stays applied—not any assessment as to whether the pending motion would likely end the case, which it deemed a neutral factor. No. 20-3200-JAR-GEB, 2023 WL 2987765, at *3 (D. Kan. Apr. 18, 2023). In *Catron v. Colt Energy, Inc.*, the court granted a stay because proceeding with discovery at that stage would be "wasteful and unnecessarily burdensome," which as elaborated *infra* § III, is not the case here. No. 13-4073-CM-KGG, 2014 WL 2828683, at *1 (D. Kan. June 23, 2014). Finally, in *Lofland v. City of Shawnee*, the court did not grant a stay based on a finding that there was "enough likelihood" that the case would be concluded via the pending motion to dismiss—but rather, as discussed further *infra*, because the

defendant had "shown multiple bas[e]s" for issuing the stay. No. 16-cv-2183-CM-TJJ, 2016 WL 5109941, at *2 (D. Kan. Sept. 20, 2016).

Defendant's unfounded belief that its motion to dismiss will succeed in disposing of Plaintiff's "entire action" is not a "basis" for granting a discovery stay, and Defendant has not shown an extraordinary likelihood of success. If every defendant who believes that it is likely to succeed on its motion to dismiss were entitled to a stay, stays would be issued in every matter. Such a result runs directly counter to this District's general policy against granting stays while dispositive motions remain pending.

IV. Preventing the potential "waste" of discovery pending the outcome of a motion to dismiss is insufficient grounds for a stay in this District.

Next, Defendant argues that discovery will be wasteful because its motion to dismiss can be decided "as a matter of law." MTS at 3–4. This argument is just the "inverse of the first [*Wolf*] factor," not a "rare" circumstance upon which this district court typically grants a stay of discovery. *KPH Healthcare Servs., Inc. v. Mylan N.V.*, No. 20-CV-2065-DDC-TJJ, 2021 WL 1108684, at *2 (D. Kan. Mar. 23, 2021) (rejecting argument that it would be wasteful to commence discovery before the parties and the Court know whether plaintiff has standing or whether its claims suffer from other fatal defects). "The fact that discovery is not needed to respond to a motion to dismiss does not alone present a separate reason to stay discovery, as the same would be true of virtually all motions to dismiss aimed at testing the sufficiency of the pleadings." *Logan v. Farmers New World Life Insur. Co.*, No. 22-2465-HLT-RES, 2022 WL 21815963, at *3 (D. Kan. Dec. 22, 2022); *see also Cetin v. Kansas City Kan. Cmty. Coll.*, No. 23-cv-2219-KHV-TJJ, 2023 WL 8188599, at *2 (D. Kan. Nov. 27, 2023) (if preventing wasted time and resources from a granted motion to dismiss "were grounds for a stay, then any case with a pending dispositive motion would be stayed").

Contrary to Defendant's contention otherwise, nowhere does *Lofland v. City of Shawnee* support the argument that a "finding that the discovery is irrelevant to pending motions is itself adequate justification for a stay." MTS at 3–4. Rather, the *Lofland* court held that allowing *further* discovery would be "wasteful and burdensome" based on a combination of findings, some of which related to the pro se plaintiff's past litigation conduct, including his "frequent motion filing practices," as well as the defendant's undisputed contention that the "uncompleted discovery would not affect resolution of the pending motion to dismiss." 2016 WL 5109941, at *2.

Defendant's remaining cited cases are also distinguishable. In *Grissom v. Palm*, the court stayed discovery primarily because the raised immunity defenses and inclusion of "numerous defendants" meant that the motion to dismiss ruling would "significantly clarify" issues in the case—circumstances not applicable here. No. 19-3178-EFM-ADM, 2021 WL 147255, at *2 (D. Kan. Jan. 15, 2021). And in *Sullivan v. Univ. of Kan. Hosp. Auth.*, the court stayed discovery specifically because the "wide-ranging amended complaint" made discovery burdensome, and the pro se plaintiff did not address the relevant legal standard for ruling on a motion to stay (which, as described above, Defendant's arguments have failed to do here). No. 19-CV-2078-JAR-TJJ, 2019 WL 3801638, at *2 (D. Kan. Aug. 13, 2019).

Not a single one of Defendant's cited cases indicates that any feature of the present case would make discovery more "wasteful" during the pendency of dispositive motions than in any other typical case. Therefore, following this district's ordinary practices will ultimately "promote the just, speedy, and inexpensive determination" of this action. *See* Fed. R. Civ. P. 1.

V. Defendant's arguments that discovery would be burdensome and unduly prejudicial are hyperbolic and speculative.

Finally, Defendant claims the Court should forgo this District's longstanding policy to permit discovery during this stage of the case because discovery would be "burdensome" and

"unduly prejudicial." MTS at 4–5. Such claims are purely speculative and do not merit an order from this Court staying discovery.

Defendant points to no actual prejudice or burden that it is likely to experience as result of discovery proceeding in this case.[1] "That litigation requires time and resources from the parties does not justify, on its own, a discovery stay." *Simmons v. Cline*, No. 20-3096-HLT-ADM, 2021 WL 1650270, at *3 (D. Kan. Apr. 27, 2021) (quoting *Green v. Blake*, No. 18-2247-CM, 2020 WL 618602, at *2 (D. Kan. Feb. 10, 2020)). Indeed, Defendant refused to engage in a Rule 26 conference prior to filing this motion and therefore has no insight into Plaintiff's discovery plan, nor did it attempt to narrow its concerns by negotiating a schedule for discovery.

Moreover, discovery here is likely to be narrower and *less burdensome* than in many other cases. This case is brought on behalf of one plaintiff against one defendant for one event (failure to provide care for Ms. Farmer's emergency pregnancy complications on August 2, 2022). Discovery will primarily focus on two questions: (1) what happened at the University of Kansas Hospital on the night of August 2, 2022; and (2) what were the medical and financial consequences of that denial of care. And Defendant has already had to produce substantial relevant information related to these events to CMS, so providing it in this matter should be less burdensome than in other circumstances.

As to the weight of public interest on this motion, Ms. Farmer is entitled to have her narrow and meritorious case heard in accordance with the standard practices and policies of this District, including its general rule allowing discovery to proceed while dispositive motions are pending. Plaintiff's Complaint and Opposition to the Motion to Dismiss detail with specificity how

[1] Plaintiff struggles to understand the connection Defendant attempts to draw between the potential burdens of discovery and the fact that Ms. Farmer has shared the story of her miscarriage publicly. To the extent Defendant is concerned about negative publicity, that concern can be addressed with a protective order allowing Defendant to designate the documents it produces as confidential.

Defendant violated EMTALA and the KAAD. And it was Defendant's burden to "clearly show a compelling reason" for a deviation from this Court's standard course of proceedings. *See Gale*, 2019 WL 2567790, at *2 (citing *Evello Invs. N.V.*, 1995 WL 135613, at *3). Because Defendant has not done so, both the equities and the law weigh strongly in favor of permitting the continuation of discovery while Defendant's dispositive motion is pending. *Id.*

For the reasons stated above, Plaintiff respectfully requests that the Court issue an order denying Defendant's motion for a stay of discovery and related Fed. R. Civ. P. 26 activities while the parties await the Court's motion to dismiss ruling.

Respectfully submitted,

Dated: October 9, 2024

/s/ Mark V. Dugan

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CERTIFICATE OF SERVICE

The undersigned certifies that this motion was filed using the Court's electronic filing system, providing notice to all counsel of record.

/s/ Mark V. Dugan
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