Case No. 21-3339

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER

JOSHUA VANCE JONES

Plaintiff - Appellant

v.

EMILY RIDDER, aka Emily Zieverink; ANTHONY ZIEVERINK

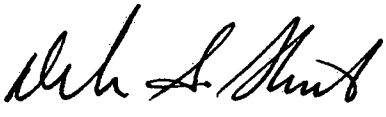
Defendants - Appellees

Appellant having previously been advised that failure to satisfy certain specified obligations would result in dismissal of the case for want of prosecution and it appearing that the appellant has failed to satisfy the following obligation:

The proper fee was not paid by August 11, 2021.

It is therefore **ORDERED** that this cause be, and it hereby is, dismissed for want of prosecution.

ENTERED PURSUANT TO RULE 45(a),
RULES OF THE SIXTH CIRCUIT
Deborah S. Hunt, Clerk



Issued: September 13, 2021

APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JOSHUA JONES,
Plaintiff,

Case No. 1:19-cv-599
Litkovitz, M.J.

v.

EMILY RIDDER, et al.,
Defendants.

ORDER

Plaintiff Joshua Jones, proceeding pro se, brings this diversity action against defendants Anthony Zieverink and Emily Ridder aka Emily Zieverink[1] (the Zieverinks) under 28 U.S.C. § 1332(a)(1). This matter is before the Court on defendants' motion for summary judgment (Doc. 30), plaintiff's opposing memorandum (Doc. 36), and defendants' reply (Doc. 38); plaintiff's motion for an extension of time to amend the complaint (Doc. 35); plaintiff's motion for extension of time to file a motion for summary judgment (Doc. 37)[2]; and plaintiff's motion to withdraw consent to the Magistrate Judge's jurisdiction (Doc. 39) and defendants' opposing memorandum (Doc. 40).

I. Background

Plaintiff filed his pro se complaint on July 24, 2019.[3] Plaintiff seeks compensatory and

[1] *See* Doc. 4 at PAGEID 12.

[2] Plaintiff filed a combined response in opposition to defendants' motion for summary judgment and a motion for extension of time to file a motion for summary judgment, which were filed on the docket as two separate but duplicate documents. (Docs. 36, 37).

[3] Plaintiff signed his verified complaint "under penalty of perjury." It therefore "carries the same weight as would an affidavit for the purposes of summary judgment." *El Bey v. Roop*, 530 F.3d 407, 414 (6th Cir. 2008) (citing *Lavado v. Keohane,* 992 F.2d 601, 605 (6th Cir. 1993) (the allegations in a verified complaint "have the same force and effect as an affidavit for purposes of responding to a motion for summary judgment"); *Williams v. Browman,* 981 F.2d 901, 905 (6th Cir. 1992) (a signed complaint in which the plaintiff declared the "the truth of the allegations under penalty of perjury" was adequate "to place controverted facts into issue")). *See* 28 U.S.C. § 1746.

punitive damages totaling $6.85 million for injuries he allegedly sustained when defendants' son "maliciously attacked" him. (Doc. 1). Plaintiff alleges that on August 11, 2018, while defendants were guests of plaintiff at "Coney Island pool," defendants' son "tackl[ed] [the] back of Plaintiff['s] head." Plaintiff alleges he suffered a debilitating traumatic brain injury ("TBI") and other medical issues, including hypopituitarism, as a result. Plaintiff claims he has incurred "tens of thousands of dollars in medical bills" for treatment of his injuries and will require future medical treatment costing "hundreds of thousands of dollars." Plaintiff alleges that on or about August 16, 2018, he contacted defendant Anthony Zieverink about the medical bills for his numerous emergency room visits and requested that defendants pay plaintiff's medical expenses, but defendants refused. Plaintiff further claims that on or about that same date, Anthony Zieverink "began stating clearly known falsehoods to Plaintiff['s] entire family, stating Plaintiff never had a head injury," which caused plaintiff's entire family to insist plaintiff did not have a head injury; led plaintiff's family to attempt to involuntarily institutionalize him for a mental disorder and take other actions against plaintiff; and has resulted in irreparable harm to plaintiff and his family.

Defendants filed their motion for summary judgment on September 29, 2020. (Doc. 30). The Court granted plaintiff an extension of 60 days to respond to defendants' motion and to file a cross-motion for summary judgment if he chose to do so. (Doc. 33). The Court vacated the dates for the final pretrial conference and the jury trial, which were to be reset if necessary after the Court ruled on the parties' motions for summary judgment. (*Id.*).

On December 30, 2020, plaintiff filed a motion for extension of time to February 1, 2021 to amend the complaint to add his wife as a plaintiff. (Doc. 35). Plaintiff also filed his response in opposition to defendants' motion for summary judgment (Doc. 36) and his motion for extension of time to file a cross-motion for summary judgment. (Doc. 37). Defendants filed

their reply in support of their motion for summary judgment on January 6, 2021. (Doc. 38). The next day, plaintiff filed his motion to withdraw his consent to the Magistrate Judge's jurisdiction. (Doc. 39). The motions are now ripe for decision.

II. Plaintiff's motion to withdraw consent (Doc. 39)

The parties originally consented to the jurisdiction of the Magistrate Judge on November 19, 2019. (Doc. 18). With the unanimous consent of the parties, this matter was transferred to the undersigned under 28 U.S.C. § 636(c) on that date. Plaintiff moved to withdraw his consent and remand this case to the jurisdiction of the District Judge more than one year later on January 7, 2021. (Doc. 39).

Once a civil case has been transferred to a magistrate judge under 28 U.S.C. § 636(c) by unanimous consent of the parties, a party does not have an "absolute right to withdraw consent" to the magistrate judge's jurisdiction. *Forsyth v. Brigner*, No. 97-3872, 1998 WL 415841, at *2, 156 F.3d 1229 (Table) (6th Cir. June 16, 1998). The court may vacate a reference of a civil matter to a magistrate judge "for good cause shown on its own motion, or under extraordinary circumstances shown by any party. . . ." *Moses v. Sterling Commerce (America), Inc.*, 122 F. App'x 177, 182 (6th Cir. 2005) (quoting 28 U.S.C. § 636(c)(4)). *See also Franklin v. Robinson*, No. 3:04-cv-187, 2013 U.S. Dist. LEXIS 36957, at *2 (S.D. Ohio Mar. 18, 2013) (citing cases). *Forsyth*, 1998 WL 415841, at *2 (citing *Dixon v. Ylst,* 990 F.2d 478, 480 (9th Cir. 1993)) (same).

Plaintiff has not articulated any reason for withdrawing his consent to the magistrate judge's jurisdiction, and he does not provide any authority to support his request. He has not shown extraordinary circumstances for vacating the reference at this stage of the litigation. Good cause for vacating the reference does not exist. Plaintiff's motion to withdraw consent is therefore denied.

III. Plaintiff's motion for extension of time to amend the complaint (Doc. 35)

Plaintiff moves for an extension of time to amend the complaint to add his wife, Amanda Jones, as a plaintiff in this case.[4] (Doc. 35). Plaintiff argues that Ms. Jones has been affected by, and has suffered derivative injuries caused by, the same conduct that led to plaintiff's injuries, in part because she is responsible for plaintiff's medical bills and costs under her medical insurance policy. Plaintiff has submitted Ms. Jones' declaration in support of his motion. (Doc. 35-1, PAGEID 169-172). In her affidavit, Ms. Jones describes plaintiff's injuries, which she attributes to defendants' "own gross negligence of not prohibiting their children's actions" and their "failure to effectively supervise their child's activity"; she claims she has been injured because she is now the sole provider for her family, and she is responsible for plaintiff's medical bills under her medical insurance policy; and she asserts she has suffered personal and emotional injuries. (*Id.*).

Defendants object to plaintiff's request for additional time to amend the complaint. (Doc. 38 at PAGEID 220). They note that discovery is closed, the dispositive motion deadline has passed, it does not appear that Amanda Jones only recently learned of this action, and it further appears that any claim she seeks to bring would fail to state a claim for relief. (*Id.*).

Fed. R. Civ. P. 15(a) governs amendments to the pleadings. A complaint may be amended once as a matter of course within 21 days of service of a responsive pleading. Fed. R. Civ. P. 15(a)(1). If a plaintiff wishes to amend the complaint after the 21-day period has expired, he must obtain consent of the opposing party or leave of the Court. Fed. R. Civ. P. 15(a)(2). "In

[4] Plaintiff moved for leave to amend the complaint under Fed. R. Civ. P. 15(a)(2) once previously on November 14, 2019. (Doc. 16). Plaintiff sought leave to add "Coney Island, aka Coney Island Pool" as an additional defendant, but he did not submit a proposed amended complaint with his motion. Plaintiff was granted leave to amend the complaint for this purpose on March 25, 2020 (Doc. 22), but he never filed an amended complaint naming Coney Island as a defendant.

deciding whether to grant a motion to amend, courts should consider undue delay in filing, lack of notice to the opposing party, bad faith by the moving party, repeated failure to cure deficiencies by previous amendments, undue prejudice to the opposing party, and futility of amendment." *Brumbalough v. Camelot Care Ctrs., Inc.*, 427 F.3d 996, 1001 (6th Cir. 2005). A district court should "freely" grant a party leave to amend his complaint "when justice so requires." Fed. R. Civ. P. 15(a)(2). However, "'a party must act with due diligence if it intends to take advantage of the Rule's liberality.'" *Pittman v. Experian Info. Sols., Inc.*, 901 F.3d 619, 641 (6th Cir. 2018) (quoting *United States v. Midwest Suspension & Brake*, 49 F.3d 1197, 1202 (6th Cir. 1995) (citation omitted)).

To deny a motion to amend solely due to delay, there must be "'at least some significant showing of prejudice.'" *Id.* (quoting *Siegner v. Twp. of Salem*, 654 F. App'x 223, 228 (6th Cir. 2016) (quoting *Prater v. Ohio Educ. Ass'n*, 505 F.3d 437, 445 (6th Cir. 2007)). "The longer the period of an unexplained delay, the less" a showing of prejudice the nonmoving party is required to make. *Id.* (quoting *Phelps v. McClellan*, 30 F.3d 658, 662 (6th Cir. 1994)). "Allowing an amendment after discovery is closed and summary judgment motions are 'fully briefed' imposes significant prejudice on defendants." *Id.* (quoting *Siegner*, 654 F. App'x at 228) (finding "significant prejudice" to the defendant would result if the plaintiff were allowed to amend the complaint "months after the close of discovery and after dispositive motions were filed and briefed").

The Court denies plaintiff's motion for an extension of time to amend the complaint. Plaintiff waited far too long to seek to add Ms. Jones as a party to the complaint. Plaintiff filed this action in July 2019, but he did not move for additional time to amend the complaint until 17 months later. By the time plaintiff sought leave of Court on December 30, 2020, the discovery

deadline had expired (*see* Doc. 21); defendants had filed their motion for summary judgment (Doc. 30); and the deadline for plaintiff to respond to defendants' motion for summary judgment, which the Court extended at plaintiff's request, had passed.[5] Plaintiff has not explained why he waited so long to seek to add his spouse as a party to the case. Plaintiff should have known about his wife's alleged injuries and damages at the beginning of the litigation. Ms. Jones' proposed claims for damages are based on the same facts that gave rise to plaintiff's claims and are derivative of plaintiff's claims. Plaintiff inexplicably and unduly delayed seeking to add her a party.

Further, allowing plaintiff to add Ms. Jones as a party at this late stage in the litigation would significantly prejudice defendants. Discovery is closed and defendants' motion for summary judgment is fully briefed. Ms. Jones' claims would likely require additional discovery related to her damages and would further delay the resolution of the lawsuit, all to no avail. Ms. Jones' claims depend for their success on the successful resolution of plaintiff's claims in his favor. As discussed *infra*, the Court finds that defendants are entitled to summary judgment as a matter of law on plaintiff's claims. Thus, it would be futile for plaintiff to amend the complaint at this point. Due to plaintiff's lack of diligence in seeking to add Ms. Jones as a party, the long and unexplained delay, the significant prejudice to defendants, and the futility of the amending the complaint at this stage of the litigation, plaintiff's motion to extend the time to amend the complaint is denied.

IV. Plaintiff's motion for an extension of time to file a cross-motion for summary judgment (Doc. 37)

Plaintiff seeks additional time to file a cross-motion for summary judgment. (Doc. 37).

[5] The Court granted plaintiff an additional 60 days until December 29, 2020 to respond to defendants' motion for summary judgment and to file a cross-motion. (Doc. 33). Plaintiff filed both his response to defendants' motion and his motion to extend the time to amend the complaint on December 30, 2020. (Docs. 35, 36).

Plaintiff alleges that his ability to access his hospital records has been limited due to COVID-19 protocols, and ongoing medical procedures he requires are being delayed due to the pandemic. (Doc. 37). Plaintiff also alleges that defendants have not complied with their discovery obligations as they relate to his medical records and his defamation claim. Defendants object to plaintiff's request for an extension, which they note he filed one day after the extended time period to file a cross-motion had expired. (Doc. 38 at PAGEID 219). Defendants contend that plaintiff has not shown a valid reason for extending the deadline to file a cross-motion yet again.

Plaintiff is not entitled to additional time to file a cross-motion for summary judgment. Plaintiff alleges he has been unable to obtain records and discovery related to his defamation claim and the injuries he allegedly suffered as a result of defendants' vicarious negligence. However, the discovery deadline expired in July 2020 (*see* Doc. 21) and plaintiff is not entitled to conduct additional discovery.[6] Further, because defendants cannot be held vicariously liable for their young child's alleged malicious attack as a matter of law, medical records related to plaintiff's injuries are not relevant to the resolution of plaintiff's vicarious liability claim. Plaintiff's motion for additional time to file a cross-motion for summary judgment is therefore denied

V. Defendants' motion for summary judgment (Doc. 30)

Defendants move for summary judgment on plaintiff's claims against them and assert they are entitled to judgment as a matter of law. (Doc. 30). Defendants argue they are entitled to summary judgment on plaintiff's claim seeking to hold them vicariously liable for injuries he

[6] The Court previously addressed discovery issues raised by plaintiff and ordered that plaintiff is precluded from introducing "any documents or information into evidence to support his defamation claim if such documents or information were not produced or disclosed to defendants during the discovery period, which closed on July 15, 2020." (Doc. 34 at PAGEID 165).

allegedly incurred when their five-year-old son "maliciously" attacked him. Defendants assert that because their child was too young on the date of the alleged incident to be capable of forming the requisite intent to be held liable for his own actions under Ohio law, they cannot be held vicariously liable for their child's actions.[7] (*Id.* at PAGEID 134-135). Defendants also contend that plaintiff cannot prove a claim for defamation against them because plaintiff has proffered no evidence in support of the defamation claim. Defendants contend that plaintiff did not serve answers to interrogatories and requests for production of documents in support of his defamation claim prior to expiration of the discovery deadline on July 15, 2020, and there is no evidence in the record to support the claim.

In response to defendants' motion, plaintiff rehashes matters that were resolved in the prior discovery Order (Doc. 34), he describes the difficulty he has experienced in obtaining his medical records, and he disputes defendants' alleged characterizations of his injuries. (Doc. 36). Plaintiff indicates he requires additional discovery related to his defamation claim to learn the "What" and the "When" of the alleged defamatory communications. (*Id.* at PAGEID 177). Plaintiff has attached five exhibits to his motion: the declaration of his wife, Amanda Jones (Doc. 36-1[8]); plaintiff's declaration alleging defendants' counsel has made false representations about discovery matters and the extent of his injury, and claiming that defendants are liable for a traumatic brain injury he has suffered (Doc. 36-2); and three email exhibits that appear to be related to requests from plaintiff to third parties for his medical records (Docs. 36-3, 36-4, 36-5). Defendants argue that plaintiff's declaration and the exhibits are hearsay and they do not contain

[7] Defendants allege, and plaintiff does not dispute, that Ohio law controls this action because the alleged injury occurred in Ohio.

[8] This is the same declaration that plaintiff submitted in support of his motion to extend the time to amend the complaint. (*See* Doc. 35-1).

any information that is relevant to the merits of plaintiff's claims. (Doc. 38).

A motion for summary judgment should be granted if the evidence submitted to the Court demonstrates that there is no genuine issue as to any material fact, and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). A grant of summary judgment is proper if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Satterfield v. Tennessee*, 295 F.3d 611, 615 (6th Cir. 2002). The Court must evaluate the evidence, and all inferences drawn therefrom, in the light most favorable to the non-moving party. *Satterfield*, 295 F.3d at 615; *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio*, 475 U.S. 574, 587 (1986).

The trial judge's function is not to weigh the evidence and determine the truth of the matter, but it is to determine whether there is a genuine factual issue for trial. *Anderson*, 477 U.S. at 249. The trial court need not search the entire record for material issues of fact, *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1479-80 (6th Cir. 1989), but must determine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson*, 477 U.S. at 251-52. "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Matsushita*, 475 U.S. at 587. "In response to a properly supported summary judgment motion, the non-moving party 'is required to present some significant probative evidence which makes it necessary to resolve the parties' differing versions of the dispute at trial.'" *Maston v. Montgomery Cty. Jail Med. Staff Pers.*, 832 F. Supp.

2d 846, 849 (S.D. Ohio 2011) (quoting *Sixty Ivy St. Corp. v. Alexander*, 822 F.2d 1432, 1435 (6th Cir. 1987)).

Because plaintiff is a pro se litigant, his filings are liberally construed. *Spotts v. United States*, 429 F.3d 248, 250 (6th Cir. 2005) (citing *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (stating that the Court holds pleadings of pro se litigants to less stringent standards than formal pleadings drafted by lawyers)); *Boswell v. Mayer*, 169 F.3d 384, 387 (6th Cir. 1999) (pro se plaintiffs enjoy the benefit of a liberal construction of their pleadings and filings). However, a party's status as a pro se litigant does not alter his duty to support his factual assertions with admissible evidence. *Maston*, 832 F. Supp.2d at 851-52 (citing *Viergutz v. Lucent Techs., Inc.*, 375 F. App'x 482, 485 (6th Cir. 2010)). When opposing a motion for summary judgment, a pro se party cannot rely on allegations or denials in unsworn filings. *Id.* (citing *Viergutz*, 375 F. App'x at 485).

1. Plaintiff's vicarious liability claim

Ohio Rev. Code § 3109.10 limits parents' liability for assaults by their children. The statute provides in pertinent part:

> Any person is entitled to maintain an action to recover compensatory damages in a civil action, in an amount not to exceed ten thousand dollars and costs of suit in a court of competent jurisdiction, from the parent of a child under the age of eighteen if the child willfully and maliciously assaults the person by a means or force likely to produce great bodily harm. . . .

Ohio Rev. Code § 3109.10. If a child is under the age of seven at the time of the assault, there can be no recovery under Ohio law from the child's parents for injuries caused by the assault. *See DeLuca v. Bowden*, 329 N.E.2d 109 (Ohio 1975). A child under the age of seven is incapable of committing an intentional tort as a matter of law in Ohio. *Id.* at 109, syll. ¶ 2. The Ohio Supreme Court reasoned in *DeLuca* that "[o]ur laws and our moral concepts assume actors capable of legal and moral choices, of which a young child is incapable." *Id.* at 111 (citation

omitted). The Court determined that rather than choosing "rules which permit the imposition of a legal judgment upon a young child for his intentional acts," public policy considerations are better served by a rule holding that "members of society must accept the damage done by very young children to be no more subject to legal action than some force of nature of act of God."[9] *Id.* It follows that because a child under the age of seven is "incapable of acting willfully and maliciously" and therefore "of committing a willful and malicious assault," there can be no liability upon the parent of a child who "is incapable of committing a willful and malicious assault." *Gibbs v. Taylor*, No. 77AP-279, 1977 WL 200325, at *2 (Ohio App. 10th Dist. Aug. 2, 1977).

Ohio Rev. Code § 3109.10 does not protect parents from liability for their own conduct. *Cuervo v. Snell*, 723 N.E.2d 139, 146 (Ohio Ct. App. 1998). When a plaintiff's complaint specifically alleges that a parent committed negligent or intentional acts that were a proximate cause of the plaintiff's injuries, then the allegations "raise more than mere vicarious liability" for the child's actions and the parents may be found liable based on their own conduct. *Id.*

Defendants are entitled to summary judgment on plaintiff's claim that they are vicariously liable for their son's "malicious[]" attack on plaintiff, which allegedly caused plaintiff to sustain a traumatic brain injury and other injuries. (*See* Doc. 1). It is undisputed that the alleged attack occurred on August 11, 2018. It is also undisputed that defendants' son, B.G.Z., was born in 2013 and was five years old on August 11, 2018. (Anthony Zieverink Aff.,

[9] Children under the age of seven are likewise incapable of negligence as a matter of law. *DeLuca*, 329 N.E.2d at 109, syll. ¶ 1 (*approving and following Holbrock v. Hamilton Distrib., Inc.*, 228 N.E.2d 628, 630 (Ohio 1967)).

Doc. 30-1, ¶ 2; *Id.*, Exh. A, PAGEID 141).[10] Under Ohio law, defendants cannot be held vicariously liable for their son's allegedly "malicious" conduct as a matter of law. *DeLuca*, 329 N.E.2d 109, syll. ¶ 2; *Gibbs*, 1977 WL 200325, at *2. Plaintiff has not introduced any evidence or cited any authority that supports any other conclusion. Defendants are entitled to summary judgment on plaintiffs' vicarious liability claim.

In addition, plaintiff has not made any sworn allegations or introduced any evidence to show that defendants were themselves negligent and that their own negligence proximately caused his injuries. Therefore, defendants cannot be held liable for plaintiff's injuries under the theory that their own negligence caused plaintiff's injuries. *See Cuervo*, 723 N.E.2d at 146.

2. Defamation claim

Defendants are also entitled to summary judgment on plaintiff's defamation claim. Under Ohio law, "defamation occurs when a publication contains a false statement 'made with some degree of fault, reflecting injuriously on a person's reputation, or exposing a person to public hatred, contempt, ridicule, shame or disgrace, or affecting a person adversely in his or her trade, business or profession.'" *Jackson v. Columbus*, 883 N.E.2d 1060, 1064 (Ohio 2008) (quoting *A & B-Abell Elevator Co. v. Columbus/Cent. Ohio Bldg. & Const. Trades Council*, 651 N.E.2d 1283, 1298 (1995)). Plaintiff has not produced any evidence to satisfy these elements.

Plaintiff alleges in the complaint only that Anthony Zieverink falsely told plaintiff's family that plaintiff had not sustained a head injury. (Doc. 1 at PAGEID 3). Beyond this allegation, plaintiff makes only a conclusory claim in his response to the motion for summary

[10] Pursuant to Fed. R. Civ. P. 5.2(a), the names of minors and other personal data identifiers must be omitted or partially redacted from all pleadings, documents, and exhibits. By separate Order, the Court has directed the Clerk to redact defendants' motion for summary judgment (Doc. 30), Anthony Zieverink's affidavit (Doc. 30-1), and the attached birth certificate (Exh. A) and to file the redacted versions on the docket and the original documents under seal.

judgment that "a communication took place between Defendants and Plaintiff's family, where Plaintiff's family was advised that Plaintiff was lying about Traumatic Brain Injury." (Doc. 36 at PAGEID 177-78). Even assuming plaintiff could establish that defendants defamed him by making false representations to his family members, plaintiff's claim that defendants made any such representations is based on speculation. Plaintiff indicates he does not know how his family was notified of an injury to him, when they were notified, and what his family was told. (*Id.* at PAGEID 177). Plaintiff alleges that he "has been attempting to obtain copies of all records of communications between Defendants and the immediate family of Plaintiff (parents and siblings)," but plaintiff indicates he does not know if such communications exist. (*Id.*). Plaintiff's speculative assertions about possible defamatory statements by one or both defendants are insufficient to defeat defendants' motion for summary judgment. *See Nilles v. Givaudan Flavors Corp.*, 521 F. App'x 364, 371 (6th Cir. 2013) (quoting *Hedberg v. Indiana Bell Tel. Co., Inc.*, 47 F.3d 928, 932 (7th Cir. 1995) ("Speculation does not create a *genuine* issue of fact; instead, it creates a false issue, the demolition of which is a primary goal of summary judgment.")).

IT IS THEREFORE ORDERED THAT:

1. Plaintiff's motion to withdraw consent to the Magistrate Judge's jurisdiction (Doc. 39) is **DENIED**.

2. Plaintiff's motion for an extension of time to amend the complaint (Doc. 35) is **DENIED**.

3. Plaintiff's motion for extension of time to file a cross-motion for summary judgment is **DENIED**. (Doc. 37).

4. Defendants' motion for summary judgment (Doc. 30) is **GRANTED**. Judgment is granted in favor of defendants and against plaintiff. The Clerk is directed to enter judgment accordingly.

Date: 3/8/2021

Karen L. Litkovitz
United States Magistrate Judge

Additional material from this filing is available in the Clerk's Office.