

NOT RECOMMENDED FOR PUBLICATION

No. 22-5881

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Apr 3, 2023

DEBORAH S. HUNT, Clerk

ORDER

Before: CLAY, THAPAR, and LARSEN, Circuit Judges.

Cassandra McGuire, proceeding pro se, appeals the district court's order dismissing her complaint, as amended, under Federal Rules of Civil Procedure 37 and 41(b). McGuire also moves to waive oral argument, for leave to correct her supplemental motion to waive oral argument, and to file reply and supplemental briefs. The defendants, Highmark Holdings, Enfield Management, Robbie King, and Glynda Shamwell, move for attorney fees and damages. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See Fed. R. App. P. 34(a).*

McGuire is a former employee of Enfield Management, a residential property management company. She alleged that, during her employment, she observed violations of the Fair Housing Act (FHA) and Tennessee Human Rights Act (THRA) and that she was harassed and ultimately discharged after she reported those alleged violations. After the termination of her employment, McGuire filed a discrimination complaint with the Tennessee Human Rights Commission, which concluded that the defendants violated the THRA and Title VIII of the Civil Rights Act of 1968,

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as amended by the FHA. McGuire then sued the defendants, bringing claims under the FHA, the THRA, Title VIII, and Title VII of the Civil Rights Act.

The defendants moved to dismiss McGuire's FHA, THRA, and Title VIII claims. The district court denied the motion, leaving those claims intact, but it dismissed McGuire's Title VII retaliation claim *sua sponte* pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). McGuire appealed, and we dismissed the interlocutory appeal for lack of jurisdiction. *McGuire v. Highmark Holdings*, No. 21-5869 (6th Cir. Nov. 1, 2021).

Back in the district court, the parties were directed to complete all discovery by March 2, 2022. They did not. Discovery was hindered because McGuire, among other things, delayed producing or failed to produce documents and complete discovery responses, unilaterally canceled her noticed deposition, and ignored the defendants' attempts to communicate with her regarding her discovery obligations. In addition, McGuire unsuccessfully moved three times for default judgment; in the order denying the last two motions, the district court clerk explained that entry of default was "inappropriate" because the defendants had shown a clear intent to defend by filing multiple responsive pleadings and motions. In response, McGuire claimed to have filed a police report in Indiana because the defendants "refused to respond" to her lawsuit in a "timely manner" and made "abusive statements" in their efforts to obtain discovery from her even though she "do[es] not have to participate in discovery."

On the day of the discovery deadline, the defendants moved for sanctions under Rules 37 and 41(b) due to McGuire's "obstinate and willful refusal to comply with the Court's prior Orders, including its Scheduling Order, the Local Rules, and the Federal Rules of Civil Procedure related to her discovery obligations in this case." They asked the district court to dismiss McGuire's second amended complaint with prejudice and to award their costs and attorney's fees. On March 11, 2022, while the motion was pending, the district court ordered McGuire to submit compliant responses to the defendants' interrogatories by March 31, 2022, and warned her that she may be sanctioned, including by having the action dismissed, if she failed to participate in discovery or filed motions without a legal or factual basis.

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McGuire did not submit compliant discovery responses, again sought default judgment against the defendants, and—for a second time—contacted police regarding the defendants’ alleged “demand[s]” that she “disobey the law for [their] gain.” Consequently, the defendants renewed their motion for sanctions. Over McGuire’s objections, the district court agreed with the magistrate judge’s recommendation that the defendants’ motions be granted as to their request for dismissal and denied as to their request for monetary sanctions. It dismissed McGuire’s second amended complaint accordingly.

Dismissal Under Rules 37 and 41(b)

We review for an abuse of discretion the dismissal of an action under Rules 37 and 41(b).

See Schafer v. City of Defiance Police Dep’t, 529 F.3d 731, 736 (6th Cir. 2008) (Rule 41); *Sommer v. Davis*, 317 F.3d 686, 692 (6th Cir. 2003) (Rule 37). “An abuse of discretion exists when the reviewing court is firmly convinced that a mistake has been made.” *Schafer*, 529 F.3d at 736 (quoting *Stough v. Mayville Cnty. Sch.*, 138 F.3d 612, 614 (6th Cir. 1998)). Rule 37(b) authorizes the district court to order sanctions, including dismissal, for failure to comply with an order to provide discovery. Fed. R. Civ. P. 37(b)(2)(A)(v). Rule 37(d) likewise authorizes the district court to order sanctions, including dismissal, if “a party, after being properly served with interrogatories under Rule 33 or a request for inspection under Rule 34, fails to serve its answers, objections, or written response.” Fed. R. Civ. P. 37(d)(1)(A)(ii); *see* Fed. R. Civ. P. 37(d)(3). Rule 41(b) “confers on district courts the authority to dismiss an action for failure of a plaintiff to prosecute the claim or to comply with the Rules or any order of the court.” *Schafer*, 529 F.3d at 736 (citing *Knoll v. AT&T*, 176 F.3d 359, 362–63 (6th Cir. 1999)). This measure is available to the court “as a tool to effect management of its docket and avoidance of unnecessary burdens on the tax-supported courts and opposing parties.” *Id.* (quoting *Knoll*, 176 F.3d at 363).

In determining whether dismissal is an appropriate sanction for failure to comply with a discovery obligation or court order, we consider four factors:

(1) whether the party’s failure is due to willfulness, bad faith, or fault; (2) whether the adversary was prejudiced by the dismissed party’s conduct; (3) whether the dismissed party was warned that failure to cooperate could lead to dismissal; and (4) whether less drastic sanctions were imposed or considered before dismissal was ordered.

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Mager v. Wis. Cent. Ltd., 924 F.3d 831, 837 (6th Cir. 2019) (quoting *United States v. Reyes*, 307 F.3d 451, 458 (6th Cir. 2002)). “Although no one factor is dispositive, dismissal is proper if the record demonstrates delay or contumacious conduct.” *Reyes*, 307 F.3d at 458.

The first factor—willfulness, bad faith, or fault—is satisfied when the plaintiff’s conduct “display[s] either an intent to thwart judicial proceedings or a reckless disregard for the effect of [her] conduct on those proceedings.” *Mulbah v. Detroit Bd. of Educ.*, 261 F.3d 586, 591 (6th Cir. 2001) (quoting *Shepard Claims Serv. v. William Darrah & Assocs.*, 796 F.2d 190, 194 (6th Cir. 1986)). Here, McGuire repeatedly failed to meet her discovery obligations. Despite extensions, she failed to provide complete, signed discovery responses;¹ unilaterally cancelled her properly noticed deposition and then declined to agree upon a new deposition date; rebuffed the defendants’ attempts to cooperate with her so that the parties could comply with the court’s scheduling order; and failed to comply with the March 11, 2022, order that directed her to take certain actions in furtherance of discovery and refrain from filing baseless motions (e.g., motions for default judgment). Flouting the latter directive, McGuire moved to extend the trial date “[d]ue to the ongoing conflict and unethical behaviors of the defendants[’] attorneys” and, once again, to enter default judgment against the defendants because they filed “untimely answers” and were “disobedient” during discovery. This is the type of contumacious conduct that commonly leads to dismissal. *See, e.g., ECIMOS, LLC v. Nortek Global HVAC, LLC*, 736 F. App’x 577, 582-83 (6th Cir. 2018) (holding that dismissal under Rule 37 was proper where the plaintiff failed to correct discovery deficiencies, failed to timely file responsive documents, and willfully violated court orders). We therefore determine that McGuire’s pattern of noncompliance throughout the discovery period—most significantly, her disregard of the court’s orders—supports the conclusion

¹ McGuire argues that she provided her responses and documents “numerous times” and that the defendants “were never specific with what they needed, leaving broad requests[,] which suggest[s] they waived all of their requests.” But the correspondence between McGuire and the defendants and the defendants’ assertions indicate that McGuire either failed to submit complete or signed responses or wholly failed to respond. Moreover, the defendants’ discovery requests, which are part of the record, appear to comply with the Federal Rules of Civil Procedure 33 and 34 and are not overly broad.

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that she acted willfully and in bad faith. *See Bass v. Jostens, Inc.*, 71 F.3d 237, 241-42 (6th Cir. 1995) (holding that the plaintiff's noncompliance was intentional insofar as she, through counsel, admitted that she failed to turn over all requested documents as required by the court's order and willfully failed to attend her noticed deposition).

Next, the defendants were "prejudiced by [McGuire's] dilatory conduct" because they were "required to waste time, money, and effort in pursuit of cooperation which [McGuire] was legally obligated to provide." *Carpenter v. City of Flint*, 723 F.3d 700, 707 (6th Cir. 2013) (quoting *Harmon v. CSX Transp., Inc.*, 110 F.3d 364, 368 (6th Cir. 1997)). For example, McGuire failed to provide complete and verified responses to Enfield's first set of interrogatories, never responded to Enfield's first set of requests for production, and unilaterally cancelled her deposition just five days before the scheduled, agreed-upon date. The defendants were also required to respond to McGuire's many unfounded motions (e.g., one of her motions for default judgment) and were told that McGuire had filed a police report against them because, according to her, their efforts to obtain discovery from her became "abusive." McGuire's avoidance of her deposition, in addition to her failure to submit timely and complete discovery responses and documents, unfairly prejudiced the defendants by, among other things, preventing them from gathering evidence to defend against her claims and requiring them to spend time and money to obtain McGuire's compliance with the discovery rules and the district court's orders. *See id.*; *see also Bass*, 71 F.3d at 242.

With respect to the third factor, the magistrate judge, in the March 11, 2022, order, explicitly warned McGuire that "failure to participate in discovery or filing of any motion without a proper legal and factual basis" could result in sanctions, including dismissal of her case.

Lastly, the district court did not impose lesser sanctions on McGuire before dismissing the case. But "[w]e have never held that a district court is without power to dismiss a complaint, as the first and only sanction." *Harmon*, 110 F.3d at 368. And the district court considered imposing less drastic sanctions but concluded that "[t]he harsh sanction of dismissal with prejudice is appropriate here" because "McGuire has prevented this litigation from moving forward by refusing to provide full sworn responses to the defendants' discovery requests despite ample time and this Court's order that she do so," "has refused to appear for a deposition," "has taken the egregiously

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improper step of filing police reports against the defendants and their counsel for trying to obtain the discovery responses to which they were entitled,” and “has continued to file motions seeking default judgment against the defendants despite the Court’s orders informing her that there is no legal or factual basis to support it.”

Because all four factors weigh in favor of dismissal, the district court did not abuse its discretion in dismissing McGuire’s second amended complaint under Rules 37 and 41(b).

Prior Dismissal of Title VII Retaliation Claim

To the extent that McGuire seeks to challenge the dismissal of her Title VII retaliation claim for failure to state a claim,² we hold that the claim was properly dismissed. The clause applicable here prohibits employers from discriminating or retaliating against an employee because the employee “has opposed any practice made an unlawful employment practice by this subchapter.” 42 U.S.C. § 2000e-3(a); *see Holden v. Owens-Illinois, Inc.*, 793 F.2d 745, 748 (6th Cir. 1986). Here, by alleging that the defendants treated their current and prospective tenants unlawfully, McGuire opposed a property management practice, not an employment practice as contemplated by Title VII. In addition, the tenants on whose behalf McGuire allegedly sought to advocate were not employees of the defendants. Thus, the district court appropriately concluded that McGuire “has not adequately alleged a plausible claim that the defendants terminated her employment in retaliation for her opposing unlawful *employment practices* under Title VII.” (emphasis added).

Denials of Motions for Default Judgment

McGuire’s continued challenge to the district court’s denial of her motions for default judgment is unavailing. As aptly stated by the district court when it denied her second and third motions for default judgment, entry of default was “inappropriate” because the defendants, “[i]n addition to filing responsive pleadings, . . . have filed and defended motions” and thus “have shown their clear intent to defend this action.” *Cf. Fed. R. Civ. P. 55(a).*

² *See Caudill v. Hollan*, 431 F.3d 900, 904 (6th Cir. 2005) (“[A]n appeal of a final judgment draws into question all prior non-final rulings and orders.” (quoting *McLaurin v. Fischer*, 768 F.2d 98, 101 (6th Cir. 1985))).

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Defendants' Motion for Attorney Fees and Damages

Citing Federal Rule of Appellate Procedure 38, the defendants move for an award of “just damages and double costs” in an unspecified amount that they allegedly “incurred for this frivolous appeal.” They argue that McGuire’s appeal is frivolous and in bad faith and that her arguments on appeal have no reasonable expectation of altering the judgment.

“If a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee.” Fed. R. App. P. 38. “We will usually impose Rule 38 . . . sanctions only where there was some improper purpose, such as harassment or delay, behind the appeal.” *Barney v. Holzer Clinic, Ltd.*, 110 F.3d 1207, 1212 (6th Cir. 1997); *see Uhl v. Komatsu Forklift Co.*, 512 F.3d 294, 308-09 (6th Cir. 2008). Here, the defendants have not shown that McGuire pursued this appeal for “delay, harassment, or other improper purposes.” *Bridgeport Music, Inc. v. Smith*, 714 F.3d 932, 944 (6th Cir. 2013) (quoting *Vic Wertz Distrib. Co. v. Teamsters Loc. 1038*, 898 F.2d 1136, 1143 (6th Cir. 1990)). Additionally, McGuire is proceeding pro se and “cannot be held to the high standards to which members of the bar aspire or should aspire.” *WSM, Inc. v. Tenn. Sales Co.*, 709 F.2d 1084, 1088 (6th Cir. 1983); *see also Donkers v. Simon*, 173 F. App’x 451, 454 (6th Cir. 2006).

Accordingly, we **GRANT** McGuire’s motion to file reply and supplemental briefs, **DENY** as moot her motions to waive oral argument and to supplement that motion, **DENY** the defendants’ motion for attorney fees and damages, and **AFFIRM** the district court’s order.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

CASSANDRA McGUIRE,

Plaintiff,

v.

HIGHMARK HOLDINGS et al.,

Defendants.

Case No. 3:19-cv-00902

Judge Eli J. Richardson
Magistrate Judge Alistair E. Newbern

To: The Honorable Eli J. Richardson, District Judge

REPORT AND RECOMMENDATION

Defendants Highmark Holdings, Enfield Management, Robbie King, and Glenda Shamwell's have moved for sanctions to be imposed against pro se and *in forma pauperis* Plaintiff Cassandra McGuire. (Doc. Nos. 88, 97.) Specifically, the defendants argue that the Court should dismiss this action with prejudice under Federal Rules of Civil Procedure 37 and 41(b) because McGuire has refused to participate in discovery and has violated the Court's orders to participate in discovery and to stop filing motions for entry of default against the defendants. (Doc. Nos. 89, 98.) McGuire has responded in opposition to the defendants' first motion for sanctions (Doc. No. 90). For the reasons that follow, the Magistrate Judge will recommend that the defendants' motions for sanctions (Doc. Nos. 88, 97) be granted in part and denied in part and that this action be dismissed with prejudice.

I. Relevant Background

This action arises out of McGuire's employment with Enfield, a company that manages residential properties in Nashville, Tennessee. (Doc. Nos. 1, 29.) Enfield employed McGuire as a leasing consultant and assistant manager at two properties, Whispering Oaks and Biltmore Place.

(Doc. Nos. 1, 29.) McGuire alleges that she observed violations of the Fair Housing Act (FHA), 42 U.S.C. §§ 3601–3619, at both properties and that the defendants subsequently terminated her employment because she reported those violations. (Doc. Nos. 1, 29.) McGuire’s remaining claims, which are set forth in her second amended complaint (Doc. No. 29), are for retaliation in violation of the FHA, 42 U.S.C. § 3617, and the Tennessee Human Rights Act (THRA), Tenn. Code Ann. § 4-21-301.¹ (Doc. Nos. 29, 52, 55.)

On March 2, 2022, the defendants filed a motion for sanctions under Federal Rules of Civil Procedure 37 and 41(b), arguing that the Court should dismiss this action with prejudice and assess reasonable costs and attorney’s fees against McGuire because she failed to provide adequate responses to their first set of interrogatories and requests for production and refused to appear for her deposition. (Doc. Nos. 88, 89.) The defendants stated that, nearly a year and a half after Enfield served its discovery requests on McGuire, she still had not provided “full, complete and verified responses to” Enfield’s first set of interrogatories and “never responded to a single one of” Enfield’s first set of requests for production. (Doc. No. 89, PageID# 736.) The defendants also filed an email showing that, five days before the mutually agreed date for her deposition, McGuire emailed defendants’ counsel stating that her “[d][e]position is cancelled until further notice. Please do not contact me regarding the matter until you file the correct forms or until it is appealed.” (Doc. No. 88-4, PageID# 732.) The defendants further stated that McGuire filed a police report against them and their counsel because of their attempts to communicate with her regarding discovery. (Doc. No. 89 (citing Doc. No. 87).) McGuire responded in opposition to the defendants’ motion for sanctions, asserting that she had answered the defendants’ interrogatories and arguing

¹ The Court dismissed McGuire’s claim brought under Title VII of the Civil Rights Act of 1964. (Doc. Nos. 52, 55.)

that the defendants were in default because they did not file a timely response to her proposed third amended complaint. (Doc. No. 90.) McGuire did not dispute the defendants' assertions that she had not responded to their requests for production, had unilaterally cancelled her deposition, and had filed a police report against them.

On March 11, 2022, the Court issued an order addressing several pending pleadings and motions filed by the parties, including McGuire's proposed third amended complaint (Doc. No. 62); her motion for an extension of time to respond to the defendants' discovery requests (Doc. No. 72); her motions regarding the defendants' "frivolous defense" against her claims (Doc. Nos. 66, 68, 73); her objections to the Clerk of Court's order denying her latest motions for entry of default (Doc. No. 87); and the defendants' motions to strike several of McGuire's filings, revoke her authorization to proceed *in forma pauperis* (IFP), and assess attorney's fees against her (Doc. Nos. 69, 80, 84). (Doc. No. 91.) The Court found that McGuire's proposed third amended complaint was improperly filed, denied her "frivolous defense" motions, and overruled her objections to the Clerk of Court's order denying entry of default, explaining why McGuire is not entitled to default against the defendants in this action. (*Id.*) The Court further informed McGuire that she was "required to respond to discovery as provided by the Federal Rules of Civil Procedure and to comply with all of the requirements of those rules and this Court's Local Rules if she wants to pursue her claims." (*Id.* at PageID# 757.) The Court granted McGuire's motion for an extension of time to respond to the defendants' discovery requests and ordered that she "must read each interrogatory or question . . . and either answer the question fully in writing under oath, or make an appropriate objection explaining why the question will not be answered, all as provided in accordance with Federal Rule of Civil Procedure 33." (*Id.* at PageID# 757-58 (quoting *Jackson v. Dep't of Hum. Servs.*, Civ. No. 3:09-0038, 2010 WL 1794121, at *2 (M.D. Tenn. May 5, 2010).)

The Court denied the defendants' motions to strike, finding "that many of [McGuire's] filings that defendants cite, while concerning, may result from McGuire's misunderstanding of what the Federal Rules and this Court's Local Rules require" and that "[t]he Court has now clarified that McGuire is not entitled to default and must participate in discovery if she wishes to pursue her claims in this action." (*Id.* at PageID# 759, 760.) The Court warned McGuire that, "should [she] continue to seek default against the defendants, refuse to participate in discovery, or otherwise unduly hinder the progress of the litigation, the Court may revisit" the propriety of sanctions. (*Id.* at PageID# 760.) Specifically, the Court warned McGuire "that, going forward, failure to participate in discovery or filing of any motion without a proper legal and factual basis may lead to a recommendation that she be sanctioned by the revocation of her IFP status or, if warranted, by other sanctions up to and including the dismissal of this action with prejudice." (*Id.* at PageID# 761.)

In the weeks following the Court's order, McGuire filed a motion to "extend the trial date indefinitely" "[d]ue to the ongoing conflict and unethical behaviors of the defendants['] attorneys" (Doc. No. 92, PageID# 763, ¶ 2); a notice of "issues to be resolved by the courts" asserting that "the lingering reality of default by untimely answers still weighs heavy in this case" (Doc. No. 93, PageID# 771, ¶ 1); a motion repeating her assertion that the defendants are in default because they did not file a timely response to her proposed third amended complaint and arguing that it is "not the plaintiff[']s job to provide strict proof, it[']s the defendants job to provide that" (Doc. No. 94, PageID# 829, ¶ 11.3); and a motion asking the Court to enter default judgment against the defendants under Rule 37 as a sanction for their conduct related to rescheduling her deposition (Doc. No. 95).

The defendants filed a renewed motion for sanctions, arguing that McGuire had failed to amend her responses to their interrogatories, refused to respond to their requests for production, refused to appear for an in-person deposition, and continued to seek entry of default against them in violation of the Court’s March 11, 2022 order. (Doc. Nos. 97, 98.) In support, the defendants attached copies of their correspondence with McGuire about her interrogatory responses, the defendants’ requests for production, and rescheduling her deposition. (Doc. Nos. 97-1–97-4.) McGuire did not file a response in opposition to the defendants’ renewed motion for sanctions; instead, she filed a motion for default judgment under Rule 55(b) (Doc. No. 100) and two motions for sanctions asking the Court to enter default judgment against the defendants (Doc. Nos. 108, 109). The defendants’ responded in opposition to McGuire’s motions, reiterating their arguments that the Court should dismiss this action under Rules 37 and 41(b) as a sanction for McGuire’s continued refusal to cooperate in discovery and obey the Court’s orders. (Doc. Nos. 101, 110.) McGuire filed replies in support of her motions, arguing that her third amended complaint was properly filed, that she has complied with the Federal Rules of Civil Procedure regarding discovery, and that her motions for default are supported by law. (Doc. Nos. 107, 112.)

II. Legal Standard

Federal Rules of Civil Procedure 37 and 41(b) provide district courts with express power to dismiss a complaint. Fed. R. Civ. P. 37(b)(2)(A)(v), 41(b). Rule 37 authorizes a court to dismiss a lawsuit “[i]f a party . . . fails to obey an order to provide or permit discovery,” Fed. R. Civ. P. 37(b)(2)(A), or otherwise fails to cooperate in discovery, including failing to respond to interrogatories and failing to appear for the party’s own deposition, Fed. R. Civ. P. 37(d)(1)(A)(i)–(ii), (d)(3). Dismissal under Rule 37 “accomplishes the dual purpose of punishing the offending party and deterring similar litigants from misconduct in the future.” *Freeland v. Amigo*, 103 F.3d 1271, 1277 (6th Cir. 1997). Rule 41(b) “confers on district courts the authority to dismiss an action

for failure of a plaintiff to prosecute the claim or to comply with the Rules or any order of the court.” *Schafer v. City of Defiance Police Dep’t*, 529 F.3d 731, 736 (6th Cir. 2008) (citing *Knoll v. AT&T*, 176 F.3d 359, 362–63 (6th Cir. 1999)). Dismissal under Rule 41(b) is a tool for district courts to manage their dockets and avoid unnecessary burdens on opposing parties and the judiciary. *See id.* (quoting *Knoll*, 176 F.3d at 363).

Courts look to four factors for guidance when determining whether dismissal under Rule 37 or 41(b) is appropriate: (1) the willfulness, bad faith, or fault of the plaintiff; (2) whether the defendant has been prejudiced by the plaintiff’s conduct; (3) whether the plaintiff was warned that failure to cooperate could lead to dismissal; and (4) the availability and appropriateness of other, less drastic sanctions. *Knoll*, 176 F.3d at 363 (citing *Stough v. Mayville Cnty. Sch.*, 138 F.3d 612, 615 (6th Cir. 1998)); *Universal Health Grp. v. Allstate Ins. Co.*, 703 F.3d 953, 956 (6th Cir. 2013). Under Sixth Circuit precedent, “none of the factors is outcome dispositive,” but “a case is properly dismissed by the district court where there is a clear record of delay or contumacious conduct.” *Knoll*, 176 F.3d at 363. (citing *Carter v. City of Memphis*, 636 F.2d 159, 161 (6th Cir. 1980)); *Universal Health Grp.*, 703 F.3d at 956 (“Although no one factor is dispositive, dismissal is proper if the record demonstrates delay or contumacious conduct.” (quoting *United States v. Reyes*, 307 F.3d 451, 458 (6th Cir. 2002))); *see also Muncy v. G.C.R., Inc.*, 110 F. App’x 552, 555 (6th Cir. 2004) (finding that dismissal with prejudice “is justifiable in any case in which ‘there is a clear record of delay or contumacious conduct on the part of the plaintiff’” (quoting *Mulbah v. Detroit Bd. of Educ.*, 261 F.3d 586, 591 (6th Cir. 2001))).

The Sixth Circuit reviews a district court’s dismissal of an action under Rule 37 or 41(b) for abuse of discretion. *See Schafer*, 529 F.3d at 736 (affording district courts “substantial discretion” with respect to Rule 41(b) dismissals (quoting *Knoll*, 176 F.3d at 363)); *Universal*

Health Grp., 703 F.3d at 955 (reviewing district court's dismissal under Rule 37(b)(2) "for an abuse of discretion").

III. Analysis

Dismissal of this action with prejudice is appropriate under Rule 37 and 41(b) because consideration of the four relevant factors shows a record of delay and contumacious conduct by McGuire.

A. Bad Faith, Willfulness, or Fault

A plaintiff's actions demonstrate bad faith, willfulness, or fault where they "display either an intent to thwart judicial proceedings or a reckless disregard for the effect of [plaintiff's] conduct on those proceedings." *Wu v. T.W. Wang, Inc.*, 420 F.3d 641, 643 (6th Cir. 2005) (quoting *Mulbah*, 261 F.3d at 591). McGuire has engaged in multiple acts that fall under this definition. The record shows that McGuire has continued to seek default judgment against the defendants repeatedly (Doc. Nos. 92–95, 100, 108, 109) despite this Court's orders finding that she is not entitled to it, explaining that finding to her, and warning her that continuing to seek default could result in sanctions (Doc. Nos. 50, 86, 91). Despite receiving an extension of time to supplement her inadequate responses to the defendants' discovery requests and being instructed by the Court and the defendants that her interrogatory responses must be provided under oath in accordance with Rule 33 (Doc. Nos. 91, 97-2), McGuire simply returned her original unsworn interrogatory responses to the defendants (Doc. No. 93-1). McGuire has not responded to the defendants' requests for production, and McGuire has not agreed to a rescheduled date for the defendants to take the deposition that she cancelled unilaterally.

McGuire's continued motions for default and her repeated refusals to cooperate in discovery demonstrate bad faith, willfulness, or fault for purposes of Rule 37 and 41(b). *See, e.g., Collins v. Waste Mgmt. of Ky. Holdings, Inc.*, Civ. No. 06-175, 2008 WL 2794661, at *4 (E.D.

Ky. July 18, 2008) (finding that plaintiff's repeated disregard of court's orders demonstrated "willfulness, bad faith, and fault under the first factor [of the Rule 41(b) analysis] because Plaintiff's conduct can only be interpreted either as an intent to thwart the proceedings of this case or a reckless disregard for the effect of his conduct on the case"); *Dickey v. Chagrin Tavern LLC*, No. 1:21-CV-00733, 2022 WL 597260, at *3 (N.D. Ohio Feb. 28, 2022) (finding that pro se plaintiff's repeated refusal to participate in discovery, including failure to respond to discovery requests and to schedule a deposition, weighed in favor of Rule 37 dismissal). This factor therefore weighs in favor of dismissal.

B. Prejudice

The Sixth Circuit has held that "[a] defendant is prejudiced by a plaintiff's dilatory conduct if the defendant is 'required to waste time, money, and effort in pursuit of cooperation which [the plaintiff] was legally obligated to provide.'" *Carpenter v. City of Flint*, 723 F.3d 700, 707 (6th Cir. 2013) (second alteration in original) (quoting *Harmon v. CSX Transp., Inc.*, 110 F.3d 364, 368 (6th Cir. 1997)); *see also Schafer*, 529 F.3d at 739 (same). Such prejudice typically arises in the discovery context. *See, e.g., Harmon*, 110 F.3d at 368 (finding prejudice where plaintiff failed to respond to defendant's interrogatories and a related motion to compel); *Wright v. City of Germantown*, No. 11-02607, 2013 WL 1729105, at *2 (W.D. Tenn. Apr. 22, 2013) (finding prejudice where defendant "expended time and money pursuing [plaintiff's] required initial disclosures and deposition testimony"). Notably, time and effort spent on "typical steps in the early stages of litigation[,]" such as answering a complaint or filing pretrial motions to advance the defendant's position, are not actions "necessitated by any lack of cooperation" and therefore do not weigh in favor of dismissal for failure to prosecute. *Schafer*, 529 F.3d at 739. The Sixth Circuit explained in *Schafer v. City of Defiance Police Department* that "[i]f such efforts . . . [were] alone sufficient to establish prejudice," for the purpose of Rule 41(b), "then every defendant who

answers a complaint and responds even minimally to a lawsuit would be able to claim prejudice[,]” a “result [that] would defy common sense.” *Id.* at 740.

Here, the record shows that the defendants repeatedly contacted McGuire over the course of nearly two years to help facilitate her discovery responses and to schedule her deposition, prepared for McGuire’s deposition before she cancelled it a few days before it was set to be held, and have had to defend against McGuire’s repeated motions for default. The Court finds that the defendants have been prejudiced by McGuire’s conduct and that the second factor weighs in favor of dismissal. *See Carpenter*, 723 F.3d at 707; *Harmon*, 110 F.3d at 368.

C. Prior Notice

Whether a party was warned that failure to cooperate could lead to dismissal “is a ‘key consideration’” in the analysis under Rule 37 and 41(b). *Schafer*, 529 F.3d at 740 (quoting *Stough*, 138 F.3d at 615); *Alley v. Vital One Health Plan*, No. 2:15-cv-00035, 2016 WL 616346, at *3 (M.D. Tenn. Feb. 16, 2016) (finding that prior notice “is a key consideration” under Rule 37). The Court warned McGuire that her “failure to participate in discovery or filing of any motion without a proper legal and factual basis may lead to a recommendation that she be sanctioned by . . . the dismissal of this action with prejudice” in its March 11, 2022 order. (Doc. No. 91, PageID# 761.) The third factor therefore weighs in favor of dismissal.

D. Appropriateness of Other Sanctions

The defendants request that the Court dismiss this action with prejudice and order McGuire to reimburse their reasonable costs and attorney’s fees. (Doc. Nos. 89, 98.) The harsh sanction of dismissal with prejudice is appropriate here. When “[p]resented with a record of sufficiently egregious conduct, . . . a district court has not abused its discretion by ordering dismissal as the first and only sanction.” *Harmon*, 110 F.3d at 369; *see also Williams v. Select Specialty Hosp. Nashville, Inc.*, Civ. No. 3:08-1007, 2010 WL 93103, at *3 (M.D. Tenn. Jan. 7, 2010) (adopting

report and recommendation and dismissing action “with prejudice due to the plaintiffs’ willfulness and fault in failing to engage in discovery and in disregarding the Court’s orders” “and the needless expenditure of resources by both the Court and the defendant caused by the plaintiffs’ conduct”). McGuire has prevented this litigation from moving forward by refusing to provide full sworn responses to the defendants’ discovery requests despite ample time and this Court’s order that she do so. She readily admits that she has refused to appear for a deposition and has taken the egregiously improper step of filing police reports against the defendants and their counsel for trying to obtain the discovery responses to which they were entitled. And, throughout, she has continued to file motions seeking default judgment against the defendants despite the Court’s orders informing her that there is no legal or factual basis to support it. McGuire’s willful frustration of the defendants’ attempts to defend against her claims and her disregard for the Court’s orders and the progress of the litigation demonstrate that dismissal with prejudice is appropriate.

The additional sanction of awarding defendants their costs and attorney’s fees is not warranted. Dismissal of this action with prejudice under Rules 37 and 41(b) is sufficient to address McGuire’s dilatory conduct. Although the Federal Rules of Civil Procedure require that a party who is sanctioned for failure to obey a discovery or other pretrial order pay the reasonable expenses, including attorney’s fees, caused by that failure, the rules create an exception if the failure “was substantially justified or other circumstances make an award of expenses unjust.” Fed. R. Civ. P. 16(f)(2), 37(b)(2)(C), (d)(3). Because McGuire proceeds *in forma pauperis* based on her demonstrated lack of financial resources (Doc. Nos. 2, 8), the Court finds that a further financial award would be unjust and likely futile. *See, e.g., Gonzalez v. Jones*, No. 2:15-cv-2448, 2021 WL 307564, at *7 (E.D. Cal. Jan. 29, 2021) (finding that “award of attorney’s fees and monetary

sanctions" against pro se and *in forma pauperis* plaintiff "would be manifestly unjust—not to mention uncollectable"), *report and recommendation adopted* by 2021 WL 1060234 (E.D. Cal. Mar. 18, 2021); *Sullivan v. Martin Sprocket & Gear, Inc.*, No. 1:08-CV-02324, 2009 WL 10670644, at *2 (N.D. Ga. Apr. 3, 2009) (finding that award of costs and attorney's fees against pro se and *in forma pauperis* plaintiff would be unjust).

IV. Recommendation

Considering the above four factors, the Magistrate Judge RECOMMENDS that the defendants' motions for sanctions (Doc. Nos. 88, 97) be GRANTED IN PART and DENIED IN PART, that this action be DISMISSED WITH PREJUDICE under Rule 37 and 41(b), and that all other pending motions be TERMINATED.

Any party has fourteen days after being served with this Report and Recommendation to file specific written objections. Failure to file specific objections within fourteen days of receipt of this report and recommendation can constitute a waiver of appeal of the matters decided.

Thomas v. Arn, 474 U.S. 140, 155 (1985); *Cowherd v. Million*, 380 F.3d 909, 912 (6th Cir. 2004).

A party who opposes any objections that are filed may file a response within fourteen days after being served with the objections. Fed. R. Civ. P. 72(b)(2).

Entered this 15th day of September, 2022.


ALISTAIR E. NEWBERN
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

CASSANDRA McGUIRE,)
Plaintiff,)
v.) NO. 3:19-cv-00902
HIGHMARK HOLDINGS, et al.,) JUDGE RICHARDSON
Defendants.)

MEMORANDUM OPINION & ORDER

Pending before the Court is a Report and Recommendation (Doc. No. 113, “R&R”) from the Magistrate Judge recommending that the Court grant Defendants’ motions for sanctions (Doc. Nos. 88, 97), which seek dismissal of Plaintiff’s claims pursuant to Federal Rules of Civil Procedure 37 and 41(b) on the grounds that Plaintiff refused to participate in discovery and filed multiple unmeritorious motions for entry of default against Defendants, even after being instructed by the Magistrate Judge to not do so. Plaintiff filed a timely objection to the R&R. (Doc. No. 114).

LEGAL STANDARD

When a magistrate judge issues a report and recommendation regarding a dispositive pretrial matter, the district court must review *de novo* any portion of the report and recommendation to which a proper objection is made. Fed. R. Civ. P. 72(b)(3). The district judge may accept, reject, or modify the recommended disposition, review further evidence, or return the matter to the magistrate judge with instructions. *Id.* Fed. R. Civ. P. 72(b)(2) provides that a party may file “specific written objections” to a report and recommendation, and Local Rule 72.02(a) provides that such objections must be written and must state with particularity the specific portions of the Magistrate Judge’s report or proposed findings or recommendations to which an

objection is made. Objections must be specific; a general objection to the report and recommendation is not sufficient and may result in waiver of further review. *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995).

The failure to properly, specifically, and timely object to a report and recommendation releases the Court from its duty to independently review the matter. *Frias v. Frias*, No. 2:18-cv-00076, 2019 WL 549506, at *2 (M.D. Tenn. Feb. 12, 2019). “The filing of vague, general, or conclusory objections does not meet the requirement of specific objections and is tantamount to a complete failure to object. Moreover, an objection that does nothing more than state a disagreement with a magistrate’s suggested resolution, or simply summarizes what has been presented before, is not an objection as that term is used in this context.” *Frias*, 2019 WL 549506, at *2 (internal citations and quotation marks omitted). The district court is not required to review, under a *de novo* or any other standard, those aspects of the report and recommendation to which no objection is made. *Ashraf v. Adventist Health System/Sunbelt, Inc.*, 322 F. Supp. 3d 879, 881 (W.D. Tenn. 2018); *Benson v. Walden Security*, No. 3:18-cv-0010, 2018 WL 6322332, at *3 (M.D. Tenn. Dec. 4, 2018). The district court should adopt the magistrate judge’s findings and rulings to which no specific objection is filed. *Id.*

DISCUSSION

Plaintiff filed a 35-page objection to the Magistrate Judge’s R&R. However, the only times the R&R is mentioned in Plaintiff’s objection is in the introduction, in which Plaintiff baldly asserts (without any explanation) that the R&R is “unconstitutional,” is “biased,” and “lacks jurisdiction.” (Doc. No. 114 at 1). The Court need not review such a vague (not to mention unsupported) objection. *See Mira v. Marshall*, 806 F.2d 636, 637 (6th Cir. 1986). The substance of Plaintiff’s objection consists of nothing more than general assertions of legal principles that are

not directed to any specific portion of the R&R, (purported) quotation of various rules of civil procedure that are not directed to any specific portion of the R&R, mere disagreement with the conclusion that she was not compliant during the discovery process, and arguments that are identical to ones raised in her response to the motions for sanctions and were reviewed by the Magistrate Judge. “[A]n ‘objection’ that does nothing more than state a disagreement with a magistrate’s suggested resolution, or simply summarizes what has been presented before, is not an ‘objection’ as that term is used in this context.” *J.A. v. Smith Cty. Sch. Dist.*, 364 F. Supp. 3d 803, 812 (M.D. Tenn. 2019) (Crenshaw, J.) (citation omitted). Thus, Plaintiff does not meaningfully object to the R&R.

Nevertheless, out of an abundance of caution the Court has reviewed the R&R *de novo* and finds no error in the Magistrate Judge’s thorough analysis. Accordingly, the objection will be overruled.

CONCLUSION

Pursuant to 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b)(3), the Court has reviewed *de novo* the Report and Recommendation, Plaintiff’s Objection, and the file. For the reasons discussed herein, Plaintiff’s objections are overruled, and the Report and Recommendation is adopted and approved. Defendants’ motions for sanctions (Doc. Nos. 88, 97) are GRANTED and Plaintiff’s claims are hereby **DISMISSED WITH PREJUDICE** pursuant to Federal Rules of Civil Procedure 37 and 41(b).

IT IS SO ORDERED.

Eli Richardson
ELI RICHARDSON
UNITED STATES DISTRICT JUDGE