

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

CHRISTOPHER KNOX,

Plaintiff,

v.

DR. KELLY RHODES, *et al.*,

Defendants.

Case No. 08-cv-277-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on Plaintiff Christopher Knox's Appeal (Doc. 217) of Magistrate Judge Philip M. Frazier's Order (Doc. 210), which granted in part and denied in part Knox's Motion (Doc. 206) to open discovery outside of the exhaustion of administrative remedies. Knox also appeals from another Order (Doc. 211) of Magistrate Judge Frazier, which extended the discovery deadline in this case to August 27, 2010. Specifically, Knox requests the following: 1) the right to request any relevant discovery from Defendants, including discovery that goes beyond the exhaustion defense; and 2) an extension of the discovery deadline to December 2010.

With respect to Knox's first request, the Court notes that the only Defendants that remain who have presumably not produced non-exhaustion discovery are Dr. Ngu, Dr. David Weidner, and Dr. Scott. Dr. Gnu has since moved for summary judgment, which the Court largely denied. Doc. 325. While Magistrate Judge Frazier's order hardly represented clear error at the time it was entered, it makes no sense to allow Dr. Ngu to continue to withhold non-exhaustion discovery, assuming he has not since tendered it. Accordingly, the Court **GRANTS** Knox's appeal insofar as it seeks non-exhaustion discovery from Dr. Ngu. Meanwhile, the Court only

recently allowed Knox to re-attempt service of process on Dr. Weidner and Dr. Scott. *See* Doc. 315. As such, it is unknown at this time whether Dr. Weidner and Dr. Scott should have to produce non-exhaustion discovery because they have not had the opportunity to assert and present the exhaustion defense. For now, the Court **DENIES** Knox's appeal as to Dr. Weidner and Dr. Scott but will allow Knox to petition Magistrate Judge Frazier for such discovery not less than thirty (30) days from when said Defendants enter their appearance, assuming it is not tendered in the interim.

The foregoing obviously moots Knox's second request because discovery has and will likely continue through the spring of this year. Moreover, the discovery deadline that Knox complains about was ultimately extended by Magistrate Judge Frazier to November 30, 2010. *See* Doc. 281. For these reasons, the Court **DENIES as moot** Knox's appeal from the discovery deadline of August 27, 2010.

IT IS SO ORDERED.

DATED: January 25, 2011

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE