

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

G.K.	*	CIVIL ACTION
VERSUS	*	NO. 21-2242
D.M.	*	SECTION “T” (2)

ORDER AND REASONS

Pending before me are Intervenor Fishman Haygood, LLP and its attorneys Michael Dodson, Danielle Teutonico, and Monica Bergeron’s Motion for Protective Order (ECF No. 299) and Plaintiff G.K.’s Motion to Compel Depositions or Stay All Proceedings (ECF No. 303). Both parties filed Opposition and Reply Memoranda. ECF Nos. 304, 306, 310, 313. No party requested oral argument, and the Court agrees that oral argument is unnecessary.

Having considered the record, the submissions and arguments of counsel, and the applicable law, Plaintiff’s Motion to Compel or Stay All Proceedings (ECF No. 303) is DENIED and Intervenor’s Motion for Protective Order (ECF No. 299) is DENIED AS MOOT for the reasons stated herein.

I. BACKGROUND

Plaintiff originally filed suit alleging that Defendant falsely represented his HIV status to induce Plaintiff to engage in unprotected sexual relations and infected him with HIV after a sexual encounter on September 1, 2019. ECF No. 3, ¶¶ 5–13, at 8–9. The court entered a default on May 24, 2023, and entered judgment on November 21, 2023. ECF Nos. 236, 273. Intervenor, as former counsel, filed a Complaint in Intervention asserting a statutory lien and privilege on any recovery. ECF No. 249.

After Plaintiff noticed depositions by remote means for Michael Dodson and Monica Bergeron, Intervenor filed for a protective order arguing that, despite their refusal to agree to

remote depositions, Plaintiff noticed depositions to occur via Zoom. ECF No. 299-1. Intervenor's express concern that a remote deposition could allow Plaintiff to receive legal coaching from an attorney who has not enrolled in this matter and further argue that the depositions should not proceed remotely because the parties have not stipulated, nor has the court ordered, that the depositions be taken by telephone or other remote means as contemplated by Rule 30(b)(4). *Id.* at 2-3. Intervenor's further contend that Plaintiff has not made the requisite showing of hardship to justify a remote deposition and, as the party who chose to bring suit in this jurisdiction, Plaintiff cannot reasonably argue that the depositions may not occur in New Orleans. *Id.* at 4.

In his "Objection/Opposition" to Intervenor's Motion, Plaintiff argues that he has good cause to depose Dodson and Bergeron remotely because he now lives in Poland. ECF No. 304. Plaintiff also filed his own Motion to Compel the depositions of Intervenor's Dodson and Bergeron to participate in depositions or, alternatively, to stay all proceedings in this matter due to Mr. Dodson's health status. ECF No. 303-1. Plaintiff contends that he noticed the depositions of Dodson and Bergeron in December 2023 but both attorneys failed to appear for deposition on that date and for subsequently noticed April 4, 2024 depositions. *Id.* at 1-2. Plaintiff has since learned that Mr. Dodson is undergoing medical treatment that limits his ability to participate in an oral deposition and argues that Dodson should still be required to participate in discovery just as Plaintiff sat for a deposition while coping with his HIV diagnosis. ECF Nos. 303-1, 304-1 at 1. Alternatively, Plaintiff argues, this matter should be stayed because Dodson is a "key witness in Plaintiff's defenses/affirmative defenses." *Id.* Finally, Plaintiff asserts that he was not served with a copy of the Motion for Protective Order and requests that "all previously sealed documents [be] unsealed." ECF No. 304-2 ¶ 4.

Plaintiff filed a Reply in support of his Motion to Compel in which he argues that Intervenor are “obsessed with [his] former attorneys,” and states that he has not received copies of Exhibits 3 and 4 to Intervenor’s Opposition, hence the court should strike the exhibits and/or provide a copy to him. Plaintiff also contends that he has not been properly served with Intervenor’s Opposition Memorandum, and argues that, if roundtrip flights to Poland are so cheap, Intervenor should fly to Poland to be deposed. ECF No 310-1.

In Opposition to Plaintiff’s Motion to Compel and in further support of their own Motion for Protective Order, Intervenor argue that Plaintiff did not satisfy the conference requirement of Rule 37 before moving to compel, Intervenor are not avoiding deposition but instead invoking their right to an in person deposition under Rule 30, and Plaintiff’s decision to move to Poland during the pendency of this case was voluntary and should not be allowed to excuse him from his litigation obligations. ECF Nos. 306, 313. Intervenor also acknowledge the “general rule... that [a deposition] will occur at the location of the residence of the individual... unless the interests of justice require otherwise.” ECF No. 306 at 5 (citing cases).

Intervenor further argue that Plaintiff’s request for a stay should be denied given Plaintiff’s failure to justify the request and posit that Mr. Dodson’s medical treatment does not serve to do so. *Id.* at 6. Should the court permit remote depositions, Intervenor request guidance to ensure there is no remote participation by Shiloh Bentacourt or any other non-admitted attorney. Addressing Plaintiff’s request that all previously sealed documents be unsealed, Intervenor take no position on the request other than to note that the request was not made in a properly drafted and noticed motion, this case is under seal pursuant to LA. REV. STAT. 46:1844(W)(1)(b), and Defendant’s position on the issue is relevant given that unsealing records in this case would risk disclosure of his personal information on the public docket. ECF No. 313 at 7. As to Plaintiff’s

assertion that he has not been properly served and cannot access certain documents, Intervenor's indicate that they asked Plaintiff if he would accept electronic service of pleadings in this matter, but Plaintiff refused, so Intervenor's have been serving Plaintiff via U.S.P.S. pursuant to Rule 5(b). *Id.* at 8 n.13.

II. APPLICABLE LAW

Federal Rule of Civil Procedure 30 governs the taking of depositions.

A. Location of Deposition

Rule 30(b)(1) of the Federal Rules of Civil Procedure provides that “[a] party who wants to depose a person by oral questions . . . must state the time and place of the deposition.” This generally means that the party noticing the deposition may choose the deposition’s location.¹ Thus, a party’s unilateral choice of location for deposition is subject to entry of a FED. R. CIV. P. 26(c)(2) protective order designating a different place.² When a dispute arises about the location of a deposition, the Court has broad discretion to determine the appropriate place for a deposition.³ Thus, the court maintains authority, upon a showing of good cause, to issue an order to protect a party or person from undue burden or expense, including specifying terms, such as time and place, for discovery. FED. R. CIV. P. 26(c)(1)(B).

¹ *Marquette Transp. Co. Gulf-Inland, L.L.C. v. Navigation Mar. Bulgarea*, No. 19-10927, 2020 WL 9396494, at *1 (E.D. La. Feb. 19, 2020) (citing 8A C. WRIGHT, A. MILLER & R. MARCUS, FEDERAL PRACTICE AND PROCEDURE § 2112 at 523).

² *Celebration Church, Inc. v. United Nat. Ins. Co.*, No. 14-1050, 2015 WL 13532831, at *2 (citing *Turner v. Prudential Ins. Co. of Am.*, 119 F.R.D. 381, 382 (M.D.N.C.1988) (citing 8A C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE, § 2112, at 403 (1970))).

³ *Berthelot v. Andreas Fahl Medizintechnik-Vertrieb GmbH*, 17-2140, 2018 WL 1251657, at *1 (E.D. La. Mar. 12, 2018) (citing *Martin v. Allstate Ins. Co.*, 292 F.R.D. 361, 368 (N.D. Tex. 2013)); *Marquette Trans.*, 2020 WL 9396494, at *1 (citations omitted); *Birkland v. Courtyards Guest House*, No. 11-0349, 2011 WL 4738649, at *2 (E.D. La. Oct., 7, 2011); *Resolution Trust Corp. v. Worldwide Ins. Mgmt. Corp.*, 147 F.R.D. 125, 127 (N.D. Tex. 1992).

B. Deposition by Remote Means

Federal Rule 30(b)(4) provides the parties may stipulate, or the court may order, that a deposition may be taken by remote means. A party who prefers to take a remote deposition but whose request is opposed by another party may seek a protective order under Rule 26(c) as necessary to protect the party from annoyance, embarrassment, oppression, undue burden or expense.⁴

Determining whether an in-person deposition should be ordered requires a weighing of the benefits and disadvantages to each party presented by such prospect.⁵ The party seeking to use deposition by remote means must establish legitimate reason for its request by “a particular and specific demonstration of fact as distinguished from stereotyped and conclusory statements,”⁶ and the party opposing the motion must demonstrate why the deposition should not be conducted remotely.⁷ Courts consider the party’s (1) age, (2) physical condition, (3) finances, and (4) other factors that might result in extreme hardship in the analysis.⁸ “[A]bsent a specific showing of hardship tied to an individual’s circumstances, a general order requiring that the deposition of an out-of-town plaintiff be taken telephonically is not warranted.”⁹

Courts historically recognize that live testimony is far superior to video or telephone testimony, and counsel’s ability to observe a party as he or she answers questions is an important

⁴ FED. R. CIV. P. 26(c)(1)(A), (C).

⁵ See *Gatte v. Lowes Home Ctrs. LLC*, No. 20-00472, 2020 WL 8674185, at *1 (W.D. La. Nov. 30, 2020); accord *Tijerina-Salazar v. Venegas*, No. 19-74, 2021 WL 6011137, at *2 (W.D. Tex. Dec. 20, 2021).

⁶ *In re Terra Int’l, Inc.*, 134 F.3d 302, 306 (5th Cir. 1998).

⁷ *Abad v. Maxum Petroleum Operating Co.*, 16-0001, 2016 WL 11261306, at *4 (W.D. Tex. Sept. 26, 2016) (citations omitted).

⁸ *Birkland*, 2011 WL 4738649, at *3 (citing *Caraway v. Chesapeake Expl., LLC*, 269 F.R.D. 627, 628 (E.D. Tex. 2010); *Srebnik v. Dean*, No. 05-1086, 2006 WL 2331014 (D. Colo. June 20, 2006) (finding evidence of extreme hardship where a seventy two year old man with a history of coronary artery disease who suffered two heart attacks and had triple bypass surgery was required to travel to a different city for a deposition); *Arce-Mendez v. Eagle Produce P’ship, Inc.*, No. 05-3857, WL 811451 (D. Ariz. March 27, 2009) (finding evidence of extreme hardship where the plaintiff had a yearly income of \$8,000, which he used to support himself as well as his wife and four children, all of whom were unemployed)).

⁹ *Birkland*, 2011 WL 4738649, at *2 (citation omitted).

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