

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

SHELTON R. THOMAS,

Plaintiff,

V.

**DOCTOR KENNETH COWENS,
et al.,**

Defendants.

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Case No.: 5:22-cv-00012-CAR-CHW

**Proceedings under 42 U.S.C. § 1983
Before the U.S. Magistrate Judge**

ORDER

Pending before the Court are Plaintiff’s motion to suppress (Doc. 146) and motion to strike (Doc. 149), which both relate to exhibits attached to Defendants’ pending motion for summary judgment. Because Plaintiff’s requested relief is not warranted, both motions (Docs. 146, 149) are **DENIED**. To address the concerns about his deposition, Plaintiff may file changes or corrections to the deposition by June 21, 2024.

Plaintiff’s Motion to Strike

Plaintiff moves to strike the declaration of Dr. Cowens (Docs. 139-4, 142-1), which was attached to Defendants’ motion for summary, or alternatively to require Dr. Cowens “to produce and identify all attachments” that he referenced. (Doc. 149). In the motion, Plaintiff noted that he received over 1000 pages of materials relating to Defendants’ motion for summary judgment and that Dr. Cowens cited to 15 attachments, which Plaintiff has been unable to identify. (Doc. 149). Plaintiff suggests that he should not be required to “sift” through all the documents to find the referenced supporting materials. (*Id.*) Defendants argue that Plaintiff’s motion to strike the declaration is not proper in the context

of a motion for summary judgment. (Doc. 150, p. 1-2). They also suggest that Plaintiff's complaints were likely resolved through the service of a second service copy.¹ (*Id.*, p. 2-3). In his reply, Plaintiff argues his motion was appropriate for the sake of fairness because Dr. Cowens did not properly include or attach his exhibits. (Doc. 154). He did not argue that Defendants provided a complete service copy. *See (id.)*

Plaintiff's objections to Dr. Cowens's declaration are without merit. First, a motion to strike is not an appropriate vehicle to dispute summary judgment evidence. The appropriate method for challenging evidence and disputing facts at summary judgment is to include any objections to the other party's evidence or statements of facts in the response to the motion and statement of material fact, with supporting evidence to show the existence of a genuine issue of material fact. *See* Fed. R. Civ. P. 56(c)(2), Advisory Committee Note (2010 Amendments). Second, the record shows that despite Plaintiff's suggestion that he could not timely respond due to the confusing way the declaration and attachments were organized, Plaintiff was able to respond and to cite to the record. (Doc. 152). In the normal course of summary judgment proceedings, the Court must consider all evidence in the light most favorable to the non-moving party and identify any disputed evidence that creates a genuine issue of material fact. Plaintiff's disagreement as to how the declaration is organized does not establish any reason that the declaration and exhibits

¹ Defendants filed Dr. Cowens's declaration and the attachments in two parts. An unsigned declaration was filed (Doc. 139-4) along with attachments 2 through 14. (Docs. 139-5 through 139-17). They then supplemented the record by filing the signed declaration (Doc. 142-1), attachment 1 (Docs. 141-2 through 141-6), and attachment 15 (Doc. 142-7).

should not be considered in the normal course of summary judgment proceedings. Accordingly, Plaintiff's Motion to Strike (Doc. 149) is **DENIED**.

Motion to Suppress

Defendants filed a transcript of Plaintiff's deposition, taken on November 9, 2023, as an exhibit to their motion for summary judgment. (Doc. 139-3). Plaintiff moves to suppress the deposition under Rule 32(d)(4) of the Federal Rules of Civil Procedure because he was not given the opportunity to review it and make changes despite preserving his right to do so. (Doc. 146); *see also* Fed. R. Civ. P. 30(e). Defendants challenge the method and timeliness of Plaintiff's objections, but these challenges are without merit. Rule 32(d)(4) specifically provides that a motion to suppress is the appropriate way to present certain challenges to the deposition, and Plaintiff, a *pro se* inmate, would not have realized he was not given an opportunity to review the deposition until it was presented for use by Defendants. Plaintiff filed this motion within a month of Defendants' motion for summary judgment. *Compare* (Doc. 139) (filed March 13, 2024) *and* (Doc. 146) (docketed April 5, 2024). Therefore, his motion is timely.

Plaintiff's challenge is nevertheless due to be denied because he has not properly supported his motion. Plaintiff does not identify any specific errors or irregularity in the way the deposition was transcribed. *See* (Doc. 146). In his response to the summary judgment motion, Plaintiff contends "that the deposition is filled with numerous inarticulate statements and inaccuracies..." (Doc. 152, p. 10), but he does not provide any specific examples of such errors or explain how he has been prejudiced by the use of the

deposition. A general blanket statement is not a sufficient basis to suppress a deposition simply because Plaintiff was not provided an opportunity to review it. *See, e.g., De Louis v. Metro. Atlanta Rapid Transit Auth.*, 2006 WL 8431825 (N.D. Ga, Aug. 2, 2006) (explaining that without a showing of prejudice, the failure to allow a party to review a deposition is at most harmless error). Therefore, Plaintiff's motion to suppress the deposition (Doc. 146) is **DENIED**.

Despite the finding that Plaintiff's motion should be denied, there will be no prejudice to the parties or delay to the Court in permitting Plaintiff to review the deposition and file an errata sheet noting any errors in the transcription. Plaintiff is hereby instructed to submit any corrections to the Court by June 21, 2024. For each change, the errata sheet shall list the page and line numbers of the change, the correction, and the reason for the change. An example of an errata sheet is found on pages 119-121 of his deposition. (Doc. 139-3).

SO ORDERED, this 31st day of May, 2024.

s/ Charles H. Weigle
Charles H. Weigle
United States Magistrate Judge