

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
No. 619-10-17 Wncv

MARTIN HOFFMAN as Administrator of the
Estate of Derrick Hoffman,
Plaintiff,

v.

CODY LAFOUNTAIN, et al.
Defendants.

RULING ON MR. LAFOUNTAIN'S MOTION FOR SUMMARY JUDGMENT

Defendant Cody LaFountain is the sole remaining defendant in this case. He has been unrepresented throughout this litigation and now has filed a motion for summary judgment to which Plaintiff Martin Hoffman has filed no opposition. For the following reasons, Mr. LaFountain's motion is granted.

This now 4 1/2-year-old case arose out of the death of Mr. Hoffman's adult son, Derrick. In the complaint, Mr. Hoffman asserts that Derrick died due to abuse or neglect caused by and while in the care of Mr. LaFountain, his "shared living provider." The other defendants include Rutland Mental Health Services, Inc. (RMHS), United Counseling Service of Bennington County, Inc. (UCS), Jerry Laik, and Walking Tall Solutions, LLC. These other defendants were alleged to have negligently facilitated the hiring of Mr. LaFountain, placed Derrick with him, and/or supervised the arrangement. The court partially granted an early round of dismissal motions because the wrongful death claim was filed out of time. The case proceeded on the basis of pre-death torts only.

The court entered a scheduling order on March 20, 2019. It required Mr. Hoffman to disclose experts by May 31, 2019 (he did not), and it expressly required that all discovery and depositions were to be complete by November 1, 2019. The case was to be trial-ready no later than January 31, 2020. Following the close of discovery, UCS and RMHS each filed a motion for summary judgment, arguing, among other things, that Mr. Hoffman would not be able to come forward with any evidence showing a genuine issue for trial and that he had not engaged in discovery. In opposition to summary judgment, Mr. Hoffman did not attempt to come forward with any such evidence. Instead, he argued that he should not have to do so until all pretrial motions had been filed and decided, despite the scheduling order and reasonable litigation practices. He did not otherwise come forward with any reason for having failed to engage in discovery up to that point. The court rejected Mr. Hoffman's dilatory tactic and granted UCS's and RMHS's motions in March 2020.

Defendants Laik and Walking Tall then filed a motion to dismiss on failure-to-

prosecute grounds. The court denied dismissal on that basis but gave them 30 days to file a summary judgment motion, which they did. Before the court ruled, Mr. Hoffman stipulated to dismiss them from the case in September 2020.

Since the beginning of September 2020, Mr. LaFountain has been the only defendant left in this case and, until his recent motion, nearly nothing has happened. At a June 17, 2021, status conference, Mr. LaFountain did not appear. Attorney Wright indicated that he would reach out to Mr. LaFountain. The court (Judge Bent) requested that he report back *in writing* within a few weeks. Nothing was filed.

At a November 16, 2021, status conference, both Mr. LaFountain and Attorney Wright were present. Attorney Wright indicated that he had never spoken with Mr. LaFountain. Mr. LaFountain indicated that he wanted to file a motion for summary judgment. The court gave the parties 30 days to communicate and, if he desired, for Mr. LaFountain to file a motion. Mr. LaFountain filed the pending motion.

Mr. LaFountain's motion does not scrupulously comply with the civil rules. However, it is reasonably clear that that he seeks summary judgment on the same basis as the court granted it to UCS and RHMS: that Mr. Hoffman has failed to develop his case, the time for discovery is over, and he is unable to come forward with evidence demonstrating a genuine issue for trial. In response, Mr. Hoffman has filed nothing.

In the context of the extraordinary length of these proceedings, and their lack of productivity, much less activity of any kind of late, the court interprets Mr. Hoffman's silence in response to Mr. LaFountain's motion as a concession that he is unable to effectively oppose summary judgment. Mr. LaFountain's motion is granted on that basis.

The court also notes that “[s]ummary judgment is mandated under the plain language of V.R.C.P. 56(c) where, after an adequate time for discovery, a party ‘fails to make a showing sufficient to establish the existence of an element’ essential to his case and on which he has the burden of proof at trial.” *Poplaski v. Lamphere*, 152 Vt. 251, 254–55 (1989), quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). While Mr. LaFountain's motion does not comply with Rule 56, “trial courts are often in the position of adjudicating summary-judgment motions on the basis of nonconforming documents.” *State v. Great N.E. Productions, Inc.*, 2008 VT 13, ¶ 6, 183 Vt. 579. Absent an objection, of which there is none, or prejudice, of which none is apparent, doing so is not error.

Order

For the foregoing reasons, Mr. LaFountain's motion for summary judgment is granted.

SO ORDERED this 13th day of May, 2022.



Robert A. Mello
Superior Judge