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Monroe Circuit Court 6
Monroe County, Indiana

Monroe County Circuit Court
Cause No. 53C06-2407-PL-001733

State of Indiana ex rel. Todd Rokita, Attorney General of Indiana, *Plaintiff,* *v.* **Ruben Marté,** in his official capacity as Monroe County Sheriff, **Monroe County Sheriff's Office,** *Defendants.*	

DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO EXCLUDE EVIDENCE

Plaintiff's motion to exclude Defendants' evidence should be denied because it contradicts the plain language of Indiana Trial Court Rules 12 and 56.

The complaint in this case was filed by Plaintiff, the Attorney General, who alleges that a written policy adopted by Defendants—the Monroe County Sheriff and his office—violates state law. Defendants disagree. Thus, the core task for this Court will be to determine whether the terms of the Sheriff's policy conflict with statutory requirements.

Defendants filed a motion to dismiss under Rule 12(B)(6), or alternatively, for summary judgment under Rule 56. Rule 12(B)(6) empowers this Court to assess whether the Plaintiff has presented a valid claim based solely on the complaint, while Rule 56 allows the Court to resolve whether any material facts are genuinely in dispute, considering all submitted evidence. To support the alternative motion for summary judgment, Defendants submitted an affidavit from the Sheriff, which

included as exhibits earlier versions of the policy and communication from the Attorney General's Office to the Sheriff's Office. Although the standards differ, Defendants submit that both motions lead to the same result: judgment in favor of Defendants because the Sheriff's policy is fully consistent with state law.

Plaintiff obtained leave of the Court to file two separate briefs opposing Defendants' motion, one addressing the motion to dismiss and one addressing the motion for summary judgment in the alternative. Plaintiff filed an opposition to the motion to dismiss on October 8, 2024. Although Plaintiff had requested the opportunity to file an opposition to the summary judgment motion on October 18, 2024, he neither filed a brief on that date nor offered any evidence of his own.

On October 4, 2024, Plaintiff filed the present motion to exclude, in which he asks that the Court ignore the Sheriff's affidavit and its attachments. The motion specifically requests that the Court "at minimum exclude Exhibit A, a prior version of Standard Operating Procedure MCSO-012 ('MCSO-12') dated August 1, 2023, and Exhibit C, a draft version of MCSO-12 with comments from a Deputy Attorney General." Mot. 1 n.1. Plaintiff's motion does not challenge the admissibility or relevance of these exhibits, but instead seeks to exclude them as procedurally improper.

Plaintiff's motion is deeply flawed. First, although external evidence should not be considered when ruling on a Rule 12(B) motion, Defendants have invoked both Rule 12 and Rule 56, seeking relief under both rules as the Court considers appropriate. And even if Defendants had not expressly invoked both rules, Rule 12

itself allows the Court to "treat[] [the motion] as one for summary judgment and dispose[] of [it] as provided in Rule 56." Trial Rule 12(B). Therefore, the Indiana Rules specifically authorize the Court to consider Defendants' exhibits in support of their alternative motion for summary judgment.

Plaintiff's motion depends on the premise that the Court cannot consider a motion for summary judgment under Rule 56 at this stage of the litigation. That is without merit. Rule 56 explicitly provides a defendant "may, *at any time*, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof." Trial Rule 56(B) (emphasis added); *accord, e.g, Feldhake v. Buss*, 36 N.E.3d 1089, 1093 (Ind. Ct. App. 2015) (rejecting argument that "trial court abused its discretion in considering a motion for summary judgment while discovery was ongoing" because Rule 56(B) "allows a defendant to file for summary judgment at any time"). Furthermore, Rule 12 explicitly allows a court to treat a Rule 12(B) motion as a motion for summary judgment, even though a Rule 12(B) motion can only be filed at the very outset of litigation.[1] Trial Rule 12(B). Thus, Defendants' request for summary judgment is expressly allowed by the rules. *See also, e.g.*, *Gill v. Evansville Sheet Metal Works, Inc.*, 970 N.E.2d 633, 645-46 (Ind. 2012) (unanimous) (expressing disagreement with court of appeals' "criticism of the trial court's local rule allowing pre-discovery motions for summary judgment").

[1] Rule 56's only temporal restriction applies to plaintiffs, who must wait 20 days after the action commences before moving for summary judgment. That time frame is irrelevant here, where the Defendants are moving for summary judgment, but in any event has long since passed in this case.

To be sure, as Plaintiff points out, a party facing summary judgment must be given a "reasonable opportunity" to respond. Trial Rule 12(B); *Lanni v. Nat'l Collegiate Athletic Ass'n*, 989 N.E.2d 791, 797 (Ind. Ct. App. 2013) (reversing conversion of a Rule 12(B) motion into one for summary judgment when "the trial court effectively deprived [plaintiff] of a reasonable opportunity to present any material made pertinent to a T.R. 56 motion"). Plaintiff received exactly that: in addition to the 30 days the Rules allow him to respond, Trial Rule 56(C), Plaintiff was given a requested extension of time to October 18, 2024, to respond to the Rule 56 aspect of Defendants' motion. That provided him with ample time to make his arguments and submit any necessary evidence. The fact that he chose not to file a brief in opposition or submit any evidence does not change the fact that he had a reasonable opportunity to respond and present his own case had he wished to do so.

If a party faced with a summary judgment motion believes that discovery is necessary in order to oppose the motion, Rule 56 provides a specific process for asking the Court for relief. Rule 56(F) requires that the party provide *affidavits* that explain that he "cannot for reasons stated present by affidavit facts essential to justify his opposition." Trial Rule 56(F); *accord, e.g.*, *Kroger Co. v. Plonski*, 930 N.E.2d 1, 6 (Ind. 2010) (district court erred by striking affidavits when plaintiff failed to comply with Rule 56(F)), *called into question on other grounds by Rogers v. Martin*, 63 N.E.3d 316 (Ind. 2016).[2] This requires the Plaintiff to identify the

[2] The Indiana Supreme Court in *Kroger* noted that, "as a general proposition it is improper for a court to grant summary judgment while reasonable discovery requests that bear on issues material to the motion are still pending," but clarified

"specific information" that could be obtained through discovery that is material to the arguments made in the summary judgment motion. *Ludwig v. Ford Motor Co.*, 510 N.E.2d 691, 700 (Ind. Ct. App. 1987).[3]

Plaintiff's motion does not include any such affidavit or otherwise explain what specific, essential facts he needs to prove his case. His motion notes that he has not deposed Sheriff Marté, Mot. 6, but he offers no explanation for how such a deposition would lead to evidence relevant to whether Defendants' policy is consistent with state law. Indeed, Plaintiff himself argued, in opposing Defendants' Motion to Dismiss, that "Sheriff Marté's purported motivations for promulgating MCSO-12 do not affect whether MCSO-12 violates Indiana law. The provisions of MCSO-12 either violate Section 3 and/or Section 4, or they do not. Neither Section contains any carveouts for specific types of motivations as exempt from the law." Pl.'s Opp. To Mot. to Dismiss 11 n.1. It is unclear how any discovery would be relevant to a case that hinges on straightforward statutory interpretation. *See, e.g.*, *Feldhake*, 36 N.E.3d at 1093 (approving of summary judgment motion before completion of discovery because "the purpose of summary judgment is to end

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that this general proposition does not apply where (as here) "discovery requests were not pending." 930 N.E.2d at 6.

[3] Plaintiff cites a case interpreting Federal Rule of Civil Procedure 56(f), Mot. at 3, but that case confirms that even in federal court the burden of seeking a delay of summary judgment is on the party opposing it, who must, among other things, demonstrate by affidavit "what facts are sought [to resist the motion] and how they are to be obtained, how those facts are reasonably expected to create a genuine issue of material fact." *Miller v. Wolpoff & Abramson, L.L.P.*, 321 F.3d 292, 303 (2nd Cir. 2003) (internal quotations omitted; alteration in original).

litigation about which there can be no factual dispute and which may be determined as a matter of law").

It is telling that Plaintiff's motion specifically seeks to exclude the comments from the Deputy Attorney General on Defendants' policy (attached as Exhibit C to Marté Declaration), perhaps because these comments undercut the position he hopes to take in this case. If Plaintiff had legitimate concerns regarding the authenticity of the document containing the Deputy Attorney General's comments, he could simply submit an affidavit from the Deputy Attorney General disputing it. But there is no amount of discovery into *Defendants* that will shed light on a document created and provided by the Plaintiff's office.

This case in particular presents no need for prolonged litigation. Plaintiff's complaint rises and falls on the meaning of a state statute and how it applies to the terms of the Sheriff's written policy. No possible amendment of Plaintiff's complaint could change the pure questions of law on which this case will be decided. Defendants' motion was designed to promote judicial efficiency by presenting, as fully as possible, the dispositive legal dispute between the parties at the earliest possible stage. *See* Trial Rule 1 (rules should be interpreted to "secure the just, speedy, and inexpensive determination of every action"). Plaintiff identifies no persuasive reason why the Court should delay resolution of the case.

In sum, Defendants agree that the Court may grant the motion to dismiss based on Rule 12(b)(6), excluding all evidence outside of the pleadings. But if the Court decides differently, Defendants' alternative motion for summary judgment

under Rule 56 is properly presented and allows the Court to consider all the evidence submitted by Defendants.

Plaintiff's motion to exclude evidence submitted in support of the Defendants' alternative motion for summary judgment should be denied.

October 22, 2024

Respectfully submitted,

/s/Justin D. Roddye
Justin D. Roddye
31583-53

E. Jeff Cockerill
Justin D. Roddye
MONROE COUNTY LEGAL DEPARTMENT
100 W Kirkwood Ave
Bloomington, IN 47404
(812) 349-2525
jroddye@co.monroe.in.us

Alexandra Lichtenstein
Joseph Mead
INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION
Georgetown University Law Center
600 New Jersey Avenue NW
Washington, DC 20001
(202) 661-6728
alex.lichtenstein@georgetown.edu

CERTIFICATE OF SERVICE

I certify that on October 22, 2024, service of a true and complete copy of the above and foregoing pleading or paper was made upon all counsel of record herein by electronic service using the Indiana E-Filing System:

Aaron M. Ridlen
Trent D. Bennett
Bradley S. Davis
Office of Indiana Attorney General Todd Rokita
Indiana Government Center South, 5th Floor
302 West Washington Street
Indianapolis, IN 46204-2770
Aaron.Ridlen@atg.in.gov

/s/Justin D. Roddye
Justin D. Roddye
31583-53