

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIMOTHY KING, et al.,

Plaintiffs,

v.

Case No. 20-13134
Honorable Linda V. Parker

GRETCHEN WHITMER, et al.,

Defendants,

and

CITY OF DETROIT,
DEMOCRATIC NATIONAL
COMMITTEE and MICHIGAN
DEMOCRATIC PARTY, and
ROBERT DAVIS,

Intervenor-Defendants.

**OPINION & ORDER DENYING INTERVENOR-DEFENDANT ROBERT
DAVIS' EMERGENCY MOTION TO STRIKE (ECF NO. 97)**

This matter is currently before the Court on Intervenor-Defendant Robert Davis' Emergency Motion to Strike Notice of Voluntary Dismissal. (ECF No. 97.)

On November 29, 2020, Plaintiffs filed a First Amended Complaint, "Emergency Motion for Declaratory, Emergency, and Permanent Injunctive Relief and Memorandum in Support Thereof," and Emergency Motion to Seal. The Court subsequently granted Four individuals or entities leave to intervene in the action as Defendants, including Davis. Defendants and the Intervenor-Defendants

then responded to Plaintiffs' emergency motion for injunctive relief. Only Intervenor-Defendant Davis filed an Answer to Plaintiffs' Complaint. This Court subsequently denied Plaintiffs' motion for injunctive relief. On Thursday, January 14, 2021, while Plaintiffs' appeal of that decision was pending, they filed "Notices" voluntarily dismissing Defendants and the Intervenor-Defendants. Because Intervenor-Defendant Davis answered the Complaint; however, dismissal may be accomplished as to him only by motion. *See* Fed. R. Civ. P. 41.

Plaintiffs' filing in fact is titled as a motion. (*See* ECF No. 97.) However, Plaintiffs' counsel selected the wrong activity and misidentified the document when filing it on the Court's electronic filing system. Davis' counsel alerted Plaintiffs' counsel to the error via email on Monday January 18 (ECF No. 97-1 at Pg ID 4165); however, Plaintiffs' counsel did not take any action to correct the error until January 21 (*see* ECF No. 98).¹ In the interim, unsatisfied by this delay, Davis filed the pending Emergency Motion to Strike the Notice of Voluntary Dismissal on January 20. (ECF No. 97.) In the motion, Davis asserts that "[t]he Court should sanction Plaintiffs' counsel for refusing to correct the error that was promptly brought to her attention by Intervening Defendant Robert Davis' counsel." (*Id.* at Pg ID 4163.)

¹ January 18 was the Martin Luther King, Jr. holiday and the courthouse was closed.

The Court declines to strike Plaintiffs' filing due to the error by Plaintiffs' counsel, as the document is correctly and clearly identified as a motion, there is no indication that counsel intended to mislead the Court or the remaining parties, and there is no indication that the error prejudiced any opposing party. While Rule 4 of the Eastern District of Michigan Electronic Filing Policies and Procedures permits sanctions for "repeated filing errors or other instances of non-compliance with the[] Policies and Procedures," *see* http://www.mied.uscourts.gov/PDFFiles/policies_procedures.pdf, the Court does not believe that the two filing errors by Plaintiffs' counsel thus far warrant such action. (*See* ECF No. 76 at Pg ID 3611.)

Accordingly,

IT IS ORDERED that Intervenor-Defendant Robert Davis' Emergency Motion to Strike Plaintiffs' Notice of Voluntary Dismissal (ECF No. 97) is **DENIED**.

IT IS SO ORDERED.

s/ Linda V. Parker

LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: January 25, 2021