

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

MATHIS KEARSE WRIGHT, JR.,

Plaintiff,

v.

SUMTER COUNTY BOARD OF
ELECTIONS AND REGISTRATION,

Defendant.

CIVIL ACTION NO. 1:14-CV-42 (WLS)

**DEFENDANT’S RESPONSE IN OPPOSITION TO PLAINTIFF’S MOTION TO
STRIKE THE DEFENDANT’S DAUBERT MOTION AND TO STAY THE TIME FOR
THE PLAINTIFF TO RESPOND TO THE DEFENDANT’S MOTION**

Plaintiff Mathis Kears Wright, Jr. (“Plaintiff” or “Wright”) moves to strike Defendant Sumter County Board of Elections and Registration’s (“Defendant” or “the County”) Motion to Renew Motion to Exclude Portion of Plaintiff’s Expert Report and Testimony [Doc. 97], arguing that it is untimely. Plaintiff’s arguments in support of his motion mischaracterize both this Court’s scheduling order and the very motion he moves to strike, which is not a new *Daubert* motion requiring a response from Plaintiff, but rather a motion to renew an already fully-briefed motion that the Court denied as moot when it granted summary judgment to Defendant.

I. FACTUAL BACKGROUND

In January 2015, Defendant filed a motion for summary judgment in this case brought under Section 2 of the Voting Rights Act. In connection with that motion, Defendant simultaneously filed a motion to exclude all opinion testimony offered by Dr. Frederick McBride regarding the socioeconomic conditions in Sumter County, which testimony was offered in partial support of the Senate factors. *See* [Doc. 42].

The parties fully briefed Defendant’s motion to exclude. [Docs. 42-1, 43, 45]. Because the Court granted summary judgment to Defendant on the second and third *Gingles* factors, there was no need to consider the opinion testimony at issue in Defendant’s motion to exclude, and therefore, the Court denied that motion as moot. *See* [Doc. 62].

More than two years later, with the case back before this Court, Plaintiff has moved for summary judgment, claiming that he meets all three *Gingles* prongs and, based on the totality of the circumstances, he should prevail. [Doc. 89]. With respect to the totality of the circumstances, Plaintiff asserts that certain “Senate factors” – including the socioeconomic conditions in Sumter County – weigh in his favor and relies on Dr. McBride’s testimony regarding those socioeconomic conditions.

Therefore, Defendant’s motion to exclude Dr. McBride’s opinion testimony is no longer moot and should be decided by this Court. Accordingly, as part of its response to Plaintiff’s motion for summary judgment, Defendant has moved to renew its motion to exclude the portion of Dr. McBride’s testimony regarding the socioeconomic conditions in Sumter County, reiterating the arguments previously made. [Docs. 97].

II. ARGUMENT AND CITATION OF AUTHORITIES

On December 20, 2016, the Court entered an Order extending discovery and related deadlines. [Doc. 85]. In that Order, the Court stated, “All dispositive motions must be filed no later than Friday, April 7, 2017. All motions challenging the qualifications of an expert witness raised under *Daubert* **and related to a dispositive motion** must be filed no later than Friday, April 7, 2017.” *Id.* (emphasis added). Otherwise, *Daubert* motions are not be due until fourteen days after notice of the pretrial conference. *Id.*

As Plaintiff recognizes, Defendant did not file a dispositive motion on April 7. [Doc. 98-2, p. 2]. Therefore, Defendant had no reason to renew its *Daubert* motion on April 7 and is not charged with predicting that Plaintiff would file a dispositive motion or foretelling the arguments he would rely on therein.

Once Plaintiff filed a dispositive motion (moving for summary judgment on his Section 2 claim, including the “Senate factor” analysis of that claim), Defendant properly responded. Plaintiff’s summary judgment motion—which relied on Dr. McBride’s testimony about the totality of the circumstances—meant Defendant’s previously-filed motion to exclude all opinion testimony offered by Dr. McBride regarding the socioeconomic conditions in Sumter County, including opinions he derived from the American Community Survey data, was no longer moot but instead ripe for consideration by this Court. *See National Ass’n of Bds. Of Pharmacy v. Board of Regents of the Univ. Sys. of Ga.*, 633 F.3d 1297, 1309 (11th Cir. 2011) (explaining that “[a] case is moot when it no longer presents a live controversy with respect to which the court can give meaningful relief[;]” a definition not met here). Therefore, out of an abundance of caution, Defendant formally renewed its *Daubert* motion when responding to Plaintiff’s motion. Because the *Daubert* motion is no longer moot, it is now appropriate for the Court to consider it. *See United States v. American Intercontinental Univ., Inc.*, No. 1:08-cv-2277-RWS, 2016 WL 5092513, at *6 (N.D. Ga. Sept. 20, 2016) (“After the Court initially granted AIU’s Motion for Summary Judgment and dismissed Relators’ only surviving claim, it denied CEC’s separate Motion for Summary Judgment as moot. But having now denied AIU’s Motion [on remand after the Eleventh Circuit vacated the District Court’s previous Order], CEC’s is no longer moot. As a result, the Court now considers whether CEC is entitled to summary judgment even if AIU is not.”); *see also In re Uniroyal Goodrich Tire Co.*, 104 F.3d 322, 324 (11th Cir. 1997) (“After the

district court vacated its June 10, 1996 remand order in compliance with this Court's mandate, it then considered and granted Newton's motion for a remand, which was no longer moot in view of the vacation of the June 10 order of remand.").

Contrary to Plaintiff's argument, Defendant's motion is not untimely, and Plaintiff is in no way prejudiced by its renewal. First, Plaintiff's argument that Defendant's motion is untimely ignores the fact that Defendant filed its motion more than two years ago and, to the extent it was necessary, renewed that motion in connection with its timely response to Plaintiff's motion for summary judgment. Second, Plaintiff argues incorrectly that "forcing Wright to respond to this untimely motion will prejudice his ability to prepare this case for trial." [Doc. 98-1, p. 3]. Plaintiff has already responded to Defendant's *Daubert* Motion, [Doc. 43], and is not forced to make nor entitled to a further response.

Furthermore, Plaintiff's argument that he will be prejudiced in his ability to prepare for trial appears to be based on his incorrect presumption that this case is set for trial on June 5, 2017. The Court specifically indicated that June 5 was a tentative date and that "the actual trial date will be know when the Parties receive the Notice of Pretrial Conference, which might state the proposed trial date listed herein or an earlier or later trial date." [Doc. 85, fn. 2]. As the parties have not yet received Notice of a Pretrial Conference, and furthermore, Plaintiff has now filed a motion for summary judgment, Plaintiff's ability to prepare for trial is not prejudiced in any way.

In short, Defendant has not asserted any new arguments but has simply renewed an already fully-briefed motion that was denied as moot at an earlier stage of this case and that is now no longer moot. The motion is timely, and there is certainly no reason that renewing this *Daubert* motion prejudices Plaintiff or should "further delay [] the trial schedule." [Doc. 98-1, p.

3]. Plaintiff has filed a motion for summary judgment, and in conjunction with Defendant's response thereto, Defendant has simply moved to renew its previous *Daubert* motion, which is no longer moot.

III. CONCLUSION

Defendant's motion to renew its motion to exclude the opinion testimony of Dr. McBride is not untimely, and Plaintiff is not prejudiced in any way by its renewal. Defendant's *Daubert* motion has already been fully briefed, and in light of Plaintiff's motion for summary judgment, it is no longer moot.

The Court should consider Defendant's *Daubert* motion, exclude that portion of Dr. McBride's testimony concerning the socioeconomic conditions in Sumter County, and deny Plaintiff's motion to strike.

This 22nd day of May, 2017.

s/ Anne W. Lewis
Anne W. Lewis
Georgia Bar No. 737490
awl@sblaw.net
Barclay S. Hendrix
Georgia Bar No. 917852
barclay.hendrix@sblaw.com
STRICKLAND BROCKINGTON LEWIS LLP
Midtown Proscenium Suite 2200
1170 Peachtree Street NE
Atlanta, Georgia 30309
Telephone: 678.347.2200
Fax: 678.347.2210

s/ Kimberly A. Reid
Kimberly A. Reid
Georgia Bar No. 596699
kimberly.reid@lawsonreidlaw.com
LAWSON & REID, LLC
601 East 14th Avenue
P.O. Box 5005
Cordele, Georgia 31010

(229) 271-9323 Office

(229) 271-9324 Fax

*Attorneys for Defendant Sumter County Board of
Elections and Registration*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day electronically served the within and foregoing DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE THE DEFENDANT'S DAUBERT MOTION AND TO STAY THE TIME FOR THE PLAINTIFF TO RESPOND TO THE DEFENDANT'S MOTION to the following attorneys of record:

Bryan L. Sells, Esq.
P.O. Box 5493
Atlanta, GA 31107
bryan@bryansellsllaw.com

M. Laughlin McDonald, Esq.
2700 International Tower
229 Peachtree Street, NE
Atlanta, GA 30303
lmcdonald@aclu.org

This 22nd day of May, 2017.

s/ Anne W. Lewis
Anne W. Lewis
Georgia Bar No. 737490