

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JULIE WELKER, et al.,	:	
Plaintiffs,	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 99-3552
DARRELL CLARKE, et al,	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, J.

January 28, 2000

Presently before the court is Defendants Darrell Clarke, et al.'s Motion for Summary Judgment, and Plaintiffs Julie Welker, et al.'s Response thereto. For the following reasons, Defendants' Motion will be granted.

I. STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party has the burden of demonstrating the absence of any genuine issue of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). A factual dispute is "material" if it might affect the outcome of the case under the governing substantive law. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Additionally, an issue is "genuine" "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id.

On summary judgment, it is not the court's role to weigh the disputed evidence and decide which is more probative; rather, the court must consider the evidence of the non-moving party as true, drawing all justifiable inferences arising from the evidence in favor of the non-moving party. See id. at 255. If a conflict arises between the evidence presented by both sides, the court must accept as true the allegations of the non-moving party. See id.

If the moving party establishes the absence of a genuine issue of material fact, the burden shifts to the non-moving party to "set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). In doing so, the non-moving party must "do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). If the evidence of the non-moving party is "merely colorable," or is "not significantly probative," summary judgment may be granted. Anderson, 477 U.S. at 249-50.

II. DISCUSSION

On December 2, 1999, Plaintiffs attorney submitted a letter to this Court stating that as a result of the October 26, 1999 Order¹ ("October Order") "and further investigation, Plaintiffs have concluded that they cannot meet their burden of proof in this matter." On January 6, 2000, Plaintiffs filed a Motion for Adverse Order, whereby, it was admitted that there no longer existed any claims as a result of the October Order. Rather than respond to the Motion for

1. Plaintiffs' filed a Motion for Preliminary Injunctive Relief and a Motion for Declaratory Judgment, both of which the Order denied.

Adverse Order,² Defendants filed a Motion for Summary Judgment, contending that Plaintiffs had not come forward with any evidence creating an issue of material fact.

As Defendants effectively point out, after months of investigation Plaintiffs have failed to come up with any evidence of illegal votes. Plaintiffs have failed to provide this Court with any evidence outside of the mere allegations set forth in the First Amended Complaint that would be sufficient to survive Defendants' Motion for Summary Judgment.

III. CONCLUSION

As a result of this failure to provide evidence in support of the First Amended Complaint and the Plaintiffs' own admission that it will be unable to carry its burden of proof at trial, Defendants' Motion for Summary Judgment is granted.

2. This Court is unable to find anything in the Federal Rules of Civil Procedure that mirrors this type of Motion and Plaintiffs fail to reference any such authority in support of said Motion. As a result, the attached Order will deny the Motion, treating Defendants' Motion for Summary Judgment as the response.

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ORDER

AND NOW, this 28th day of January, 2000, upon consideration of the Defendants Darrell Clarke, et al.'s Motion for Summary Judgment, and Plaintiffs Julie Welker, et al.'s response thereto, it is hereby ORDERED that said Motion is GRANTED and the case is dismissed. It is further ORDERED that Plaintiffs' Motion for an Adverse Order and Final Judgment is DENIED.

Judgment is entered in favor of defendants and against plaintiffs.

This case shall be marked **CLOSED**.

BY THE COURT:

RONALD L. BUCKWALTER, J.