

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

MARK P. RILEY,

Plaintiff,

v.

Case No.: 2:23-cv-981-JLB-KCD

CARMINE MARCENO, CARMINE  
MARCENO, CHARLES  
CUSTODIO, NIKO THOMAS  
IRIZARRY, SCOTT JOSEPH  
SNIDER, II and LEE COUNTY,  
FLORIDA,

Defendants.

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**ORDER**

Plaintiff Mark Riley was arrested and charged with several narcotics crimes. It later came to light that the drugs were planted and he was innocent. Riley now sues those involved in his arrest, including Lee County Sheriff Carmine Marceno. (Doc. 30.)<sup>1</sup>

Before the Court is Sheriff Marceno's Motion to Stay Discovery Pending Ruling on Motion to Dismiss. (Doc. 65.) According to Sheriff Marceno, discovery should be suspended until his "outstanding dispositive motion to dismiss has

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<sup>1</sup> Unless otherwise indicated, all internal quotation marks, citations, and alterations have been omitted in this and later citations.

been resolved.” (*Id.* at 1.) This will, in his view, avoid wasting resources on “an unmeritorious claim.” (*Id.* at 5.)

Staying discovery pending a motion to dismiss is the exception, not the rule. This is because suspending discovery for an indefinite period “tend[s] to delay resolution of cases.” *Fetchick v. Eslinger*, No. 6:15-CV-96-ORL-28TBS, 2016 WL 8929252, at \*1 (M.D. Fla. Jan. 11, 2016). “A request to stay discovery . . . is rarely appropriate unless resolution of the motion will dispose of the entire case.” *McCabe v. Foley*, 233 F.R.D. 683, 685 (M.D. Fla. 2006); *see also McCrimmon v. Centurion of Fla., LLC*, No. 3:20-CV-36-J-39JRK, 2020 WL 6287681, at \*2 (M.D. Fla. Oct. 27, 2020) (“Absent a clear indication a case will be dismissed in its entirety, a motion to stay should be denied.”).

Sheriff Marceno’s motion to dismiss is not dispositive, as the Court just ruled. (*See* Doc. 73.) At least one claim is due to survive. And several more could proceed if the complaint is amended. Advancing into discovery is thus appropriate. *See, e.g., Fetchick*, 2016 WL 8929252, at \*2. To the extent Sheriff Marceno is concerned about the breadth of discovery, those issues are better addressed through motion practice and not simply stopping discovery. Accordingly, Sheriff Marceno’s motion (Doc. 65) is **DENIED**.

**ORDERED** in Fort Myers, Florida on July 1, 2024.



Kyle C. Dudek  
United States Magistrate Judge

Copies: All Parties of Record