

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

SUSAN MILLS

PLAINTIFF

v.

CIVIL ACTION NO. 3:99CV-121-S

AMERICAN UNDERGROUND STRUCTURES, INC.

DEFENDANT

MEMORANDUM OPINION AND ORDER

This matter is before the Court on motion of the plaintiff, Susan Mills (“Mills”), to set aside an order entered by the Magistrate Judge on October 6, 1999, requiring disclosure of Mills’ attorney’s total hours expended and her hourly rate in this employment discrimination case. The defendant, American Underground Structures, Inc. (“American Underground”), requested this information as part of its pretrial discovery for the purpose of settlement negotiations because there is a statutory authorization for attorney’s fees for a prevailing plaintiff under the Kentucky Civil Rights Act, KRS Chapter 344.

Under 28 U.S.C. § 636 and Fed.R.Civ.P. 72, the non-dispositive orders of magistrate judges are binding unless they are clearly erroneous or contrary to law. Discovery orders, such as the one at issue in this case, fall into that category. Grimes v. City and County of San Francisco, 951 F.2d 236, 240 (9th Cir. 1991).

Mills argues that this information is only discoverable upon conclusion of the case and only if she is successful. The parties agree that the only case addressing whether attorney’s fees are discoverable before trial is Maddow v. Proctor & Gamble Co, Inc., 107 F.3d 846 (11th Cir. 1997). In Maddow, an age discrimination case, the district court compelled the plaintiff’s attorney to produce contingency fee information in pretrial discovery. Because this information was relevant

to calculating reasonable attorney's fees as provided for under the statute, the Eleventh Circuit found that the district court's decision was not an abuse of discretion.

The Magistrate Judge's order in this case is consistent with the Maddow decision. Therefore, this Court finds that the order was not clearly erroneous or contrary to law. The plaintiff's motion to set aside the order is **DENIED**.

IT IS SO ORDERED this _____ day of _____, 1999.

CHARLES R. SIMPSON III, CHIEF JUDGE
UNITED STATES DISTRICT COURT

cc: Counsel of Record