

Ricky R. v. City of Alhambra, et al., 08-55396

MAY 20 2009

SILVERMAN, Circuit Judge, concurring:

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

In my opinion, the court abused its discretion in ruling on the motion for summary judgment before allowing plaintiff's counsel to take the deposition of Fisher, the principal actor in this case. The time for the completion of discovery had not yet passed. Not only was the time for discovery still open, but even more puzzling is the fact that the court had, just a few days earlier, ordered the deposition to go forward – and by stipulation of the other side, no less. I fail to see the logic of approving the parties' stipulation for the deposition, and then not allowing it to be completed before ruling on the summary judgment motion. It is no answer that the deposition had not been scheduled earlier. It did not have to be – plaintiff was well within his time to conduct discovery and was entitled to do so, at his own pace, so long as he completed it before the deadline.

That said, I concur in the result because the district court's error was harmless. Plaintiff has not shown that the information he sought by deposition, even though he should have been allowed to obtain it, would have changed the result.