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United States District Court,
E.D. Michigan.

Linda NUNN, et al., Plaintiffs,
v.
Kenneth MCGINNIS, et al., Defendants.

No. 96-CV-71416. | July 28, 1997.

Attorneys and Law Firms

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Opinion

***ORDER DENYING DEFENDANTS' MOTION TO
DISMISS OR FOR SUMMARY JUDGMENT***

OMEARA, J.

*1 Before the court is Defendants' June 5, 1997 motion to dismiss or, alternatively, for summary judgment. Plaintiffs filed a response July 7; Defendants submitted a reply July 17. The court heard oral argument on July 24, 1997, and DENIED Defendants' motion.

Defendants have previously filed a motion to dismiss, which the court granted in part and denied in part on February 4, 1997. In their second motion to dismiss or for summary judgment, Defendants argue, as they did in their first motion to dismiss, that some of Plaintiffs' counts should be dismissed for failure to state a claim and that Defendants are entitled to qualified immunity. The court ruled on those issues in its February 4, 1997 order and will not reconsider them. The court also finds that Defendants' motion for summary judgment is premature. Defendants' brief raises factual issues and discovery in this matter is not complete.

Accordingly, IT IS HEREBY ORDERED that Defendants' June 5, 1997 motion to dismiss or for summary judgment is DENIED. With respect to the request for dismissal under Rule 12(b), Defendants' motion is DENIED WITH PREJUDICE. With respect to the request for summary judgment, Defendants' motion is DENIED WITHOUT PREJUDICE.