

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
OHIO, WESTERN DIVISION

Stephanie McAfee v. Early Warning Services, LLC

No. 1:25-cv-578 (S.D. Ohio Mar. 12, 2026) · No. 1:25-cv-578 · Decided March 12, 2026

SUMMARY

The court considers Early Warning Services, LLC’s motion to dismiss or, alternatively, for summary judgment in a Fair Credit Reporting Act action concerning disclosure of a consumer file under 15 U.S.C. § 1681g. The court converts the motion to one for summary judgment, holds that mailing the disclosure would satisfy the statutory disclosure obligation even if the consumer did not receive it, and denies summary judgment because a factual dispute may remain about whether the disclosure was mailed. The court permits limited discovery on that issue and denies the plaintiff’s motion for leave to file a surreply.

CASE DETAILS

COURT	United States District Court for the Southern District of Ohio, Western Division
WRITING FOR THE COURT	Douglas R. Cole
JURISDICTION	United States District Court for the Southern District of Ohio, Western Division
DECIDED	March 12, 2026
DOCKET	1:25-cv-578
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved to dismiss the FCRA complaint or, alternatively, for summary judgment based on matters outside the pleadings. The court converted the motion to one for summary judgment, denied it without prejudice, and permitted limited discovery concerning whether defendant actually mailed the statutory disclosure. The court also denied plaintiff's motion for leave to file a surreply.
STANDARD OF REVIEW	Summary judgment is proper when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The evidence must be viewed in the light most favorable to the nonmoving party, and the court does not sua sponte search the record for evidence creating a factual dispute. Under Rule 56(d), limited

discovery may be allowed when the nonmovant cannot yet present facts essential to oppose summary judgment.

PRECEDENTIAL VALUE

unpublished district court opinion; persuasive only

TOPICS

credit reporting

summary judgment

discovery dispute

statutory interpretation

civil procedure

PRACTICE AREAS

consumer protection

fair credit reporting

civil procedure

QUESTIONS PRESENTED

1. Whether the motion to dismiss should be converted to a motion for summary judgment under Federal Rule of Civil Procedure 12(d) because the court considered matters outside the pleadings.
2. Whether mailing a consumer's file, without proof that the consumer actually received it, satisfies a consumer reporting agency's disclosure obligation under 15 U.S.C. § 1681g.
3. Whether summary judgment should be granted before discovery when the record leaves a factual question as to whether the disclosure was actually mailed.
4. Whether plaintiff showed good cause for leave to file a surreply under Southern District of Ohio Civil Rule 7.2(a)(2).

HOLDINGS

1. A motion to dismiss that presents matters outside the pleadings must be treated as a motion for summary judgment under Rule 12(d); because defendant expressly moved in the alternative for summary judgment and the court considered the supporting affidavit, conversion was appropriate.
2. Proof that a consumer reporting agency properly mailed the consumer's file is sufficient to satisfy the disclosure obligation under 15 U.S.C. § 1681g, independent of whether the consumer actually received the mailed disclosure.
3. Summary judgment was premature because the evidence did not establish without genuine dispute that Early Warning actually mailed the disclosure, and limited discovery was warranted on that issue.
4. Plaintiff did not establish good cause for leave to file a surreply because the reply raised no materially new evidence or argument requiring a response and did not mischaracterize the record.

KEY QUOTATIONS

"So the Court concludes that must answer that question by interpreting the statute." (Law and Analysis § B)

"The Court concludes that the former reading prevails." (Law and Analysis § B)

"The Court therefore DENIES Early Warning's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment (Doc. 3), but only to allow limited discovery on one specific issue detailed below." (Conclusion)

FACTUAL BACKGROUND

McAfee submitted a written request on May 23, 2025, for a full consumer-file disclosure from Early Warning under 15 U.S.C. § 1681g(a)(1), and Early Warning concedes receiving the request on May 28. McAfee alleged that Early Warning failed to provide the disclosure, while Early Warning asserted through an employee affidavit that it mailed the file on June 6, 2025, and later emailed a copy on August 13, 2025. The record included the disclosure cover pages and competing accounts concerning whether the file was actually mailed or received.

PROCEDURAL HISTORY

McAfee sued Early Warning in Hamilton County Municipal Court on July 8, 2025, alleging that Early Warning violated 15 U.S.C. § 1681g by failing to disclose her consumer file. Early Warning removed the action to federal court on August 13, 2025, and moved to dismiss or for summary judgment, submitting an affidavit and documentary evidence. The court treated the motion as one for summary judgment, concluded that mailing the file would satisfy the statutory obligation as a matter of law, but found that the present record did not establish without genuine dispute that the file had been mailed. The court denied the motion without prejudice and authorized limited discovery on that issue alone.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand. The court denied plaintiff's motion for leave to file a surreply and denied defendant's motion to dismiss or for summary judgment without prejudice. The case may proceed to limited discovery directed solely to whether Early Warning actually mailed the disclosure, including discovery concerning mailing processes, mailing-confirmation records, and depositions of persons with relevant knowledge.

CASES CITED

- Child. Trends, Inc. v. U.S. Dep't of Educ., 795 F. Supp. 3d 700, 713 (D. Md. 2025)
- Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986)
- Lansing Dairy, Inc. v. Espy, 39 F.3d 1339, 1347 (6th Cir. 1994)
- Amway Distribs. Benefits Ass'n v. Northfield Ins. Co., 323 F.3d 386, 390 (6th Cir. 2003)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250-52 (1986)
- Betkerur v. Aultman Hosp. Ass'n, 78 F.3d 1079, 1087 (6th Cir. 1996)
- Guarino v. Brookfield Twp. Trs., 980 F.2d 399, 404-06 (6th Cir. 1992)
- Moore v. Philip Morris Cos., Inc., 8 F.3d 335, 340 (6th Cir. 1993)
- Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587-88 (1986)
- Cox v. Ky. Dep't of Transp., 53 F.3d 146, 150 (6th Cir. 1995)
- Canter v. Alkermes Blue Care Preferred Provider Plan, 593 F. Supp. 3d 737, 744-45 (S.D. Ohio 2022)

- *Fields v. Checkr Group, Inc.*, No. 1:24-cv-21220, 2025 WL 2270151, at *1-2, *9 (N.D. Ga. May 29, 2025), report and recommendation adopted, 2025 WL 2270148 (N.D. Ga. June 20, 2025)
- *McDaniel v. Liberty Mutual Insurance Co.*, No. 3:21-cv-610, 2024 WL 3647655, at *4 (W.D.N.C. Aug. 2, 2024)
- *Gillespie v. Trans Union Corp.*, 482 F.3d 907, 909 (7th Cir. 2007)
- *Watkins v. Equifax Info. Servs. LLC*, No. 1:25-cv-524, 2025 WL 3763869, at *5-6 (S.D. Ohio Dec. 30, 2025)
- *Abuelhawa v. United States*, 556 U.S. 816, 819-20 (2009)
- *United States Nat'l Bank of Or. v. Independent Ins. Agents of Am., Inc.*, 508 U.S. 438, 455 (1993)
- *Dolan v. Postal Service*, 546 U.S. 481, 486 (2006)
- *Yates v. United States*, 574 U.S. 528, 537 (2015)
- *Robinson v. Shell Co.*, 519 U.S. 337, 341 (1997)
- *Deal v. United States*, 508 U.S. 129, 132 (1993)
- *Hagner v. United States*, 285 U.S. 427, 430 (1932)
- *Rosenthal v. Walker*, 111 U.S. 185, 193 (1884)
- *In re Yoder Co.*, 758 F.2d 1114, 1118 (6th Cir. 1985)
- *Short v. Oaks Corr. Facility*, 129 F. App'x 278, 280 (6th Cir. 2005)
- *Zakora v. Chrisman*, 44 F.4th 452, 479 (6th Cir. 2022)
- *Abercrombie & Fitch Stores, Inc. v. Am. Eagle Outfitters, Inc.*, 280 F.3d 619, 627 (6th Cir. 2002)
- *Cacevic v. City of Hazel Park*, 226 F.3d 483, 488 (6th Cir. 2000)
- *Unan v. Lyon*, 853 F.3d 279, 292 (6th Cir. 2017)
- *United States v. Rohner*, 634 F. App'x 495, 504 (6th Cir. 2015)
- *Wallin v. Norman*, 317 F.3d 558, 564 (6th Cir. 2003)
- *Heard v. Caruso*, 351 F. App'x 1, 14-15 (6th Cir. 2009)