

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
INDIANA, INDIANAPOLIS DIVISION

Steven Neville v. Michael Kevin Gill

Neville v. Gill · No. 1:25-cv-00043-SEB-MJD · Decided February 4, 2026

SUMMARY

The United States District Court for the Southern District of Indiana grants Defendant Michael Kevin Gill's motion for leave to file an amended counterclaim despite the expired amendment deadline. The court finds good cause and concludes that the amendment clarifies the asserted claims without materially changing the underlying facts. The court denies as moot, without prejudice, a pending motion for summary judgment and declines to consider a disqualification request raised for the first time in a reply brief.

CASE DETAILS

COURT	United States District Court for the Southern District of Indiana, Indianapolis Division
WRITING FOR THE COURT	Mark J. Dinsmore
JURISDICTION	United States District Court for the Southern District of Indiana
DECIDED	February 4, 2026
DOCKET	1:25-cv-00043-SEB-MJD
DISPOSITION	other
PROCEDURAL POSTURE	The court considered the defendant's motion for leave to file an amended counterclaim after the deadline for amendments had passed, as well as a motion for summary judgment and an attempted motion to disqualify opposing counsel raised in a reply brief.
STANDARD OF REVIEW	Good-cause standard for amendment after a scheduling-order deadline; the court also applied the local rule governing motions improperly raised in reply briefs.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

- motion to amend
- summary judgment
- pleadings
- civil procedure
- commercial litigation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether good cause existed to permit amendment of the counterclaim after the scheduling-order deadline.
2. Whether a proposed amendment may alter or refine the legal theories supporting claims when the underlying factual allegations remain substantially the same.
3. Whether the pending motion for summary judgment should remain pending after the amendment was allowed.
4. Whether a motion to disqualify opposing counsel could be asserted for the first time in a reply brief.

HOLDINGS

1. The court may permit amendment after the applicable deadline upon a showing of good cause, and good cause existed here because the amendment would clarify the defendant's claims and promote a more orderly dispositive-motions process.
2. A motion may not be asserted in a reply brief unless the court orders otherwise.
3. The pending motion for summary judgment was denied as moot and without prejudice to refiling in compliance with the court's scheduling deadline.

KEY QUOTATIONS

"We have made this point repeatedly: 'The Federal Rules of Civil Procedure do not require a plaintiff to plead legal theories.'"

"A motion may not be asserted in a reply brief."

FACTUAL BACKGROUND

Gill sought to amend his counterclaim after the court-ordered August 14, 2025 deadline. The proposed amendment changed some legal bases for the counterclaims, but the underlying facts remained basically the same. The court concluded that amendment would clarify Gill's claims and allow a more orderly dispositive-motions process.

PROCEDURAL HISTORY

Defendant Michael Kevin Gill moved for leave to amend his counterclaim after the August 14, 2025 amendment deadline. The court found good cause, granted the motion, and directed the Clerk to file the amended counterclaim. Because the amendment would permit the counterclaim defendants to address the claims actually being asserted, the court denied Kinnard's pending motion for summary judgment as moot and without prejudice. The court also declined to consider Gill's motion to disqualify counsel because it was raised in a reply brief and had not been properly presented.

DISPOSITION

other

CASES CITED

- Chessie Logistics Co. v. Krinos Holdings, Inc., 867 F.3d 852, 859 (7th Cir. 2017)
- Vidimos, Inc. v. Laser Lab Ltd., 99 F.3d 217, 222 (7th Cir. 1996)
- Johnson v. City of Shelby, 574 U.S. 10, 10-11, 135 S. Ct. 346, 190 L.Ed.2d 309 (2014) (per curiam)
- Skinner v. Switzer, 562 U.S. 521, 529-30, 537, 131 S. Ct. 1289, 179 L.Ed.2d 233 (2011)
- Zimmerman v. Bornick, 25 F.4th 491, 492-94 (7th Cir. 2022)
- Beaton v. SpeedyPC Software, 907 F.3d 1018, 1023 (7th Cir. 2018)
- Zall v. Standard Ins. Co., 58 F.4th 284, 295 (7th Cir. 2023)
- CMFG Life Insurance Co. v. RBS Securities, Inc., 799 F.3d 729, 743-44 (7th Cir. 2015)
- Whitaker v. Milwaukee County, 772 F.3d 802, 808-09 (7th Cir. 2014)

OPINION

NEVILLE

PER CURIAM.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF INDIANA

INDIANAPOLIS DIVISION

STEVEN NEVILLE,)

) Plaintiff,)) v.) No. 1:25-cv-00043-SEB-MJD)

MICHAEL KEVIN GILL,)

) Defendant.)

ORDER

This matter is before the Court on Defendant's motion for leave to file an amended counterclaim. [Dkt. 44.] The motion was filed on October 21, 2025, after the applicable deadline of August 14, 2025, and therefore may only be granted for good cause. The Court finds good cause to permit the amendment because doing so will clarify the claims of Defendant and permit a more orderly dispositive motions process. The proposed amended counterclaim changes some of the legal bases for the claims asserted by Defendant, although the underlying facts remain basically the same. As the Seventh Circuit has emphatically stated: We have made this point repeatedly: "The Federal Rules of Civil Procedure do not require a plaintiff to plead legal theories." *Chessie Logistics Co. v. Krinos Holdings, Inc.*, 867 F.3d 852, 859 (7th Cir. 2017), quoting *Vidimos, Inc. v. Laser Lab Ltd.*, 99 F.3d 217, 222 (7th Cir. 1996), accord, e.g., *Johnson v. City of Shelby*, 574 U.S. 10, 10-11, 135 S. Ct. 346, 190 L.Ed.2d 309 (2014) (per curiam) (summarily reversing dismissal based on failure to identify legal theory in complaint); *Skinner v. Switzer*, 562 U.S. 521, 529-30, 537, 131 S. Ct. 1289, 179 L.Ed.2d 233 (2011) (reversing dismissal); *Zimmerman v. Bornick*, 25 F.4th 491, 492-94

(7th Cir. 2022) (allowing amendment of complaint); *Beaton v. SpeedyPC Software*, 907 F.3d 1018, 1023 (7th Cir. 2018) ("As the Supreme Court and this court constantly remind litigants, plaintiffs do not need to plead legal theories."). Also, when a complaint does present legal theories, those theories may later be altered or refined. *Chessie Logistics*, 867 F.3d at 859. *Zall v. Standard Ins. Co.*, 58 F.4th 284, 295 (7th Cir. 2023). Therefore, Gill could have changed the legal theories he is asserting in this case in his response to Kinnard's motion for summary judgment. See *CMFG Life Insurance Co. v. RBS Securities, Inc.*, 799 F.3d 729, 743-44 (7th Cir. 2015) (plaintiff did not inappropriately add new claim during summary judgment briefing when factual basis was alleged in complaint); *Whitaker v. Milwaukee County*, 772 F.3d 802, 808-09 (7th Cir. 2014) (plaintiff should have been permitted to proceed on new summary judgment theory that recharacterized already-alleged facts and did not offer "any unfair surprise"). The Court finds it to be in the interests of judicial economy to permit the requested amendment, which will permit Counterclaim Defendants to file motions for summary judgment that address the claims Gill is actually asserting in this case. Accordingly, the motion to amend, [Dkt. 44], is GRANTED and the Clerk is directed to file the Amended Counterclaim, which is found at Docket Numbers 46-1, -2, -3, and -4. In light of this ruling, Kinnard's motion for summary judgment, [Dkt. 36], is DENIED AS MOOT without prejudice to its resubmission in compliance with the March 6, 2026 deadline set forth in the Court's June 30, 2025 Order Setting Pretrial Schedule and Discussing Discovery [Dkt. 32 at 4]. In his reply in support of the instant motion, Gill also moves for disqualification of Kinnard as Neville's attorney in this case. A motion may not be asserted in a reply brief. See Local Rule 7-1(a) ("A motion must not be contained within a brief, response, or reply to a previously filed motion, unless ordered by the court."). In any event, the Court has not determined that disqualification is appropriate at this time, although that may change as the case progresses. SO ORDERED. Dated: 4 FEB 2026 Marl J. Dinsnfgre United StatesMagistrate Judge Southern District of Indiana Distribution: All ECF-registered counsel of record via email
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