

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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JANE DOE and JANE ROE,

Plaintiffs,

v.

FALL RIVER SCHOOL DISTRICT  
and JEFFREY A. MROZ, in his  
individual capacity,

Defendants.  
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ORDER

03-C-0728-C

One week before plaintiffs' brief in opposition to defendants' motion for summary judgment was due, plaintiffs moved for and were granted a ten-day extension of time in which to file the brief. Two days into the extension, plaintiffs moved for dismissal of the entire case without prejudice, on the grounds that plaintiff Jane Roe's mother is receiving cancer treatments for metastasized cancer, Jane Roe's sister is about to have spinal surgery and plaintiff Doe's family helps plaintiff Roe's family. As a result of these health problems and stress, both families are unable to provide adequate assistance to counsel.

As unfortunate as the situation may be for both the Does and Roes, dismissal without prejudice is not an option for them at this stage of the lawsuit. Plaintiffs have known about

the summary judgment deadline since the preliminary pretrial conference; they have had more than a month to prepare their brief in opposition to defendants' motion for summary judgment. The plaintiffs are Jane Doe and Jane Roe, not their mothers or their families, so it is difficult to know why the mothers' health and busy schedules would prevent plaintiffs' counsel from opposing the pending motion.

In addition to the health problems plaintiffs have discussed, they ask for dismissal on the grounds that it would give them an opportunity to correct a procedural error and to add at least one more claim to their complaint. Granting their motion to allow them to start over under these circumstances would be an obvious prejudice to defendants, who identified the procedural error in their motion for summary judgment as well as other arguments supporting dismissal. It would also be a reward to plaintiffs for their failure to notice the procedural error themselves when they still had time to dismiss the case without prejudice and for their dilatoriness in preparing this case. Defendants assert that plaintiffs' counsel has yet to schedule a deposition, despite the looming deadline for opposing the motion for summary judgment and plaintiffs' counsel has given me no reason to think that defendants' assertion is incorrect or that he has been diligent in pursuing plaintiffs' claims.

Plaintiffs' counsel referred to the limitations of his "tiny office," when he moved for an extension of time. The size of his office is no basis for a dismissal. Under the rules of the Supreme Court of Wisconsin, he is obligated not to take on the representation of a client

that he cannot represent adequately. SCR 20:1.1 provides that a lawyer “shall provide competent representation of a client.”

Plaintiffs have accused defendant Mroz of serious misconduct, jeopardizing a long career. It is time for them to show their hand. If they ever had any factual bases for the allegations they have made, they should be able to marshal those facts for the court before November 2, 2004, the deadline for the filing of their brief in opposition.

ORDER

IT IS ORDERED that the motion for voluntary dismissal without prejudice filed by plaintiffs Jane Doe and Jane Roe is DENIED.

Entered this 27th day of October, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge