

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

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SUSAN M. RUDOLPH,

Plaintiff,

ORDER

v.

14-cv-240-jdp

TOSHIBA AMERICA MEDICAL SYSTEMS, INC.,  
MINISTRY HEALTH CARE, MINISTRY ST.  
MICHAEL'S HOSPITAL,

Defendants.

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Plaintiff Susan M. Rudolph has suffered from mild lupus since the early 1980s, and her health took a severe turn for the worse in 2007 and she is now disabled. Plaintiff contends that her health decline is due in part to radiation over-exposure from a series of CT scans she received in 2007. She filed this case, without attorney assistance, against her healthcare providers and the maker of the CT scanner to hold them responsible for what she contends are injuries that could have been prevented.

As I explained in an earlier order, Dkt. 6, it is questionable whether this federal court has subject matter jurisdiction to hear plaintiff's case. Even though plaintiff alleges that "the complaint arises under the laws of the United States and the issues herein affect the health and economic well-being of its citizens," plaintiff's case appears to allege claims for products liability, medical malpractice, and fraud, which are all state-law claims. Plaintiff has referred to certain federal regulations dealing with healthcare, but those regulations do not give plaintiff the right to sue to enforce them. This is why I concluded in the earlier order that plaintiff's allegations do not establish federal question jurisdiction (which is one way to establish subject matter jurisdiction).

Plaintiff's other option (to establish subject matter jurisdiction) is diversity jurisdiction. This court does not have jurisdiction to hear plaintiff's state-law claims unless the parties are diverse, which means that none of the defendants are citizens of the same state as the plaintiff. Based on the allegations in plaintiff's complaint and the records of the Wisconsin Department of Financial Institutions, defendant Ministry Health Care is almost certainly a citizen of Wisconsin, as is plaintiff. (It is not clear whether defendant Ministry St. Michael's Hospital is a separate suable entity; if so, it is likely also a Wisconsin citizen.) In sum, it is doubtful that this court would have jurisdiction over plaintiff's case. Nevertheless, I gave plaintiff an opportunity (and a deadline) to file an amended complaint that would establish jurisdiction.

Now before the court are three motions by plaintiff: a motion for extension of time to file her amended complaint, Dkt. 7, and motions for assistance in recruiting counsel, Dkts. 3, 8. I will grant the first motion, but I will deny her motions for assistance in recruiting counsel.

I will give plaintiff a further 30 days to file an amended complaint that establishes jurisdiction on the basis that the parties are of diverse citizenship.<sup>1</sup> To give me enough information to determine whether this court has diversity jurisdiction, plaintiff must state: (1) her citizenship; and (2) the citizenship of each defendant. Plaintiff has already alleged an amount in controversy exceeding \$75,000, which satisfies one requirement of diversity jurisdiction. Now, plaintiff must simply allege the *citizenship* of each party, herself included. Plaintiff should refer to my earlier order for additional guidance as to what is needed.

If plaintiff's amended complaint states that she is a citizen of Wisconsin, and that Ministry Health Care and Ministry St. Michael's Hospital are citizens of Wisconsin, then this

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<sup>1</sup> If she wants, plaintiff may also try again to establish subject matter jurisdiction on basis that a claim presents a question of federal law. But, as determined in the earlier order, plaintiff's allegations as pled in her original complaint do not establish jurisdiction.

court will not have jurisdiction to hear plaintiff's case. Thus, her options are to (1) sue all three defendants in *state* court or (2) drop any defendant that is a Wisconsin citizen from the lawsuit.

As to her motion for assistance in recruiting counsel, a court will seek to recruit counsel for a pro se litigant only when she demonstrates that her case is one of those relatively few in which it appears from the record that the legal and factual difficulty of the case exceeds her ability to prosecute it. *Pruitt v. Mote*, 503 F.3d 647, 654–55 (7th Cir. 2007). I have no doubt that plaintiff would benefit from the assistance of an attorney to present the merits of her claim, which will involve complex technical and medical evidence. If this court determines that it has jurisdiction, plaintiff may renew her request for assistance in recruiting counsel and I will evaluate her request then. But I will not attempt to recruit counsel until we get over the jurisdiction hurdle.

#### ORDER

IT IS ORDERED that:

1. Plaintiff's motion for extension of time to file her amended complaint, Dkt. 7, is GRANTED. Plaintiff shall have until April 24, 2015, to file and serve an amended complaint containing good faith allegations sufficient to establish this court's jurisdiction. Failure to amend timely shall result in prompt dismissal of this matter for lack of subject matter jurisdiction.
2. Plaintiff's motion for assistance in recruiting counsel, Dkt. 8, is DENIED at this time, without prejudice to renewing her request if this court determines that it has jurisdiction.

Entered March 24, 2015.

BY THE COURT:

/s/

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JAMES D. PETERSON  
District Judge