

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

ANNA McCULLOUGH,

Plaintiff,

v.

JAMES M. LINDBLADE, M.D.,

Defendant.

ORDER

06-C-0658-C

In this civil action for monetary relief brought under Wisconsin law, plaintiff Anna McCullough contends that defendant James Lindblade committed medical malpractice when he failed to diagnose a lump in her breast as cancerous. There are two motions awaiting resolution in the case: defendant's motion for summary judgment and plaintiff's motion to strike defendant's motion for summary judgment.

In reviewing the parties' submissions for these motions, I have discovered that neither party has proposed facts demonstrating that this court has subject matter jurisdiction to hear the case, in violation of the court's Procedure to Be Followed on Summary Judgment, which the parties received with preliminary pretrial conference order. The cause of action asserted by plaintiff arises under state law. Thus, federal jurisdiction exists only if the amount in controversy is more than \$75,000 and the parties are of diverse citizenship. 28 U.S.C. §

1332.

The parties appear to agree that the case was properly filed in federal court. However, this court has an independent obligation to insure that subject matter jurisdiction exists. Arbaugh v. Y & H Corp., 126 S. Ct. 1235, 1237 (2006). The Court of Appeals for the Seventh Circuit has reiterated the need for litigants to meticulously review the limits of federal jurisdiction to prevent the waste of federal judicial resources. Belleville Catering Co. v. Champaign Market Place, L.L.C., 350 F.3d 691, 693 (7th Cir. 2003). The federal courts are “always obliged to inquire sua sponte whenever a doubt arises as to the existence of federal jurisdiction.” Tylka v. Gerber Prods. Co., 211 F.3d 445, 447-48 (7th Cir. 2000).

For a case to be within the diversity jurisdiction of the federal courts, diversity must be complete, meaning that no plaintiff may be a citizen of the same state as any defendant. McCready v. EBay, Inc., 453 F.3d 882, 891 (7th Cir. 2006); Strawbridge v. Curtiss, 7 U.S. 267 (1806). As noted above, in this case neither party has proposed any facts to establish that the parties are of diverse citizenship. Plaintiff’s complaint and defendant’s brief both contain allegations about where the parties “reside.” Even if I accepted these allegations as true, they are not sufficient to establish diversity jurisdiction. For the purpose of establishing diversity jurisdiction, the court examines the *citizenship*, not the residency, of individual persons. Guaranty National Title Co. v. J.E.G. Associates, 101 F.3d 57, 59 (7th Cir. 1996). An individual is a citizen of the state in which he is domiciled, that is, where he has a

“permanent home and principal establishment, and to which he has the intention of returning whenever he is absent therefrom.” Charles Alan Wright, Law of Federal Courts 161 (5th ed. 1994); see also Dakuras v. Edwards, 312 F.3d 256, 258 (7th Cir. 2002). A person has only one domicile, but may have several residences. Steigleder v. McQuesten, 198 U.S. 141 (1905) (distinguishing between residency and citizenship).

Until the parties submit proof of their citizenship, I cannot decide defendant’s motion for summary judgment. Vermont Agency of Natural Resources v. United States ex rel. Stevens, 529 U.S. 765, 778 (2000) (“if there is no jurisdiction there is no authority to sit in judgment of anything else.”). As the proponent of jurisdiction, plaintiff has the burden to establish its existence. Oshana v. Coca-Cola, 472 F.3d 506, 511 (7th Cir. 2006).

Accordingly, IT IS ORDERED that plaintiff Anna McCullough may have until September 12, 2007, in which to submit proof to the court of her state of citizenship and that of defendant James Lindblade. If plaintiff fails to do this, the case will be dismissed for lack of subject matter jurisdiction.

Entered this 4th day of September, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge