

NO. 22-CI-003225  
*Electronically filed*

JEFFERSON CIRCUIT COURT  
DIVISION THREE (3)  
CHIEF JUDGE MITCH PERRY

EMW WOMEN’S SURGICAL CENTER,  
P.S.C., *et al.*

PLAINTIFFS

v.

DANIEL CAMERON, *et al.*

DEFENDANTS

**PLAINTIFFS’ MOTION TO DISMISS WITHOUT PREJUDICE**

Plaintiffs EMW Women’s Surgical Center, P.S.C., Ernest Marshall, M.D., and Planned Parenthood Great Northwest, Hawai’i, Alaska, Indiana, and Kentucky, Inc., by and through undersigned counsel, move to voluntarily dismiss the above-captioned action without prejudice pursuant to CR 41.01(2).

**I. BACKGROUND**

Plaintiffs brought suit to challenge two Kentucky abortion bans, KRS 311.772 and KRS 311.7701-11 (collectively, the “Bans”). This Court granted a temporary injunction against the Bans, which was dissolved by a Court of Appeals judge. The Kentucky Supreme Court affirmed the Court of Appeals’ dissolution of the temporary injunction, holding that Plaintiffs had not shown that they had third party standing to bring claims on behalf of their patients. *Cameron v. EMW Women’s Surgical Center, P.S.C.*, 664 S.W.3d 633 (Ky. 2023). The Supreme Court remanded the case back to this Court for further proceedings consistent with its opinion to adjudicate the nondelegation claim, which Plaintiffs have standing to raise.

**II. ARGUMENT**

CR 41.01(2) provides for voluntary dismissal by a plaintiff “upon order of the court.” The decision of how to handle a motion to dismiss without prejudice is “a matter within the trial court’s discretion.” *Louisville Label, Inc. v. Hildesheim*, 843 S.W.2d 321, 325 (Ky. 1992). While “[m]any

things must be taken into consideration by the trial judge prior to entering an order dismissing an action without prejudice...the basic criterion is whether the opposing party will suffer some substantial injustice or be substantially prejudiced.” *Sublett v. Hall*, 589 S.W.2d 888, 893 (Ky. 1979); *see also Hartlage v. Kroger*, No. 2006-SC-0139-WC, 2006 WL 3386623, at \*2 (Ky. Nov. 22, 2006). *Sublett* lays out particular factors for courts to consider prior to entering an order dismissing a case without prejudice, including: “What preparation has the opposing parties and their counsel made for trial?,” “What was the lapse of time between the filing of the complaint and the date of the motion to dismiss?,” and “Will a dismissal without prejudice be prejudicial to the opposing parties?” *Sublett*, 589 S.W.2d at 893.

Here, no injustice or prejudice to Defendants exists. This case is at the very early stages and thus far has focused only on preliminary relief, and there has been no extensive lapse of time between the filing of the complaint and the instant motion. *See id.* (affirming dismissal without prejudice when that dismissal was granted three years after commencement of the action). Further, no meaningful discovery has taken place (Defendants have only propounded written discovery), which weighs in favor of dismissal without prejudice. *See Haroon v. Kerwin*, No. 2011-CA-001299-MR, 2013 WL 3105545, at \*1, \*4 (Ky. App. June 21, 2013) (affirming lower court dismissal where the “matter was dismissed before the parties could undertake any significant discovery”). Dismissal would therefore conserve, not waste, this Court and defendants’ time and effort.

### III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully ask this Court to grant dismissal of this action without prejudice pursuant to CR 41.01(2).

DATE: June 20, 2023

Respectfully submitted,

/s/ Michele Henry

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## CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2023, true and accurate copies of the foregoing were served by email on the following:

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DEFENDANTS

**[PROPOSED] ORDER GRANTING PLAINTIFFS’ MOTION TO  
DISMISS WITHOUT PREJUDICE**

Plaintiffs EMW Women’s Surgical Center, P.S.C., Ernest Marshall, M.D., and Planned Parenthood Great Northwest, Hawai’i, Alaska, Indiana, and Kentucky, Inc. have moved to voluntarily dismiss the above-captioned action without prejudice pursuant to CR 41.01(2). Upon consideration of the motion, any oppositions and replies filed thereto, and the record in this case, the Court finds that dismissal without prejudice will not cause Defendants to “suffer some substantial injustice or be substantially prejudiced,” *Sublett v. Hall*, 589 S.W.2d 888, 893 (Ky. 1979), and accordingly that such dismissal is warranted under CR 41.01(2).

Accordingly, **IT IS ORDERED** that Plaintiffs’ motion to dismiss this action without prejudice is **GRANTED**.

This action is **DISMISSED WITHOUT PREJUDICE**.

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CHIEF JUDGE MITCH PERRY

Date: \_\_\_\_\_

*Tendered by:*

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