

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.*

DEFENDANT

**PLAINTIFFS EMW WOMEN’S SURGICAL CENTER, P.S.C.,  
AND DR. ERNEST MARSHALL’S RESPONSE IN NON-OPPOSITION  
TO DEFENDANT’S MOTION TO DISMISS**

Plaintiffs EMW Women’s Surgical Center, P.S.C. (“EMW”), and Ernest Marshall, M.D., do not oppose Defendant Attorney General Daniel Cameron’s Second Motion to Dismiss, dated May 31, 2023. Plaintiffs do not agree that EMW and Dr. Marshall’s remaining claims are moot simply because the building that EMW is currently located in has been listed for sale. *Mut. Life Ins. Co. of New York v. Prewitt*, 105 S.W. 463, 465 (Ky. 1907) (“The right of the plaintiff to do business in the state is involved, and so the questions are real, not moot.”). *See also Women’s Med. Pro. Corp. v. Baird*, 277 F. Supp. 2d 862, 869 (S.D. Ohio 2003) (finding change in circumstances does not moot abortion provider’s claims regarding license waiver where continue to seek to provide care), *aff’d in part and vacated in part*, 438 F.3d 595 (6th Cir. 2006); *W. Side Women’s Servs., Inc. v. City of Cleveland*, 573 F. Supp. 504, 508 (N.D. Ohio 1983) (finding “the fact that [abortion provider] no longer occupies the [clinic] premises on West 130th Street does not moot its claim for declaratory” relief); *Linmark Assocs., Inc. v. Willingboro Twp.*, 431 U.S. 85, 86 n.1 (1977) (finding challenge to city ordinance limiting use of “for sale” signs “not moot” after sale of property that gave rise to the challenge because of an “immediate prospect” that plaintiff would seek to place signs on other property in the city). EMW continues to be licensed as a Kentucky abortion facility, and Dr. Marshall continues to be licensed as a physician. While Plaintiffs disagree

with the reasoning in the Attorney General's Second Motion to Dismiss, they nonetheless do not oppose the dismissal of EMW and Dr. Marshall from this lawsuit. *See also* Plaintiffs' Motion to Dismiss Without Prejudice (filed simultaneously with this pleading).

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 OF PARTIAL DISMISSAL WITHOUT PREJUDICE**

This action having been remanded to this Court from the Supreme Court of Kentucky, *Cameron v. EMW Women’s Surgical Center, P.S.C.*, 664 S.W.3d 633, 661 (Ky. 2023), this action coming before the Court on Defendant Attorney General Daniel Cameron’s second motion to dismiss, and the Court being sufficiently advised,

**IT IS HEREBY ORDERED AND ADJUDGED** that, as directed by the Supreme Court of Kentucky, the Plaintiffs’ third-party claims on behalf of their patients challenging the constitutionality of the Trigger Ban, KRS 311.772, and the Six-Week Ban, KRS 311.7701–11, are hereby DISMISSED WITHOUT PREJUDICE.

**IT IS FURTHER ORDERED AND ADJUDGED** that Defendant Attorney General’s second motion to dismiss, which Plaintiffs do not oppose, be, and hereby is, GRANTED. The first-party claims of Plaintiffs EMW Women’s Surgical Center, P.S.C., and Ernest Marshall, M.D., challenging the constitutionality of the Trigger Ban, KRS 311.772, are DISMISSED WITHOUT PREJUDICE.

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CHIEF JUDGE MITCH PERRY

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

*Tendered by:*

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