

043133/19344/MHW/REN/SLB

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

JOHNNY JONES,

Plaintiff,

v.

WEXFORD HEALTH SOURCES, INC. and
DR. MARSHALL JAMES,

Defendants.

Case Number 17 cv 8218

Honorable Mary M. Rowland

DEFENDANTS', WEXFORD HEALTH SOURCES, INC. AND DR. MARSHALL JAMES, MOTION FOR ENTRY OF RULE 54(b) ORDER OR, IN THE ALTERNATIVE, TO DISMISS

Defendant, WEXFORD HEALTH SOURCES, INC. (“Wexford”) and DR. MARSHALL JAMES (“Dr. James”) (collectively “Wexford Defendants”), by and through their attorneys, Matthew H. Weller, Ronald E. Neroda and Sandra L. Byrd of CASSIDAY SCHADE LLP, and for their Motion for Entry of Rule 54(b) Order or alternatively, to dismiss the remaining allegations without prejudice, state as follows:

1. On February 1, 2021 this Court granted the Wexford Defendants’ Motion for Summary Judgment as to Plaintiff’s claims of deliberate indifference leaving as the only issue before this Court the state court claim of medical malpractice. [Dkt. ## 112-113]. Wexford and Dr. James now move pursuant to Federal Rule of Civil Procedure 54(b) for entry of a final judgment in their favor or in the alternative, for this Court to dismiss the remaining allegations without prejudice.

2. Federal Rule of Civil Procedure 54(b) permits entry of a final judgment when: (1) the action involves multiple parties or multiple claims for relief; (2) the order sought to be certified finally decided the rights and liabilities of a party or claim; and, (3) the district court

determines that there is no just reason to delay certification of the order. Fed. R. Civ. P. 54(b); *Local P-171, Amalgamated Meat Cutters and Butcher Workmen of North America v. Thompson Farms Co.*, 642 F.2d 1065, 1069–72 (7th Cir. 1981). Determination as to multiplicity and finality are non-discretionary. *Id.* at 1069. The third determination, no just reason for delay, is discretionary. *Id.* at 1071.

3. The first two requirements of Rule 54(b), multiplicity of parties and claims, are satisfied in this case. Wexford and Dr. James are the only defendants in this matter and, following this Court’s February 1, 2021 ruling on their Motion for Summary Judgment, the only claim remaining before this Court is the Illinois state law claim of medical malpractice. [Dkt. ## 112-113].

4. Likewise, there is no just reason to delay certifying the order as it relates to the deliberate indifference claims—finality for Wexford and Dr. James will allow the remaining state law claims in this matter to be resolved in State court, which is the preference under the caselaw. *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966).

5. Alternatively, this Court should dismiss the remaining State law claims without prejudice as an exercise of this Court’s discretion. 28 U.S.C. § 1367(c)(3).

6. As a general rule, when all federal claims are dismissed before trial, the district court should relinquish jurisdiction over pendent state law claims rather than resolving them on the merits. *United Mine Workers of Am. v. Gibbs*, 383 U.S. at 726.

7. As such, this Court should either enter an order pursuant to Federal Rule of Civil Procedure 54(b) or dismiss the remaining allegations without prejudice.

WHEREFORE, Defendants, WEXFORD HEALTH SOURCES, INC. and DR. MARSHALL JAMES, request that this honorable Court enter a “final order” pursuant to Federal

Rule of Civil Procedure 54(b) or, alternatively, dismiss this matter without prejudice pursuant to this Court's discretion under 28 U.S.C. § 1367(c)(3) and for such other relief as this Court deems just and proper.

Respectfully submitted,

WEXFORD HEALTH SOURCES, INC. and DR.
MARSHALL JAMES

By: Sandra L. Byrd

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CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2021 I electronically filed the foregoing document with the clerk of the court for Northern District of Illinois, Eastern Division, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of E-Filing” to the attorneys of record in this case.

/s/ Sandra L. Byrd

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