

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

RANDOLPH S. RENARD and CAROL A. RENARD,	: NO. 15 – 00,455
Plaintiffs	:
vs.	:
	: CIVIL ACTION
DR. SAM STEA, DR. ERIC ADAMS, WILLIAMSPORT	:
REGIONAL MEDICAL CENTER, THE WILLIAMSPORT	:
HOSPITAL and SUSQUEHANNA REGIONAL HEALTHCARE	:
ALLIANCE,	: Motion for
Defendants	: Summary Judgment

**OPINION AND ORDER**

Before the Court are motions for summary judgment, filed by Defendant Dr. Sam Stea on June 14, 2016, and by the remaining defendants on June 17, 2016. Argument on the motions was heard September 14, 2016.

Both motions assert that Plaintiffs cannot carry their burden of production as no expert report has been produced in this complex medical malpractice case.<sup>1</sup> At the time of argument, Plaintiffs produced an expert report and thus the argument focused on whether Plaintiffs should be permitted to use the report as evidence and call the witness at trial; Defendants strenuously object to such as the production of the report is well past the deadline previously set for such.

This matter began when suit was initiated in Northumberland County on May 16, 2014. After a Complaint filed August 11, 2014, preliminary objections to venue resulted in the matter being transferred to Lycoming County by Order dated December 17, 2014. An amended complaint was filed February 17, 2015, and preliminary objections to that complaint were addressed by Order dated April 2, 2015. Plaintiffs were directed to file either a second amended complaint or a

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<sup>1</sup> Defendants Susquehanna Regional Healthcare Alliance and Dr. Adams also raise the statute of limitations but in light of this court's disposition, this issue need not be addressed.

notice that they did not intend to file such, within twenty days. By order dated April 23, 2015, that deadline was extended upon agreement of counsel, to May 1, 2015. A second amended complaint was filed April 30, 2015. Preliminary objections to that complaint were addressed by Orders dated June 24, 2015, and defendants were directed to file answers within twenty days. Those answers were filed July 14 and 15, 2015, and Plaintiffs replied to the new matter on August 5, 2015, closing the pleadings nearly fifteen months after the case began.

Pursuant to Lycoming County Local Rule of Procedure L205.2(b)(A)(1)(iii), Plaintiffs should have filed a monitoring notice when they filed their amended complaint, but they did not. When the matter came to the court's attention at the time of the argument on preliminary objections, however, a Scheduling Order was entered June 24, 2015, placing the case on the June 2016 trial term, setting a discovery deadline of March 11, 2016 and requiring Plaintiffs to provide expert reports by January 22, 2016.

When no report was provided by Plaintiffs, Dr. Stea filed a motion for summary judgment on February 26, 2016 and the remaining defendants filed a similar motion on March 1, 2016. Plaintiffs filed a motion for extension of case deadlines on March 8, 2016; difficulties in scheduling depositions was cited as the reason for the request. Defendants opposed the request and the court heard argument on both motions for summary judgment and the motion for extension, on April 22, 2016. By Order dated April 27, 2016, the motion for extension of deadlines was "reluctantly" granted and the motions for summary judgment were dismissed as moot. The court noted that "Plaintiffs' counsel has not sufficiently explained her lack of diligence in this matter" but that it would not "impose the harsh sanction requested by defense counsel" on the clients. The court

specifically “cautioned [Plaintiff’s counsel] that failure to strictly comply with the Second Amended Scheduling Order, issued this date, may result in the entry of summary judgment.” An Amended Scheduling Order was then entered that date, moving the case to the October 2016 term, and setting a discovery cutoff date of July 22, 2016. The Plaintiffs’ expert report deadline was set for May 27, 2016,<sup>2</sup> and Defendants were given until July 8, 2016 to provide responsive reports.

On May 27, 2016, Plaintiffs’ counsel emailed the court and requested until June 24 to provide an expert report. This request was opposed by defense counsel and because “the letter did not identify the progress made to date on the procurement of the report, nor did it contain any reason for further delay”, the request was denied by Order dated June 7, 2016. Forty-two days later, on July 19, 2016, Plaintiffs filed a motion for reconsideration in which they asserted that “despite their best efforts and due to circumstances beyond their control, Plaintiffs were unable to obtain the report of their medical expert, Dr. Akhtar Kahn, by the deadline of May 27, 2016.” Interestingly enough, the email from Dr. Kahn to counsel (in which he states that “it will need some time”), dated April 20, 2016, offers that “if it cannot wait, I will be happy to try to find someone to help you”.<sup>3</sup> Counsel did not explain in the motion why this avenue was not pursued, or any other reason for the delay in seeking the reconsideration. The motion was therefore denied as untimely.

As stated above, the motions for summary judgment were filed on June 14 and 17. Argument was set for August 23, but based on Plaintiffs’ counsel’s request for continuance, was re-scheduled to September 27. When it was realized

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<sup>2</sup> Although Plaintiffs’ counsel assured the court at the argument on April 27, 2016 that two weeks would be sufficient, the court granted her four weeks instead.

<sup>3</sup> See Exhibit B to motion for reconsideration filed July 19, 2016.

that a pre-trial conference was to be held September 14, the argument was moved up to that date. On September 13, the court received another continuance request from Plaintiffs' counsel, and the court's law clerk emailed her to inform her that she could participate in the argument and conference by phone, and also requested that a copy of her pre-trial statement (which should have been filed by September 7 but had not been) and her expert report be faxed to the court.<sup>4</sup> On the morning of the 14<sup>th</sup>, the court received a faxed copy of the pre-trial statement and a report of Akhtar Khan, M.D., dated September 13, 2016. Defendants contend this report, as well as Dr. Kahn's testimony, should be excluded as untimely, and further, that without expert testimony, Plaintiffs cannot meet their burden of production or proof and defendants are entitled to judgment as a matter of law.

As the above summary shows, Plaintiffs have been dragging their feet since this case began. Venue clearly lies in Lycoming County and yet the suit was filed in Northumberland County, causing significant delay. The initial deadlines were not met but Plaintiffs waited for over six weeks past the expert report deadline to seek an extension, and that request was apparently only in response to motions for summary judgment which cited the lack of an expert report. At argument on the motions, Plaintiffs' counsel did not explain her lack of diligence but the court nevertheless allowed her additional time to obtain a report, even though it required moving the trial to the next term, and two years had already elapsed since the initiation of the case. Counsel assured the court she would meet the extended deadline of May 27, but when she did not, she emailed the court, seeking a thirty day extension *without explanation*. Once the request was denied,

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<sup>4</sup> The court did not know whether counsel actually *had* an expert report, but if she did, was requesting a copy.

she waited *forty-two days* to seek reconsideration. She did not file any responses to the motions for summary judgment filed in June, until September 14, the date of argument, three months later.<sup>5</sup> The expert report provided on September 14, if accepted, would require moving the trial yet again, to the next trial term, in February 2017, to allow Defendants an opportunity to respond with their own expert reports.

A trial scheduled for February 2017 would mean that this matter has been pending against defendants for nearly three years, and would require them to defend against allegations nearly five years old. Not only does this constitute prejudice to the defendants, it also represents a significant waste of the court's time and resources. Therefore, the court believes that preclusion of the expert's report and testimony is appropriate under the circumstances of this case, which are strikingly similar to those in Kurian v. Anisman, 851 A.2d 152 (Pa. Super. 2004). There, the Superior Court upheld the trial court's preclusion of an expert and grant of summary judgment to the defendants in a medical malpractice action, where the plaintiffs' expert report was not provided until three months after the deadline, and in response to motions for summary judgment. The plaintiffs argued that they should be allowed to produce the report as a "supplement to the record" under the rules applicable to summary judgment procedures, but the Court agreed with the trial court that even though the response to summary judgment may be timely, to allow the report at that late date would again delay the trial and "disrupt the efficient and just administration of justice and would send a blatant message that case management deadlines are meaningless". Id. at 162. The Court stated:

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<sup>5</sup> The original date of argument had been moved at Plaintiffs' counsel's request.

While our Supreme Court has made clear the fact that local rules, such as Philadelphia's case management system, must take a backseat to our Rules of Civil Procedure, these deadlines are far from meaningless. They are court orders. When these deadlines are violated with impunity, as was done by the plaintiffs in this case, the abusing party must be prepared to pay the consequences. Usually the consequences are less than what occurred here, an order which effectively dismisses the lawsuit. Yet, when the other party suffers prejudice because of the unjustified delay, this result is proper and is in accordance with Pennsylvania's Rules of Civil Procedure.

Id. In the instant case, the expert report was not even a timely response to the motions for summary judgment, and, produced at such a late stage in the proceedings, it must be excluded. To do otherwise would “send a blatant message that case management deadlines are meaningless”.

**ORDER**

AND NOW, this            day of September 2016, for the foregoing reasons, Defendants’ motions for summary judgment are GRANTED. Judgment is hereby entered against Plaintiffs and in favor of all Defendants.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Mary Elizabeth Bogan, Esq., Bogan Law Group, LLC  
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