

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

BONNIE BOSTON and SYLVIA WALLACE,)
on behalf of themselves and all others)
similarly situated,)
Plaintiffs,)
v.)
HOSPITAL HOLDINGS, INC.; UNITED)
FLORALA, INC. d/b/a Florala Memorial)
Hospital;)
Defendants.)

Civil Action No. 2:14cv240-WHA

(wo)

ORDER

This cause is before the court on a Motion to Dismiss for lack of personal jurisdiction (Doc. #38), filed by Defendant Hospital Holdings, Inc. The Plaintiffs have filed a response in which they state that they do not oppose a dismissal of Defendant Hospital Holdings, Inc. without prejudice, each party to bear their own costs. The Plaintiffs apparently concede the lack of personal jurisdiction, and indicate an intention to re-file in the United States District Court for the Eastern District of Tennessee.

Hospital Holdings, Inc. has replied to the Plaintiffs’ response, stating that it ought to be awarded fees and costs as a prevailing party, citing a court case from outside of this circuit awarding fees and costs where a WARN Act claim was withdrawn. *See In re Arrow Transportation Co. of Del.*, 224 B.R. 457 (D. Ore. 1998). That case, however, did not involve a dismissal for lack of jurisdiction.

This court finds that a dismissal without prejudice for lack of personal jurisdiction is not sufficient to entitle Hospital Holdings, Inc. to fees and costs as a prevailing party. *Cf. Davis v. Jackson*, 776 F. Supp. 2d 1314, 1318 (M.D. Fla. 2011) (finding that dismissal of claims based on

jurisdictional basis did not render the defendant a prevailing party under the Clean Water Act).

Therefore, it is hereby ORDERED

that the Motion to Dismiss (Doc. #38) is GRANTED and Hospital Holdings, Inc. is DISMISSED without prejudice for lack of subject matter jurisdiction.

The Plaintiffs and Hospital Holdings, Inc. are to bear their own costs.

Done this 18th day of September, 2014.

/s/ W. Harold Albritton
W. HAROLD ALBRITTON
SENIOR UNITED STATES DISTRICT JUDGE