

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

JAMES TODD and
VENDA LEE TODD

PLAINTIFFS

v.

Case No. 4:09CV00336 JLH

D & D FOODS, INC. d/b/a MCDONALD'S;
and MCDONALD'S CORPORATION

DEFENDANTS

ORDER

James Todd and Venda Lee Todd have filed a motion to dismiss without prejudice pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure. Rule 41(a)(2) provides, in pertinent part, "Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper." Rule 41(a) does not apply here, so plaintiffs may dismiss this action only pursuant to court order.

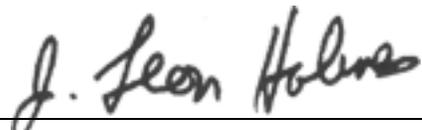
In considering whether to grant a motion to dismiss pursuant to Rule 41(a)(2), a court should take into consideration: "(1) the defendant's effort and the expense involved in preparing for trial, (2) excessive delay and a lack of diligence on the part of the plaintiff in prosecuting the action, (3) insufficient explanation of the need to take a dismissal, and (4) the fact that a motion for summary judgment has been filed by the defendant." *Paulucci v. City of Duluth*, 826 F.2d 780, 783 (8th Cir. 1987). "A party may not dismiss simply to avoid an adverse decision or seek a more favorable forum." *Cahalan v. Rohan*, 423 F.3d 815, 818 (8th Cir. 2005).

Three of the factors listed above are present in this case. The discovery deadline was March 19, 2010. The defendants have responded and stated that they have completed discovery, located the witnesses necessary for trial, and prepared a motion for summary judgment, which in fact

was filed shortly after the motion to dismiss. Thus, the defendants have expended substantial effort and expense in preparing for trial. Moreover, the plaintiffs offer no explanation of the need to take a dismissal. In the absence of any explanation as to the need for taking a dismissal, it appears likely that the plaintiffs seek to dismiss the case in order to avoid an adverse decision or to seek a more favorable forum.

This case is ripe for a decision on the merits. Discovery is or should be complete. A summary judgment motion has been filed. Trial is scheduled to be held in three months. The defendants have expended considerable time and expense in preparing for trial and in preparing a motion for summary judgment. The plaintiffs have offered no explanation as to why they need to dismiss the case. *Cf. Beavers v. Bretherick*, 227 F. App'x 518 (8th Cir. 2007). The motion to dismiss without prejudice is DENIED. Document #30.

IT IS SO ORDERED this 7th day of April, 2010.



J. LEON HOLMES
UNITED STATES DISTRICT JUDGE