

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION

HAROLD BRAZEAL

PLAINTIFF

v.

Case No. 5:12-CV-05201

SCOTT COOPER, M.D.; and ORTHOPAEDIC  
CLINIC, LTD d/b/a OZARK ORTHOPAEDIC  
AND SPORTS MEDICINE CLINIC, LTD d/b/a  
OZARK ORTHOPAEDICS

DEFENDANTS

**ORDER**

Currently before the Court are Plaintiff's motion to amend the complaint and continue trial, or, in the alternative, to voluntarily dismiss the case (Doc. 101); Plaintiff's brief in support (Doc. 102); and Defendants' response (Doc. 103).

Defendants advise the Court that they object to allowing Plaintiff to amend his complaint to add new defendants and claims less than a week before trial of this matter is set to begin. Federal Rule of Civil Procedure 15(a)(2) provides that at this late stage in the litigation, a party may amend its pleadings only with the opposing party's permission or with the court's leave. Considering the procedural posture of this case, the Court finds that granting leave to amend and continuing trial are not in the interests of justice. The deadline for amending pleadings passed long ago in this matter, and the Court observes that the parties were prepared to go to trial more than a month ago, on October 21, 2013. However, shortly before trial was to commence, the Court was obligated to reset the trial date in order to accommodate a criminal matter that took precedence. The Court then reset the trial for the next available date on the Court's calendar, the week of December 9, 2013, which is now only six days away. As of today's date, the parties have submitted their pretrial disclosure

sheets, disclosed their respective witnesses, and the Court has ruled on all motions in limine. It appears that Plaintiff's "discovery" of the new claims and defendants he seeks to add was occasioned by a last-minute deposition of a fact witness. Under the circumstances, therefore, and considering the time and expense Defendants have incurred in preparing for trial, the Court will not permit amendment of the complaint or a continuance of the trial at this time.

With regard to Plaintiff's alternate request that the case be voluntarily dismissed pursuant to Rule 41(a)(2), it appears Defendants have no objection. Accordingly, the case will be dismissed without prejudice, with the parties to bear their own costs and fees. Should Plaintiff re-file his claims in either federal or state court, Defendants may at that time seek payment, pursuant to Federal Rule of Civil Procedure 41(d)(1), of any duplicative costs, fees, or expenses incurred.

IT IS THEREFORE ORDERED that Plaintiff's motion to amend the complaint and continue trial, or, in the alternative, to voluntarily dismiss the case (Doc. 101) is GRANTED IN PART AND DENIED IN PART. Plaintiff's request for leave to amend the complaint and continue trial is DENIED, while his request to voluntarily dismiss the case pursuant to Federal Rule of Civil Procedure 41(a)(2) is GRANTED. Plaintiff's complaint is hereby DISMISSED WITHOUT PREJUDICE. All other pending motions are DENIED AS MOOT.

IT IS SO ORDERED this 3rd day of December, 2013.

*P. K. Holmes, III*

P. K. HOLMES, III  
CHIEF U.S. DISTRICT JUDGE