

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
HOT SPRINGS DIVISION

MARTHA MCKEE, as administratrix of  
the estate of Ralph Fantcone

PLAINTIFF

v.

No. 6:17-CV-06011

CORRECT CARE SOLUTIONS, et al.

DEFENDANTS

**ORDER**

Before the Court is Plaintiff's motion (Doc. 28) to dismiss her case without prejudice. Defendants have filed a response (Doc. 33) in opposition. Plaintiff seeks dismissal under Federal Rule of Civil Procedure 41(a)(2). Plaintiff has responded to Defendant's pending motion for summary judgment, correctly describing it as premature and pointing out that Defendant has failed to show it is entitled to judgment as a matter of law. There is no indication that Plaintiff seeks voluntary dismissal for an improper purpose. The discovery deadline has not yet passed, but some fact discovery has occurred. Dismissal without prejudice will not result in a waste of judicial time and effort. Defendant has expended some time, effort, and resources in defending this action, and if dismissal were without prejudice, Defendant would face the threat of future litigation. This identified prejudice is overstated. "Courts generally will grant [Rule 41(a)(2)] dismissals where the only prejudice the defendant will suffer is that resulting from a subsequent lawsuit." *Paulucci v. City of Duluth*, 826 F.2d 780, 782 (8th Cir. 1987). Further, should a subsequent lawsuit be filed in federal court, the Court can require Plaintiff to pay all or part of the costs of this action. Fed. R. Civ. P. 41(d).

IT IS THEREFORE ORDERED that Plaintiff's motion to dismiss (Doc. 28) is GRANTED and this case is DISMISSED WITHOUT PREJUDICE. The motion for summary judgment (Doc. 25) is DENIED AS MOOT.

IT IS SO ORDERED this 16th day of January, 2018.

*/s/ P. K. Holmes, III*

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