

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION**

MATTHEW SPANOS and DAVID L. MYERS,	)	
as Co-Personal Representatives of the Estate	)	
of JOHN SPANOS, Deceased, Plaintiffs,	)	
	)	CASE NO. 1:23-CV-118-HAB
Plaintiffs,	)	
v.	)	
	)	
WALTER MCNEILL and A.D. TRANSPORT	)	
EXPRESS, INC.,	)	
	)	
Defendants.	)	

**OPINION AND ORDER**

On March 6, 2025, the parties filed a joint stipulation of partial dismissal seeking dismissal of “any and all of Plaintiffs’ claims against A.D. TRANSPORT EXPRESS, INC., except for Plaintiffs’ claim that A.D. TRANSPORT EXPRESS, INC. is vicariously liable for the alleged negligence of its employee, WALTER MCNEILL...” (ECF No. 35) (“Stipulation”).

Federal Rule 41(a)(1)(A)(ii), permits a plaintiff to “dismiss an action without a court order by filing ... a stipulation of dismissal signed by all parties who have appeared.” Fed. R. Civ. P. 41(a). The Seventh Circuit has explained that Rule 41(a) “does not speak of dismissing one claim in a suit; it speaks of dismissing ‘an action’—which is to say, the whole case.” *Taylor v. Brown*, 787 F.3d 851, 857 (7th Cir. 2015) (quoting *Berthold Types Ltd. v. Adobe Sys. Inc.*, 242 F.3d 772, 777 (7th Cir. 2001)). As such, a Rule 41(a) stipulation that does not dispose of the entire case is improper. *See id.* at 858 n.9. (“The parties indicated that it’s common practice in some district courts in this circuit to allow the voluntary dismissal of individual claims under Rule 41(a). If that is true, we remind judges to use Rule 15(a) instead.”).

The Stipulation filed in this matter is deficient as it makes clear that the dismissal would not dispose of the entire case. In fact, the Stipulation states that a “singular claim against A.D. TRANSPORT EXPRESS, INC. shall remain pending.” (ECF No. 35). According to the Seventh Circuit, Rule 41(a) is not the proper vehicle for dropping individual parties or claims. If Plaintiff desires, instead, to amend the complaint under Federal Rule of Civil Procedure 15(a) to remove claims against A.D. Transport Express, Inc., leave is so granted. Plaintiff shall have fourteen (14) days to file an Amended Complaint consistent with this Order if that is how Plaintiff intends to proceed. Currently, this action remains pending as to all parties.

### **CONCLUSION**

For the reasons stated above, the Stipulation to Dismiss (ECF No. 35), has no effect and will be termed as a pending motion on the Court’s docket.

SO ORDERED on March 12, 2025.

*s/ Holly A. Brady*

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CHIEF JUDGE HOLLY A. BRADY  
UNITED STATES DISTRICT COURT