

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

THE ESTATE OF KATHERINE LYNN
STREAM, by and through its duly
appointed administrator, Susan L.
Stream; SUSAN STREAM, individually
and as legal guardian of MARLEY
ROSE STREAM, a minor; RICKY A.
STREAM, individually and as legal
guardian of MARLEY ROSE STREAM,
a minor,

Plaintiffs,

vs.

PRIMARY URGENT CARE, P.C., a
Nebraska corporation; DR. DARIUSH
GHAFFARI, individually, and as an
agent, employee, and/or representative of
PRIMARY URGENT CARE, P.C.; and
AVERA HEALTH, a South Dakota
corporation, d/b/a AVERA
MCKENNAN HOSPITAL AND
UNIVERSITY HEALTH CENTER,
another South Dakota Corporation,

Defendants.

No. C 11-4082-MWB

ORDER

This case is before me on the November 15, 2011, Motion To Dismiss Pursuant To Federal Rule Of Civil Procedure 12(b)(1) (docket no. 8), filed by original defendants Avera Health d/b/a Floyd Valley Hospital, a South Dakota corporation, and Medical Associates, P.C., a duly owned subsidiary of Avera Health, d/b/a Floyd Valley Hospital, a South Dakota corporation, asserting lack of complete diversity. On November 29, 2011, defendant Dr. Ghaffari filed a Motion To Dismiss Pursuant To Federal Rule Of

Civil Procedure 12(b)(1) (docket no. 11), joining in the motion to dismiss for lack of complete diversity filed by Avera and Medical Associates. Likewise, on December 5, 2011, defendant Primary Urgent Care, P.C., a Nebraska corporation, filed a Motion To Dismiss Pursuant To F. R. Civ. P. 12(b)(1) (docket no. 22), also joining in the motion to dismiss for lack of complete diversity filed by Avera and Medical Associates.

After extensions of time to conduct limited discovery on the diversity issue, the plaintiffs filed a Response/Resistance To Defendants' Motion To Dismiss (docket no. 26). In their Response, the plaintiffs acknowledge that, after a deposition of the current administrator of the Floyd Valley Hospital in LeMars, Iowa, and other investigations, it is now clear that the original Complaint lacked complete diversity of citizenship between all plaintiffs and all defendants, but that the rather convoluted relationships among the defendants made that fact far from clear at the time of filing. The plaintiffs contend that the lack of diversity is solved by the filing of their proffered Amended Complaint, which drops the defendants now known to be non-diverse, that is, Floyd Valley Hospital and Medical Associates, P.C., and properly identifies the Avera defendant as Avera Health, d/b/a Avera McKennan Hospital and University Health Center. The plaintiffs argue that these amendments relate back to the filing of the original Complaint pursuant to Rule 15(c) of the Federal Rules of Civil Procedure.

The defendants filed no replies in further support of their motions to dismiss or otherwise disputing the plaintiffs' contentions that their proffered Amended Complaint resolved the diversity of citizenship issues and relates back to the filing of the original Complaint. Nor did they resist the plaintiffs' Motion For Leave To Amend Complaint (docket no. 27). After Chief Magistrate Judge Paul A. Zoss granted the Motion For Leave To Amend Complaint by Order (docket no. 28), filed February 21, 2012, and the filing of the Amended Complaint (docket no. 29), defendant Primary Urgent Care challenged only certain references to plaintiffs Susan L. Stream and Ricky A. Stream as the natural

grandmothers of Marley Rose Stream in a Motion To Strike Pursuant To F.R.C.P. 12(f) (docket no. 30), filed February 27, 2012. Judge Zoss granted that Motion To Strike by Order (docket no. 35), filed March 6, 2012, and granted the plaintiffs leave to file an amended complaint by March 16, 2012.

Thus, it appears that the parties all now agree that the original Complaint (docket no. 2) lacked diversity jurisdiction, but that lack of diversity jurisdiction has been cured by the filing of the Amended Complaint (docket no. 29). It also appears that the current defendants do not challenge relation back of the Amended Complaint to the filing of the original Complaint.

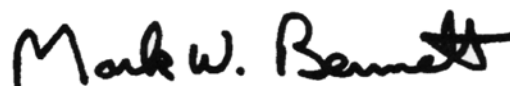
THEREFORE,

1. Original defendants Floyd Valley Hospital and Medical Associates, P.C., are **dismissed**, because they were not included in the Amended Complaint (docket no. 29); and

2. The November 15, 2011, Motion To Dismiss Pursuant To Federal Rule Of Civil Procedure 12(b)(1) (docket no. 8), filed by original defendants Avera Health d/b/a Floyd Valley Hospital and Medical Associates, P.C.; the November 29, 2011, Motion To Dismiss Pursuant To Federal Rule Of Civil Procedure 12(b)(1) (docket no. 11), filed by defendant Dr. Ghaffari; and the December 5, 2011, Motion To Dismiss Pursuant To F. R. Civ. P. 12(b)(1) (docket no. 22), filed by defendant Primary Urgent Care, P.C., are **denied as moot**, in light of the dismissal of non-diverse defendants and the filing of the Amended Complaint (docket no. 29).

IT IS SO ORDERED.

DATED this 7th day of March, 2012.



MARK W. BENNETT
U. S. DISTRICT COURT JUDGE
NORTHERN DISTRICT OF IOWA