

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

LOU K. JOHNSON and)
 CLIFFORD E. JOHNSON,)
)
 Plaintiffs,)
)
 v.)
)
 DR. CHRISTINE FISHER, et al.,)
)
 Defendants.)
)
 _____)

Case No. 10-1219-JWL

ORDER

1. Plaintiffs filed this action pro se on July 6, 2010, against three doctors seeking damages for medical expenses incurred. None of the defendants has been served with process. As it appeared from the complaint that all parties were Kansas residents, on July 12, 2010, the Court ordered plaintiffs to show cause why the action should not be dismissed for lack of subject matter jurisdiction (Doc. # 5). Plaintiffs' response did not establish either a federal question or diversity of citizenship; therefore, on August 3, 2010, the Court issued an order dismissing the action for lack of subject matter jurisdiction (Doc. # 9).

2. Plaintiffs have now retained counsel, who has filed a motion to alter or amend the judgment of dismissal (Doc. # 12). Plaintiffs concede that the Court does not have jurisdiction over this action. Nonetheless, plaintiffs seek to re-open the case to allow them to effect service of process, so that they may take advantage of the Kansas

savings statute in a subsequent suit. Plaintiffs represent that they would dismiss the re-opened suit once service is effected.

3. The Court **denies** the motion. Plaintiffs concede that this Court lacks jurisdiction, and without jurisdiction, the Court is powerless to act. *See Cunningham v. BHP Petroleum Great Britain PLC*, 427 F.3d 1238, 1245 (10th Cir. 2005) (“Simply put, once a federal court determines that it is without subject matter jurisdiction, the court is powerless to continue.”) (quoting *University of S. Ala. v. American Tobacco Co.*, 168 F.3d 405, 410 (11th Cir. 1999)). Plaintiffs have provided no authority that would sanction the relief they seek.

IT IS SO ORDERED.

Dated this 27th day of September, 2010, in Kansas City, Kansas.

s/ John W. Lungstrum
John W. Lungstrum
United States District Judge