Maria Jongebloed Holden v. Novartis Pharmaceuticals Corporation Doc. 47

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MARIA JONGEBLOED HOLDEN	CIVIL ACTION
VERSUS	NO. 11-1098
NOVARTIS PHARMACEUTICALS CORPORATION	SECTION "C" (3)

ORDER AND REASONS

This matter comes before the Court on motion for substitution of plaintiff and motion to dismiss filed by the defendant, Novartis Pharmaceuticals Corporation. Having considered the record, the memoranda of counsel and the law, the Court has determined that substitution should be allowed for the following reasons.

The plaintiff, Maria Jongebloed Holden, died on March 4, 2012. The record reflects that the first suggestion of the death of was made on April 16, 2012, in a joint motion to continue telephonic scheduling conference. Rec. Doc. 36. Notice of suggestion of death pursuant to Rule 25 was filed on May 30, 2012, the day before the reset scheduling conference. Rec. Docs. 37, 38. That conference was canceled and the Court issued an order that any motion to substitute be filed by July 2, 2012. Rec. Doc. 39. Both the plaintiff's motion for substitution and the defendant's motion to dismiss were filed on July 3, 2012. Rec. Docs. 40, 41.

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Under Fed. R. Civ. P. 25(a), "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party ... If the motion [to substitute] is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." Although the motion for substitution was filed one day beyond the Court-imposed deadline, there is no dispute that it was filed well within the 90 day period set forth in Rule 25(a), regardless of whether the Court considers as the triggering event either the April 2012 joint motion to continue telephonic scheduling conference or the May 2012 suggestion of death. In addition, no prejudice to the defendant can be shown.

Accordingly,

IT IS ORDERED that the motion for substitution of plaintiff is GRANTED. Rec. Doc. 40.

IT IS FURTHER ORDERED that the motion to dismiss filed by Novartis Pharmaceuticals Corporation is DENIED. Rec. Doc 41.

New Orleans, Louisiana, this 30th day of July, 2012.

HELEN G. BERRIGAN
UNITED STATES DISTRICT COURT