

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JULIE C. TREADWAY, ET AL.

CIVIL ACTION

V.

NO. 11-2965

STATE FARM MUTUAL
AUTOMOBILE INSURANCE CO.

SECTION "F"

ORDER AND REASONS

Before the Court is the defendant's Rule 41(b) motion to dismiss for failure to prosecute. For the following reasons, the motion is GRANTED.

I.

This is a motion to involuntarily dismiss the plaintiffs' claims for the plaintiffs' failure to prosecute.

On May 16, 2013, the Court held a status conference with counsel and administratively closed the case pending resolution of state criminal proceedings against parties and key witnesses involved in this lawsuit. During the more than three years that have passed since staying this case, the Plaquemines Parish District Attorney has decided not to file or pursue state charges, which were the basis for staying the case in this Court.

The defendant now moves the Court to involuntarily dismiss this lawsuit because reopening would prejudice the defendant. The defendant argues that it would be an uphill battle if the case were to be reopened because witnesses' memories, evidence, and

testimony are not as readily available and would be tarnished because of the unexplained delay.

In the plaintiffs' untimely response¹ to the defendant's motion, the plaintiffs contend that the case has not been abandoned. The plaintiffs' brief response rests on the Court's Order staying the case in 2013, which stated that either party could move to reopen the case. The plaintiffs offer no explanation as to why the case has been abandoned for over three years, and the opposition does not address any of the defendant's concerns about the prejudice that could result because of the failure to prosecute.

The Fifth Circuit has held that "only an 'unreasonable delay' will support a dismissal for lack of prosecution." Ramsay v. Bailey, 531 F.2d 706, 708 (5th Cir. 1976). The plaintiffs' untimely and uninformative opposition indicates an "unreasonable delay." The plaintiffs offered no helpful explanation to inform the Court and the defendant on whether there is a good cause for the delay or whether this failure to prosecute results in prejudice. As such,

¹ Local Rule 7.5 of the Eastern District of Louisiana requires that memoranda in opposition to a motion be filed no later than eight days before the noticed submission date. The defendant filed this motion to dismiss on December 2, 2016 and noticed it for submission on February 22, 2017. The plaintiffs untimely filed an opposition on February 22, 2017, more than two months after the motion was filed and on the noticed submission date. The opposition indicated no explanation for this unreasonable delay.

dismissal under Rule 41(b) of the Federal Rules of Civil Procedure
is appropriate.

New Orleans, Louisiana, February 22, 2017



MARTIN L. C. FELDMAN
UNITED STATES DISTRICT JUDGE