

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

MATTHIAS FRANCOIS

CIVIL ACTION

VERSUS

NO. 14-338

JEFFERSON PARISH, ET. AL

SECTION: "C" (5)

ORDER AND REASONS

Before the Court is a Motion for Summary Judgment filed by the plaintiff, Matthias Francois. Rec. Doc. 17. Having considered the record, the memorandum of the plaintiff, the defendant's opposition, and the law, the Court has determined that the Motion for Summary Judgment is DENIED for the following reasons. In the plaintiff's Motion for Summary Judgment there is also a request that one of the defendants, Rafael Salcedo, be dismissed. Rec. Doc. 17. Accordingly, this motion will also be construed as a motion for voluntary dismissal under Rule 41 of the Federal Rules of Civil Procedure. Having considered the record, the memorandum of the plaintiff, and the law, the Court has determined that the Motion for Voluntary Dismissal is GRANTED for the following reasons.

FACTUAL SUMMARY

On February 13, 2014, the plaintiff filed a complaint against Dr. Rafael F. Salcedo, Dr. Richard W. Richoux and Jefferson Parish, Louisiana. Rec. Doc. 3. In his complaint, the plaintiff seeks damages and the costs of a medical review panel resulting from alleged medical malpractice committed by the defendants. *Id.* at 1-2. On April 9, 2014, the plaintiff filed the

Motion for Summary Judgment at issue. Rec. Doc. 17. On April 29, 2014, Dr. Richard W. Richoux filed an opposition to the plaintiff's Motion for Summary Judgment. Rec. Doc. 21. Subsequently, on May 23, 2014, Jefferson Parish filed a Motion for Extension of Time to Answer or Otherwise Plead. Rec. Doc. 24. To this date, no answer or any other pleading has been filed by Jefferson Parish or Dr. Rafael Salcedo.

ANALYSIS

In his Motion for Summary Judgment and accompanying documents, the plaintiff restates the claims in his original complaint, namely that he was misdiagnosed during his court-ordered mental competency evaluation. Rec. Docs. 17, 17-1, 17-2. Rule 56 of the Federal Rules of Civil Procedure states: "The Court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56. A factual dispute precludes summary judgment when the evidence would allow a reasonable jury to return a verdict for the nonmoving party. *Hunt v. Rapides Healthcare Sys. LLC*, 277 F.3d 757, 762 (5th Cir.2001). Because there are genuine issues as to material facts regarding the plaintiff's medical diagnosis, summary judgment cannot be granted in this case.

In the motion at issue, the plaintiff also requests to remove Rafael Salcedo as a defendant. Rec. Doc. 17 at 1. Therefore, the motion will be construed as a motion for voluntary dismissal under Rule 41 of the Federal Rules of Civil Procedure. Rule 41 provides that a plaintiff may voluntarily dismiss a defendant without a court order if the notice of dismissal has been filed before the opposing party serves either an answer or a motion for summary judgment. Fed.R.Civ.P. 41(a)(1)(A). Generally, "motions for voluntary dismissal should be freely granted unless the non-moving party will suffer some plain legal prejudice other than the mere prospect

of a second lawsuit.” *Elbaor v. Tripath Imaging, Inc.*, 279 F.3d 314, 317 (5th Cir.2002). Because Dr. Salcedo has not yet filed an answer or a motion for summary judgment, and there is no apparent prejudice to him, the Motion for Voluntary Dismissal will be granted.

Accordingly,

IT IS ORDERED that the plaintiff's Motion for Summary Judgment is DENIED. Rec. Doc. 17. IT IS FURTHER ORDERED that the plaintiff's Motion for Voluntary Dismissal is GRANTED.

New Orleans, Louisiana, this 15th day of August, 2014.


UNITED STATES DISTRICT JUDGE