

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION

MATTHEW THEISEN, et al., )  
Plaintiffs, )  
vs. ) Case No. 1:13 CV 32 CDP  
STODDARD COUNTY, et al., )  
Defendants. )

## **MEMORANDUM AND ORDER**

This action is before me on two motions to dismiss filed by the defendants.

The defendants seek to dismiss this case with prejudice because the plaintiffs failed to comply with my order directing the plaintiffs to file a second amended complaint. *See Rule 41(b), Fed. R. Civ. P.* (“If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it.”) The plaintiffs did not, as ordered, file the amended complaint by the court-ordered deadline on July 18, 2013. Unfortunately, this was because their counsel had died abroad a week before the deadline, on July 11, 2013. (*See Doc. 67-1.*)

In light of the death of plaintiffs' counsel, I stayed this case for several months so plaintiffs could seek a new attorney. They have now secured counsel, and I have lifted the stay. Because their failure to comply with my court order was

entirely involuntary, *see Rodgers v. Curator of Univ. of Mo.*, 135 F.3d 1216, 1219 (8th Cir. 1998), it would not be interest of justice to dismiss this case.

Accordingly,

**IT IS HEREBY ORDERED** that defendants' motions to dismiss [#43, #45] are denied.

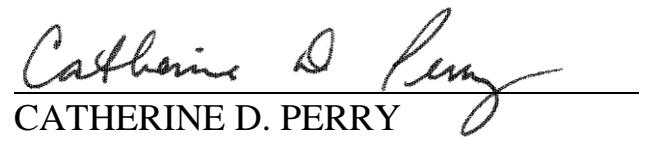
**IT IS FURTHER ORDERED** that:

Plaintiffs must file a second amended complaint no later than **April 18, 2014**. The plaintiffs are advised that the new complaint must comply with the Federal Rules of Civil Procedure, especially Rules 8 and 10, and the Memorandum and Order dated June 27, 2013.

No later than **April 18, 2014**, plaintiffs must also show cause in writing why the two unserved defendants, Missouri Department of Mental Health and Keith Schafer, should not be dismissed for lack of timely service in accordance with Rule 4(m), Fed. R. Civ. P.

Finally, no later than **April 18, 2014**, plaintiffs must file any motion for appointment of next friend, accompanied by supporting affidavits and any other appropriate evidence. As long as the motion for appointment of next friend is accompanied by proper support, the plaintiffs may change their parents' designation to "next friend" on the new amended complaint. Alternatively, if they

no longer wish for their parents to be designated as next friends, the plaintiffs may drop the parents from the new complaint.

  
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CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE

Dated this 24<sup>th</sup> day of March, 2014.