UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF OHIO WESTERN DIVISION AT CINCINNATI

ESTATE OF MARIE CLARK, et al., : CASE NO. 1:15-cv-512

:

Plaintiffs, :

Judge Michael R. Barrett

vs.

:

HAMILTON COUNTY, et al.,

:

Defendants. :

ORDER

This matter is before the Court on the October 27, 2015 Report and Recommendation of the Magistrate Judge (Doc. 5), which recommends denying Plaintiffs' Ex Parte Motion for Order Directing U.S. Marshal's Service to Serve Summons and First Amended Complaint Upon the Defendants Pursuant to Rule 4(c)(3) of the Federal Rules of Civil Procedure (Doc. 3) because the support for the motion was an improper request to proceed *in forma pauperis* as coadministrators purportedly on behalf of the estate. On November 4, 2015, Plaintiffs filed a Notice Withdrawl of In Forma Pauperis Applications (Doc. 6) as well as Objections to the Report and Recommendation (Doc. 7) in which Plaintiffs request that service by a U.S. Marshal be granted as soon as possible given that they withdrew the *in forma pauperis* applications.

Federal Rule of Civil Procedure 4(c)(3) upon which Plaintiffs rely states:

At the plaintiff's request, the court may order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court. The Court must so order if the plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. § 1915 or as a seaman under 28 U.S.C. § 1916.

Plaintiffs' original motion sought service by a U.S. Marshal solely on the basis that such service

is required when a plaintiff is authorized to proceed in forma pauperis. Given the Magistrate

Judge's correct conclusion in the Report and Recommendation as well as the withdrawal of the

in forma pauperis applications, the grounds upon which the request was based no longer exist.

While the Court has the discretion to order service by the U.S. Marshal even when a plaintiff is

not proceeding in forma pauperis, Plaintiffs have provided the Court with no explanation as to

why it should do so in this case.

Accordingly, Plaintiffs' objections (Doc. 7) are **OVERRULED** and the conclusion of the

Report and Recommendation (Doc. 5) is ADOPTED on different grounds. Specifically,

Plaintiffs' Motion (Doc. 3) is **DENIED** on the grounds that the Court is not required to order

service by the U.S. Marshal where, as here, Plaintiffs are not proceeding, and cannot proceed, in

forma pauperis and no reasons have provided at this time that warrant Court's exercise of

discretion to order such service.

IT IS SO ORDERED.

s/Michael R. Barrett

JUDGE MICHAEL R. BARRETT

UNITED STATES DISTRICT COURT

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