

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

SANDRA RILEY and)
MICHAEL RILEY)
Plaintiffs,)
)
v.) C.A. No. N12C-08-211 PEL
)
AMERICAN MEDICAL)
SYSTEMS, INC.,)
Defendant.)

Upon Consideration of Motion to Withdraw as Counsel by Counsel for Plaintiffs
GRANTED

With Respect to the CMO and Trial Scheduling Order
VACATED in part

ORDER

This matter is before the Court on the motion by counsel for Plaintiffs Sandra Riley and Michael Riley to withdraw as counsel. Counsel for Defendant American Medical Systems, Inc. have notified the Court that Defendant does not oppose the motion as long as it does not affect CMO deadlines. Upon consideration of the motion filed by Plaintiffs’ counsel; the opposition in part filed by Defendant’s counsel; the CMO applicable to this case; the Superior Court Rules of Civil Procedure; the Delaware Lawyers’ Rules of Professional Conduct (“DLRPC”); the current status of a national and Delaware states of emergency due to COVID-19; statutory and decisional law; and the entire record in this case, the Court finds as follows:

1. The United States of America and the State of Delaware declared states of emergency due to COVID-19.

2. As a result of the states of emergency, in-person hearings are not taking place in civil matters. While the Court could convene a hearing by teleconference on the pending motion, the Court recognizes that counsel of record are located in many different states and operating under varying limitations and constraints. To decrease the burden, the Court is addressing as many matters on the papers as reasonably possible. Based on the presentation by Plaintiffs' Delaware counsel, the Court is satisfied to rely upon those representations which set forth a valid basis for withdrawal as counsel, consistent with their professional and ethical obligations to their clients and to the Court.

3. This case is governed by the Third Amended Case Management Order No. 17 approved by Order dated February 13, 2020 ("Third Amended CMO"). Trial is scheduled to begin April 13, 2020. However, as a result of the states of emergency, jury trials have been suspended until at least April 15, 2020. The April 13, 2020 date for jury selection in this case is therefore no longer feasible. Nevertheless, several deadlines set forth in the Third Amended CMO had expired prior to March 11, 2020, the date on which Plaintiffs' counsel moved to withdraw.

NOW, THEREFORE, this 17th day of March, 2020:

1. Plaintiffs' Motion to Withdraw as Counsel is hereby GRANTED.
2. Counsel shall comply with their professional and ethical obligations, including as set forth in DLRPC 1.16(d).
3. Counsel of record for Plaintiffs shall notify Plaintiffs Sandra Riley and Michael Riley of this Court Order.
4. Plaintiffs' counsel shall file with the Court a notice that this Order was provided to Plaintiffs Sandra Riley and Michael Riley.
5. Plaintiffs' counsel shall notify the Court of contact information for Plaintiffs Sandra Riley and Michael Riley, including mailing addresses, phone numbers, and e-mail addresses.
6. The trial date of April 13, 2020 is hereby VACATED.
7. Any deadlines set forth in the Third Amended CMO that expired as of March 10, 2020 – the day before Plaintiffs' counsel moved to withdraw – will not be reinstated by the Court without a showing of extraordinary hardship and/or manifest injustice.
8. Any deadlines set forth in the Third Amended CMO that had NOT expired as of March 10, 2020 are hereby vacated.
9. All scheduled hearings and conferences are hereby postponed.

10. Within thirty (30) days of the date of this Order, Plaintiffs Sandra Riley and Michael Riley shall notify the Court in writing of whether they will proceed as self-represented litigants unless new counsel for Plaintiffs files an entry of appearance within 30 days. In the alternative, Plaintiffs may request an extension of this deadline for good cause shown. If Plaintiffs do not contact the Court within 30 days as hereby ordered, that failure may be considered a failure to diligently prosecute this action consistent with Superior Court Civil Rule 41.

11. If Plaintiffs do not contact the Court within 30 days as ordered herein and if new counsel for Plaintiffs does not file an entry of appearance within 30 days, counsel for Defendant American Medical Systems, Inc. may file a motion to dismiss this action for Plaintiff's failure to prosecute the action, pursuant to Superior Court Civil Rule 41(b).

12. In the event Defendant files a motion to dismiss, Plaintiffs will be given the opportunity to respond in writing. Plaintiffs may also request a hearing. If Plaintiffs neither respond nor request a hearing, the Court will rule on any motion to dismiss on the written submissions to the Court, without a hearing.

IT IS SO ORDERED.

Andrea L. Rocanelli
The Honorable Andrea L. Rocanelli