

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

JENNY NICHOLS, individually and)
as Widow and Next of Kin of)
DARRELL D. NICHOLS, Deceased and)
for the Benefit of JORDAN)
WALLACE NICHOLS, Surviving Minor)
Child of DARRELL D. NICHOLS,)
Deceased,)
)
)
Plaintiffs,)

vs.)

No. 02-2561 MaV

)
BAPTIST MEMORIAL HOSPITAL, INC.,)
RAMON UNGAB, M.D., STEVEN J.)
STACK, M.D., MIDUEL H.)
RODRIGUEZ, M.D., LLOYD R.)
THOMAS, JR., M.D., and BARTLETT-)
RALEIGH INTERNAL MEDICINE GROUP,)
P.C.,)
)
Defendants.)

ORDER STAYING DISCOVERY PENDING RESOLUTION OF DEFENDANTS' MOTION
TO DISMISS FOR LACK OF JURISDICTION

Before the court is the March 16, 2004 motion of the defendants, Ramon Ungab, M.D., and Bartlett-Raleigh Internal Medicine Group ("Bartlett-Raleigh"), for a protective order to stay the deposition of Dr. Ungab, scheduled for April 6, 2004, until a pending motion to dismiss for lack of jurisdiction is decided. In the alternative, Dr. Ungab and Bartlett-Raleigh request that the deposition of Miduel Rodriguez, M.D., be completed prior to the staying of Dr. Ungab's deposition, as agreed upon by all counsel

prior to the filing of the motion to dismiss. The motion was referred to the United States Magistrate Judge for determination.

The plaintiff, Jenny Nichols, filed the original complaint for medical malpractice on July 17, 2002 alleging that the defendants, including Dr. Ungab and Bartlett-Raleigh, were negligent in failing to diagnose a dissecting aortic aneurysm in her husband, Darrell Nichols, the decedent. (Compl. at 3-8.) On February 5, 2003, Dr. Ungab and Bartlett-Raleigh were dismissed from the lawsuit by order of voluntary dismissal, and the case proceeded against the remaining defendants. During the course of discovery, Nichols obtained information during the deposition of Dr. Miduel Rodriguez, as well as from written discovery responses and document production, that led her to file a motion to amend the complaint to rename Dr. Ungab and Bartlett-Raleigh back as defendants in this litigation. A summons was reissued to Dr. Ungab and Bartlett-Raleigh on September 25, 2003. As a result, all deadlines under the court's previous scheduling order were suspended and have not been reset.

After being renamed as defendants in this case, Dr. Ungab and Bartlett-Raleigh contacted counsel for Nichols to schedule the depositions of the plaintiff, the plaintiff's expert, and Dr. Rodriguez. (Mot. for Protective Order as to the Depos. of Def. Dr. Ungab at 2.) According to Dr. Ungab and Bartlett-Raleigh, counsel

for both parties agreed that the newly named defendants would take the depositions they desired prior to the deposition of Dr. Ungab. (*Id.* at 2.) Nichols' deposition was taken on February 20, 2004, and the plaintiff's expert's deposition was completed on March, 2, 2004. The deposition of co-defendant Dr. Rodriguez was noticed for March 3, 2004, and Nichols filed a notice to take the deposition of Dr. Ungab on April 6, 2004.

After the deposition of Nichols but before the date Dr. Rodriguez was scheduled to be deposed, Dr. Ungab and Bartlett-Raleigh discovered that the decedent was never a resident of Mississippi. In light of that information, the defendants filed a Joint Motion to Dismiss for Lack of Jurisdiction arguing that complete diversity does not exist in this case. Additionally, the newly named defendants canceled or postponed¹ the noticed deposition of Dr. Rodriguez and asked the plaintiffs to postpone the noticed deposition of Dr. Ungab, which was scheduled for April 6, 2004, until the court decided the motion to dismiss. Nichols refused to postpone Dr. Ungab's deposition and intends to take Dr. Ungab's deposition as scheduled. (Pl.'s Resp. to Def.'s Mot. for

¹ The record is unclear as to whether the Dr. Ungab and Bartlett-Raleigh cancelled or merely asked to postpone Dr. Rodriguez's deposition. (See Mot. for Protective Order as to the Depos. of Def. Dr. Ungab at 3; Pl.'s Resp. to Def.'s Mot. for Protective Order as to the Depos. of Dr. Ungab at 2.)

Protective Order as to the Depos. of Dr. Ungab at 2.) In response, Dr. Ungab and Bartlett-Raleigh filed this motion for a protective order. asking the court to delay the deposition of Dr. Ungab while the motion to dismiss is still pending.

Although Dr. Ungab and Bartlett-Raleigh have asked the court for a protective order with regard to Dr. Ungab's deposition , the court is inclined at this time, pursuant to Rule 26(c), to stay all discovery in this action pending resolution of the defendants' motion to dismiss for lack of jurisdiction. Rule 26(c) of the Federal Rules of Civil Procedure provides in pertinent part that

upon motion by a party or by the person from who discovery is sought, and for good cause shown, the court in which the action is pending . . . may make any order which justice requires to protect a party or person from . . . undue burden or expense, including . . . that the discovery may be had only on specified terms and conditions, including a designation of the time or place.

FED. R. CIV. P. 26(c). Although Rule 26 does not explicitly authorize the imposition of a stay of discovery, "[i]t is settled that entry of an order staying discovery pending determination of dispositive motions is an appropriate exercise of the court's discretion." *Chavous v. Dist. of Columbia Fin. Responsibility & Mgmt. Assistance Auth.*, 201 F.R.D. 1, 2 (D.C. 2001); see also *Sprague v. Brook*, 149 F.R.D. 575, 578 (N.D. Ill. 1993); *Hachette Distrib., Inc. v. Hudson County News Co.*, 136 F.R.D. 356, 358 (E.D.N.Y. 1991) (citations omitted); *Simpson v. Specialty Retail*

Concepts, 121 F.R.D. 261, 263 (M.D.N.C. 1988). Furthermore, Rule 1 states that the Federal Rules of Civil Procedure "shall be construed and administered to secure the just, speedy, and inexpensive determination of every action." FED. R. CIV. P. 1.

Nevertheless, a stay of discovery is not proper in every circumstance. For example, a stay of discovery "is rarely appropriate when the pending motion will not dispose of the entire case." *Chavous*, 201 F.R.D. at 3 (quoting *Keystone Coke Co. v. Pasquale*, No. Civ. A. 97-6074, 1999 WL 46622, at *1 (E.D. Pa. Jan. 7, 1999)). A trial court also "should not stay discovery which is necessary to gather facts in order to defend against [a] motion [to dismiss]." *Id.* (quoting *Feldman v. Flood*, 176 F.R.D. 651, 652 (M.D. Fla. 1997)). Furthermore, a trial court must consider whether the party seeking the discovery will be prejudiced by the delay. See *id.* at 3-4; *Johnson v. N.Y. Univ. Sch. of Educ.*, 205 F.R.D. 433, 434 (S.D.N.Y. 2002) (finding that a stay of discovery was proper where plaintiff failed to demonstrate prejudice by a stay).

In this case, a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction, if granted, would dispose of the entire case before the federal court. On its face, the defendants' motion to dismiss appears to this court as if it has merit and is likely to be granted. Nichols has already filed a response in opposition to the defendants' motion to dismiss and has not argued

that she would be unable to defend that motion in the absence of Dr. Ungab's deposition testimony. Additionally, a stay would not prejudice any party in this case because all discovery and dispositive motion deadlines, as well as the trial date, have been suspended due to the addition of Dr. Ungab and Bartlett-Raleigh as defendants to this litigation.

Accordingly, in the interest of judicial economy, the defendants' request for a protective order is granted in that all discovery in this action is stayed until resolution of the joint motion to dismiss for lack of jurisdiction. The stay will be lifted only upon a showing to the court that particular discovery would be needed to further respond to the motion to dismiss or upon the court's ruling on the motion to dismiss.

IT IS SO ORDERED this 2nd day of April, 2004.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE