

1 STATE OF ILLINOIS)
2 COUNTY OF COOK) SS:

3
4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - LAW DIVISION

5 MICHAEL APPLEBAUM, Special)
6 Administrator of the Estate of)
7 JOSEPH APPLEBAUM, deceased,)
8 Plaintiff,)
9 vs.) No. 05 L 62044
10 RUSH NORTH SHORE MEDICAL CENTER;)
11 RUSH UNIVERSITY MEDICAL CENTER, RUSH)
12 MEDICAL COLLEGE; DR. IBRAHIM)
13 #074/MOD, EMERKA EZE, M.D.; JOSE)
14 VELASCO, M.D.; JOHN DOE DOCTOR #338;)
15 LAWRENCE LAYFER, M.D.; UNIVERSITY)
16 RHEUMATOLOGISTS; ALAN REICH, M.D.;)
17 NORTH SHORE RADIOLOGY; RUSH NORTH)
18 SHORE RADIOLOGY; RUSH NORTH SHORE)
19 MEDICAL CENTER DEPARTMENT OF)
20 RADIOLOGY; NORTH SHORE MRI/CT CENTRE;)
21 LEONARD BERLIN, M.D.; MICHAEL)
22 RACENSTEIN, M.D.; GARY NOVETSKY, M.D.)
23 M. EDELMAN, M.D.; AVRUM EPSTEIN, M.D.)
24 M. SMITH, M.D.; J. ALEXANDER, M.D.;)
C. FISHER, M.D.; CHEST MEDICINE)
CONSULTANTS; VADIM LEYENSON, M.D.,)
Defendants.)

21 REPORT OF PROCEEDINGS before the HONORABLE MARY
22 K. ROCKFORD, Judge of said court, on Thursday, August
23 17, 2006 at 10:30 a.m.

2

1 APPEARANCES:

2

3 MICHAEL APPLEBAUM, M.D., J.D.
P.O. Box 4952

4 Skokie, Illinois 60076
5 Pro se on behalf of the plaintiff;

6 DONOHUE, BROWN, MATHEWSON & SMYTH
7 140 South Dearborn Street - Suite 700
8 Chicago, Illinois 60603
9 MR. CHARLES S. OFSTEIN
appeared on behalf of the defendant,
Rush North Shore Medical Center;

10 ANDERSON, RASOR & PARTNERS
11 55 East Monroe Street - Suite 3650
12 Chicago, Illinois 60603
13 MR. AARON RYAN
14 appeared on behalf of the defendants,
Rush University Medical Center, Rush
Medical College, University Rheumatologists,
Dr. Ibrahim & Lawrence Layfer, M.D.;

15 RUFF, WEIDENAAR & REIDY, LTD.
16 222 North LaSalle Street - Suite 700
17 Chicago, Illinois 60601
18 MS. GIA G. Di LEO
appeared on behalf of the defendant,
Jose Velasco, M.D.;

19 CUNNINGHAM, MEYER & VEDRINE, P.C.
20 111 West Washington Street - Suite 937
21 Chicago, Illinois 60602
22 MR. DANIEL HRONEK
appeared on behalf of the defendant,
Alan Reich, M.D.

23 Reported for
24 LAKE SHORE REPORTING SERVICE, by
Marlene Reilly, RPR

□

1 THE COURT: Applebaum versus Rush North
2 Shore.

3 MR. RYAN: Good morning, Your Honor.
4 Aaron Ryan on behalf of the Rush University Medical
5 Center and about four other entities or people.

6 MR. APPLEBAUM: Good morning, Judge.
7 Mike Applebaum.

8 MR. HRONEK: Dan Hronek for Dr. Reich.
Page 2

9 MS. Di LEO: Gi a Di Leo on behal f of Dr.
10 Vel asco.

11 MR. OFSTEIN: Charli e Ofstei n on behal f
12 of Rush North Shore Medical Center.

13 MR. RYAN: I 'm assumi ng you got the full
14 bri efs?

15 THE COURT: I di d; so, i t's here on the
16 moti on to di smi ss whi ch i s based on Mr. Appl ebaum' s
17 status when he fi led the compl ai nt.

18 MR. RYAN: Correct.

19 THE COURT: You' ve taken the lead on
20 that, ri ght?

21 MR. RYAN: Yes.

22 THE COURT: If you woul d li ke to go
23 ahead.

24 MR. RYAN: Certai nly.

¶ 4

1 Based on my reading of Dr. Appl ebaum' s
2 response bri ef, he' s conced ed that i n December 2005
3 when he fi led thi s sui t and, as we confi rmed through
4 the ARDC, he was on an i nacti ve li cense status whi ch
5 under the Supreme Court Rules i ndi cates that he' s
6 i nel i gi ble to practi ce law on behal f of another. Thi s
7 sui t i s brought on behal f of the estate of Dr.
8 Appl ebaum' s father.

9 The law cl early recogni zes that an
10 estate i s a legal enti ty, and, therefore, when you
11 bring sui t on i ts behal f, you' re doi ng so i n a
12 representati ve capaci ty and must be an acti vel y

13 licensed attorney. I believe the plaintiff has
14 essentially conceded that that is the case because
15 he's recognized the well settled rule that there's a
16 nullity when someone is not licensed to practice law,
17 not actively licensed to practice, and the pleadings
18 should be treated as a nullity because in his response
19 brief he asked the Court to apply the exceptions as he
20 cites the cases to.

21 It is the defendant's position that the
22 cases do not apply in this matter because the unique
23 circumstances set forth in those three cases do not
24 exist here. That unique circumstance is an innocent

¶

5

1 lay person who thought they had retained an actively
2 licensed attorney. Here before us is a man who has
3 earned his JD, did pass the bar, and, therefore, is
4 deemed to know the laws and the rules of Illinois. He
5 then consciously elected to have his status changed
6 from active to inactive and, therefore, is deemed to
7 understand the rule that explicitly states that he's
8 ineligible to practice law on behalf of another.
9 That, as I interpreted the case law, does not
10 constitute the unique circumstances that would unduly
11 punish an innocent lay person who thought they had
12 retained an actively licensed attorney.

13 Here he is the attorney. He was not
14 actively licensed, and he elected to do that after, I
15 believe he puts in line 26, his considered analysis of
16 the law before filing this suit.

17 For those reasons I would ask you to

18 dismiss the complaints and the pleadings as nullities
19 with the exception of Dr. Applebaum's personal
20 complaint set forth in Count IV of the First Amended
21 Complaint at law.

22 THE COURT: Do any of the defendants
23 wish to add anything?

24 MR. HRONEK: Nothing for us.

¶ 6

1 THE COURT: Does the plaintiff wish to
2 respond?

3 MR. APPLEBAUM: If I may, I have a
4 couple things.

5 The first is I have not conceded I was
6 practicing law without a license or representing
7 another when I made my response brief. I said, if
8 somebody construes the facts that way, I believe I was
9 not representing another entity, that the estate of my
10 father and myself are a unity, and there is no
11 distinction as between us. The estate is an empty
12 shell, and I explained those reasons in my response
13 brief.

14 I mentioned four cases, not three, one
15 of which was an overview and analysis of the prior
16 case law which is Colmar, and I will get to that.

17 I have not requested that the exception
18 to the nullity rule be applied in this case unless the
19 Court believes that I was, in fact, doing what
20 defendants say I was doing which I have not conceded.

21 Defendants in their reply brief have

22 mentioned that the only person that's going to be
23 harmed if the Court decides to dismiss the case, and
24 their request to dismiss the case is brought on behalf

0

7

1 of my father's estate's representing my father and my
2 father's issues, not the one brought on behalf of
3 myself solely, they say the only plaintiff would be
4 affected by the dismissal. This, in fact, bolsters my
5 contention that there is no distinction as between us.
6 If doing something to the estate only affects me, then
7 the estate and I are one and the same.

8 I actually have something that, if I may
9 read it, has to do with the fact that, deals with the
10 principles that are underlying any of the reasoning
11 and policy behind the quote/unquote "nullity rule."
12 May I? It's four pages.

13 MR. RYAN: Was this produced to us
14 because I would --

15 MR. APPLEBAUM: No, I just put it
16 together this morning.

17 THE COURT: I mean, you can present your
18 argument using that, but I think it would be better if
19 you don't read it. Is it something that's contained
20 in your written --

21 MR. APPLEBAUM: It's a little different,
22 Judge. If you prefer not --

23 THE COURT: If you want to continue with
24 your argument and use that as your support, you may.

0

1 MR. APPLEBAUM: Yes, I would.

2 The Court's reason and analysis in
3 Janiczek reasoned that "A rigid adherence to precedent
4 would not advance but would, in fact, defeat the
5 purposes of the rule prohibiting representation by
6 non-attorneys."

7 Non-attorney cases with rare exceptions
8 have always involved lay persons who have never
9 qualified to practice law in the state of Illinois.

10 In Pratt-Holdampf the Court said, "We
11 find the risks to individual clients and to the
12 integrity of the legal system inherent in
13 representation by a person who has never qualified to
14 practice law are not present in the instant case."

15 Nor are they present in this case. Not
16 one case that was cited by the defendants provided any
17 reasons for the rule central to the alleged matter at
18 hand in this court right now. The policy is clear the
19 purpose of the rule is, quote, "That rule is intended
20 to protect litigants against the mistakes of the
21 ignorant and the schemes of the unscrupulous and to
22 protect the Court itself in the administration of its
23 proceedings from those lacking in requisite skills,"
24 end quote.

0

1 The cases presented by the defendant,

2 Midwest, Blue, Ratcliff, Ford, and Fruin all involved
3 individuals who were lay persons who were representing

4 others in a court of law with the exception of Fruin.
5 That was an out of state attorney, and Fruin discussed
6 none of the reasons behind its decision making; yet,
7 when Ford was written, which is a Supreme Court case
8 subsequent to Fruin, when Ford discussed the nullity
9 rule, Fruin was shunned, and Fruin has not been
10 followed by any court case except for Blue, and Blue
11 involved a lay person. Even Ford discussed the
12 nullity rule. They only cited those cases that have
13 to do with lay persons representing others.

14 When there was an attorney involved in
15 cases such as Janiczek, McEvers, Pratt-Holdampf, and
16 the case of Colmar, the Courts have always decided in
17 favor of letting the case continue, and there's a
18 trend in the Courts in Illinois. Experience leads to
19 enlightenment that finding harshness of the nullity
20 rule has been a trend in Illinois Courts and has not
21 been applied. Janiczek was decided in '85; McEvers in
22 '91; Pratt in 2003; Colmar in 2003; and Ford reviewing
23 the prior case law in 2005.

24 The cases cited by the defendants were

10

1 from 1984, 1990, 1992, and 2000, with 2000 being
2 Ratcliff, the case involving solely a lay person
3 representing another's interest.

4 The reason the Court's opinions are
5 published is so we can understand the reasoning behind
6 their ruling, and the reasoning here is clear. The
7 dismissal of this case would serve no reasonable

8 purpose and does not, in fact, do anything to further
9 the policy. If punishment is sought, then a shotgun
10 approach causing collateral damage to the litigants is
11 unnecessary. There are more focused means to do that
12 without so harsh an outcome. Dismissal of any type is
13 a disproportionate response in this matter. No policy
14 considerations have been violated. It is contrary to
15 a fair administration of justice.

16 The Supreme Court Rule 756(A)(5) clearly
17 certifies that plaintiff is and has been a licensed
18 and registered attorney throughout the duration of
19 this case. Quote, "An attorney may advise the
20 administrator in writing that he or she desires to
21 assume inactive status and thereafter register as an
22 inactive status attorney."

23 Just quoting Colmar, "Furthermore, in
24 determining whether to apply the general voidance

¶ 11

1 rule in this case, we find significance in the fact
2 that the Courts have created exceptions to the rule
3 even in cases where the representation took place
4 during a court proceeding when a dismissal or voidance
5 would not promote the policy for which the rule was
6 developed."

7 Nor would the policy for which the rule
8 was developed be promoted by dismissing this case in
9 any way, Your Honor.

10 MR. RYAN: Rebuttal?

11 THE COURT: Yes.

12 MR. RYAN: Thank you.

13 First, with regard to the estate being
14 one and the same as Dr. Applebaum, that's legally just
15 incorrect. I mean, it's clear that an estate
16 represents a legal entity separate and distinct from
17 the beneficiaries for that estate, which Dr. Applebaum
18 is; therefore, and, as cited in Ratcliff, a suit for
19 an estate is brought in a representative capacity.

20 This suit was brought on behalf of
21 another. He just discussed the Supreme Court Rule,
22 and that rule about inactive status is very explicit
23 that you are ineligible to practice on behalf of
24 another. Only someone who is actively licensed may do

0 12

1 so.

2 In 2005 in the Ford Motor Credit Company
3 case, our Supreme Court acknowledged that it is a well
4 settled rule that when a pleading is filed by someone
5 not duly licensed, and that means actively licensed,
6 that the pleading is a nullity.

7 I disagree with his interpretation of
8 the cases regarding the exceptions. It is very clear
9 if you look at the facts of those cases that you have
10 an innocent lay person who thought they had retained
11 an actively licensed attorney in Illinois. That
12 simply is not the case here as he has argued. He was
13 an actively licensed attorney who consciously chose to
14 become an inactive licensed attorney before he filed
15 this suit.

16 THE COURT: That's where the facts are

17 not really clear to me. I know that it has been
18 represented that, as of January 2005, he was on
19 inactive status, but I don't know what his status was
20 prior to that time.

21 MR. RYAN: I believe the way the case
22 law reads -- One, I don't know either because his
23 Request To Admit does not acknowledge and that
24 information was not provided to us by the ARDC; but,

13

1 two, under the case law it doesn't matter. It's
2 simply here's a gentleman who bothered to get the
3 education to become a lawyer. He chose to become a
4 lawyer; therefore, as all of us are deemed to know the
5 law and know the rules under the law, he was required
6 to know what the rules were before he filed this suit.
7 He chose to go inactive and, therefore, be ineligible
8 to practice on behalf of another. Because he did
9 that, he takes the risks that come with that.

10 The exception cases require unique
11 circumstance. A conscious decision to not pay another
12 \$140 is not a unique circumstance. It's the harshness
13 of penalizing someone who thought they got an attorney
14 who can represent them. That is the unique
15 circumstance that our cases have found the exception
16 to the well settled rule.

17 MR. APPLEBAUM: May I, Your Honor?

18 THE COURT: You don't get another
19 chance.

20 Anybody else?

21 [No audible response.]

22 THE COURT: I have reviewed all of the
23 written filings in this issue and have carefully
24 considered all of the cases cited by both sides and

14

1 have carefully considered other cases regarding this
2 issue.

3 The complaint in this case was filed on
4 December 1, 2005 and an amended complaint on April 4,
5 2006. The cause of action is for medical malpractice
6 relating to the death of Joseph Applebaum while a
7 patient at Rush North Shore Medical Center.

8 The complaint was filed by Michael
9 Applebaum, son of the decedent. Michael Applebaum is
10 a lawyer who at the time of filing of the complaint
11 was on inactive status. Michael Applebaum is also the
12 special administrator of the estate of Joseph
13 Applebaum. The plaintiff in the caption is listed as
14 Michael Applebaum, Special Administrator of the Estate
15 of Joseph Applebaum. The plaintiff is Michael
16 Applebaum on behalf of the estate of Joseph Applebaum,
17 but there are also some allegations relating to
18 Michael Applebaum in his individual capacity.

19 Count I is titled "A Wrongful Death
20 Allegation." Paragraph 31 of that count alleges that,
21 "Michael Applebaum suffered pecuniary loss and a loss
22 of society as a result of the death of his father."

23 Paragraph 32 states that "The action is
24 brought by Michael Applebaum in his capacity as a

0

1 court appointed special administrator of the estate of
2 the decedent. "

3 Count II is titled "A Survival Action
4 For The Pain and Suffering Suffered By The Decedent. "

5 Count III is titled "Willful and Wanton
6 Conduct For The Death of Joseph Applebaum"

7 Count IV is titled "Intentional
8 Infliction of Emotional Distress," seeks damages
9 resulting from the emotional distress inflicted on the
10 decedent and Michael Applebaum Individually.

11 Count V is titled "Conscious
12 Misrepresentation Involving Risk of Physical Harm" and
13 requests damages for the death of Joseph Applebaum.

14 Count VI is titled "Duty To Act When
15 Defendant Has Created The Danger," and seeks damages
16 for the death of Joseph Applebaum.

17 There are over 20 named defendants.
18 Several motions to dismiss have been filed including
19 this motion to dismiss based on the fact that Michael
20 Applebaum was on inactive status at the time of filing
21 the complaint.

22 The parties appear to agree that Michael
23 Applebaum has received a law degree. The parties are
24 in agreement that in January of 2005 he was on

0

1 inactive status.

2 In his brief in response to the motion
3 to dismiss, Michael Applebaum states that he was

4 admitted to the bar in 1988 and has maintained his
5 Illinois license since then though, quote, "He had not
6 practiced law in any real capacity until his father's
7 death when he took on this matter in December 2005."

8 Michael Applebaum represents in his
9 response to the motion to dismiss that he is the sole
10 beneficiary and that no creditors exist as to the
11 estate of his father.

12 The parties appear to be in agreement
13 that subsequent to the filing of these motions Mr.
14 Applebaum has now regained, either regained or become
15 an active status.

16 In the Ratcliff case, Ratcliff versus
17 Apantaku, a First District case, the Court held that a
18 non-attorney personal representative could not
19 represent the legal interests of the decedent's estate
20 in a pro se capacity in a wrongful death or survival
21 action, and the Appellate Court dismissed the appeal
22 in that case because the plaintiff estate was
23 represented by a non-attorney.

24 It is clear that, therefore, under that

□ 17

1 case that Michael Applebaum, as a non-active lawyer,
2 could not represent the estate in either the wrongful
3 death counts nor in the survival counts.

4 The Ratcliff Court relied on the holding
5 in Blue versus People of the State of Illinois, a
6 Second District case, which held that a non-lawyer
7 could not represent a minor in court and dismissed the

8 appeal and held the trial to be void.

9 These two cases recognize the general
10 rule in Illinois that where proceedings are brought by
11 a non-lawyer on behalf of another those proceedings or
12 actions are void. This voidance rule is still viable
13 in Illinois, however, Courts have found exceptions to
14 the rule and have demonstrated a reluctance to impose
15 the rule because of its harshness in every case.
16 Courts have ruled that dismissal may not be required
17 in every case.

18 Although decided prior to Ratcliff and
19 Blue, the central case for avoiding the harshness in
20 the nullity rule is Janiczek versus Dover Management,
21 a First District case. Neither Ratcliff nor Blue
22 referred to Janiczek. In that case a disbarred
23 attorney signed a complaint with the name of another
24 attorney who had not authorized the use of his

¶

18

1 signature. A licensed attorney later filed an
2 appearance. At the time the plaintiff retained the
3 original attorney, the attorney was not disbarred.
4 The Court said that dismissal with prejudice would be
5 unreasonably harsh against an innocent lay person who
6 never consciously elected to be represented by a
7 layman.

8 In this case Michael Applebaum did
9 choose to proceed to file suit for the estate of his
10 father, and he is the beneficiary of the estate. On
11 one hand, Michael Applebaum, as the person commencing
12 the suit and as representative of the estate and as

13 the sole beneficiary of the estate, are all one and
14 the same. Michael Applebaum argues that this fact
15 mitigates against application of the voidance rule;
16 however, in actuality it may, in fact, argue against
17 application of the innocent litigant exception in
18 Janiczek. By not applying the exception in Janiczek
19 it will lose sight of the fact that it is Joseph
20 Applebaum who is said to have suffered pain and
21 suffering and died as a result of the alleged actions
22 of the defendants. It is his injuries which would be
23 left without recourse if the voidance rule were
24 applied.

¶

19

1 The Court in Fruin, a First District
2 1990 case, did refuse to extend the holding in
3 Janiczek finding that special circumstances did not
4 exist. The plaintiff was represented by a lawyer
5 licensed and with offices in another state. The Court
6 felt that plaintiff should have inquired into the
7 propriety of the attorney to practice in Illinois.

8 The Court in McEvers, a Fourth District
9 case in 1991, refused to follow Fruin, and, as the
10 Court said, critically examined the decision in Fruin.
11 The Court said that most of the cases relied upon by
12 Fruin dealt with voiding judgments and involved
13 corporations represented by non-lawyers.

14 Neither situation is present here. The
15 McEvers Court said that "The rule prohibiting a person
16 from representing other persons unless admitted to the

17 practice of law is to protect litigants against the
18 mistakes of the ignorant and the schemes of the
19 unscrupulous and to protect the Court itself in the
20 administration of its proceedings from those lacking
21 the requisite skill."

22 The filing of the complaint in this case
23 by Michael Applebaum, who has a law degree, is not
24 said to have been disciplined by the Illinois Attorney

□ 20

1 Registration & Disciplinary Commission or other
2 agency, was apparently zealous in his attempt to seek
3 redress for the harm suffered by his father and who
4 has passed the bar in the state of Illinois and is now
5 currently on active status does not raise these
6 concerns.

7 The holding in Pratt-Holdampf
8 distinguishes Blue and Ratcliff and follows Janiczek
9 and McEvers. There a complaint was filed by the
10 special administrator and daughter of the decedent for
11 the wrongful death of the decedent based on alleged
12 medical malpractice. The daughter had consulted with
13 an attorney prior to filing the complaint, and an
14 attorney filed an appearance shortly after the
15 complaint was filed. The Pratt Court held that the
16 nullity rule was not to be applied automatically. The
17 Court found that the risks of representation by a
18 non-attorney were not present.

19 Similarly here the risks are not
20 present.

21 Defendants point out that the viability
Page 17

22 of the nullity rule was recognized recently by the
23 Illinois Supreme Court in Ford Motor Credit, however,
24 the Court there found that the goals of protecting the

□ 21

1 public and ensuring the integrity of the court system
2 which underpin the invocation of the nullity rule are
3 not implicated by the facts in that case. Plus, the
4 Court also recognized that the nullity rule is not to
5 be applied in every case.

6 The plaintiff -- I'm sorry. The
7 defendant has -- I don't know how they were filed or
8 how they were presented, but in my courtesy copies or
9 in the things that I've received are exhibits relating
10 to some proceedings that may or may not be pending
11 before the ARDC. It appears that I received a letter
12 that was written by a defendant seeking the status of
13 Mr. Applebaum's position as an attorney.

14 I also have a response letter that Mr.
15 Applebaum wrote. He indicates in that letter that he
16 sought some type of advice from the ARDC before filing
17 the complaint. I assume that he's trying to present
18 some type of innocence and non-intention on his part
19 by filing the complaint in an inactive status,
20 however, I do not think those exhibits are appropriate
21 for me to rely upon in making my decision, and I have
22 not relied upon them, one, because those proceedings
23 before the ARDC are supposed to be confidential, and,
24 second of all, they are not proper evidence, in any

0

1 event, to be considered here.

2 So, I do not find that the nullity rule
3 should be applied in this case.

4 I know there is one case that considered
5 this. I don't know if the proper procedure is to deny
6 the motion to dismiss or to grant it and allow him to
7 file by the fact that he is now an active attorney. I
8 know there was one case that addressed that.

9 MR. RYAN: I don't know the answer to
10 that question.

11 MR. APPLEBAUM: I recollect the term
12 substitution of attorney, if that helps, from one of
13 the cases, and I believe it was McEvers where Mr.
14 Siedel, the Wisconsin attorney, or perhaps Dohl -- Mr.
15 Dohl was the attorney in the case of Pratt-Holdampf,
16 one of those two. That's how I associated it. I
17 believe it's McEvers.

18 MR. RYAN: Correct.

19 THE COURT: This is the one which
20 concludes, that the Court said "We conclude that the
21 filing was not a nullity, and plaintiff should now be
22 allowed to file an amended complaint either by them or
23 by their Illinois attorney."

24 So, this will make it much clearer. He

0

1 needs to file an amended complaint.

2 MR. RYAN: There are two motions still

3 pending.

4 MR. APPLEBAUM: Does that mean we go
5 through these motions and just file the amended
6 complaint after we've resolved these other issues?

7 THE COURT: Let me just take care of
8 this.

9 I'm going to deny the motion to dismiss
10 based on the argument that the complaint is a nullity,
11 but I'm going to direct that the plaintiff file an
12 amended complaint indicating his said current status
13 as an active attorney.

14 How long do you need to do that? I
15 shouldn't think it would be more than seven days.

16 MR. APPLEBAUM: Okay. May I go back to
17 my prior question? Since we have these outstanding
18 issues, rather than just creating a fire hazard, can
19 we perhaps start going through those and file the
20 amended complaint at that time?

21 THE COURT: No, you don't have a proper
22 complaint. Your complaint needs to be refiled.

23 MR. APPLEBAUM: Okay, Judge, within
24 seven days?

0

24

1 THE COURT: Right.

2 MR. HRONEK: Judge, I would just ask if
3 we can go ahead and adopt at this point our motion to
4 dismiss as our responsive pleading to the upcoming
5 amended complaint?

6 THE COURT: Yes.

7 MR. RYAN: Do we enter the briefing

8 schedules now, or would you like us to come back after
9 the amended complaint is on file because the 622
10 motions are completely briefed but the statute of
11 limitations and motions related to the punitive
12 damages, we had the response brief from plaintiff, and
13 then we filed this motion, so, there still is a reply
14 brief required before a hearing can be put on that.

15 THE COURT: I think we need to set
16 whatever briefing schedule and hearing date.

17 MR. RYAN: Okay.

18 MR. OFSTEIN: In addition, there might
19 be additional 2-615 or 2-619 grounds on the amended
20 complaint as well. I'm just thinking off of the top
21 of my head.

22 THE COURT: Okay. What is the status on
23 the service on all of those complaints? Do you have
24 service on all the defendants?

¶ 25

1 MR. APPLEBAUM: I just recently received
2 information like within the last week or two of the
3 outstanding defendants; so, no, I have not issued
4 anything yet. I have to confirm those were, in fact,
5 good addresses. I don't know if this is helpful, Your
6 Honor, but among the radiologists, one of the problems
7 that we had was trying to figure out precisely --
8 There's nothing in the record to suggest who was doing
9 the reading or anything like that in medical records.
10 We could probably get rid of some defendants if I have
11 an opportunity to do a small amount of discovery.

12 THE COURT: You're really jumping
13 around.

14 MR. RYAN: Their counsel isn't here, and
15 we assume we'll see motions on that.

16 MR. APPLEBAUM: Okay.

17 THE COURT: You know this motion has
18 been denied, and, in making this statement, I'm not
19 trying to undermine my decision, but have you
20 reconsidered going forward without having additional
21 attorneys or a substitute attorney come in?

22 MR. APPLEBAUM: Well, insofar as the
23 plaintiff in Pratt, there are attorneys with whom I am
24 in communication, have been in communication before,

¶ 26

1 during, and after, but not of record.

2 THE COURT: I'm not talking for purposes
3 of just representing the estate, but --

4 MR. APPLEBAUM: I think I understand,
5 and I will give it consideration, but my intention is
6 to continue to pursue this, at least participate in
7 pursuing this.

8 THE COURT: Well, there is a difference
9 between participating in and doing it. Again, I don't
10 want to undermine my decision, but I think you need to
11 step back and see whether or not you need to bring
12 another attorney in.

13 MR. APPLEBAUM: I believe I understand
14 the suggestion, Judge. I will take it under
15 advisement.

16 THE COURT: Okay. Would it be better to
Page 22

17 then give Mr. Applebaum some time to consider that
18 rather than go ahead on the briefing schedule and with
19 the indication there might be some additional motions?

20 MR. OFSTEIN: With respect to that, I
21 would only say I agree we should adopt and incorporate
22 by reference the responsive pleadings that have
23 already been filed, but I don't want to preclude
24 additional filings that may require additional

□

27

1 briefing schedules and/or hearing dates.

2 THE COURT: In other words, you're
3 asking time to answer?

4 MR. OFSTEIN: Consider it.

5 MR. RYAN: I will inform Your Honor,
6 since I'm probably going to be the one writing most
7 of the reply briefs that the next two or three weeks
8 would be very difficult for me to write them; so,
9 from my standpoint it would personally be more
10 convenient --

11 THE COURT: If we waited and give it a
12 status date in what, about 45 days?

13 Are you also asking for aliases against
14 some of these other --

15 MR. APPLEBAUM: I have not pursued any
16 of that since we recently got the information, and I
17 did have this coming up, so, I haven't worked on that
18 substantially.

19 THE COURT: The basic order is you're
20 going to file your amended complaint in seven days,

21 and all motions will be continued. The defendants are
22 allowed to adopt any of the motions previously filed
23 in response to the amended complaint and are given 28
24 days after the seven days to file any additional

□ 28

1 responsive pleadings, and we will come back for status
2 sometime in October.

3 Does that make sense?

4 MR. RYAN: The 7 plus 21 days, 28 days
5 is September 21st, if I'm doing my math right.

6 THE COURT: Okay. So, the beginning of
7 October or mid October.

8 MR. RYAN: I leave that with you.

9 THE COURT: October 3rd or October 18th.

10 MS. DiLEO: The 3rd is fine with me.

11 MR. RYAN: I concur with the 3rd.

12 MS. DiLEO: At 9:30?

13 THE COURT: No, at 9:00.

14 MR. APPLEBAUM: Judge, actually I am out
15 of town and not back until Monday night which is the
16 2nd. May we make that the 18th, please, Your Honor?
17 Is the 18th a Thursday?

18 THE COURT: The 18th is a Wednesday.

19 MR. APPLEBAUM: May we make that the
20 19th, Your Honor?

21 THE COURT: Is the 19th good?

22 MR. HRONEK: That's fine.

23 MR. RYAN: It is.

24 MR. APPLEBAUM: Sorry. I'm out of town.

0

1 THE COURT: That will give you lots of
2 time to consider my suggestion.

3 MR. APPLEBAUM: Thank you.

4

5 [Whereupon, this hearing was concluded.]

6

7

* * * * *

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

0

1 C E R T I F I C A T E

2

3 STATE OF ILLINOIS)
4 COUNTY OF COOK) SS:

5

6

7 I, MARLENE REILLY, RPR, certify that the
8 foregoing is a true and correct transcript of the
9 proceedings before the said Judge on Thursday, August
10 17, 2006.

11 I further certify that I am not a
12 relative or employee or attorney or counsel of any of
13 the parties, or a relative or employee of such
14 attorney or counsel, or financially interested in the
15 action.

16

17

18

19

MARLENE REILLY, RPR

20

21

22

23

24

□