

UNITED STATE DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
CLERKS OFFICE

2003 DEC -9 A 11:52

DANIELLE MOLA,
Plaintiff

vs.

WINN WHEELER, R.N., AMY LIEF,
MARTHA GROVER, MAUREEN PAUL, M.D., and
PLANNED PARENTHOOD LEAGUE OF
MASSACHUSETTS,
Defendants

U.S. DISTRICT COURT
DISTRICT OF MASS.

No. 02-11195GAO

JOINT MOTION TO REMAND CASE TO SUPERIOR COURT

Now come the defendants, Winn Wheeler, R.N., Maureen Paul, M.D. and Planned Parenthood League of Massachusetts and the plaintiff, Danielle Mola, and move for an order allowing the case to remain in Suffolk Superior Court where it was remanded for purposes of a Medical Malpractice Tribunal, pursuant to M.G.L. 231, §60B, only.

As grounds for said motion, the parties state the following:

1. This is a medical malpractice action in which the plaintiff alleges that the defendants were negligent in their care and treatment of her resulting in the delayed diagnosis and treatment of her cervical cancer.

2. This case was originally filed in Suffolk Superior

Court on or about December 11, 2001.¹ On June 14, 2002, the United States of America on behalf of two of the original defendants, Colleen Pinch, N.P. and Joseph M. Smith Health Center, filed a Notice of Removal of the action to the United States District Court for the District of Massachusetts, pursuant to 28 U.S.C. §233. The Attorney General of the United States, by the United States Attorney for the District of Massachusetts, certified pursuant to 42 U.S.C. §233(c) and 28 U.S.C. §2679(d), that the Joseph M. Smith Health Center was an entity receiving federal grant money from the United States Public Health Service and that Colleen Pinch, N.P., was acting within the scope of her employment as an employee of the Joseph M. Smith Health Center at the time of the alleged medical malpractice and was therefore an employee under the Federal Tort Claims Act. On July 15, 2002, the action was transferred to the United States District Court for the District of Massachusetts, based on federal question jurisdiction and included the pendent state claims of medical malpractice.

3. On September 23, 2002, the defendants, Winn Wheeler, R.N., Maureen Paul, M.D. and Planned Parenthood League of Massachusetts filed a motion to transfer the case back to Suffolk Superior Court for the purposes of convening a Medical Malpractice Tribunal pursuant to M.G.L. c. 231 §60B. On November

¹ The defendants in the original action filed in Superior Court, docket no: 01-5610, were Winn Wheeler, R.N., Amy Lief, Martha Grover, Maureen Paul, M.D., Planned Parenthood League of Massachusetts, Joseph M. Smith Health Center and

6, 2002, the United States District Court for the District of Massachusetts allowed the motion and remanded the case back to the Suffolk Superior Court for purposes of convening a Tribunal only.

4. On November 24, 2003, a Medical Malpractice Tribunal was convened.

5. The parties now seek to have the case remain in Suffolk Superior Court and not transferred back to Federal Court, as the plaintiff has dismissed her federal questions claims against Colleen Pinch and the Joseph M. Smith Community Health Center.²

6. Whether the case is remanded to state court is up to the informed discretion of the federal court. See Carnegie-Mellon University v. Cohill, 484 U.S. 343 (1988). If the federal claims are dismissed, "the federal court must reassess its jurisdiction, ...engaging in a pragmatic and case-specific evaluation of a variety of considerations that may bear on the issue." Camelio v. American Foundation, 137 F. 3d 666, 672 (Mass. 1998), citing Roche v. John Hancock Mutual Life Insurance Co., 81 F.23d 249, 256-257 (1st. Cir. 1996). "Among the factors that will often prove relevant ... are the interests of fairness, judicial economy, convenience, and comity. Id.

7. State court jurisdiction is proper since all the federal-law claims have been eliminated and only pendent state-

Colleen Pinch, N.P.

² A Stipulation of Dismissal dismissing plaintiff's claims against Colleen Pinch, N.P. and the Joseph M. Smith Community Health Center was filed with the

law claims remain. See Kuehl v. Lafarge Corp., 164 F. Supp. 2d 200 (D. Mass. 2001) (remanding case to state court after all federal claims eliminated); Roche v. Town of Wareham, 24 F. Supp. 2d 146 (D. Mass. 1988) (remanding case after granting summary judgment on federal law claims); Blick v. Pitney Bowes Management Services, Inc., 1995 WL 791945 at 6-7 (D. Mass. December 26, 1995) (remanding case after dismissing all federal law claims on summary judgment because the state court was better suited to decide state law issues); See also 28 U.S.C. §1367(c) ("district courts may decline to exercise supplemental jurisdiction over a claim ... [where it] has dismissed all claims over which it has original jurisdiction").

8. Retaining jurisdiction over the case in federal court would be inappropriate because only state claims of negligence and medical malpractice remain. Moreover, only preliminary discovery has been initiated in the case. The defendants propounded written discovery to the plaintiff. No other discovery was conducted as the case was removed to federal court and the parties awaited a discovery conference pursuant to Rule 26(f) of the Fed. R. Civ. Procedure. The case is in the preliminary stages of discovery. No trial date has been assigned.

9. As the case has already been transferred to Suffolk Superior Court, the parties request that the case remain in state court.

WHEREFORE, the Defendants, Winn Wheeler, R.N., Maureen Paul, M.D., and Planned Parenthood League of Massachusetts, and Plaintiff, Danielle Mola, respectfully request that the Court allow their motion to remand the case to Suffolk Superior Court.

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DATED: 12/8/03

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of December, 2003, I served a true copy of the above pleading upon all concerned parties by mail, postage prepaid addressed to: Barry D. Lang, Esquire, Barry D. Lang, M.D. & Associates, 1 State Street, Suite 1050, Boston, MA 02108

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