

partial stay of this Court's injunction, the parties briefed a second motion for preliminary injunction which the Court denied. (Doc. No. 76).

Since that time, the parties have focused on the appeal. They have not participated in a case management conference. They have not exchanged discovery. No scheduling order has been entered, and no trial has been set. Before the Supreme Court's ruling in *Dobbs*, this case was effectively stayed on the Court's docket.

Plaintiffs now move to dismiss this case without prejudice under Federal Rule of Civil Procedure 41(a)(2). Defendants oppose the motion, citing the efforts they have expended in defending this action thus far and arguing that the ruling in *Dobbs* "dooms Plaintiffs' claims," making dismissal with prejudice the only appropriate course of action. Plaintiffs respond that dismissal without prejudice is both procedurally and legally appropriate. They dispute Defendants' contention that the ruling in *Dobbs* has a preclusive effect on their claims.

Fed. R. Civ. P. 41(a)(2) provides in relevant part that "an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). "Whether dismissal should be granted under the authority of Rule 41(a)(2) is within the sound discretion of the district court." *Grover by Grover v. Eli Lilly & Co.*, 33 F.3d 716, 718 (6th Cir. 1994). The touchstone of the court's decision is whether the defendant will suffer "plain legal prejudice." *Id.* "[F]acing the mere prospect of a second lawsuit" is generally insufficient. *Id.* In making the determination of prejudice, the Court is advised to consider:


- (1) "the defendant's effort and expense of preparation for trial;"
- (2) "excessive delay or lack of diligence on the part of the plaintiff in prosecuting the action;"
- (3) "insufficient explanation for the need to take dismissal;" and
- (4) "whether a motion for summary judgment has been filed by the defendant."

Id. These factors are neither exhaustive nor exclusive, but rather are “simply a guide for the trial judge, in whom the discretion ultimately rests.” *Rosenthal v. Bridgestone/Firestone, Inc.*, 217 F. App’x 498, 502 (6th Cir. 2007).

As already noted, there is no trial set in this case, and the parties have not exchanged discovery. There is no indication that Plaintiffs were dilatory in prosecuting this action; they have offered a sufficient explanation for the dismissal; and neither party has filed a summary judgment motion. The Court is not persuaded at that the parties efforts surrounding the preliminary injunction demonstrate plain legal prejudice. Neither is the Court persuaded by Defendants’ broad and unsupported characterization of the preclusive effects of *Dobbs* on all of Plaintiffs’ claims.

Having considered the factors, as well as the procedural posture of this case and the arguments of the parties, the Court finds that Defendants will not suffer any plain legal prejudice and dismissal without prejudice is proper. Accordingly, this case is **DISMISSED** without prejudice. The Clerk is directed to close the file.

It is so **ORDERED**.



WILLIAM L. CAMPBELL, JR.
UNITED STATES DISTRICT JUDGE