IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

MEMPHIS CENTER FOR	
REPRODUCTIVE HEALTH, et al.,)
Plaintiffs,) NO. 3:20-cv-00501
v.)) JUDGE CAMPBELL
) MAGISTRATE JUDGE FRENSLEY
HERBERT H. SLATERY, III, et al.,	
)
Defendants.	,

ORDER

Pending before the Court is the Plaintiffs' Motion to Dismiss this case without prejudice in light of the Supreme Court's opinion in *Dobbs v. Jackson Women's Health Organization*, No. 19-1392, 2022 WL 2276808 (U.S. June 24, 2022). The Sixth Circuit Court of Appeals, in consideration of the opinion in *Dobbs*, issued an order vacating this Court's preliminary injunction and remanding the case for further proceedings. The Mandate has now issued. (Doc. No. 109).

This action challenging two types of abortion bans enacted into Tennessee law—referred to during the course of litigation as the "Cascading Bans" and the "Reason Bans"—was filed by Plaintiffs on June 19, 2020. Plaintiffs immediately sought injunctive relief. (Doc. No. 6). On July 13, 2020, the Court granted the motion for a temporary restraining order. (Doc. No. 33). The parties consented to the Court ruling on Plaintiffs' motion for a preliminary injunction without a hearing, and on July 24, 2020, the Court granted the motion. (Doc. Nos. 41, 42). Defendants timely appealed the Court's order. (Doc. No. 46). Following the ruling of the Sixth Circuit granting a

The Court reserved ruling on Plaintiffs' motion for a temporary restraining order pending the challenged provisions being signed into law. (See Doc. No. 19).

partial stay of this Court' 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, JK

UNITED STATES DISTRICT JUDGE

3