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FILED

December 2, 2022

HON. BRUCE J. KAPLAN, J.S.C.

STEPHANIE SMITH

Plaintiffs,

v.

MERCK SHARP & DOHME CORP,

Defendants.

)
) SUPERIOR COURT OF NEW JERSEY
) LAW DIVISION: MIDDLESEX
) COUNTY
) **CASE NO. L-7835-14**
)
) CIVIL ACTION
)
) IN RE FOSAMAX LITIGATION

ORDER

THIS MATTER being opened to the Court by Thomas P. Giuffra, Esq., attorney for the plaintiff STEPHANIE SMITH, for an Order adjourning the instant proceeding for one-hundred and eighty days in order to locate the successor or representative of Plaintiff, STEPHANIE SMITH, deceased, the claim set forth in the Complaint not having been extinguished by the death of STEPHANIE SMITH, pursuant to NJ Rule 4:34-1; and the Court having read and considered the papers submitted in this matter, and for the reasons in the attached Statement of Reasons, and for good cause having been shown;

IT IS on this 2nd day of December, 2022:

ORDERED that Plaintiff's motion to extend time to file a motion to substitute **is hereby DENIED**; and it is further

ORDERED that Plaintiff's complaint is hereby dismissed without prejudice; and it is further

Under New Jersey law, a deceased person has no standing to pursue a claim pursuant to Repko v. Our Lady of Lourdes Med. Ctr., Inc., 464 N.J. Super. 570, 575-74 (App. Div. 2020).

R. 4:34-1(b) provides that “If a party dies and the claim is not thereby extinguished, the court shall on motion order substitution of the proper parties. The motion for substitution may be made by the successors or representatives of the deceased party or by any party.”

Pursuant to the Repko case as cited above, the law requires substitution of a deceased Plaintiff’s estate for a litigation to proceed. A deceased Plaintiff cannot proceed on the Court’s docket without having an estate opened and a representative appointed.

The Court having read and considered the arguments of Counsel finds that the vague, uncorroborated record is void of any justification for an additional 180 days. Plaintiff, Stephanie Smith passed away more than six years ago. The record also reveals that Plaintiff’s Counsel was aware of Plaintiff’s death since the May 24, 2022 Case Management Conference. See June 28, 2022 CMO Exhibit B. The current record is void of any information when the search for the next of kin had begun, what efforts have been made prior to the filing of this motion, and the efforts made to identify a willing next of kin in the 5 months since learning of Plaintiff’s death. Forwarding a certified letter and/or retaining an investigator certainly could have been done in the 120 days the Court provided for previously. While the Court is sympathetic to the efforts of Counsel, the fact remains that this Plaintiff passed away quite some time ago, and to date, no willing next of kin has been identified.

Accordingly, the Court will be denying Plaintiff’s motion to extend time and will enter an order dismissing Plaintiff’s complaint without prejudice pursuant to the above-referenced case law and this Court’s previous Case Management Order.

With that said, it is not the intent of this Court, or this Order, to bar viable claims or deny counsel a reasonable time to comply with our court rules, case law, and this Court’s prior Orders. Therefore, while denying Plaintiff’s request for a 180-day extension for compliance, the Court will provide Plaintiff’s next of kin 90 days, or until March 2, 2023, from the date of this Order to file a motion to reinstate and amend the complaint to substitute the estate for this deceased Plaintiff. The Court notes this time is in addition to the 15 days that has accrued since the November 17, 2022 compliance date. To the extent there is a willing next of kin, there is ample time to locate same and file the necessary motion. Failure to do so could result in the case being dismissed with prejudice.

For the reasons stated, the motion is denied, and this matter is dismissed without prejudice.