

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

SAUL JAMES, by his next friend,)
ELAINE JAMES,)
)
) Plaintiff,)
)
) vs.) Case No. 1:13-cv-01486-SEB-DML
)
ALLISON TRANSMISSION,)
)
) Defendant.)

Report and Recommendation to Dismiss the
Plaintiff's Complaint Without Prejudice

After a hearing held March 6, 2015, the court found that plaintiff Saul James was not competent to prosecute his claims, and that the case could be prosecuted by his next friend, Elaine James, who is Mr. James's spouse. (See Entry and Order from March 6, 2015, Dkt. 38). The court reminded Mrs. James, as it earlier had done in an order dated December 31, 2014 (Dkt. 33), that as a representative of the individual plaintiff, she may proceed only by counsel. *E.g., Cavanaugh v. Cardinal Local School Dist*, 409 F.3d 753, 755 (6th Cir. 2005).¹ To facilitate settlement discussions and potential settlement, the court appointed Mediation Assistance Program ("MAP") counsel to assist with settlement issues, and held a settlement conference on June 18, 2015. A settlement was not achieved.

¹ The Seventh Circuit reaffirmed this principle in an unpublished decision issued last week. *Jones v. Griggs*, 2015 WL 4861694 at *2 (7th Cir. Aug. 14, 2015) ("next friend" representative is prohibited from litigating *pro se* on behalf of another) (citing *Elustra v. Mineo*, 595 F.3d 699, 705-06 (7th Cir. 2010).

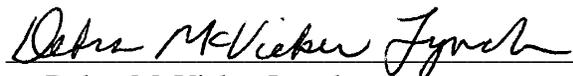
The appointment of MAP counsel was for a limited purpose, and on July 14, 2015, the court granted the motion by MAP counsel to withdraw her appearance. (See Order at Dkt. 48.) The court's July 14, 2015 order reminded the plaintiff of the requirement to obtain counsel, and ordered plaintiff Saul James, by his next friend Elaine James, to appear by counsel no later than August 4, 2015. The order states that the failure to obtain counsel will likely result in the magistrate judge's recommendation that this action be dismissed. Counsel has not appeared as required.

Because Mr. James has been found to be incompetent and Mrs. James, who is prosecuting his claims as a representative "next friend," has not appeared by counsel, the plaintiff's claims should be dismissed without prejudice. The Magistrate Judge HEREBY RECOMMENDS to the District Judge that this action be DISMISSED WITHOUT PREJUDICE because the plaintiff is not permitted to prosecute this action without counsel.

Any objections to the Magistrate Judge's Report and Recommendation must be filed in accordance with 28 U.S.C. § 636(b)(1) and Fed R. Civ. P. 72(b). Failure to file objections within fourteen days will constitute a waiver of subsequent review absent a showing of good cause for such failure.

IT IS SO RECOMMENDED.

Dated: August 18, 2015


Debra McVicker Lynch
United States Magistrate Judge
Southern District of Indiana

Distribution:

All ECF-registered counsel of record via email generated by the court's ECF system

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By his next friend ELAINE JAMES

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