

STATE OF MAINE  
ANDROSCOGGIN, ss.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. CV-15-156

JEFFREY BROWN and AMBER  
BROWN

Plaintiffs,

v.

JOHN B. WAHLIG, JR., M.D.

Defendant.

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JUN 29 '17 AM 9:05  
ANDRO SUPERIOR COURT

ORDER ON DEFENDANT'S  
MOTION FOR INVOLUNTARY  
DISMISSAL

Pending before the court is a motion to dismiss by Defendant John B. Wahlig, Jr., M.D., pursuant to Maine Rule of Civil Procedure 41(b)(2), a complaint filed against him by Plaintiffs Jeffrey Brown and Amber Brown, for failure to comply with a court order. For the reasons below, this court grants Defendant's motion.

#### I. Background

On October 20, 2014, Defendant John B. Wahlig, Jr., M.D. performed back surgery on Plaintiff Jeffery Brown. (Compl. ¶ 7.) One week later, Defendant performed a second surgery on Plaintiff Jeffery Brown. (Compl. ¶ 14.) On September 23, 2016, Plaintiffs filed a complaint against Defendant for: (I) alleged malpractice (negligence) during the week between the surgeries, and (II) loss of consortium allegedly experienced by Plaintiff Amber Brown as a result of the alleged injuries suffered by Plaintiff Jeffery Brown. (Compl. ¶¶ 17, 23.) On September 28, 2016, Defendant answered, and a scheduling order was signed on September 29, 2016. On December 27, 2016, Plaintiffs' counsel moved for leave to withdraw. The court granted this motion on February 3, 2017, and ordered Plaintiffs within 20 days to secure the representation of another attorney or to state they would be representing themselves. On March 24, 2017, the court granted Plaintiffs' February 23, 2017 motion to extend their time to comply with this order until March 25, 2017. On April 6, 2017, Defendant filed this motion for

involuntary dismissal. The 21-day window for Plaintiffs to oppose Defendant's motion expired on April 27, 2017. M.R. Civ. P. 7(c).

## II. Standard of Review

A defendant may move to dismiss a claim for the failure of a plaintiff to comply with a court order. M.R. Civ. P. 41(b)(2). The Law Court has held that the reviewing court should, in its discretion, evaluate the circumstances of the case as to whether there exists "good cause" to the contrary of the dismissal. *West Point-Pepperell v. State Tax Assessor*, 1997 ME 58, ¶ 7, 691 A.2d 1211 ("the 'good cause' showing for keeping an action on the docket, explicit only in Rule 41(b)(1), is also applicable to 41(b)(2)".) Involuntary dismissal "should be exercised only with full appreciation and consideration of the plight of the plaintiff," and the trial courts should consider a lesser sanction than dismissal. *Westbrook v. Wallace*, 478 A.2d 687, 689-690 (Me. 1984). An involuntary dismissal operates as an adjudication upon the merits unless otherwise specified by the court. M.R. Civ. P. 41(b)(3).

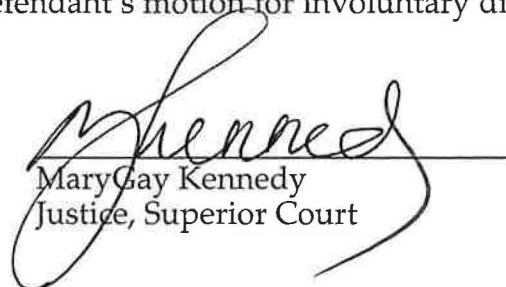
## III. Discussion

Plaintiffs have provided no facts to the court to support a showing of good cause to the contrary for dismissing this complaint, other than a reference to the "voluminous" file sent to them by their first attorney. (Pl.s' Mot. to Extend Time ¶ 1.)

## IV. Conclusions

For these reasons, this court grants Defendant's motion for involuntary dismissal with prejudice.

Date: 6/29/17

  
Mary Gay Kennedy  
Justice, Superior Court

JEFFREY BROWN - PLAINTIFF  
112 NEWBURY STREET APT 2  
AUBURN ME 04210  
AMBER BROWN - PLAINTIFF  
112 NEWBURY STREET APT 2  
AUBURN ME 04210

SUPERIOR COURT  
ANDROSCOGGIN, ss.  
Docket No AUBSC-CV-2015-00156

**DOCKET RECORD**

vs  
JOHN B WAHLIG MD - DEFENDANT

Attorney for: JOHN B WAHLIG MD  
DANIEL RAPAPORT - RETAINED 09/24/2015  
PRETI FLAHERTY BELIVEAU PACHIOS LLP  
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PO BOX 9546  
PORTLAND ME 04112-9546

Filing Document: NOTICE OF CLAIM  
Filing Date: 09/24/2015

Minor Case Type: MEDICAL MALPRACTICE

**Docket Events:**

09/24/2015 FILING DOCUMENT - NOTICE OF CLAIM FILED ON 09/24/2015

09/24/2015 Party(s): JEFFREY BROWN  
ATTORNEY - RETAINED ENTERED ON 09/24/2015

Party(s): AMBER BROWN  
ATTORNEY - RETAINED ENTERED ON 09/24/2015

09/24/2015 Party(s): JOHN B WAHLIG MD  
SUMMONS/SERVICE - ACCEPTANCE OF SERVICE SERVED ON 09/18/2015  
THROUGH DANIEL RAPAPORT, ESQ.

09/24/2015 Party(s): JOHN B WAHLIG MD  
SUMMONS/SERVICE - ACCEPTANCE OF SERVICE FILED ON 09/24/2015

09/24/2015 Party(s): JOHN B WAHLIG MD  
ATTORNEY - RETAINED ENTERED ON 09/24/2015  
Defendant's Attorney: DANIEL RAPAPORT

09/24/2015 CERTIFY/NOTIFICATION - NOTICE OF CLAIM SENT FOR REVIEW ON 09/24/2015  
COPIES SCANNED TO HEIDI CARPENTER

11/03/2015 ORDER - PANEL CHAIR ENTERED ON 11/03/2015  
ROLAND A COLE , JUSTICE  
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO  
PARTIES/COUNSEL MARILYN ASHCROFT, ESQ. IS  
APPOINTED AS PANEL CHAIR

12/02/2015 ORDER - SCHEDULING ORDER ENTERED ON 12/02/2015  
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO  
PARTIES/COUNSEL PRELITIGATION SCHEDULING  
ORDER (ASHCROFT, PANEL CHAIR)

08/30/2016 ORDER - PANEL FINDING ENTERED ON 08/26/2016