

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
NORTHERN DIVISION**

SHARPE HOLDINGS, INC.,)
RITA JOANNE WILSON,)
JUDI DIANE SCHAEFER,)
OZARK NATIONAL LIFE INSURANCE)
COMPANY,)
CNS CORPORATION, and)
N.I.S. FINANCIAL SERVICES, INC.,)

Plaintiffs,)

v.)

No. 2:12 CV 92 DDN

UNITED STATES DEPARTMENT OF)
HEALTH AND HUMAN SERVICES,)
KATHLEEN SEBELIUS, Secretary of)
the United States Department of)
Health and Human Services,)
UNITED STATES DEPARTMENT OF)
THE TREASURY,)
JACOB J. LEW, Secretary of the)
United States Department of the)
Treasury,)
UNITED STATES DEPARTMENT OF)
LABOR, and)
SETH D. HARRIS, Acting Secretary of)
the United States Department of Labor,)

Defendants.)

**ORDER
STAYING PROCEEDINGS
AND ADMINISTRATIVELY TERMINATING DOC. 2**

This action is before the court on the motion of the defendants to stay these proceedings. (Doc. 41).¹

Original plaintiffs Sharpe Holdings, Inc., Charles N. Sharpe, Judi Diane Schaefer, and Rita Joanne Wilson commenced this action for injunctive relief prohibiting defendants from applying and enforcing against plaintiffs certain portions of the Patient Protection and Affordable Care Act, Pub. L. 111-148 (March 23, 2010), and the Health Care and Education Reconciliation Act, Pub. L. 111-152 (March 30, 2010). Following the filing of

¹ The court notes that plaintiffs' original motion for preliminary injunctive relief remains shown on the minutes of this action as pending. It is herein dealt with administratively.

new pleadings on behalf of added plaintiffs Ozark National Life Insurance Company, N.I.S. Financial Services, Inc., and CNS Corporation, the court on June 28, 2013, entered the following order:

IT IS HEREBY ORDERED that defendants, their agents, officers and employees are prohibited from applying and enforcing against these plaintiffs, their employee health plan(s), or their insurer(s) the statute and regulations that require plaintiffs to provide employees insurance coverage for "[a]ll Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity," as prescribed by a health care provider, 77 Fed. Reg. 8725, as well as any penalties, fines, assessments, or enforcement actions for noncompliance, including those found in 26 U.S.C. §§ 4980D and 4980H, and 29 U.S.C. § 1132, to the extent these regulations require coverage of services that plaintiffs believe to be abortifacients.

(Doc. 56 at 2.) Thereafter, the minute entries of this case continue to show that the original motion for a preliminary injunction (Doc. 2) remains pending. This is incorrect. The entry of the order quoted above effectively disposed of Doc. 2. Therefore, the court directs the clerk to administratively terminate the pendency of Doc. 2.

Still pending, however, is the motion of the defendants to stay this action. Since the commencement of this action, two assertedly similar cases have been appealed to the United States Court of Appeals for the Eighth Circuit and that court has issued injunctive relief maintaining the status quo pending appeal in both cases. O'Brien v. HHS, No. 12-3357 (8th Cir. Nov. 28, 2012); Annex Medical, Inc. v. Sebelius, No. 13-1118, 2013 WL 1276025 (8th Cir. Feb. 1, 2013).

In their motion to stay, defendants state "they do not oppose plaintiffs' motion for preliminary injunction, ECF No. 2, on its Religious Freedom Restoration Act (RFRA) claim, until such time as the appeal in O'Brien or Annex Medical is resolved, whichever occurs first. In light of the pending appeals and defendants' non-opposition to a preliminary injunction until the appeal in O'Brien or Annex Medical is resolved, defendants move to stay all proceedings in this case until such time." (Doc. 41 at 1.)

Plaintiffs object to the stay, because defendants have not shown entitlement to it, because there are no extraordinary circumstances that support a stay here, defendants have not shown they would be prejudiced by the failure to stay the action, there are significant differences between this case and the two cases now before the Court of Appeals, and plaintiffs anticipate seeking summary judgment on their RFRA claim during the pendency of these appeals without the need for extensive discovery. (Doc. 44.)

Defendants argue in reply that they anticipate that the disposition of the two cases now on appeal will support a motion to dismiss this case, the appellate disposition(s) will

otherwise significantly affect the outcome of this case, and the plaintiffs will not be substantially prejudiced by a stay since they will have the benefit of the preliminary injunction. (Doc. 45.)

The court has considered the parties arguments and concludes that the circumstances warrant a stay of this case pending the disposition of the issues appealed to the Court of Appeals. Neither side in this litigation will be substantially prejudiced by a stay, and the Court of Appeals' ruling on the issues before it, and any appeal to the Supreme Court from the Court of Appeals' ruling(s) will very likely provide guidance to this court in further proceedings in this case.

Thereupon,

IT IS HEREBY ORDERED that the Clerk of the Court administratively terminate Doc. 2, the original motion of plaintiffs for a preliminary injunction.

IT IS FURTHER ORDERED that the injunction issued by the court on June 28, 2013 (Doc. 56) quoted above shall remain in effect for all parties until further order of this court on that matter.

IT IS FURTHER ORDERED that the motion of the defendants for a stay of these proceedings (Doc. 41) is sustained. All proceedings in this action are STAYED pending the final resolution of the appeal in O'Brien v. HHS, No. 12-3357, or in Annex Medical, Inc. v. Sebelius, No. 13-1118, whichever occurs first, including the time any proper application(s) for relief is before the Supreme Court. Thereafter, this court will set a status and scheduling proceeding regarding this action.

/S/ David D. Noce

UNITED STATES MAGISTRATE JUDGE

Signed on September 30, 2013.