

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

HANNAH KIDWELL and BILLY
RAY KIDWELL,

Plaintiffs,

v.

Case No.: 2:21-cv-517-SPC-MRM

WALMART, INC., DOUG
MCMILLON, KAREN ROBERTS,
CHANEL BARGAUSEN, LARRY
COULTAS, BILL PRUMMEL and
UNKNOWN CHARLOTTE
COUNTY SHERIFF'S DEPUTIES,

Defendants.

ORDER

Plaintiffs' Medical Emergency Motion Requiring the United States Department of Justice to Comply with Its Statutory Duty(s) [sic], Pursuant to the Servicemembers, and Veterans, Initiative Act of 2020, to Provide Funding, and Other Duties, Equally, to Servicemembers, Veterans, and Their Families, Starting with Providing Counsel in this Case (Doc. 49), the Walmart Defendants' response thereto (Doc. 50), and Defendant Prummel's response thereto are ripe for adjudication.

The Court has carefully reviewed Plaintiffs' motion and finds it to be without merit for several reasons.

First, Plaintiffs appear to demand that the United States Department of Justice intervene to represent them in this litigation and take other action against the Defendants. The Department of Justice has not done so to date and the Court cannot discern any statutory or other basis for requiring the Department of Justice to do so given the nature of the claims asserted in this action. None of the authorities or other materials cited by Plaintiffs in their motion require the result Plaintiffs urge.

Second, to the extent Plaintiffs' motion can be construed as requesting that the Court independently appoint counsel to represent Plaintiffs in this action, the Court finds such relief to be unwarranted. The United States Supreme Court made clear that there is no constitutional right to appointment of counsel in a civil action.

Lassiter v. Dep't of Soc. Servs. of Durham Cnty., N. C., 452 U.S. 18, 25 (U.S. 1981); see also *Bass v. Perrin*, 170 F.3d 1312, 1320 (11th Cir. 1999) (stating “[a] plaintiff in a civil case has no constitutional right to counsel”). Rather, it is a “privilege” and is “justified only by exceptional circumstances, such as where the facts and legal issues are so novel or complex as to require the assistance of a trained practitioner.” *Carroll v. Corr. Med. Servs.*, 160 F. App'x 848, 849 (11th Cir. 2005) (quoting *Fowler v. Jones*, 899 F.2d 1088, 1096 (11th Cir. 1990)). “The key is whether the pro se litigant needs help in presenting the essential merits of his or her position to the court. Where the facts and issues are simple, he or she usually will not need such help.” *McDaniels v. Lee*, 405 F. App'x 456, 457 (11th Cir. 2010) (quoting *Kilo v. Ricks*, 983 F.2d 189, 193 (11th Cir. 1993)).

In the instant case, the Court finds no exceptional circumstances necessitating the appointment of counsel. The Court has reviewed Plaintiffs' Complaint (Doc. 1) and their motion (Doc. 49). Furthermore, the Court has considered the type and nature of the case, its complexity, and Plaintiffs' ability to prosecute their claims. The Court finds that there are no novel or complex issues or facts that would require the assistance of an attorney at this time. Additionally, the Court finds that Plaintiffs are able to present the merits of this case without appointment of counsel. In that regard, Plaintiffs' claims regarding Plaintiff Billy Kidwell's medical infirmity are wholly unsubstantiated. Plaintiffs prepared, filed, and served their Complaint, as well as the instant motion, without the assistance of a lawyer notwithstanding their alleged limitations. The Court finds that Plaintiffs have the ability to continue to prosecute this action without court-appointed counsel.

Third, insofar as Plaintiffs demand that the Court "suspend all time limits in this case" (*see, e.g.*, Doc. 49 at 13) until Plaintiff Billy Kidwell is determined medically able to proceed and to allow Plaintiff Hannah Kidwell to continue to provide care for Mr. Kidwell, the Court finds insufficient cause to stay these proceedings indefinitely based upon Plaintiffs' unsubstantiated claims of medical infirmity or lack of time. Again, Plaintiffs initiated this action *pro se* and they are under a continuing obligation to prosecute their claims, to comply with court orders, and to comply with their obligations under the procedural and substantive law that governs these proceedings. Put simply, the Court cannot allow an indefinite stay of proceedings under these circumstances. Moreover, the fact that Plaintiffs were able

to prepare and file the motion *sub judice* belies any suggestion that they are completely incapable of prosecuting their claims or that doing so places Mr. Kidwell's life in jeopardy.

Fourth, inasmuch as Plaintiffs' motion may be construed as a response to this Court's show cause orders dated October 12, 2021 (Doc. 34), November 10, 2021 (Doc. 43), and December 1, 2021 (Doc. 48), the Court finds that Plaintiffs have at most demonstrated good cause to extend the deadline for their compliance with those orders, as well as the Court's October 12, 2021 order (Doc. 36) requiring Plaintiffs' to file a Notice of Related Action. The Court will give Plaintiffs one final opportunity to comply no later than January 14, 2021. **Plaintiffs are warned, however, that continued failure to comply fully and meaningfully with the Court's prior orders and this order may result in the dismissal of this action without further notice.**

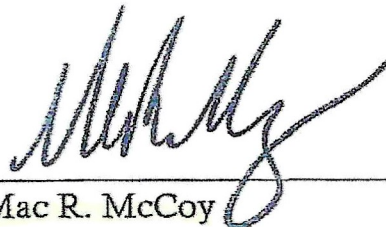
Lastly, Plaintiffs are reminded and warned that the Defendants filed motions to dismiss the Complaint on November 12, 2021 (Doc. 44) and November 18, 2021 (Doc. 46). Plaintiffs were required under Local Rule 3.01(c) to respond to those motions within twenty-one days. They failed to do so, however. **Plaintiffs are warned that the presiding United States District Judge may deem the motions as unopposed based on Plaintiffs' failure to respond timely and dismiss the Complaint without further notice.**

CONCLUSION

Based upon the foregoing, the Court **ORDERS** as follows:

1. **Plaintiffs' Medical Emergency Motion Requiring the United States Department of Justice to Comply with Its Statutory Duty(s) [sic], Pursuant to the Servicemembers, and Veterans, Initiative Act of 2020, to Provide Funding, and Other Duties, Equally, to Servicemembers, Veterans, and Their Families, Starting with Providing Counsel in this Case (Doc. 49) is DENIED without prejudice.**
2. **No later than January 14, 2022, Plaintiffs must comply fully and meaningfully with the Court's orders dated October 12, 2021 (Docs. 34 and 36), November 10, 2021 (Doc. 43), and December 1, 2021 (Doc. 48).**
3. **PLAINTIFFS ARE WARNED THAT FAILURE TO COMPLY WITH THE COURT'S PRIOR ORDERS AND THIS ORDER MAY RESULT IN THE DISMISSAL OF THIS ACTION WITHOUT FURTHER NOTICE.**
4. The Clerk of Court is **DIRECTED** to mail a copy of this Order and Docket Entries 34, 36, 43, and 48 to Plaintiffs at their mailing address of record.

DONE and ORDERED in Fort Myers, Florida on December 29, 2021.

A handwritten signature in black ink, appearing to read 'Mac R. McCoy', written over a horizontal line.

Mac R. McCoy
United States Magistrate Judge

Copies furnished to:

Counsel of Record
Unrepresented Parties