IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

M.B. by his next friend Ericka Eggemeyer; E.S. by her next friend A.S.; Z.S. by her next friend S.H.; K.C. by her next friend Kris Dadant; A.H. by her next friend Kealey Williams, for themselves and those similarly situated, Plaintiffs,	)	
v.	)	No. 2:17-cv-04102-NKL
Steve Corsi in his official capacity as Acting Director of the Missouri Department of Social Services; Tim Decker, in his official capacity as Director of the Children's Division of the Missouri Department of Social Services, Defendants.	)	

ORDER

For the reasons discussed below, the Court grants Plaintiffs' motion to dismiss Z.S. as a named plaintiff (along with her next friend, S.H.).

I. BACKGROUND

This case concerns whether the State of Missouri adequately oversees the administration of psychotropic medications to children in foster care.

While conducting a pre-filing investigation in April 2017, attorneys for the plaintiffs learned of a three-year-old child in the custody of the Children's Division (CD) who had been administered Risperdal, and subsequently had to be weaned off the drug by a different treating physician. Doc. 133-1, ¶ 3. Although Plaintiffs' attorneys spoke with several adult sources

regarding the child, the sources did not reveal the child's legal name because of confidentiality restrictions. *Id.*

The complaint that the plaintiffs filed contained allegations concerning the three-year old child, identified as Z.S. *See* Doc. 1.

The Court directed Plaintiffs' counsel to provide to Defendants the plaintiffs' legal names. Doc. 133-1, ¶ 4. Plaintiffs then conducted further due diligence and obtained from a source what they understood to be the correct legal name of Z.S. *Id.* Plaintiffs revealed that name to Defendants' counsel on September 7, 2017. *Id.*

However, Plaintiffs later came to believe that the legal name they supplied to Defendants for Z.S. was not the name of the 3-year-old child Plaintiffs described in their pleadings. On February 21, 2018, Plaintiffs came across two pages of email transmissions (part of a production made by Defendants) concerning a child whose circumstances appeared identical to those of the child identified as Z.S. in the pleadings. That unidentified child had, at the age of three, been prescribed Risperdal by one provider and then weaned off of it by subsequent medical provider. Plaintiffs already knew that the CD case file that belonged to the child whose legal name they had provided to Defendants did not show that the child had been administered Risperdal. However, Plaintiffs' investigation had indicated that CD case files often are missing medical records and medication histories, so they did not initially have reason to suspect that Z.S. had been misidentified. They assumed that the relevant records were missing from the child's file, or that the prescription drugs were purchased with cash. However, after reviewing the email correspondence on February 21, 2018 concerning the three-year old who had been prescribed Risperdal, Plaintiffs concluded that they had misidentified Z.S.

On February 27, 2018, Plaintiffs' counsel suggested to Defendants' counsel that the parties stipulate to the dismissal of Z.S. as class representative. Doc. 124-3, at 3. Plaintiffs offered to dismiss Z.S. as a class representative with prejudice, although Plaintiffs would not agree to dismiss Z.S. from the case with prejudice. *Id.*, at 2. In other words, Plaintiffs wished to preserve the misidentified child's right to participate in the case as a member of the putative class. Defendants refused to stipulate to the dismissal of Z.S. without prejudice. *Id.* at 1. Plaintiffs then filed this motion to dismiss Z.S. without prejudice.

II. STANDARD

Federal Rule of Civil Procedure 41 permits the Court to dismiss a case "at the plaintiff's request . . . on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). Defendants question whether Rule 41 permits the dismissal of a party, but in fact, dismissal of a party pursuant to Rule 41 is appropriate. *See, e.g., James ex rel. James Ambrose Johnson, Jr., 1999 Tr. v. UMG Recordings, Inc.*, No. 11-1613 SI, 2012 WL 4859069, at *3 (N.D. Cal. Oct. 11, 2012) (dismissing without prejudice three of multiple plaintiffs from case, noting that "[t]he decision to dismiss a plaintiff under Rule 41(a)(2) is a matter of the district court's sound discretion"); *Dee-K Enterprises, Inc. v. Heveafil Sdn. Bhd.*, 177 F.R.D. 351, 355–56 (E.D. Va. 1998) ("Rule 41 overlaps with Rule 15(a) to the extent that a plaintiff can effectively amend the pleading by dismissing particular parties or claims from the action.") (quoting 8 James Wm. Moore, Moore's Federal Practice, § 41.13(6)).

"When determining whether to allow a voluntary dismissal without prejudice, a district court should consider whether the party has presented a proper explanation for its desire to dismiss; whether a dismissal would result in a waste of judicial time and effort; and whether a dismissal will prejudice the defendants." *United States v. Thirty-two thousand eight hundred*

twenty dollars & fifty-six cents ($32,820.56) in United States Currency, 838 F.3d 930, 937 (8th Cir. 2016) (quotation marks and citations omitted). A decision under Rule 41(a)(2) is soundly within the Court's discretion. *Thatcher v. Hanover Ins. Grp., Inc.*, 659 F.3d 1212, 1213 (8th Cir. 2011) (citation omitted).

III. ANALYSIS

a. Whether Plaintiffs Have Presented a Proper Explanation

Given the confidentiality restrictions that prevented Plaintiffs' from learning before filing suit the identity of the 3-year old who was administered Risperdal, their good faith belief that a source had identified the correct child when they provided Defendants with a legal name for Z.S., Plaintiffs' representation that they assumed that Z.S.'s case file did not evidence her taking Risperdal because it was incomplete or the prescriptions were purchased with cash, and their prompt effort to dismiss Z.S. when they concluded that they had identified the wrong three-year old, Plaintiffs have provided a proper explanation as to why they would like to dismiss Z.S. as a named plaintiff.

b. Whether Dismissal Would Result in a Waste of Judicial Time and Effort

This case is still in the discovery process. Discovery is not scheduled to close until August 17, 2018. Doc. 94. Plaintiffs filed a motion for class certification on the same day that they filed the motion to dismiss Z.S. as a named plaintiff, so both Plaintiffs' motion for class certification and Defendants' opposition to that motion were informed by Plaintiffs' motion to dismiss Z.S. Given the status of the litigation, granting the motion to dismiss Z.S. without prejudice would not waste judicial time or effort. *See Mullen v. Heinkel Filtering Sys., Inc.*, 770 F.3d 724, 728 (8th Cir. 2014) ("The grant of voluntary dismissal did not result in a waste of judicial time and effort, because the case had not progressed very far. The magistrate judge held

two hearings on discovery disputes, but the case was still in the early stages of discovery. We have upheld granting motions to dismiss without prejudice when the cases were much further along.").

c. Whether Dismissal Would Prejudice Defendants

Defendants complain that Plaintiffs refused to provide discovery concerning Z.S. after they moved to dismiss her as a named plaintiff, and they argue that this prevented Defendants from adequately responding to Plaintiffs' motion for class certification. But Plaintiffs have not relied on Z.S. in moving for class certification, and Defendants therefore were not prejudiced by Plaintiffs' refusal to provide discovery concerning Z.S.[1] Thus, there is no indication that dismissal of Z.S. as a named plaintiff would prejudice Defendants.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs' motion to dismiss Z.S. as a named plaintiff without prejudice is GRANTED.

s/ Nanette K. Laughrey
NANETTE K. LAUGHREY
United States District Judge

Dated: May 29, 2018
Jefferson City, Missouri

[1] In any event, if Defendants feared that they would be prejudiced by Plaintiffs' refusal to provide discovery concerning Z.S., the proper course would have been to request a telephonic conference with the Court. *See* Local Rule 37.1 (providing that attorney that has not been successful in attempting to confer with opposing counsel concerning discovery dispute "must arrange with the Court for an immediate telephone conference with the judge and opposing counsel," and the "[t]he attorney may not file a written discovery motion until after this telephone conference"). Having failed to do so, Defendants cannot now complain of prejudice.