

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

L.S., by and through his next
Friend, Sheila Davis

PLAINTIFF

V.

CAUSE NO. 3:10-CV-153-HTW-LRA

GOVERNOR PHIL BRYANT, in his official
capacity; DAVID J. DZELAK in his official capacity
as Executive Director of Medicaid; RICK BARRY,
in his official capacity as Chair of the State Board
of Mental Health; and DIANA MIKULA, in her official
capacity as Executive Director of the Mississippi
Department of Mental Health

DEFENDANTS

ORDER

Before this court is the motion [**doc. no. 135**] filed by the sole remaining plaintiff, L.S., by and through counsel, for leave to file a first amended complaint [doc. no. 135] pursuant to Rule 15(a)(2)¹ of the Federal Rules of Civil Procedure. Plaintiff contends that due to significant factual and procedural developments in this case, plaintiff has good cause to amend the complaint. The Defendants oppose the motion. [doc. no. 141].

Over the course of this litigation, several of the former plaintiffs reached adulthood, causing them to no longer be proper plaintiffs in this lawsuit, since this lawsuit purports to

¹ Rule 15 of Federal Rules of Civil Procedure provides:

Amended and Supplemental Pleadings

(a) Amendments Before Trial.

- (1) **Amending as a Matter of Course.** A party may amend its pleading once as a matter of course within:
 - (A) 21 days after serving it, or
 - (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e) or (f), whichever is earlier.
- (2) **Other Amendments.** In all other cases, a party may amend the pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

address mental health care for children in Mississippi. Further, the plaintiff has withdrawn the motion to certify class. Accordingly, as this litigation now stands, as above stated, this matter is now proceeding as an individual lawsuit on behalf of the sole remaining plaintiff, L.S.

The Defendants object to the proposed amended complaint because, they contend, it attempts to reassert a claim that was previously dismissed on the merits, the claim under the Early and Periodic, Screening, Diagnostic and Treatment (EPSDT) provision of the Medicaid Act.²

L.S. has met the standard for obtaining leave to file an amended complaint. Federal Rule of Civil Procedure 15(a)(2) provides that “[t]he court should freely give leave when justice so requires.” Rule 15(a) “evinces a bias in favor of granting leave to amend.” *Hermann Holdings Ltd. v. Lucent Techs. Inc.*, 302 F.3d 552, 566 (5th Cir. 2002) (quoting *Dussouy v. Gulf Coast Inc. Corp.*, 660 F.2d 594, 598 (5th Cir. 1981)). The district court has extensive discretion to decide whether to grant leave to amend. *See Marucci Sports, L.L.C. v. Nat’l Collegiate Athletic Ass’n*, 751 F.3d 368, 378 (5th Cir. 2014). Here, given the changed circumstances of the case, the plaintiff should be allowed to amend the complaint to conform to the claims made on behalf of the individual plaintiff.

The Defendants have a valid argument, though, in saying that plaintiff should not be allowed to resurrect the EPSDT claim, which was previously denied on the merits. *Lincoln Gen. Inc. Col v. U.S. Auto Ins. Svcs., Inc.*, 787 F.3d 716, 724 (5th Cir. 2015). The Report and Recommendations of Magistrate Judge Michael T. Parker found that Plaintiffs’ EPSDT

² 42 U.S.C. § 1396, *et seq.*

claim should be dismissed with prejudice. [doc. no. 55 at p. 11]. This court adopted that Report and Recommendation in its order of November 7, 2016. [doc. no. 120]. The Magistrate Judge found [doc. no.55 at p. 9], and this Court agreed, that plaintiffs had not requested screening under the provisions of the EPSDT, as would be required before a duty is created for the Defendants to provide treatment. Therefore, this court concludes that plaintiff's averments in the proposed amended complaint [135-1] which purport to state a claim under the EPSDT provisions of Medicaid, may not be re-alleged.

Accordingly, this court is persuaded to grant in part and deny in part plaintiff's motion to amend [doc. no. 135]. Plaintiff is hereby granted leave to amend the complaint, but plaintiff must purge the amended complaint of the EPSDT claim before plaintiff files the amended complaint. Plaintiff shall tailor the amended complaint [doc. no. 135-1] to conform to this Court's directives herein, and may file the amended complaint, as modified, within ten days of this order.

SO ORDERED, this the 14th day of April , 2017.

s/ HENRY T. WINGATE
UNITED STATES DISTRICT COURT JUDGE