

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: GUIDANT CORP. IMPLANTABLE
DEFIBRILLATORS PRODUCTS
LIABILITY LITIGATION

MDL No. 05-1708 (DWF/AJB)

This Document Relates to:

Donald Alexander,

Plaintiff,

v. Civil No. 07-1129 (DWF/AJB)

Boston Scientific Corporation, Guidant
Subsidiary of Boston Scientific Corporation,
and St. Anthony's Medical Center,

Defendants.

ORDER

Donald Alexander, 31057 Oak Ridge Drive, Rocky Mount, MO 65072, *pro se*.

Timothy A. Pratt, Esq., Deborah A. Moeller, Esq., and Julie R. Somora, Esq., Shook Hardy & Bacon, LLP, counsel for Defendants Boston Scientific Corporation and Guidant Subsidiary of Boston Scientific Corporation.

Douglas Ponder, Esq., Karen C. Moske, Esq., and V. Scott Williams, Esq., Hazelwood & Weber, LLC, counsel for Defendant St. Anthony's Medical Center.

On June 13, 2007, Plaintiff Donald Alexander filed a Motion to Amend the Court's Order Issued June 4, 2007 Remanding the Above Captioned Cause of Action to State Court. The Court's June 4, 2007 Order severed and remanded Alexander's claims

against St. Anthony's Medical Center ("St. Anthony's") to St. Louis County Circuit Court, and retained jurisdiction over the claims against the remaining Defendants.

A party seeking reconsideration of an order must seek permission to file a motion to reconsider by submitting a letter to the Court that asks for permission to file such a motion. D. Minn. L.R. 7.1(g). However, *pro se* pleadings are liberally construed and are held to less stringent standards than formal pleadings drafted by lawyers. *See Martin v. Sargent*, 780 F.2d 1334, 1337 (8th Cir. 1985); *see also Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (quoting *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam) (stating *pro se* complaints are held to less stringent standards than formal pleadings drafted by lawyers)). Accordingly, the Court construes Alexander's motion as a request for permission to file a motion to reconsider.

Pursuant to Local Rule 7.1(g), a request for leave to file a motion for reconsideration will only be granted upon a showing of "compelling circumstances." A motion to reconsider should not be employed to relitigate old issues but to "afford an opportunity for relief in extraordinary circumstances." *Dale & Selby Superette & Deli v. United States Dept. of Agriculture*, 838 F. Supp. 1346, 1348 (D. Minn. 1993).

Alexander asks the Court to amend and/or reconsider its June 4, 2007 Order for three reasons. First, citing *Carlson v. Arrowhead Concrete Works, Inc.*, 445 F.3d 1046 (8th Cir. 2006), Alexander asserts that the Court erred in severing his claims against St. Anthony's after the Court determined the case should be remanded. The Court disagrees. Although the Court did not find that St. Anthony's was fraudulently joined, the Court did determine that St. Anthony's had been misjoined. Therefore, severance and

remand of the claims against St. Anthony's was proper. Fed. R. Civ. P. 21 ("Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately."). *Carlson* is distinguishable because there, the court commented on the timing and the conclusiveness of the ruling on a substantive motion to dismiss. 445 F.3d at 1052. Although it would be superfluous to deny a motion to dismiss on substantive grounds after a case has already been remanded, it is not superfluous to grant a severance under such circumstances. Accordingly, Alexander has not presented compelling circumstances on this ground.

Second, Alexander asserts that his state claim against St. Anthony's will be severely prejudiced if St. Anthony's is severed from the other Defendants. Because of the nature and stage of the MDL, however, the Court disagrees. Instead, both justice and the litigation itself will be efficiently served if the Court retains the product liability claims asserted against Guidant and severs the claims asserted against St. Anthony's. Further, any information regarding what St. Anthony's employees and/or agents knew at the time of Alexander's implant, and St. Anthony's and Guidant's relationship with one another, can be procured through proper discovery, including third-party discovery.

Finally, Alexander asserts, in part, that because he will need testimony and documents from Guidant Corporation and Boston Scientific Corporation, and because Guidant and St. Anthony's allegedly were working together as a team on the date of Alexander's implant, his claims against St. Anthony's and the other Defendants arise out

of the same transaction and the same occurrence. In its June 4, 2007 Order, the Court found that the claims-at-issue “do not both involve common questions of law or fact and assert joint, several, or alternative liability ‘arising out of the same transaction, occurrence, or series of transactions or occurrences.’ Any liability that may be found against either BSC/Guidant or St. Anthony’s would not be a basis for liability as to the other.” (June 4, 2007 Order at 12 (citing Fed. R. Civ. P. 20(b)).) Alexander merely seeks to relitigate issues that the Court has already considered and decided. The Court will not relitigate these issues here.

In conclusion, the Court finds that Alexander has not demonstrated compelling circumstances that warrant reconsideration of the Court’s decision to sever and remand Alexander’s claims against St. Anthony’s.

Based on the foregoing, it is **HEREBY ORDERED** that:

1. Plaintiff’s Motion to Amend the Court’s Order Issued June 4, 2007

Remanding the Above Captioned Cause of Action to State Court (MDL No. 05-1708, Doc. No. 1929; Civil No. 07-1129, Doc. No. 22) is **DENIED**.

Dated: August 20, 2007

s/Donovan W. Frank
DONOVAN W. FRANK
Judge of United States District Court