

OFFICE OF SPECIAL MASTERS

(Filed: May 12, 2006)

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MISTY MCANALLY, as Legal Representative of)	
DARRIN JAMES PIAZZA, deceased,)	
)	
	Petitioner,)	
)	
	v.)	04-1594V
)	UNPUBLISHED
)	Dismissal for Failure to
)	Prosecute; Missing
)	Petitioner
SECRETARY OF THE DEPARTMENT OF)	
HEALTH AND HUMAN SERVICES,)	
)	
	Respondent.)	
-----)	

DECISION* ¹

On August 15, 2005, petitioner’s counsel in the above-captioned case filed a Motion to Withdraw as Counsel of Record. Accompanying the Motion was a signed statement by petitioner indicating that she had received a hand-delivered copy of the Motion. Also submitted with counsel’s Motion was a June 29, 2005 letter sent from

* Vaccine Rule 18(b) states that all of the decisions of the special masters will be made available to the public unless the decisions contain trade secrets or commercial or financial information that is privileged or confidential, or the decisions contain medical or similar information the disclosure of which clearly would constitute an unwarranted invasion of privacy. Within 14 days after the filing of a decision or substantive order with the Clerk of the Court, a party may identify and move for the redaction of privileged or confidential information before the document’s public disclosure.

¹ This Decision replaces the vacated Dismissal Order of May 11, 2006 in title but not in substance.

petitioner's counsel to petitioner via hand delivery. The letter informed petitioner that counsel could no longer represent her and noted,

our office[']s inability to locate you with any regularity has made our representation of your interest virtually impossible. According to our records we have not had a working phone number where we can reach you in 3 months. Nor have we had a mailing address at which we could send you a letter in 5 months.

The filing did not include an address or telephone number where the court could reach petitioner.

By court Order of August 30, 2005, the special master indicated that she would not grant petitioner's counsel's motion until counsel filed proof of delivery of the Order to petitioner. The Order also stated:

Petitioner, Misty McAnally, is hereby directed, no later than Wednesday, September 28, 2005, to provide the court with (1) a current address at which the court can send her mail and (2) a current telephone number at which the court can leave her messages. If petitioner does not contact the court with this information, she could face a dismissal of her case for failure to prosecute her claim. This matter cannot move forward without petitioner's participation.

Order, filed Aug. 30, 2005 (emphasis in original).

The court failed to receive any proof of delivery from petitioner's counsel or from petitioner herself. Accordingly, on December 1, 2005, the special master issued an Order directing counsel again to take the steps instructed in the August 30, 2005 Order before the court would permit him to withdraw as counsel of record. The Order again directed petitioner herself to provide the court with a current address and telephone number at which to be contacted. It stated:

Petitioner, Misty McAnally, is hereby directed, no later than Tuesday, January 21, 2006, to provide the court with (1) a current address at which the court can send her mail and (2) a current telephone number at which the court can leave her messages. If petitioner does not contact the court with this information, she could face a dismissal of her case for failure to prosecute her claim. This matter cannot move forward without petitioner's participation.

Order, filed Dec. 1, 2005 (emphasis in original).

In complying with the court's Order "to the fullest extent possible," petitioner's counsel filed on December 8, 2005 the Affidavit of Delbert Holstead, a licensed private investigator. In his Affidavit, Mr. Holstead attests that he personally delivered counsel's Motion to Withdraw to Misty McAnally and that she is aware that the law firm no longer represents her and that she must find other counsel to represent her. Mr. Holstead states that he also delivered the court's most recent Order to Darrin Piazza, the father of the deceased child but not a named petitioner in this case, and that Mr. Piazza also understands that the law firm no longer represents petitioner. Mr. Holstead further states that Misty McAnally left the State of Texas and is believed to be in the State of Florida, with no known address or telephone number.

Based on the representations made by the private investigator, Delbert Holstead, and based on the representations made by petitioner's former counsel², Matthew Matheny, during a telephonic status conference held on March 7, 2006, Ms. McAnally received personal notice of the August 30, 2005 and December 1, 2005 Orders on several occasions. To date, the court has not received any response to either Order from Ms. McAnally.

On March 8, 2006, having failed to receive any response from Ms. McAnally, the court issued an Order to Show Cause, which directed Ms. McAnally to contact the court on or before May 8, 2006, to provide a current address and phone number at which she could be contacted to discuss further proceedings in this case. Petitioner was warned that if she failed to contact the court by May 8, 2006, "this petition WILL BE DISMISSED for failure to prosecute."

To date, Ms. McAnally has not contacted the court. Accordingly, this petition is DISMISSED for failure to prosecute. The Clerk of the Court shall enter judgment accordingly. The Clerk of the Court shall deliver this decision to the parties via overnight delivery.

IT IS SO ORDERED.

Patricia E. Campbell-Smith
Special Master

² Petitioner's counsel's Motion to Withdraw as Counsel of Record was granted by court Order of March 8, 2006.