

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

KATIE ROBERTS, et al.,

Plaintiffs,

v.

BRIAN CASKEY, et al.,

Defendants.

Case No. 22-2366-DDC-ADM

ORDER OF DISMISSAL WITHOUT PREJUDICE

Defendants have moved to dismiss plaintiffs' Verified Petition (referred to as their "Complaint" on our docket). Defendants' motion invokes Fed. R. Civ. P. 12(b)(1) (contending that the court lacks subject matter jurisdiction) and 12(b)(6) (contending that plaintiffs' filing fails to state a claim). Doc. 22. Defendants' filings don't differentiate between a dismissal with prejudice or one without. *See id.* (motion) and Doc. 23 (Memorandum in Support). But as defendants correctly point out, the court must decide the subject matter jurisdiction question first before expressing any view about the case's merits. Doc. 23 at 2–3 (citing *Blain v. Wyandotte Cnty. Detention Ctr.*, No. 20-2643, 2021 WL 492257, at *1 (D. Kan. Feb. 10, 2021)).

Plaintiffs now have responded to the motion, reporting that they "concur with the defendants['] motion to dismiss without prejudice, pursuant to Fed. R. [C]iv. Rule 14(1)(B)." Doc. 25. As Rule 14 governs third-party practice, the court liberally construes the pro se plaintiffs' filing to mean, instead, that they concur with a dismissal under Fed. R. Civ. P. 12(b)(1)'s subject matter jurisdiction provision.¹

¹ The court construes a pro se litigant's pleadings liberally. *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

Consistent with defendants' motion and plaintiffs' response, the court elects to dismiss plaintiffs' Verified Petition (Doc. 1) for lack of subject matter jurisdiction. When a federal court dismisses on that basis, the outcome is one without prejudice. *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1216 (10th Cir. 2006) ("A longstanding line of cases from this circuit holds that where the district court dismisses an action for lack of jurisdiction, as it did here, the dismissal must be without prejudice.").

THEREFORE, the court dismisses plaintiffs' Verified Petition for Writ of Mandamus (Doc. 1), docketed as their Complaint. This dismissal is without prejudice.

THE COURT ALSO DIRECTS the clerk to close the case

IT IS SO ORDERED.

Dated this 10th day of November, 2022, at Kansas City, Kansas.

s/ Daniel D. Crabtree
Daniel D. Crabtree
United States District Judge