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4 **IN THE SUPERIOR COURT**
5 **FOR THE**
6 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

6 **PILAR MANGLONA**
7 **DELEON GUERRERO,**

8 **Plaintiff,**

9 **v.**

10 **ST. JUDE RENAL CARE FACILITY,**
11 **INC.,**

12 **Defendant.**

CIVIL ACTION NO. 22-0009

ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION
BECAUSE PUBLIC LAW 23-17
ESTABLISHING A RIGHT TO
SURVIVORSHIP FOR CERTAIN
CAUSES OF ACTION AFTER THE
DEATH OF AN INJURED PERSON IS
NOT APPLICABLE, AS THIS CASE
HAD BEEN DISMISSED AND WAS NO
LONGER PENDING

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14 **I. INTRODUCTION**

15 **THIS MATTER** came before the Court on Pilar Manglona Deleon Guerrero's
 16 ("Plaintiff" or "Pilar") Motion for Reconsideration and Motion to Substitute Plaintiff with Co-
 17 Executrixes of Plaintiff's Estate on June 18, 2024, at 2:30 p.m. in Courtroom 220A¹. Michael
 18 W. Dotts, Esq., appeared for Pilar. Brien Sers Nicholas, Esq., appeared for St. Jude Renal
 19 Care Facility, Inc. ("Defendant" or "St. Jude").
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21 **II. RELEVANT FACTS²**

- 22 1. Pilar was a long-term sufferer of type 2 diabetes, and she required dialysis three
 23 times a week. *See* Complaint ¶ 4.
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26 ¹ The Motion to Substitute Plaintiff with Co-Executrixes of Plaintiff's Estate was stayed pending the ruling on the Motion for Reconsideration. As the Court has denied the Plaintiff's Motion for Reconsideration, the Motion to Substitute Plaintiff with Co-Executrixes of Plaintiff's Estate is moot.

² For purposes of this Order, the Court is cognizant that there was no trial or evidentiary hearing to properly hear testimony and receive evidence thus the Court only briefly list some relevant allegations in the pleadings to provide context.

By order of the Court, Judge Joseph N. Camacho

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2. From 2015 to 2020, Pilar went to St. Jude for routine dialysis sessions. *See* Complaint ¶ 5.
3. Pilar experienced numbness in her feet to the point that she felt no pain. *See* Complaint ¶ 6.
4. Pilar also experienced another common complication of diabetes where her wounds did not heal properly. *See* Complaint ¶ 7.
5. Pilar’s dialysis sessions usually lasted four hours and she could not move or walk away from the machine during the sessions. *See* Complaint ¶ 10.
6. On February 14, 2020, Pilar went to St. Jude for her routine dialysis session. *See* Complaint ¶ 9.
7. During the February 14, 2020 session, Pilar’s lower body felt cold, and she asked the nurse for a way to keep warm. The nurse placed a heating lamp next to Pilar’s left foot. *See* Complaint ¶ 11.
8. The heating lamp was placed next to her feet for an extended amount of time and was not removed during the session. *See* Complaint ¶ 12.
9. Pilar discovered the burn injury at the end of the dialysis session. *See* Complaint ¶ 21.
10. On February 24, 2020, Pilar went to the Commonwealth Healthcare Corporation for the burn injury she suffered on her left foot. *See* Complaint ¶ 24.
11. On April 1, 2020, Pilar’s post-burn foot ulcer was removed. *See* Complaint ¶ 25.
12. Around April 2020, the top of her second left toe fell off by itself. *See* Complaint ¶ 26.
13. On May 15, 2020, a partial amputation of her left foot was subsequently performed. *See* Complaint ¶ 27.

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2. On February 28, 2022, St. Jude filed an Answer to the Complaint.
3. On May 16, 2022, Pilar filed an Ex Parte Motion to Appoint Guardian Ad Litem for Pilar.
4. On May 27, 2022, Pilar requested to take the Ex Parte Motion off the calendar.
5. On February 13, 2024, Pilar filed a Notice for Suggestion of Death, notifying the Court that Pilar had died on April 19, 2023.
6. On February 15, 2024, St. Jude filed a Summary Judgment Motion arguing that the Commonwealth does not have a survivorship statute that allows Pilar’s tort claims to survive her death. St. Jude asserts the Court should dismiss the case as the case ceased to exist after Pilar died.
7. On March 1, 2024, Pilar filed an Opposition to Defendant’s Summary Judgment arguing that modern common law, specifically Restatement (Second) of Torts § 900 (1979) allows for tort claims to survive the death of the tort victim. Pilar argues that the Northern Mariana Commonwealth Legislature unconstitutionally delegated legislative power to Restatement writers, and the Commonwealth’s common law should be based on Commonwealth Courts’ judicial decisions. Finally, the Court should “disregard 7 CMC §3401 and recognize that the “modern trend [...] is to recognize the right of survivorship” as common law. Pilar’s Opposition at 5.
8. On March 15, 2024, the Court granted St. Jude’s Summary Judgment Motion and dismissed the case with prejudice.
9. Three days later, on March 18, 2024, House Bill 23-61 was signed into law as Public Law 23-17.
10. On March 22, 2024, Pilar filed a Motion for Reconsideration arguing that P.L. 23-17 is intervening controlling law that now adds a survivorship statute for “[a] cause of action arising out of a wrongful act, neglect, or default[.]” 7 CMC § 2602. P.L. 23-

1 17 applies retroactively for cases pending within a year from the effective date of the
2 law. Pilar states this new law applies to this case, allowing Pilar’s claims to survive
3 her death. Pilar suffered damages that under this law may be recovered by her estate,
4 and if the Court does not grant a reconsideration, Pilar’s estate “will suffer great
5 prejudice.” Pilar’s Motion for Reconsideration at 6.

6 11. On April 16, 2024, St. Jude filed an Opposition to Pilar’s Motion for Reconsideration.
7 St. Jude noted that P.L. 23-17 applies to cases that are currently pending. In this
8 instance, the case cannot be considered pending under P.L. 23-17, as the cause of
9 action did not survive Pilar’s death on April 19, 2023. This case was determined when
10 Pilar died and the Court properly granted St. Jude’s summary judgment motion and
11 dismissed the case with prejudice. By the plain meaning of “pending” this case “does
12 not and cannot fall within the parameters of P.L. 23-17 as a matter of law.” St. Jude’s
13 Opposition at 3.
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15 12. On April 17, 2024, Pilar filed a Motion to Substitute Plaintiff with Co-Executrixes of
16 Plaintiff’s Estate.

17 13. On May 24, 2024, Pilar filed a Reply to St. Jude’s Opposition to Plaintiff’s Motion for
18 Reconsideration arguing that the cause of action was still pending after Pilar died
19 because it was not yet resolved. P.L. 23-17 was signed into law on March 18, 2024,
20 and it applies retroactively to cases pending within a year of the effective date. Pilar
21 died on April 19, 2023. The Court granted summary judgment dismissing the case on
22 March 15, 2024. Pilar believes the case has been pending and falls within the timeline
23 of P.L. 23-17.
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25 14. On August 15, 2024, the Court issued an Order For Supplemental Briefing on the
26 Retroactive Application of P.L. 23-17. The Court asked the parties to answer four
questions: (1) Is the “Findings and Purpose” section of House Bill 23-61 (Public Law

1 23-17) regarded as statutory law that would be enforceable; (2) Does P.L. 23-17 apply
2 retroactively despite 7 CMC § 2602 lacking the terms “retroactive” or “pending” in
3 the statutory language; (3) In a case such as this that has been dismissed with prejudice,
4 is a case pending during the allotted ten days that a party must file a motion for
5 reconsideration; and (4) In a case such as this that has been dismissed with prejudice,
6 is a case pending after the motion for reconsideration is filed?

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8 15. On September 13, 2024, Pilar filed her Supplemental Brief asserting that P.L. 23-17
9 applies retroactively because it is mentioned in the Findings and Purpose section,
10 showing the Legislature’s intent for the law to apply retroactively. The Findings and
11 Purpose section is considered statutory law, despite the absence of the terms
12 “retroactive” and “pending” in 7 CMC § 2602. Pilar further argues that this case is still
13 pending before the Court since there is time to file a motion for reconsideration and
14 an appeal, the judgment is not final which means the case is still pending. Within the
15 ten days allotted for a motion for reconsideration and thirty days to file an appeal, the
16 case is still pending. The case ends when there is a final and unappealable order or
17 judgment.
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19 16. On October 4, 2024, St. Jude filed its Supplemental Brief arguing that 7 CMC § 2602
20 is statutory law, not the Findings and Purpose section. The plain meaning of 7 CMC §
21 2602 does not include the word “retroactive” which means it applies prospectively.
22 This case ceased to be pending as the Commonwealth did not have a right of
23 survivorship statute when Pilar died on April 19, 2023. Furthermore, the time
24 allocated for a motion for reconsideration did not render the case pending, as that
25 period does not affect the legal consequences of the Court’s order of dismissal with
26 prejudice.

1 17. On October 18, 2024, Pilar filed a Supplemental Reply Brief arguing that P.L. 23-17
2 cannot be applied prospectively because the Legislature made their intent clear in the
3 Findings and Purpose for the law to apply retroactively. The issue is not the
4 interpretation of 7 CMC § 2602, but what the Legislature intended, which is what the
5 Court should enforce. Pilar then makes a connection between the finality of judgments
6 and a pending case. Pilar argues that Rule 59 (e)(1) and Rule 60(b)(5) would have no
7 meaning if judgments were final once it was entered, and if the judgment is not final
8 then the case is still pending.
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10 18. On October 24, 2024, St. Jude filed its Sur-reply, arguing that Pilar failed to answer
11 the Court’s questions and failed to address P.L. 23-17 based on statutory construction
12 laws. The plain and common meaning of “pending” precludes the retroactive
13 application of P.L. 23-17. At the time the Court rendered its order, the Commonwealth
14 did not have a survivorship statute, and Pilar would not have had a legal basis to
15 appeal. Finally, Pilar failed to raise any arguments regarding Rules 59(e)(1) and
16 60(b)(5) in her Supplemental Brief and as such, has waived those arguments in this
17 case.
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19 **IV. LEGAL STANDARD**

20 A party must file a motion to alter or amend a judgment within ten days following the
21 entry of the judgment. *See* NMI R. CIV. P. 59(e). A court may alter or amend a judgment
22 based on three factors:

23 (1) there has been an intervening change in controlling law; (2) new evidence
24 has become available; or (3) alteration or amendment of the judgment is
25 necessary to correct a clear error or prevent manifest injustice.

26 NMI R. CIV. P. 59(e).

Rule 60(b) of the Commonwealth Rules of Civil Procedure “is a mechanism by which
a party can obtain relief from a judgment.” *Lizama v. Kintz*, 2002 MP 18 ¶ 4. The court may

1 relieve a party or its legal representative from a final judgment, order, or proceeding for any
2 other reason that justifies relief. *See* NMI R. Civ. P. 60(b)(5).

3 **V. DISCUSSION**

4 Pilar argues that P.L. 23-17 is an intervening change in controlling law, and a denial
5 of the motion for reconsideration would result in manifest injustice. P.L. 23-17 amends Title
6 7 Chapter 6 of the Commonwealth Code by adding a new section 2602. The Commonwealth
7 now allows a cause of action “arising out of a wrongful act, neglect, or default” to survive the
8 death of an injured person, and it can be brought by a legal representative of the injured
9 person’s estate. *See* 7 CMC § 2602. P.L. 23-17 was signed into law on March 18, 2024.
10 Before P.L. 23-17, the Commonwealth did not have a survivorship statute that allowed a tort
11 claim to survive the tort victim’s death. Pilar believes that P.L. 23-17 is an intervening change
12 in controlling law applicable to this case.
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14 **1. Before Public Law 23-17**

15 Rule 25(a) states that “[i]f a party dies and the claim is not extinguished, the court may
16 order substitution of the proper party.” *See* NMI R. Civ. P. 25(a)(1). The NMI Supreme Court
17 addressed the existence (or lack thereof) of a survivorship statute that allowed a tort claim to
18 survive the tort victim’s death in *Indalecio v. Yarofalir, et al.* The plaintiff in *Indalecio* filed
19 a wrongful death action seeking damages for herself and the decedent who was her son. *See*
20 *Indalecio v. Yarofalir, et al.*, 2006 MP 18 ¶1. The trial court dismissed the plaintiff’s
21 complaint because the “wrongful death statute does not permit recovery for injuries sustained
22 by the decedent.” *See Id.* The NMI Supreme Court found that the plaintiff in *Indalecio*
23 adequately pled a claim for wrongful death to recover damages for her (mother) injuries. *See*
24 *Id.* However, 7 CMC § 2101, the wrongful death statute, did not apply to Indalecio’s (son)
25 estate attempting to recover for Indalecio’s (son) injuries. *See Id.* at ¶ 22. Title 1 CMC § 2601
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1 allowed a tort victim to still recover upon the tortfeasor’s death. At the time the NMI Supreme
2 Court determined *Indalecio v. Yarofalir, et al.*, 2006 MP 18 the Commonwealth did not have
3 a survivorship statute that would permit tort claims arising during a tort victim’s lifetime to
4 continue after the tort victim’s death. *See Id.* “We must assume that the Legislature’s silence
5 here was not an oversight, but a calculated decision.” *Id.*

6 In *Flores v. Concepcion*, the United States District Court for the Northern Mariana
7 Islands echoed *Indalecio* by concluding that tort claims are extinguished upon the tort victim’s
8 death and cannot be continued by the administrator of the estate. *See Flores v. Concepcion*,
9 2016 U.S. Dist. LEXIS 185945 at *14. Here, Pilar’s cause of action was extinguished upon
10 her death on April 19, 2023 because the Commonwealth did not have a survivorship statute
11 at the time of Pilar’s death. The Court properly granted summary judgment in favor of St.
12 Jude and dismissed the case.

14 **2. After Public Law 23-17**

15 Section 1 of P.L. 23-17, titled “Findings and Purpose⁵” states that “in order to provide
16 a fair period of transition, the application of the right of survivorship is applied retroactively
17 to **cases pending within a year of the effective date** of this act.” Public Law No. 23-17
18 (emphasis added). The actual explicit statutory language of Public Law 13-17 does not
19 mention the word “pending”. St. Jude argues that because there was no survivorship statute
20 prior to the enactment of P.L. 23-17, Pilar’s cause of action did not survive after Pilar’s death.
21 Furthermore, since the Court dismissed the action, the case was no longer active.
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⁵ The Court is cognizant that the issue of “pending” stems from the “Findings and Purpose” of the Public Law. The “Findings and Purpose” of a bill introduced at the legislature generally gives background information as to the reasons and grounds why a proposed legislation is being introduced, which may be helpful if there is some ambiguity. The actual explicit statutory language of Public Law 23-17 does not mention the word “pending”.

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A. Some definitions and case laws on the meaning of pending.

The Court will examine judicial decisions to clarify the legal meaning of “pending” and how different jurisdictions have developed consistent or similar definitions for the term. The court in *In re Easthope* used Black’s Law Dictionary to define the word “pending” mentioned in 11 U.S.C.S. § 362(c)⁶ when deciding whether an automatic stay went into effect for Easthope’s current case. *See In re Easthope*, 2006 Bankr. LEXIS 826 at *1. “Black’s Law Dictionary defines ‘pending’ as ‘[r]emaining undecided; awaiting decision.’ *Id.* at 7. The court in *In re Easthope* concluded that the plain meaning of “pending”, “demonstrates that a case is no longer pending once the Court has dismissed it.” *Id.* at 8.

In *Sievert v. Duzinski*, the Circuit Court of the 12th Judicial Circuit in Illinois certified a question to the Third District Court of Appeals. The defendant had argued that under Illinois Supreme Court Rule 103(b), the plaintiff failed to exercise diligence in serving defendant and refile a suit that was involuntarily dismissed. *See Sievert v. Duzinski*, 2021 IL App (3d) 190179 ¶16. The Third District Court in *Sievert v. Duzinski* explained that to measure diligence under Rule 103(b), there must be a pending civil suit. *See Id.* at ¶23. “However, Rule 103(b) does not measure a party’s diligence between dismissal and refile; it measures diligence in effectuating service of a pending civil suit.” *Id.* “While the complaint was **dismissed** for want of prosecution **and not pending**, there was no reason for plaintiff to attempt service of process and no way for her to do so.” *Id.* at 19 (emphasis added). This demonstrates that a case that has been dismissed cannot simultaneously be considered pending, despite the ability of a plaintiff to refile. “The pendency of a civil suit is the ‘simple logic’ upon which Rule 103(b) diligence is based.” *Id.* ¶ 23 (citing *Case v. Galesburg Cottage*

⁶ “To summarize, for debtors who had one case pending in the previous year, § 362(c)(3) applies and the automatic stay goes into effect for at least 30 days upon the filing of their petition.” *See In re Easthope*, 2006 Bankr. LEXIS 826 at * 6. “For those debtors with two or more cases pending in the previous year, § 362(c)(4) applies and there is no automatic stay in effect upon the filing of their petition.” *Id.*

1 *Hosp.*, 227 Ill. 2d 207, 217 (2007)). “That logic does not apply from the time a lawsuit is
2 dismissed to the time the suit is refiled, regardless of the nature of the dismissal.” *Id.* The
3 time between the dismissal and the refiled does not classify the case as pending.

4 In *Kellogg Brown & Root Servs. v. United States ex rel. Carter*, one of the questions
5 the United States Supreme Court addressed was “whether the False Claims Act’s first-to-file
6 bar keeps new claims out of court only while related claims are still alive or whether it may
7 bar those claims in perpetuity.” *Kellogg Brown & Root Servs. v. United States ex rel. Carter*,
8 575 U.S. 650, 653 (2015). To do so, the United States Supreme Court discussed the meaning
9 of “pending action” mentioned in the first-to-file bar in 31 U.S.C. §3730(b)(5)⁷. *See Id.* at 662.
10 The Supreme Court referred to Black’s Law Dictionary to clarify the term “pending action”
11 in the context of the False Claims Act. *See Id.* The United States Supreme Court interpreted
12 this to indicate that an earlier lawsuit obstructs the initiation of a later lawsuit while it remains
13 unresolved; however, this obstruction ceases **once the earlier suit is dismissed**. *See Id.*
14 (emphasis added). The United States Supreme Court concluded “[w]e see no reason not to
15 interpret the term “pending” in the FCA in accordance with its ordinary meaning.” *See Id.*

16
17 “It is a basic rule of construction that the court look first to the plain meaning of
18 statutory language.” *Villanueva v. Tinian Shipping & Transp., Inc.*, 2005 MP 12 ¶14 (citing
19 *Commonwealth v. Hasinto*, 1 N.M.I. 377, 382). These cases demonstrate that “pending” has
20 a specific legal meaning; it is not ambiguous. The Northern Marianas Commonwealth
21 Legislature had a specific intention when explicitly using the term “pending” in its Findings
22 and Purpose.
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⁷ “The first-to-file bar provides that “[w]hen a person brings an action . . . no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.” *Kellogg Brown & Root Servs. v. United States ex rel. Carter*, 575 U.S. 650, 653 (2015) (citing 31 U.S.C. §3730(b)(5)).

1 ***B. This case was not pending as it was dismissed prior to passage of Public***
2 ***Law 23-17***

3 Pilar contends that this case was pending and falls within the timeline established by
4 P.L. 23-17, that the starting point of the law begins on the effective date of P.L. 23-17 and
5 backward one year from March 18, 2024 to March 19, 2023. Pilar is correct that this case was
6 pending on March 19, 2023, but it was subsequently decided on and dismissed, on March 15,
7 2024, three days before P.L. 23-17 became law. “[A] case is pending only so long as there
8 remains something left to decide.” *See Easthope*, 2006 Bankr. LEXIS 826 at *8. The decision
9 before this Court was whether St. Jude was entitled to judgment as a matter of law regarding
10 St. Jude’s Motion for Summary Judgment. Once this case was dismissed there was nothing
11 left to decide. *See Easthope*, 2006 Bankr. LEXIS 826 at *8.

12 The Court issued its Order on March 15, 2024, granting summary judgment dismissing
13 Pilar’s case because there were no disputed facts and no survivorship statute that allowed
14 Pilar’s claims to survive her death. Nothing was left for the Court to decide or resolve,
15 transitioning the case from pending to decided and dismissed. All dismissed cases were
16 pending at some point, whether the parties were in active litigation, court-ordered mediation
17 or awaiting a decision from the court. Like *Easthope*, once a case has been dismissed there
18 is nothing left to decide or settle, and all that remains is for the case to be closed. *See Easthope*,
19 2006 Bankr. LEXIS 826 at *8.

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21 In *Sievert v. Duzinski*, following the dismissal of the initial case, there was no basis
22 for the plaintiff to attempt service, as there was neither a new complaint nor a new case in
23 existence. *Sievert*, 2021 IL App (3d) 190179, ¶19. An active lawsuit must be filed and
24 currently in progress for a plaintiff to attempt service. *See Id.* ¶ 23. A case dismissed and not
25 refiled cannot be considered pending. *See Id.* Here, the case was dismissed on March 15,
26 2024, and it cannot logically be regarded as pending simply because it was classified as such

1 before its dismissal. As stated, all dismissed cases were, at some point, pending before their
2 dismissal. By March 15, 2024, this case was no longer awaiting a decision, as a ruling had
3 already been rendered. Similarly to *Sievert v. Duzinski*, Pilar argues that the allotted ten days
4 to file a motion for reconsideration makes the case pending. This contradicts the definition
5 and plain meaning of “pending” involving a decision not yet made or awaiting a decision.
6 This case was not awaiting a decision during the eight days between the dismissal and Pilar’s
7 Motion for Reconsideration because there was nothing left to adjudicate.

8 Pilar’s reliance on the “change of law” is misplaced. ***If*** P.L. 23-17 was enacted before
9 the death of Pilar or before the Court issued its written order dismissing the case, then the
10 posture of Pilar’s case would be different. Pilar’s argument would be logically consistent at
11 that stage, as a decision had not yet been rendered. Again, ***if*** P.L. 23-17 was enacted before
12 the death of Pilar or before the Court issued its order dismissing the case, then the posture of
13 Pilar’s case would be different as Pilar’s case would still be pending.

14 However in Pilar’s case, there was no occurrence of a change of law during the
15 pendency of her lawsuit to affect the outcome of the lawsuit. Like in *Sievert v. Duzinski*, the
16 time between dismissal and refiling did not make the lawsuit active and pending. Here, Pilar’s
17 Motion for Reconsideration was filed after the case was dismissed and after P.L. 23-17
18 became law on March 18, 2024. The plain statutory language of 7 CMC § 2602 does not
19 explicitly say it applies retroactively. Pilar’s case was dismissed on March 15, 2024 and thus
20 was no longer pending.
21

22 Pilar contends that the Findings and Purpose section indicates the Legislature’s intent
23 for the application to be retroactive. In *Kellogg Brown & Root Servs. v. United States ex rel.*
24 *Carter*, the key point was that an unresolved lawsuit prevented the filing of a subsequent
25 lawsuit. *See Kellogg Brown & Root Servs.*, 575 U.S. at 662. However, if an unresolved lawsuit
26 was dismissed, it no longer served as a barrier to the later suit, as it was no longer active. *See*

1 *Id.* A lawsuit remains pending as long as it is unresolved and requires a decision. Once a
2 lawsuit is dismissed, the matter is considered settled, and the status of being unresolved is
3 eliminated. “[A]ccording to petitioners, the term ‘pending’ is used as a short-hand for the first
4 filed action.” *Kellogg Brown & Root Servs.*, 575 U.S. at 662 (citation and quotation marks
5 omitted). “Thus, as petitioners see things, the first-filed action remains “pending” even after
6 it has been dismissed, and it forever bars any subsequent related action.” *Id.* “This
7 interpretation does not comport with any known usage of the term ‘pending.’” *Id.*

8
9 Similarly, Pilar asserts that since ten days were allotted to file a motion for
10 reconsideration, the case was pending despite its dismissal on March 15, 2024. However, a
11 case cannot be classified as pending once it has been dismissed. Like in *Kellogg Brown &*
12 *Root Servs.*, a lawsuit remains pending as long as it is unresolved and requires a decision.
13 Once the lawsuit is dismissed, the matter is considered settled, and the status of being
14 unresolved is eliminated. By utilizing the term “pending,” the Legislature indicated its
15 intention to refer to active cases, “remaining undecided and awaiting a decision.” If the
16 Legislature had intended to revive dismissed cases, the Legislature using the term “pending”
17 would not have been the choice of word they would have used. To paraphrase *Indalecio*, the
18 Court “must assume that the Legislature’s [word choice] here was not an oversight, but a
19 calculated decision.” *See Indalecio v. Yarofalir, et al.*, 2006 MP 18 ¶1

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21 A dismissed case cannot be classified as pending. Furthermore, this case was not
22 appealed at the time the law became effective. In *Arizona v. Yellen*, the Arizona District Court
23 stated that many courts have concluded a case pending on appeal is a pending action. *See*
24 *Arizona v. Yellen*, 2022 U.S. Dist. LEXIS 74101 at *5 (“When determining what ‘pending’
25 means courts across the country have widely determined that this term includes cases pending
26 on appeal.”)

1 To be clear, this case was not pending in the sense that there were issues still before
2 the trial court. This case was dismissed. More accurately, this case was dismissed before P.L.
3 23-17 became law. Once this case was dismissed it was no longer pending, and because this
4 case was no longer pending P.L. 23-17 does not apply.

5 **3. Manifest Injustice**

6 Pilar argues that denial of her motion for reconsideration would result in manifest
7 injustice because Pilar was seriously injured and Pilar’s estate could recover damages under
8 the new law. When St. Jude’s Motion for Summary Judgment was before the Court asserting
9 the case be dismissed as the case ceased to exist after Pilar died, the Commonwealth did not
10 have a survivorship statute. The Court made its decision based on the absence of a
11 survivorship statute, resulting in the dismissal of the case, and the case ceased to be pending
12 as of March 15, 2024. P.L. 23-17 does not apply because this case was no longer pending,
13 and therefore P.L. 23-17 does not grant Pilar’s estate a right of survivorship either. Pilar’s
14 estate could not have been deprived of a right to recovery when such a right did not exist.

16 **VI. CONCLUSION**

17 The Court concludes that “pending” refers to an active case that is still awaiting a
18 decision and has not yet been dismissed. As such, Public Law No. 23-17 was enacted on
19 March 18, 2024 is not an intervening change in controlling law for purposes of Plaintiff Pilar
20 Manglona Deleon Guerrero’s Motion for Reconsideration because Public Law No. 23-17 does
21 not apply to this case which was dismissed on March 15, 2024.

22 The case *Pilar Manglona Deleon Guerrero v. St. Jude Renal Care Facility, Inc.* was
23 no longer *pending* and the passage of Public Law 23-17 could not revive an already dismissed
24 case. As such, there is no manifest injustice in denying Plaintiff’s Motion for Reconsideration
25 because P.L. 23-17 does not provide a right of survivorship for Pilar Manglona Deleon
26 Guerrero’s estate as the case was dismissed and no longer pending.

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THEREFORE, Plaintiff Pilar Manglona Deleon Guerrero's Motion for Reconsideration is **DENIED**.

SO ORDERED this 28th day of October 2024.

/s/
JOSEPH N. CAMACHO, Associate Judge