IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

LEON McNEAL,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	No. 01-1205
	)	
CITY OF HICKORY VALLEY, TENNESSEE, et al.,	)	
	)	
	)	
Defendants.	)	

ORDER GRANTING MOTION TO AMEND COMPLAINT
AND PARTIALLY GRANTING AND PARTIALLY DENYING
DEFENDANTS' MOTION TO DISMISS

Plaintiff Leon McNeal filed this action against the City of Hickory Valley, Tennessee, Hickory Valley Police Department, Officer Larry Butler, Duane Lax, Allen Rogers, and John Doe, alleging that Defendants deprived him of his civil rights pursuant to 42 U.S.C. §§ 1983, 1985(3), and 1986 and the First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution.[1] Plaintiff has also alleged state law tort claims of false arrest and imprisonment and assault and battery. Defendants have filed a motion to dismiss, and Plaintiff has filed a motion to amend the complaint. Defendants have responded to Plaintiff's

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[1] Plaintiff has no separate claim under the First, Fourth, Fifth, and Fourteenth Amendments. Instead, his claim that his constitutional claims were violated are properly brought under § 1983. See Thomas v. Shipka, 818 F.2d 496 (6th Cir. 1987) ("[I]n cases where a plaintiff states a constitutional claim under 42 U.S.C. § 1983, that statute is the exclusive remedy for the alleged unconstitutional violations.")

motion, and Plaintiff has responded to Defendants' motion. For the reasons set forth below, Defendant's motion is PARTIALLY GRANTED and PARTIALLY DENIED, and Plaintiff's motion is GRANTED.

Plaintiff's Motion to Amend

Plaintiff seeks to amend his complaint to (1) delete as defendants Hickory Valley Police Department, Duane Lax, Allen Rogers, and John Doe;[2] (2) delete the claims brought pursuant to 42 U.S.C. §§ 1985 and 1986; (3) delete the claim for punitive damages against Defendant City of Hickory Valley; and (4) allege that Defendant City of Hickory Valley's failure to train and/or supervise Defendant Butler was the result of a custom or policy. Defendants oppose the motion to amend on the ground that Plaintiff has not shown good cause for the amendment.[3]

Federal Rule of Civil Procedure 15(a) provides that "leave [to amend] shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). "[T]he thrust of Rule 15 is to reinforce the principle that cases 'should be tried on their merits rather than the technicalities of pleadings.'" Moore v. City of Paducah, 790 F.2d 557, 559 (6th Cir. 1986) (quoting Tefft v. Seward, 689 F.2d 637, 639 (6th Cir. 1982)). Thus, although the grant or denial of a motion

[2] In their response, Defendants state that Plaintiff has moved to delete Defendants Butler, Lax, Rogers, and John Doe in their official capacities only. The motion actually seeks to delete Lax, Rogers, and John Doe as defendants in all capacities.

[3] The court is puzzled by Defendants' opposition to the portion of Plaintiff's motion seeking to delete certain Defendants and claims rather than having them dismissed pursuant to Defendants' motion. In either case, the result is the same.

to amend is within the discretion of the court, the Sixth Circuit has stated that "there must be 'at least some significant showing of prejudice to the opponent' if the motion is to be denied." Janikowski v. Bendix Corp., 823 F.2d 945, 951 (6th Cir. 1987) (quoting Moore, 790 F.2d at 562).

A district court should consider the following factors when ruling on a plaintiff's motion to amend his complaint: (1) undue delay in filing the motion, (2) lack of notice to adverse parties, (3) whether the movant is acting in bad faith or with a dilatory motive, (4) failure to cure deficiencies by previous amendments, (5) the possibility of undue prejudice to adverse parties, and (6) whether the amendment is futile. Foman v. Davis, 371 U.S. 178, 182 (1962); Robinson v. Michigan Consol. Gas Co., 918 F.2d 579, 591 (6th Cir.1990).

In their motion to dismiss, Defendants seek to have Duane Lax, Allen Rogers, and John Doe, in their official capacities, and Hickory Valley Police Department dismissed as defendants. Likewise, Defendants seek to have the claim for punitive damages and the claims brought pursuant to 42 U.S.C. §§ 1985 and 1986 dismissed. Defendants cannot claim to be prejudiced by the proposed amendment since they have sought the same relief in their motion to dismiss. Moreover, Plaintiff is obviously not acting with an improper motive or in bad faith by seeking to delete parties and claims that might not withstand a motion to dismiss. To the contrary, it appears that Plaintiff is acting in good faith.

As for the additional allegation that Defendant City of Hickory Valley's failure to train and/or supervise Defendant Butler was the result of a custom or policy, in the original

complaint Plaintiff alleged that the actions of Defendant Butler were taken "pursuant to policies and procedures adopted by the City of Hickory Valley governing the conduct of officers and police business." Complaint at ¶ 22. The proposed amendment merely clarifies what has already been alleged.[4] Accordingly, Defendant City of Hickory Valley and Defendant Butler will not be prejudiced by this amendment and cannot complain of lack of notice. Furthermore, the trial of this matter is not set until November 18, 2002.

Defendants argue that Plaintiff's motion should be analyzed under the standard for modifying a scheduling order pursuant to Fed. R. Civ. P. 16(b) instead of the standard for modifying pleadings under Fed. R. Civ. P. 15(a). According to Defendants, Plaintiff must show good cause for filing the motion to amend outside the deadline set in the scheduling order. Defendants rely on Lower v. Albert, 1999 WL 551414 (6th Cir.), in support of their motion.

As Defendants acknowledge, the Sixth Circuit Court of Appeals rejected the reasoning of Lower in Inge v. Rock Financial Corp., 281 F.3d 613 (6th Cir. 2002).

> In Lower, a panel of this Court found that the district court did not abuse its discretion in refusing post-dismissal leave to amend when the plaintiffs sought to cure deficiencies identified in their pleading. For two reasons, however, Lower has little bearing on our review of the district court's denial of leave to amend in the instant case. First, this Court's unpublished decisions "are never controlling authority." Second, because the Lower Court discussed the good cause issue in a very limited fashion, we do not find that panel's disposition of the issue to be persuasive.

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[4] In § 1983 actions against a government entity, a plaintiff must plead and prove the existence of a custom or policy that was the proximate cause of the plaintiff's alleged deprivation. See Monell v. New York City Dept. of Social Servs., 436 U.S. 658, 694 (1978).

Id. at 625-26 (citations omitted). Despite Inge, Defendants continue to argue that "the lack of prejudice to the party opposing the motion is irrelevant to the moving party's exercise of diligence and does not show good cause." Defendant's Response at p. 4. Defendants are mistaken. The Inge court clearly held that:

> Further, because Plaintiff's request to amend was a prompt effort to remedy pleading deficiencies identified by the district court in the dismissal order--as opposed to an effort to add new claims or parties--**we envision no prejudice to Defendant from granting leave to amend.**
>
> We conclude that the district court abused its discretion in denying leave to amend based on an absence of good cause.

Id. at 626 (emphasis added). Additionally, Inge cites Bradford v. DANA Corp., 249 F.3d 807 (8th Cir.2001) and Johnson v. Mammoth Recreations, Inc., 975 F.2d 604 (9th Cir.1992), approvingly for the proposition that "[a]nother relevant consideration is possible prejudice to the party opposing the modification." 281 F.3d at 625.

In the present action, the amendment sought by Plaintiff as to Defendants' policy and/or custom is merely a clarification of the allegations pleaded in the original complaint. Therefore, Plaintiff's motion to amend is granted.

Defendants' Motion to Dismiss

A complaint should not be dismissed for failure to state a claim unless it is clear that the plaintiff would not be entitled to relief even if the factual allegations were proven. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). The factual allegations must be taken as true, Hammond v. Baldwin, 866 F.2d 172, 175 (6th Cir. 1989), and it must be apparent that the

plaintiff "can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Hammond, 866 F.2d at 175. The complaint must be read in the light most favorable to the plaintiff. Allard v. Weitzman (In re Delorian Motor Co.), 991 F.2d 1236, 1240 (6th Cir. 1993).

Defendants have moved to dismiss any state law claims filed against them. Since Defendants are governmental entities, they are immune from suits based on state law except as provided by the Tennessee Governmental Tort Liability Act, T.C.A. § 29-20-302, et seq. ("TGTLA"). The TGTLA provides that the circuit courts have exclusive original jurisdiction over claims brought under the Act. T.C.A. § 29-20-307. See Beddingfield v. Pulaski, 666 F. Supp. 1064 (M.D. Tenn. 1987), *reversed on other grounds*, 861 F.2d 968 (6th Cir. 1988). Cf. Timberlake v. Benton, 786 F. Supp. 676 (M.D. Tenn. 1992) (Granting the motion to dismiss of the City and the officers in their official capacities pursuant to Beddingfield but declining to apply the holding in Beddingfield to the officers in their individual capacities.) Therefore, the motion to dismiss the state law claims is granted.

Alternatively, the court declines to exercise supplemental jurisdiction over any state law claims brought by Plaintiff. See Maxwell v. Conn, 893 F.2d 1335, 1990 WL 2774 (6th Cir.) (While the federal claims would ordinarily confer jurisdiction over plaintiff's TGTLA claims because they arise out of the same nucleus of operative fact, the decision of the Tennessee legislature to grant original jurisdiction to state circuit courts belies plaintiff's claim that he could expect to try all his claims in the same judicial proceeding, and the

district court properly declined to exercise its discretion by extending pendent jurisdiction over the state common law negligence claims because of concerns of jury confusion.) Accord Spurlock v. Whitley, 971 F. Supp. 1166 (M.D. Tenn. 1997), *aff'd* 167 F.3d 995 (6th Cir. 1999) (A court may decline to exercise supplemental jurisdiction if "in exceptional circumstances," there are "compelling reasons for declining jurisdiction," 28 U.S.C. § 1367(c)(4), and the exclusivity provision of the TGTLA provides a compelling reason for this court to decline supplemental jurisdiction of the TGTLA claim.) Accordingly, any state law claims brought against Defendants pursuant to the TGTLA are dismissed on this ground.

Defendants have moved the court to dismiss Defendant Butler in his official capacity. As noted by Defendants, a suit against an officer in his official capacity is tantamount to a suit against the governmental entity employing the officer. See Will v. Michigan Dept. of State Police, 491 U.S. 58, 68 (1989). Because the City of Hickory Valley is a defendant, the claims against Defendant Larry Butler in his official capacity are dismissed.[5] The remaining portions of Defendants' motion to dismiss are DENIED as moot.

In summary, Plaintiff's motion to amend is GRANTED. The clerk is directed to file

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[5] It is not clear from the complaint in what capacity Defendant Butler has been sued. Ordinarily, absent a specification of capacity, officials are construed to be sued in their official capacity. See Wells v. Brown, 891 F.2d 591, 593 (6th Cir.1989). However, the Sixth Circuit Court of Appeals clarified the pleading requirements for a § 1983 complainant in Moore v. City of Harriman, 272 F.3d 769 (6th Cir. 2001). In Moore, the court rejected the defendants' argument that "to withstand a motion to dismiss, Wells requires complaints seeking damages for alleged violations of § 1983 to contain the words 'individual capacity,' regardless of whether the defendants actually receive notice that they are being sued individually." Id. at 775. Instead, a court must look to "the course of proceedings" to determine whether the individual defendant has received notice that he is being sued individually. Id. Here, the answer, Plaintiff's response to Defendants' motion to dismiss, and Plaintiff's request for punitive damages against Defendant Butler alone in his amended complaint, indicate that Plaintiff intended to sue Defendant Butler individually. Therefore, the claim against Defendant Butler in his individual capacity remains.

the amended complaint which is attached to the motion to amend as Exhibit A. Defendants City of Hickory Valley and Larry Butler will have twenty (20) days in which to file an answer to the amended complaint. The portion of Defendants' motion seeking to dismiss Hickory Valley Police Department, Duane Lax, Allen Rogers, and John Doe, the claims brought pursuant to 42 U.S.C. §§ 1985 and 1986, and the claim for punitive damages against Defendant City of Hickory Valley is DENIED as moot. The portion of Defendants' motion seeking to dismiss the state law claims is GRANTED. The portion of the motion seeking to dismiss Defendant Larry Butler is his official capacity is GRANTED. Therefore, the only claims remaining are those brought pursuant to 42 U.S.C. § 1983 against Defendant City of Hickory Valley and Defendant Larry Butler in his individual capacity.

IT IS SO ORDERED.

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JAMES D. TODD
UNITED STATES DISTRICT JUDGE

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DATE