

IN THE UNITED STATES DISTRICT COURT  
 FOR THE MIDDLE DISTRICT OF ALABAMA  
 SOUTHERN DIVISION

VELMA JEAN HUMPHREY and	)	
ROBERT LOWE, individually and as	)	
personal representative of the ESTATE OF	)	
O’PATRICK HUMPHREY and on behalf of	)	
O’Patrick Humphrey’s SURVIVORS and the	)	
BENEFICIARIES of O’Patrick Humphrey’s	)	
ESTATE,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:12-cv-366-WHA
	)	(WO)
TONY SMITH, individually and in his	)	
official capacity,	)	
	)	
Defendant.	)	

**MEMORANDUM OPINION AND ORDER**

This case is before the court on a Motion to Dismiss Amended Complaint for Failure to State a Claim (Doc. # 18). In their original Complaint, the Plaintiffs brought federal law and state law claims against multiple Defendants. On July 2, 2012, this court entered an order dismissing the Plaintiffs’ claims against all Defendants without prejudice and giving the Plaintiffs until July 16, 2012, to file an Amended Complaint or have the federal claims dismissed with prejudice. The Plaintiffs filed an Amended Complaint (Doc. # 17) that abandoned the federal claims and brought a single state law claim against Defendant Smith pursuant to Alabama’s Wrongful Death Act. *See* Ala. Code § 6-5-410. On July 30, 2012, Defendant Smith moved to dismiss the Amended Complaint for failure to state a claim, pursuant to Federal Rule of Civil Procedure 12(b)(6).

The Plaintiffs' state law claim is before the court on the basis of supplemental jurisdiction. *See* 28 U.S.C. § 1367. Because the Plaintiffs' federal law claims were dismissed without prejudice but with leave to amend, and the Plaintiffs have not alleged a federal claim in their Amended Complaint, the court will now dismiss the federal claims with prejudice and decline to exercise supplemental jurisdiction over the state law claim, pursuant to 28 U.S.C. § 1367(c)(3). *See Mergens v. Dreyfoos*, 166 F.3d 1114, 1119 (11th Cir. 1999) (noting that courts in the Eleventh Circuit are encouraged to dismiss state law claims if the federal claims are dismissed prior to trial).

For the foregoing reasons, it is hereby ORDERED as follows:

1. The federal claims asserted in the original Complaint are DISMISSED with prejudice.
2. The court declines to exercise jurisdiction over the Plaintiffs' state law claim, and the Amended Complaint is DISMISSED pursuant to 28 U.S.C. § 1367(c)(3), without prejudice pursuant to 28 U.S.C. § 1367(c)(4).
3. Final Judgment will be entered in accordance with this Order.

Done this 13th day of September, 2012.

/s/ W. Harold Albritton  
W. HAROLD ALBRITTON  
SENIOR UNITED STATES DISTRICT JUDGE