

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

ROSIE MAE CHATT, ET AL.,

Plaintiffs,

VS.

CITY OF WEST MEMPHIS, ET AL.,

Defendants.

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NO: 3:08CV0096 SWW

Order

Plaintiffs filed this action on July 3, 2008, alleging defendants violated the constitutional rights of decedent Dewayne Chatt when they used excessive force to arrest and detain him and then failed to provide proper medical care. Plaintiffs sued defendants City of West Memphis, Arkansas; West Memphis Police Officers Samuel Malone, Steven Jackson, and John Does; and Richard Busby, Sheriff of Crittenden County, Arkansas. Now before the Court is a motion to dismiss filed by defendants Malone and Jackson for failure to serve them within 120 days of filing the complaint as required by Fed.R.Civ.P. 4(m).

In response, plaintiffs acknowledge they did not serve Malone and Jackson in a timely manner. Plaintiffs also state they failed to serve defendants City of West Memphis and the John Doe police officers. They request that any dismissal the Court might order be pursuant to Fed.R.Civ.P. 41 without prejudice.

The Court finds the motion to dismiss [docket entry 9] should be granted pursuant to Rule

4(m).¹ The Court further finds that separate defendants City of West Memphis and John Does should be dismissed pursuant to Rule 41(a). The dismissals are without prejudice.

SO ORDERED this 8th day of April 2009.

/s/Susan Webber Wright

UNITED STATES DISTRICT JUDGE

¹Rule 4(m) provides that if a defendant is not served within 120 days after the complaint is filed, the court, on motion or on its own after notice to the plaintiff, must dismiss the action without prejudice or order service within a specified time.