

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

TONY DANIELS

PLAINTIFF

V.

3:11CV00018 JMM

CHARLEY BYRD

DEFENDANT

ORDER

Pending is the Plaintiff's motion asking the Court to grant his civil lawsuit (Docket # 18). The Court has interpreted the motion to be for summary judgment of the action pursuant to Rule 56 of the Federal Rules of Civil Procedure. The Defendant has responded. For the reasons set forth below, Plaintiff's Motion is DENIED.

Summary judgment is appropriate only when there is no genuine issue of material fact, so that the dispute may be decided solely on legal grounds. *Holloway v. Lockhart*, 813 F.2d 874 (8th Cir. 1987); Fed. R. Civ. P. 56. There is considerable difference between Plaintiff's version of the facts giving rise to this case and the Defendant's version of the facts. However, so far it is undisputed that the Defendant, an officer of the City of Gosnell Police Department, observed Plaintiff driving an older model Mercedes Benz in Gosnell, Arkansas. At the time, Plaintiff had outstanding felony warrants against him and a suspended drivers license. During the course of an official stop, Defendant's vehicle struck the rear of Plaintiff's vehicle. Plaintiff was taken into custody by Blytheville police officers, who were also at the scene, and transferred to the Mississippi County Jail. He is awaiting transfer to the Arkansas Department of Correction. Plaintiff alleges that he was injured as a result of the collision with the Defendant and that the Defendant violated Plaintiff's constitutional rights. Plaintiff seeks \$2.5 million in damages for his pain and suffering, lost wages, time away from his children, medical expenses, loss of

apartment, and loss of vehicle. He also asks that the Court to dismiss the charges against him.

After review of the pleadings, the Court finds that there are several fact issues remaining which require the Court to deny the Plaintiff's motion. For example, Plaintiff states the Defendant intentionally hit him from behind and the Defendant states that the Plaintiff stopped abruptly causing him to accidentally collide with Plaintiff's vehicle. Plaintiff states he sustained injuries and the Defendant states he did not. Other than an affidavit by the Defendant (which incorporates the Answer), there has been no evidence presented by the parties.

Further, Plaintiff, acting pro se, does not state in his Complaint what constitutional right he feels the Defendant violated when the Defendant's police car hit his vehicle. "Pursuit reflecting an intent to stop 'does not amount to a 'seizure' within the meaning of the Fourth Amendment.'" *Slusarchuk v. Hoff*, 346 F.3d 1178, 1181 (8th Cir. 2003) (quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 844, 118 S.Ct. 1708 (1998)). A § 1983 substantive due process claim, however, may be "based upon the conduct of public officials engaged in a high-speed automobile chase aimed at apprehending a suspected offender." *Helseth v. Burch*, 258 F.3d 867, 871 (8th Cir. 2001) (en banc), cert. denied, 534 U.S. 1115, 122 S.Ct. 924, 151 L.Ed. 2d 888 (2002).

For these reasons, Plaintiff's Motion (Docket # 18) is DENIED. Plaintiff is directed to file an Amended Complaint on or before August 15, 2011, stating the constitutional right which he feels was violated by the collision with the Defendant's police car. The Court also notes that the Defendant, in his Response, asks the Court to dismiss Plaintiff's Complaint. However, Local Rule 7.2(e) states that a motion to dismiss will not be considered unless set forth in a separate pleading accompanied by a separate brief.

IT IS SO ORDERED this 2nd day of August, 2011.



James M. Moody
United States District Judge