

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

**TONIA ESTES**

**PLAINTIFF**

v.

**3:11CV00109-BRW**

**DAVID BURNSIDE, Individually and in his  
Official Capacity as Police Officer for the City  
of Walnut Ridge, et al.**

**DEFENDANTS**

**ORDER**

Pending is Plaintiff's Motion For More Definite Statement (Doc. No. 13). Defendants David Burnside and the City of Walnut Ridge, Arkansas ("Defendants") have responded.<sup>1</sup> For the reasons set out below, Plaintiff's Motion is DENIED.

Plaintiff's Complaint alleges that Defendants violated Plaintiff's civil rights.<sup>2</sup> Defendants' Answer asserts multiple affirmative defenses.<sup>3</sup> Defendants' Answer reads, in relevant part: "[s]eparate Defendants affirmatively assert Insufficiency of Service as a defense."<sup>4</sup> Plaintiff filed a response to Defendants' affirmative defenses, denying them all except for insufficiency of service.<sup>5</sup> With respect to insufficiency of service, Plaintiff asks the Court to order Defendant to provide "more and certain . . . allegations" so that any defects can be cured before the time allowed for service expires.<sup>6</sup>

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<sup>1</sup>Doc. No. 14.

<sup>2</sup>Doc. No. 1.

<sup>3</sup>Doc. No. 12.

<sup>4</sup>*Id.*

<sup>5</sup>Doc. No. 13.

<sup>6</sup>*Id.*

Federal Rule of Civil Procedure 12(e), which governs motions for a more definite statement, is not the proper means for challenging the sufficiency of an affirmative defense. Rule 12(e) reads:

A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.<sup>7</sup>

Rule 7(a) of the Federal Rules of Civil Procedure provides that “[o]nly these pleadings are allowed: (1) a complaint; (2) an answer to a complaint; . . . and (7) if the court orders one, a reply to an answer.”<sup>8</sup> A plaintiff is not permitted to file a responsive pleading to a defendant’s answer, including affirmative defenses, unless the court orders a plaintiff to do so.<sup>9</sup> Generally, a district court will order a reply to a defendant’s answer only when the answer raises a new matter, or, for example, contains a counter-claim.<sup>10</sup>

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<sup>7</sup>Fed. R. Civ. P. 12(e). See also *Perry v. Wal-Mart Stores, East, L.P.*, No. 4:09-CV-1373 CDP, 2009 U.S. Dist. Lexis 104418, at \*1-2 (E.D. Mo. Nov. 9, 2009) (denying motion for more definite statement of affirmative defenses); *Wells v. Farmers Alliance Mut. Ins. Co.*, No. 2:07-CV-00036-ERW, 2008 Dist. Lexis 24628, at \*10-11 (E.D. Mo. Mar. 27, 2008) (denying motion for more definite statement of affirmative defenses).

<sup>8</sup>Fed. R. Civ. P. 7(a).

<sup>9</sup>See *Kansas-Nebraska Natural Gas Co. v. Village of Deshler*, 192 F. Supp. 303 (D.C. Neb. 1960), *affirmed* 288 F.2d 717.

<sup>10</sup>See 5 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1185 (3d ed. 2004).

I have not ordered Plaintiff to file a responsive pleading to Defendants' answer or affirmative defenses. Accordingly, there is no basis for Plaintiff's pleading, and no grounds on which to grant Plaintiff's motion. Plaintiff's Motion is DENIED.

The above is my technical order which may be somewhat didactic. Here is what should occur -- defense counsel should forthwith (like today or tomorrow) email or fax Plaintiff's counsel advising Plaintiff's counsel in exact detail why defense counsel believes service has been insufficient. A copy of this email or fax should be sent to the Clerk of the Court and to me, attention Ms. Genoveva Gilbert. In other words, let's get this matter out of the way here and now.

IT IS SO ORDERED this 13<sup>th</sup> day of September, 2011.

/s/Billy Roy Wilson  
UNITED STATES DISTRICT JUDGE