

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

DONALD FELIX WINNETT,
ADC #139544

PLAINTIFF

v.

4:07CV01227HLJ

SALINE COUNTY JAIL, et al.

DEFENDANTS

ORDER

This matter is before the Court on plaintiff's motions to dismiss defendants' waiver of their jury trial demand (DE ##127, 128). Defendants have filed a response to plaintiff's motion.

On January 25, 2008, defendants filed an answer to plaintiff's complaint which included a jury trial demand (DE #12). On April 14, 2009, defendants then filed a waiver of their jury trial demand (DE #125). Plaintiff, however, filed the motions to dismiss the waiver, stating he objects to the waiver and wants a jury trial. In their response to the motion, defendants state they have no objection to a jury trial, but are willing to try the case before the Court.

Fed.R.Civ.P. 38(d) provides that a proper jury demand "may be withdrawn only if the parties consent." In addition, Rule 39(a)(1) provides that when a demand has been made, the trial must be by jury unless "the parties or their attorneys file a stipulation to a nonjury trial...." The Court construes these provisions as requiring consent of all the parties to such a waiver. In this case, since the plaintiff objects, the Court finds that the motions to dismiss the waiver should be granted. Accordingly,

IT IS, THEREFORE, ORDERED that plaintiff's motions to dismiss the defendants' waiver of their jury trial demand (DE ##127, 128) are hereby GRANTED.

IT IS SO ORDERED this 29th day of May, 2009.

Henry L. Jones, Jr.
United States Magistrate Judge