

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

TIMOTHY WATKINS

PLAINTIFF

v.

No. 4:12-cv-555-DPM

BILLY'S TRUCKING

DEFENDANT

ORDER

1. Billy's Trucking's motion to dismiss, *No 54*, is denied. The facts are thin, but Watkins has said enough to state claims against Billy's. It's undisputed that Billy's moved the truck from the roadside; it's plausible that Billy's left the truck unsecured in its lot; Watkins could have had some items stolen; and this could have contributed to the black mark on Watkins's "DAC Report." This is enough to push this *pro se* complaint forward. The law is too unsettled on the availability of a good-faith defense for Billy's against the constitutional claims. On the arguments made, the motion fails. *Compare Filarsky v. Delia*, 132 S.Ct. 1657 (2012).

2. The Court construes Watkins's motion to reconsider, *No 56*, as a motion to amend his complaint to add individual-capacity claims against Officers Smith and Perkins. Watkins sued them originally, but made only official-capacity claims for damages against them. Those claims were barred.

No 20. The motion to amend is granted. FED. R. CIV. P. 15(a)(1)(B). Watkins must file his proposed amended complaint by 31 January 2014. The embedded motion for appointment of counsel is denied for the reasons previously stated. No 8.

3. Watkins's motion for judgment against Billy's, No 57, is denied. Billy's answer is not overdue, FED. R. CIV. P. 12(a)(4)(A); the company's timely motion to dismiss postponed the need to answer.

* * *

Motion to dismiss, No 54, denied. Motion for judgment, No 57, denied. Motion, No 56, granted. Second amended complaint due by January 31st.

So Ordered.



D.P. Marshall Jr.
United States District Judge



15 January 2014