

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

GREG HESLEP and KEITH HESLEP

PLAINTIFFS

v.

No. 4:17CV00410 JLH

ARKANSAS GAME & FISH COMMISSION;
PORTANNE GEORGETOWN, INC.;
and UNITED STATES DEPARTMENT
OF AGRICULTURE

DEFENDANTS

ORDER

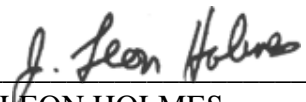
Greg and Keith Heslep brought this action in the Circuit Court of White County, Arkansas, alleging that the Arkansas Game & Fish Commission has illegally blocked a road to the Hesleps' property. After the Arkansas Game & Fish Commission moved to dismiss the complaint based on sovereign immunity, the Hesleps amended their complaint to add the United States of America, Department of Agriculture, as a defendant on the ground that the Hesleps had conveyed to the United States an easement on their property so that the United States may have rights that could be affected by the disposition of the case. The United States then removed the case to this Court. The United States also filed an answer in which it admitted that it has acquired an easement across the Hesleps' property and that its rights might be affected by the disposition of this case. The United States alleged, however, as an affirmative defense that the complaint does not contain a claim for affirmative relief against it nor does the complaint state a claim against it upon which relief can be granted.

After removal, the Arkansas Game & Fish Commission filed a supplemental motion to dismiss the complaint, asserting that the Eleventh Amendment bars it from being sued in federal court. The Commission asks the Court to dismiss the Hesleps' claims with prejudice. The Hesleps responded, stating that if the United States failed to bring an affirmative claim in line with its answer

under federal law, they concurred with the Arkansas Game & Fish Commission that the federal court lacked jurisdiction by virtue of the Eleventh Amendment. The United States then responded to the Arkansas Game & Fish Commission's motion to dismiss by stating that the motion does not seek any kind of relief against the United States, so no response is necessary. The United States added that the Eleventh Amendment does not apply to the federal government.

Because the Hesleps have agreed that if the United States did not seek affirmative relief, this Court lacks jurisdiction over the Arkansas Game & Fish Commission under the Eleventh Amendment, this action must be dismissed. Because this Court lacks jurisdiction over the Arkansas Game & Fish Commission, it cannot reach the issue of whether the Arkansas Game & Fish Commission is immune from suit in the courts of the State of Arkansas. Therefore, the dismissal must be without prejudice.

IT IS SO ORDERED this 13th day of October, 2017.



J. LEON HOLMES
UNITED STATES DISTRICT JUDGE