

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

CONNIE BERRY, Individually
and as Administrator of the
ESTATE OF ERIC W. BERRY

PLAINTIFF

v.

Case No. 12-2269

BRANDON DAVIS, Individually;
THE CITY OF FORT SMITH, ARKANSAS;
THE CITY OF FORT SMITH BOARD OF
DIRECTORS; and THE CITY OF FORT
SMITH, ARKANSAS POLICE DEPARTMENT

DEFENDANTS

ORDER

Now before the Court are the Motion to Dismiss and supporting brief (docs. 17-18) filed by Separate Defendants The City of Fort Smith Board of Directors and The City of Fort Smith, Arkansas Police Department. Separate Defendants contend they were not involved in the death of Eric Berry and are not entities capable of being sued and should be dismissed from this suit. Further, that the naming of these Separate Defendants is superfluous as the City of Fort Smith is a defendant. Plaintiff failed to file a timely response to the motion.

The Eighth Circuit has held that dismissal of a police department is proper in a § 1983 action because a police department is only a "subdivision of the City" and, therefore, not a "jurisdictional [entity] suable as such." *Ketchum v. City of West Memphis*, 974 F.2d 81, 82 (8th Cir. 1992). Accordingly, the motion (doc. 17) is **GRANTED** and Plaintiff's claims against

Separate Defendants are **DISMISSED WITH PREJUDICE**. Plaintiff's claims against Brandon Davis, individually, and the City of Fort Smith, Arkansas, remain.

IT IS SO ORDERED this 3rd day of June 2013.

/s/ Robert T. Dawson
Honorable Robert T. Dawson
United States District Judge