

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FORT SMITH DIVISION

CONNIE BERRY and J.W. BERRY, Individually  
and as Co-Administrators of the  
Estate of ERIC W. BERRY

PLAINTIFFS

v.

CASE NO. 12-2269

BRANDON DAVIS and  
THE CITY OF FORT SMITH

DEFENDANTS

**O R D E R**

Now on this 1st day of August 2013, comes on for consideration Plaintiffs' Request for Jury Trial (doc. 33). Defendants did not file a response.

On December 20, 2012, this matter was initially scheduled for a bench trial during the week of September 9, 2013, without a jury demand by any party. On July 12, 2013, this matter was reset for a bench trial during the week of November 4, 2013, on Plaintiffs' motion. On July 19, 2013, Plaintiffs filed their request for a jury trial. Defendants filed no objection.

Rule 38 of the Federal Rules of Civil Procedure provides that a party may demand a jury trial by serving the other parties with a written demand no later than fourteen (14) days after the last pleading directed to the issue is served and filing the said demand. The Rule further provides that a party waives a jury trial unless its demand is properly served and filed. Fed. R. Civ. P. 38(d).

In this case, the fourteen (14) days began to run after Defendants filed their answer to Plaintiffs' Complaint on December 12, 2012. No Rule 38 jury demand was made by any party until July 19, 2013, when Plaintiffs filed the instant request, therefore, the parties waived their right to a jury trial.

However, Rule 39(b) of the Federal Rules of Civil Procedure provides that the Court may, on motion, order a jury trial on any issue for which a jury might have been demanded. Accordingly, the Court, being well and sufficiently advised, finds Plaintiffs' Request (doc. 33) should be GRANTED. This matter is reset for a jury trial during the week beginning **November 4, 2013**.

IT IS SO ORDERED this 1st day of August 2013.

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