

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

**LISA CRAIN; CATHEE CRAIN;
MARILLYN CRAIN BRODY; and
KRISTAN SNELL**

PLAINTIFFS

V.

CASE NO. 2:20-CV-2038

**SHIRLEY CRAIN; JOHN DOE 1, Personal Representative
of the Estate of H.C. Crain, Jr., Deceased;
and JOHN DOES 2–10**

DEFENDANTS

ORDER

Now before the Court are: (1) a Motion for Extension of Time to File an Amended Complaint and to Serve John Does 1–2 (Doc. 26) filed by Plaintiffs Lisa and Cathee Crain, Marillyn Crain Brody, and Kristan Snell and (2) a Motion to Dismiss John Does 2–10 (Doc. 28) filed by Separate Defendant Shirley Crain. Both Motions are ripe and ready for decision.

On July 6, 2020, the Court granted Plaintiffs leave to file an amended complaint substituting the name of the personal representative of the Estate of H.C. Crain, Jr., for John Doe 1 within fifteen days of the the state court's order appointing the personal representative. Plaintiffs' counsel was also ordered to "provide updates to the Court as to the status of the state probate court's appointment of a representative for the Estate" every thirty days "until a representative is appointed." (Doc. 18, p. 3). The deadline to file the first status report—August 5—came and went, and Plaintiffs' counsel failed to file a report with the Court. The same Order also directed Plaintiffs to file an amended complaint identifying Brian Pope as John Doe 2 and to serve him by August 5. Plaintiffs failed to do this. The Order warned that "failure to file an amended complaint naming Mr.

Pope and/or to effect proper service by the above deadline will result in the Court's dismissal of John Doe 2 without prejudice." *Id.* at pp. 2–3.

Plaintiffs filed their Motion for Extension of Time to File an Amended Complaint (Doc. 26) as to John Does 1 and 2 on August 26, 2020. The Motion itself does not address the fact that Plaintiffs missed the Court's deadline to name and serve John Doe 2/Brian Pope by August 5. Accordingly, the Motion is **DENIED** as to John Doe 2, and this Defendant is **DISMISSED WITHOUT PREJUDICE** pursuant to Rule 41(b) for failure to comply with a Court Order.¹

As for John Doe 1, Plaintiffs have already been granted advance leave of Court to file an amended complaint naming this individual by a certain deadline. The deadline has not yet passed, which means the request for an extension of time to file an amended complaint as to John Doe 1 is **MOOT**.²

In view of the Court's decision above, Defendant's Motion to Dismiss John Doe 2 (Doc. 28) is now **MOOT**. Defendant's request to dismiss John Does 3–10 is **DENIED**; however, Defendant may revisit this request after the deadline for seeking leave to amend pleadings has expired.

IT IS THEREFORE ORDERED that Plaintiffs' Motion for Extension of Time to File an Amended Complaint and to Serve John Does 1–2 (Doc. 26) is **DENIED IN PART AND**

¹ This dismissal does not otherwise disturb the Case Management Order's deadline for seeking leave to amend pleadings and/or to add parties, which is September 28, 2020. (Doc. 17).

² Plaintiffs filed a Notice (Doc. 31) on September 4, 2020, advising the Court that the Circuit Court of Sebastian County appointed Ray Fulmer to serve as administrator of the Estate of H.C. Crain, Jr, on September 2. Accordingly, per the Court's earlier Order (Doc. 18), Plaintiffs have advance leave of Court to file an amended complaint substituting Mr. Fulmer for John Doe 1 by September 17, 2020.

MOOT IN PART, and Defendant Shirley Crain's Motion to Dismiss John Does 2-10 (Doc. 28) is **DENIED IN PART AND MOOT IN PART**.

IT IS FURTHER ORDERED that John Doe 2 is **DISMISSED WITHOUT PREJUDICE**.

IT IS SO ORDERED on this 15th day of September, 2020.



TIMOTHY L. BROOKS
UNITED STATES DISTRICT JUDGE