

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

JUSTIN PHILLIPS

PLAINTIFF

v.

No. 2:20-CV-02237

ANTHONY BOEN, individually and
in his official capacity, and MASON
BERRY, in his individual capacity

DEFENDANTS

OPINION AND ORDER

Before the Court is Plaintiff's motion (Doc. 11) to remand and brief (Doc. 12) in support. Defendant Anthony Boen filed a response (Doc. 13) in opposition. The motion will be granted.

This case was removed from the Circuit Court of Crawford County, Arkansas by Defendant Boen (in his official capacity), with consent of all defendants. Plaintiff subsequently attempted to voluntarily dismiss all federal civil rights claims by filing a notice (Doc. 10) of dismissal of those claims with prejudice. Such notices of dismissal must be filed before any defendant answers, or otherwise the Plaintiff requires Court approval, on terms it "considers proper," to dismiss a claim. Fed. R. Civ. P. 41(a)(1)(A)(i), (2). Defendant Boen already answered (Docs. 7 and 8) in both his individual and official capacities, so the Court will construe Plaintiff's notice of dismissal as a motion to dismiss. Because Plaintiff seeks to dismiss his federal civil rights claims with prejudice and pursue only his state civil rights on remand, the Court sees no good reason that these terms should be considered anything other than proper. The motion to dismiss, with prejudice, all federal civil rights claims against these Defendants will be granted.

Because the Court is exercising only supplemental jurisdiction over the remaining state law claims, dismissal without prejudice of those claims under 28 U.S.C. § 1367(c)(3) might be proper. However, because Plaintiffs seek remand of an action under 28 U.S.C. § 1447(c) on the

basis that the Court now lacks subject matter jurisdiction, the Court will instead remand.

IT IS THEREFORE ORDERED that Plaintiff's motion (Doc. 10) for partial dismissal is GRANTED and his federal civil rights claims are DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that Plaintiff's motion to remand (Doc. 11) is GRANTED and this case is remanded to the Circuit Court of Crawford County, Arkansas.

IT IS SO ORDERED this 21st day of January, 2021.

P. K. Holmes, III

P.K. HOLMES, III
U.S. DISTRICT JUDGE