

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

RICHARD L. KELLEMS, individually
and as Special Administrator of the
estate of TARA CLARK

PLAINTIFFS

v. Civil No. 08-5227

MICHAEL SAMS, individually and in
his capacity as an employee of JOYCE
CAUDLE d/b/a D-C TRUCKING; JOYCE
CAUDLE individually and d/b/a D-C
TRUCKING; DALE CAUDLE individually
and d/b/a D-C TRUCKING; and HARRY
BLACK

DEFENDANTS

O R D E R

Now on this 24th day of November, 2008, come on for consideration plaintiff's **Motion To Non-Suit Without Prejudice** (document #2) and **Defendants' Motion To Dismiss Plaintiff's Complaint** (document #4), and from said motions, and the response thereto, the Court finds and orders as follows:

Plaintiff brought suit on the basis of diversity jurisdiction, in spite of the fact that he was an Arkansas resident, as were defendants Joyce and Dale Caudle. Apparently realizing that diversity did not exist under those circumstances, plaintiff then filed the Motion To Non-Suit Without Prejudice as to the Caudles. Simultaneously, plaintiff filed a First Amended Complaint which did not name the Caudles.

The Caudles moved to dismiss the claims against them on the following day, perhaps not yet being aware of the motion filed by

plaintiff.

Under the circumstances, the Court finds that plaintiff's **Motion To Non-Suit Without Prejudice** (document #2) should be, and same hereby is, **granted**, and plaintiff's claims against Joyce Caudle individually and d/b/a D-C Trucking and Dale Caudle individually and d/b/a D-C Trucking are **dismissed without prejudice**. **Defendants' Motion To Dismiss Plaintiff's Complaint** (document #4) is **denied as moot**.

IT IS SO ORDERED.

 /s/ Jimm Larry Hendren
JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE