

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

ANDREA ARGALL

PLAINTIFF

v.

Case No.: 10-5059

J. BECKER

DEFENDANT

REPORT AND RECOMMENDATIONS OF THE MAGISTRATE JUDGE

Now before the Court is Plaintiff's Complaint. (Doc. 2). Plaintiff's Complaint was filed by utilizing a form entitled "Form to be Use by Prisoners in Filing a Complaint Under the Civil Rights Act, 42 U.S.C. § 1983." (*Id.*) Pursuant to the provisions of 28 U.S.C. § 636(b)(1) and (3), this case is referred to the undersigned by the Honorable Chief Judge Jimm Larry Hendren. For the following reasons, it is the recommendation of the undersigned that Plaintiff's Complaint be **DISMISSED** with prejudice as to Defendant Benton County Detention Center as it is a building, and not an entity capable of being served.

I. BACKGROUND

Plaintiff filed the above-styled case on March 24, 2010, naming as Defendants the Benton County Detention Center and J. Becker, a deputy at that facility. (Doc. 2). An Order was entered directing service upon the individual named as a Defendant, J. Becker. (Doc. 7). In that same Order, Plaintiff was to name any individuals she intended to substitute for Defendant Benton County Detention Center as that Defendant is not an entity capable of being served. (*Id.*) Plaintiff was advised that if she intended

to substitute individual Defendants for Defendant Benton County Detention Center, she should file any such Motion to Amend on or before October 13, 2010. Plaintiff has not filed any Motion to Amend and the deadline has passed.

II. APPLICABLE LAW

Section 1983 authorizes suits against any "person" acting under color of state law who subjects a citizen to the deprivation of constitutional rights. However, a jail is not a person or entity subject to suit under § 1983. See La Garza v. Kandiyohi County Jail, 18 Fed. Appx. 436 (8th Cir. 2001) (unpub. table op.) (affirming dismissal of county jail on grounds that a jail is not an entity subject to suit under § 1983). See e.g. Powell v. Cook County Jail, 814 F. Supp. 757 (N.D. Ill. 1993) (jail not subject to suit under § 1983); Marsden v. Fed. Bureau of Prisons, 856 F. Supp. 832, 836 (S.D.N.Y. 1994) ("jail is not an entity that is amendable to suit").

III. DISCUSSION

The Claims against the Benton County Detention Center should be dismissed as Benton County Detention Center is not a "person" for purposes of Section 1983 litigation. Moreover, Plaintiff was given notice and opportunity to amend her Complaint and substitute others for Benton County Detention Center, but chose not to amend.

IV. CONCLUSION

For the forgoing reasons I recommend the Complaint (Doc. 2)

be **DISMISSED** as to Defendant Benton County Detention Center.

The parties have fourteen (14) days from receipt of this report and recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely objections may result in waiver of the right to appeal questions of fact. The parties are reminded that objections must be both timely and specific to trigger de novo review by the district court.

DATED this 28th day of October 2010.

/s/ Erin L. Setser
HON. ERIN L. SETSER
U.S. MAGISTRATE JUDGE