

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

CARMEN NUNN

PLAINTIFF

vs.

Civil No. 6:08-cv-06069

OFFICER TYSON DUNN and
OFFICER JOHN DOE

DEFENDANTS

MEMORANDUM OPINION

BEFORE the Court is Defendant Tyson Dunn's Motion to Dismiss. ECF No. 15. Plaintiff did not respond to this Motion. The parties have consented to the jurisdiction of a magistrate judge to conduct any and all proceedings in this case, including conducting the trial, ordering the entry of a final judgment, and conducting all post-judgment proceedings. ECF No. 12. Pursuant to this authority, the Court issues this memorandum opinion.

1. Background

On December 6, 2010 Defendant Tyson Dunn filed his Motion to Dismiss Plaintiff's Complaint. According to Defendant Dunn, Plaintiff has alleged that on or about the 8th day of July, 2005, she was brought into the Garland County Detention Facility and Officer Tyson Dunn used excessive force on her while at the Garland County Detention Facility. ECF No. 15. Defendant Dunn argues Plaintiff's Complaint was not filed until July 9, 2008. Defendant Dunn states the applicable statute of limitation for Plaintiff's claim was three (3) years. According to Defendant, Plaintiff's Complaint was filed more than three (3) years after her cause of action accrued and as such, her claim is barred by the applicable statute of limitations. ECF No. 15.

2. Discussion

Although it appears Plaintiff's Complaint was not filed by the clerk until July 9, 2008, Plaintiff's Complaint does contain a notation that the complaint was received by the clerk on June 26,

2008, along with Plaintiff's Application to Proceed *in forma pauperis*. ECF Nos. 1, 3. Based on this, the Court will consider Plaintiff's Complaint filed *nunc pro tunc* as of June 26, 2008. As a result, Plaintiff's Complaint was filed within the applicable statute of limitations.

3. Conclusion:

Based on the foregoing, Defendant Tyson Dunn's Motion to Dismiss (ECF No. 15) is **DENIED**.

ENTERED this 11th day of January, 2011.

/s/ Barry A. Bryant
HON. BARRY A. BRYANT
U.S. MAGISTRATE JUDGE