M.T. et al v. Fresno et al Doc. 46

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

P.Y.M.T., a minor, by and through her guardian ad litem DEIBI ONTIVEROS, an individual and as Successor in Interest to decedent, Miguel Moreno Torrez; MARIA CARRILLO, an individual and Successor in Interest to decedent, Miguel Moreno Torrez,

Plaintiffs,

v.

CITY OF FRESNO, THE FRESNO POLICE DEPARTMENT; and DEFENDANT OFFICERS DOES 1-10,

Defendant.

No. 1:15-cv-00710-JAM-BAM

ORDER GRANTING DEFENDANT'S MOTION FOR DISMISSAL AND GRANTING IN PART AND DENYING IN PART DEFENDANT'S REQUEST FOR MONETARY SANCTIONS FOR FAILURE TO COMPLY WITH THE COURT'S MAY 19, 2016 ORDER AND FAILURE TO PARTICIPATE IN DISCOVERY

Under the Court's inherent and statutory authority, including but not limited to the Court's authority under the applicable Federal Rules of Civil Procedure and the United States District Court, Eastern District of California Local Rules; and after due consideration of all of the relevant pleadings, papers, and records in this action,

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IT IS HEREBY ORDERED that:

Defendant City of Fresno's Motion for Dismissal for Failure to Comply with the Court's May 19, 2016 Order and Failure to Participate in Discovery is GRANTED.[1] The Court hereby dismisses with prejudice and without leave to amend all of Plaintiffs' P.Y.M.T., by and through her guardian ad litem DEIBI ONTIVEROS, MIGUEL MORENO TORREZ, and MARIA CARRILLO ("Plaintiffs")claims in this action, including:

1. Dismissal with prejudice of the claim for Excessive Force against decedent in violation of the Fourth Amendment to the U.S. Constitution under 42 U.S.C. § 1983 by Plaintiffs against Defendant [First Cause of Action];

2. Dismissal with prejudice of the claim for Negligence by City in Ratification of Reports & Negligence by City in Hiring/Supervision, resulting in deprivation of Plaintiffs' Due Process rights under Cal. Gov. Code § 815.2 by Plaintiffs against Defendant [Second Cause of Action];

3. Dismissal with prejudice of the claim for Intentional Infliction of Emotional Distress (IIED) upon decedent by Plaintiffs against Defendant [Third Cause of Action];

4. Dismissal with prejudice of the claim for Negligent Infliction of Emotional Distress (NIED) upon Plaintiffs by Doe Defendant Officers 1-10 under California law by Plaintiffs against Defendant [Fourth Cause of Action];

[1] This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for September 20, 2016.

5. Dismissal with prejudice of the claim for Assault upon decedent under California law by Plaintiffs against Defendant [Fifth Cause of Action];

6. Dismissal with prejudice of the claim for Battery upon decedent under California law by Plaintiffs against Defendant [Sixth Cause of Action];

7. Dismissal with prejudice of the claim for Negligent Medical Care to Prisoner (decedent) under Cal. Gov. Code § 845.6 by Plaintiffs against Defendant [Seventh Cause of Action];

8. Dismissal with prejudice of the claim for Violation of the Bane Act under Cal. Civ. Code § 52.1 by Plaintiffs against Defendant [Eighth Cause of Action];

9. Dismissal with prejudice of the claim for Wrongful Death under Cal. Code Civ. Proc. § 377.60 by Plaintiffs against Defendant [Ninth Cause of Action]; and

10. Defendant's request for costs in the amount of $1,260.12 is GRANTED. Defendant's request for attorneys' fees is DENIED. Defendant has failed to provide detailed billing records in support of their request. Without such evidence, the Court is unable to evaluate the reasonableness of Defendant's attorneys' fees request.

IT IS SO ORDERED.

Dated: September 16, 2016

JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE