

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Christine M. Arguello**

Civil Action No. 08-cv-02421-CMA-CBS

MICHAEL P. MAROTTA,

Plaintiff,

v.

ROCCO-MCKEEL, individually and in his official capacity
as a Denver Police Officer, and
THE CITY AND COUNTY OF DENVER,

Defendants.

ORDER REGARDING REQUESTS FOR FINAL JUDGMENT

This matter is before the Court on Plaintiff's Request for Final Judgment or 54(b) Certification and his Second Request for Final Judgment or Rule 54(b) Certification. (Doc. ## 124, 137.) For the following reasons, the Court denies both.

I. DISCUSSION

On February 16, 2010, the Court issued an Order adopting and affirming a Recommendation of United States Magistrate Judge Shaffer, which resulted in the dismissal of Plaintiff's First, Second, Fourth, Fifth, and Sixth Claims for Relief, as well as the dismissal of Defendants Cortez, Black, Soran, and the Denver Police

Department. (Doc. # 98.) Given these dismissals, only one claim remains: Plaintiff's Third Claim for Relief, which alleges a Fourth Amendment violation against Defendants Rocco-McKeel and the City and County of Denver.¹ (Doc # 39, ¶¶ 65-68.)

Plaintiff now moves the Court for a final judgment or Rule 54(b) certification regarding the dismissed claims so that he can prosecute an interlocutory appeal of them. Because one claim remains pending, though, there is no final judgment; thus, Plaintiff cannot pursue an appeal absent the relief sought. See Fed. R. Civ. P. 54(b).

Fed. R. Civ. P. 54(b) provides that:

When an action presents more than one claim for relief--whether as a claim, counterclaim, crossclaim, or third-party claim--or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

"The purpose of Rule 54(b) is to avoid the possible injustice of a delay in entering judgment on a distinctly separate claim or as to fewer than all of the parties until the final adjudication of the entire case by making an immediate appeal available."

Oklahoma Turnpike Auth. v. Bruner, 259 F.3d 1236, 1241 (10th Cir. 2001) (internal

¹ As pleaded, Plaintiff's Third Claim for Relief includes the Denver Police Department ("DPD") as a defendant. (Doc. # 39, ¶ 67.) The DPD, however, were dismissed from this case. (Doc. # 98 at 2-3.)

citations and quotation marks omitted). However, the standard for certification under Rule 54(b) is not easily met.

[A] certification under Rule 54(b) is only appropriate when a district court adheres strictly to the rule's requirement that a court make two express determinations. First, the district court must determine that the order it is certifying is a final order. Second, the district court must determine that there is no just reason to delay review of the final order until it has conclusively ruled on all claims presented by the parties to the case.

Id. at 1242 (internal citations omitted).

Plaintiff argues that because the claims that were dismissed were separate from the one remaining, the Court should enter a final judgment as to the former. (Doc. # 124, ¶ 5.) It is true that the claims are separate in at least one sense. The remaining claim alleges "physical abuse" whereas the dismissed claims contain no allegations of physical abuse. But the fact that the claims are separate in that they present separate allegations is not enough to justify a Rule 54(b) certification.

The main question for the Court to consider is whether there is no just reason to delay review of Plaintiff's dismissed claims. See *Bruner*, 259 F.3d at 1242. Defendants present such a reason. The pending claim and the ones that were dismissed share defendants. (Doc. # 134, ¶ 3.) Thus, the remaining Defendants – Rocco-McKeel and the City and County of Denver – would have to defend the case in two Courts simultaneously. This situation would undermine the policy of Rule 54(b) of seeking to avoid multiple, piecemeal appeals. See *Stockman's Water Co., LLC v. Vaca Partners*,

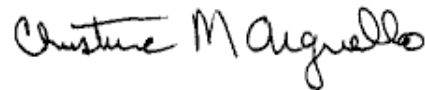
L.P., 425 F.3d 1263, 1265 (10th Cir. 2005.) Accordingly, the Court finds that there is just reason to delay review of Plaintiff's dismissed claims.

II. CONCLUSION

For the foregoing reasons, the Court DENIES Plaintiff's Request for Final Judgment or 54(b) Certification and DENIES his Second Request for Final Judgment or Rule 54(b) Certification. (Doc. ## 124, 137.)

DATED: July 6, 2010

BY THE COURT:



CHRISTINE M. ARGUELLO
United States District Judge