

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

FRED HERMAN KOBIE, III,

Plaintiff,

vs.

Case No. 2:12-cv-98-FtM-29DNF

JASON FIFTHIAN, Detective of Lee
County, Sheriff Department, MIKE
SCOTT, Sheriff of Lee County Sheriff
Department,

Defendants.

OPINION AND ORDER

This matter comes before the Court on Defendants, Jason Fifthian and Mike Scott's Motion to Dismiss the Amended Complaint (Doc. #39) filed on February 22, 2013. Plaintiff did not file a response in opposition and the time to do so has expired. For the reasons set forth below, the motion is granted and plaintiff's Amended Complaint (Doc. #37) is dismissed without prejudice.

Some procedural history is warranted. Plaintiff filed his original Complaint on February 27, 2012. Upon review of the file, the Court dismissed the Complaint without prejudice for failure to comply with Fed. R. Civ. P. 8(a)(2). (Doc. #34.) The Court found the Complaint was silent as to whether the defendants were sued in their official capacities, individual capacities, or both, failed to make clear whether it asserted United States or Florida constitutional violations, asserted different claims within the same count, and was unclear as to whether the false imprisonment

claim was a federal claim, state claim, or both. The Court provided plaintiff with the opportunity to amend, and plaintiff did so on February 8, 2013. (Doc. #37.)

On February 28, 2013, plaintiff's counsel filed a document he entitled "Answer" (Doc. #42). The document was an incomplete filing which appeared to contain a portion of a motion. On March 4, 2013, plaintiff's counsel filed a Motion for Leave to File a Second Amended Complaint (Doc. #43) as well as a Second Amended Complaint. (Doc. #44.) The same day, the Court issued an Order striking the "Answer," the Motion for Leave to File a Second Amended Complaint, and the Second Amended Complaint because the "Answer" and motion were incomplete documents and the Second Amended Complaint was filed without leave of Court as required by Fed. R. Civ. P. 15. (Doc. #45.) Plaintiff has not filed another motion for leave to file a Second Amended Complaint.¹ Therefore, the operative pleading in this matter is the Amended Complaint filed on February 8, 2013. (Doc. #37.)

Defendants seek to dismiss the Amended Complaint because it suffers from the same deficiencies as the original Complaint and fails to properly put them on notice as to the claims asserted

¹However, plaintiff has filed an unrelated motion to compel and deposition transcripts after the Court's Order striking plaintiff's pleadings. (See Docs. #47-50.) Thus, it appears plaintiff has abandoned his attempt to file a Second Amended Complaint.

against them in contravention of Fed. R. Civ. P. 8(a)(2). The Court agrees.

Despite this Court's prior Order, the Amended Complaint is silent as to whether the claims against Jason Fifthian and Mike Scott are asserted in their official capacities, individual capacities, or both. In addition, Count I appears to assert a claim for both false arrest and false imprisonment presumably in violation of 42 U.S.C. § 1983 and like plaintiff's original Complaint, seeks to assert more than one cause of action within the same count despite the Court's direction not to do so. In Count III, plaintiff asserts a claim for false imprisonment. However, despite this Court's prior order, plaintiff fails to allege whether the false imprisonment claim is brought pursuant to Federal Law, State Law, or both. Thus, plaintiff has failed to put defendants on proper notice as to the claims asserted against them. Because plaintiff has failed to remedy the deficiencies previously outlined by the Court, the Amended Complaint is dismissed without prejudice.

Accordingly, it is now


ORDERED:

1. Defendants, Jason Fifthian and Mike Scott's Motion to Dismiss the Amended Complaint (Doc. #39) is **GRANTED**.

2. Plaintiff's Amended Complaint (Doc. #37) is **DISMISSED WITHOUT PREJUDICE**.

3. The Clerk is directed to enter judgment accordingly, terminate all pending motions and deadlines, and close the file.

DONE AND ORDERED at Fort Myers, Florida, this 15th day of April, 2013.



JOHN E. STEELE
United States District Judge

Copies: Counsel of record