

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

**ALBERTO D. BTESH as Guardian of Ronald S.  
Btsh,**

**Plaintiff,**

**-vs-**

**Case No. 6:10-cv-71-Orl-19DAB**

**CITY OF MAITLAND, FLORIDA a Florida  
Municipal Corporation, REBECCA DENICOLA  
individually and in her official capacity as a City  
of Maitland Police Officer, AMANDA PAYNE  
individually and in her official capacity as a City  
of Maitland Police Officer, and GARY  
CALHOUN, individually and in his official  
capacity as a City of Maitland Police Officer,**

**Defendants.**

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**ORDER**

This case comes before the Court on the following:

1. Motion to Dismiss Count VIII of the Second Amended Complaint by Defendant Amanda Payne (Doc. No. 75, filed Jan. 10, 2011); and
2. Response to Defendant Amanda Payne's Motion to Dismiss Count VIII of the Second Amended Complaint by Plaintiff Alberto D. Btsh (Doc. No. 76, filed Jan. 12, 2011).

This case arises from the shooting of Ronald S. Btsh, a man who allegedly has the mental capacity of a nine year-old and suffers from a number of mental illnesses, by Rebecca Denicola, a police officer for the City of Maitland, Florida. (Doc. No. 72 ¶¶ 20, 65, filed Jan. 5, 2011.) On January 3, 2011, the Court entered an Order granting Plaintiff Alberto D. Btsh leave to file a

Second Amended Complaint, and on January 5, 2011, Plaintiff filed a Second Amended Complaint. (Doc. Nos. 71-72.)

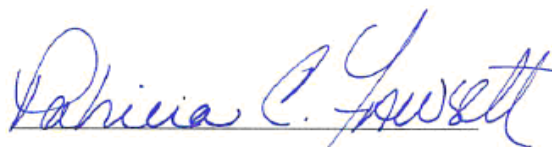
Defendant Amanda Payne now moves to dismiss Count VIII of the Second Amended Complaint, arguing that it is identical to Count VII of the First Amended Complaint, which was dismissed for failure to state a claim upon which relief can be granted. (Doc. No. 75 at 7.) In his Response to the Motion, Plaintiff represents that Count VIII was inadvertently included in the Second Amended Complaint and consents to the dismissal of that Count. (Doc. No. 76 at 1-2.)

The Court agrees with Payne that the battery claim in Count VIII of the Second Amended Complaint is identical to the battery claim in Count VII of the First Amended Complaint previously dismissed for failure to state a claim upon which relief can be granted. (Doc. No. 41 at 6-7.) Accordingly, Count VIII of the Second Amended Complaint will be dismissed.

#### **Conclusion**

Based on the foregoing, it is **ORDERED** and **ADJUDGED** that the Motion to Dismiss Count VIII of the Second Amended Complaint by Defendant Amanda Payne (Doc. No. 75) is **GRANTED**. Count VIII of the Second Amended Complaint is **DISMISSED without prejudice**.

**DONE** and **ORDERED** in Chambers in Orlando, Florida on January 13, 2011.



PATRICIA C. FAWSETT, JUDGE  
UNITED STATES DISTRICT COURT

Copies furnished to:

Counsel of Record