

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

Alisha Clopton,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION NO.
	:	1:09-cv-01367-JOF
City of Forest Park, Georgia, et al.,	:	
	:	
Defendants.	:	
	:	

OPINION & ORDER

This matter is before the court on Defendant City of Forest Park’s submission of a status report [20].

Plaintiff, Alisha Clopton, filed suit against Defendants, City of Forest Park, Georgia; Dwayne Hobbs, Chief of Police for the City of Forest Park; and Kenneth Schmidt, a police officer for the City of Forest Park, Georgia. Plaintiff contends that on April 6, 2008, Defendant Schmidt pulled her over to issue several citations. He informed her that her vehicle would have to be towed but that he would give her a “courtesy” ride home. Instead, Plaintiff alleges Defendant Schmidt drove her to an empty parking lot and raped her in the back seat of the police cruiser.

Plaintiff originally filed her complaint in the State Court of Clayton County on April 17, 2009. Defendants removed the suit to this court on May 21, 2009. On July 9, 2009, the court entered a consent order dismissing Plaintiff's claims against Defendants Hobbs and Schmidt in their official capacities; dismissing Plaintiff's claims made pursuant to federal law against Defendant Hobbs in his individual capacity; and dismissing Plaintiff's claim for punitive damages against Defendant City of Forest Park.

The parties then filed a joint motion to stay proceedings pending the outcome of Defendant Schmidt's criminal case. In an order dated November 24, 2009, this court granted the parties' motion to stay, but requested that Defendant City of Forest Park provide a status report to the court no later than April 1, 2010. The court also noted that Plaintiff's complaint was an example of "shotgun" pleading and directed her to file an amended complaint within twenty days. The court further instructed that Defendants were not required to answer the amended complaint until the court lifted the stay. Plaintiff filed her amended complaint on December 14, 2009.

On March 25, 2010, Defendant City of Forest Park filed the requested status report noting that Defendant Schmidt stood criminal trial in the Superior Court of Clayton County in February 2010. While the jury was deliberating, the State and Schmidt reached a plea agreement such that Schmidt pled guilty to violating his oath of office and public sodomy and the more serious charges were adjudicated as *nolle prosequi*.

Also in the status report, Defendant City of Forest Park noted that Plaintiff's amended complaint dropped her federal section 1983 allegations. *See generally* Amended Complaint, Docket Entry 18. Instead, Plaintiff raises only state law claims of assault, battery, false imprisonment, intentional infliction of emotional distress, negligent hiring/retention, and negligent training. *Id.* In her jurisdictional statement, Plaintiff avers that the court has jurisdiction pursuant to 28 U.S.C. § 1367 supplemental jurisdiction for pendant state tort claims. *Id.*, ¶ 18. In light of this pleading, Defendant City of Forest Park seeks further guidance.

The court therefore *sua sponte* examines whether it has jurisdiction to hear these claims. Because jurisdiction is determined at the time a complaint is filed, the court could exercise supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1367. However, when the federal issues have been resolved, the court may decline to exercise supplemental jurisdiction and the court chooses to do so here. Because Plaintiff has dropped the federal claims in her amended complaint and because her state law claims should be heard by state courts, the court **DISMISSES WITHOUT PREJUDICE** Plaintiff's state law claims.

The Clerk of the Court is DIRECTED to ADMINISTRATIVELY CLOSE this case.

IT IS SO ORDERED this 3rd day of May 2010.

_____/s J. Owen Forrester_____

J. OWEN FORRESTER
SENIOR UNITED STATES DISTRICT JUDGE