

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JIMMIE JORDAN,)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:15-cv-97-DGW
)	
C/O SHERROD, LT. EOVALDI, LYNDOL)	
QUALLS, SGT. K. CARTWRIGHT,)	
ANTHONY D. MCALLISTER, JAMES)	
SMITH, and MAJOR KALAHER,)	
)	
Defendants.)	

ORDER

WILKERSON, Magistrate Judge:

This matter is before the Court for case management purposes and to address a number of motions pending before the Court. By way of background, Plaintiff Jimmie Jordan, through counsel, filed this action on January 29, 2015 pursuant to 42 U.S.C. § 1983 alleging his constitutional rights were violated by Officer Christopher Sherrod and John Doe defendants (*see* Doc. 2). Plaintiff was granted leave to file an amended complaint on October 1, 2015 (Doc. 25). Plaintiff’s amended complaint named a number of additional defendants, including Lt. Eovaldi, Lt. Qualls, Lt. Cartwright, Lt. McAllister, Major Smith and Major Kalaher (Doc. 26). Although lacking in clarity, it appears Plaintiff set forth claims of excessive force, failure to intervene, and deliberate indifference against all Defendants, as well as a claim of supervisory liability against the “Supervisory Defendants” for failing to intervene. Plaintiff also included a claim for indemnification under the State Employee Indemnification Act, 5 ILCS 350/2.

Since the filing of the amended complaint Plaintiff filed a motion to dismiss Defendants Cartwright, Smith, and Kalaher with prejudice (Doc. 74) as well as a motion to dismiss the

excessive force claim against Defendant McAllister with prejudice (Doc. 85). Defendants Eovaldi, McAllister, Qualls, and Sherrod also filed a motion for partial summary judgment (Doc. 80) that Plaintiff seeks to strike (Doc. 83).

The Court first considers the motion to dismiss Defendants Cartwright, Smith, and Kalaher with prejudice (Doc. 74). Defendants assert they have no objection to the motion, but indicate they do not waive costs as to any Defendants whose claims remain pending (*see* Doc. 77). Although Plaintiff fails to invoke any legal authority for the dismissal, it appears he seeks to dismiss Defendants pursuant to Rule 41(a)(2). A plain reading of Federal Rule of Civil Procedure 41(a) suggests that dismissal under this Rule should be used only to dismiss an entire action rather than a particular claim against a particular defendant. *See Taylor v. Brown*, 787 F.3d 851, 857 (7th Cir. 2015) (Rule 41(a) is limited to dismissal of an entire action and Rule 15(a) is the proper vehicle for adding or dropping parties and claims). While the Court acknowledges the plain reading of the rule, it finds that dismissing Defendants Cartwright, Smith, and Kalaher, rather than ordering amendment of the complaint, is in the interest of judicial economy. Accordingly, Plaintiff's motion (Doc. 74) is **GRANTED** and Defendants Cartwright, Smith, and Kalaher are **DISMISSED WITH PREJUDICE**. With regard to costs, each party shall bear their own; however, any costs that may be associated with any remaining Defendants shall not be waived.

The next issue before the Court is the motion for partial summary judgment filed by Defendants Eovaldi, McAllister, Qualls, and Sherrod (Doc. 80). Defendants' motion was filed on December 5, 2016. Prior to filing said motion, Defendants filed a second motion for extension of time to file a dispositive motion that remains pending (*see* Doc. 78). Plaintiff filed a motion to strike Defendants' motion for summary judgment arguing it was untimely and filed without being given leave of court. Plaintiff further argues that Defendants' motion is meritless and engaging in

full briefing on the motion will only cause undue delay. The Court finds that Defendants showed good cause for their second request for extension of time and rejects Plaintiff's argument that the motion is baseless, particularly without full briefing. Accordingly, Plaintiff's motion to strike (Doc. 83) is **DENIED**. Defendants' motion for extension of time (Doc. 78) is **MOOT** as the Court will consider Defendants' Motion for Partial Summary Judgment as timely filed. As Plaintiff addressed many of Defendants' summary judgment arguments in his motion to strike and subsequent reply, the Court will allow only supplemental briefing, limited to **8 pages**. Any supplemental response shall be filed by **July 27, 2017**.

Finally, the Court considers Plaintiff's Motion to Dismiss the Excessive Force Claim against Defendant McAllister (Doc. 85). Again, Plaintiff fails to cite any legal authority for the dismissal, though it appears he seeks to dismiss the excessive force claim against McAllister pursuant to Rule 41(a)(2). As set forth above, a plain reading of Federal Rule of Civil Procedure 41(a) suggests that dismissal under this Rule should be used only to dismiss an entire action rather than a particular claim against a particular defendant. *See Taylor*, 787 F.3d at 857 (Rule 41(a) is limited to dismissal of an entire action and Rule 15(a) is the proper vehicle for adding or dropping parties and claims). While the Court acknowledges the plain reading of the rule, it finds that dismissing the excessive force claim against Defendant McAllister, rather than ordering amendment of the complaint, is in the interest of judicial economy. Accordingly, Plaintiff's motion to dismiss (Doc. 85) is **GRANTED IN PART**. The Eighth Amendment excessive force claim against Defendant McAllister is **DISMISSED WITH PREJUDICE**. However, insofar as Plaintiff argues that granting this Motion obviates the need to address Defendants' motion, any such relief surrounding this argument is **DENIED**. Defendants' argument addresses more than the excessive force claim against Defendant McAllister and, although that issue is moot, the other

arguments remain pending.

The Court also **ENTERS** the following trial schedule in this case:

1. Final Pretrial Conference set for **November 28, 2017 at 2:00 p.m.**
2. Jury trial set for **December 13, 2017 at 9:00 a.m.**

In light of this Order, Plaintiff's Motion to Set a Pretrial Conference and Trial Date (Doc. 82) is **MOOT**. Also, the Court **DENIES** Plaintiff's Motion for a Telephonic Status Conference (Doc. 88).

IT IS SO ORDERED.

DATED: July 19, 2017



DONALD G. WILKERSON
United States Magistrate Judge