

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

MARK A. BROOKS-ALBRECHTSEN,)	
)	
Plaintiff,)	
vs.)	Case No.1:15-cv-00786-TWP-TAB
)	
THE CITY OF INDIANAPOLIS and MARION)	
COUNTY, et al.,)	
)	
Defendants.)	

Entry Severing Claims and Directing Further Proceedings

The Second Amended Complaint alleges that the City of Indianapolis, Marion County, Police Merit Board, Richard Hite, Mark A. Brown, Kathleen L. Depew, and Officer Mitchell violated plaintiff Mark A. Brooks-Albrechtsen’s civil rights pursuant to 42 U.S.C. § 1983. For the reasons explained below, the claims against Officer Mitchell are severed from this action.

I.

In *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007), the Court of Appeals explained that “[u]nrelated claims against different defendants belong in different suits.” Rule 18 allows joinder of multiple parties only when the allegations against them involve the same conduct or transaction and common questions of fact and law as to all defendants. The second amended complaint violates the misjoinder of claims limitation of Rule 20(a) of the *Federal Rules of Civil Procedure*. Specifically the claims against Officer Mitchell related to the unlawful seizure of the plaintiff on October 18, 2015, are distinct from the claims surrounding the remaining defendants’ roles in disqualifying the plaintiff from employment as a patrol officer. *DirecTV, Inc. v. Leto*, 467 F.3d 842, 844 (3d Cir. 2006)(“Misjoinder [under Rule 21] . . . occurs when there is no common question

of law or fact or when . . . the events that give rise to the plaintiff's claims against defendants do not stem from the same transaction.”).

In such a situation, “[t]he court may . . . sever any claim against a party.” FED. R. CIV. P. 21. Generally, if a district court finds that a plaintiff has misjoined parties, the court should sever those parties or claims, allowing those grievances to continue in spin-off actions, rather than dismiss them. *Elmore v. Henderson*, 227 F.3d 1009, 1012 (7th Cir. 2000). That is the remedy which will be applied to the Second Amended Complaint.

II.

Consistent with the foregoing, the claims against Officer Mitchell in Count VII are **severed from the Second Amended Complaint**.

To effectuate this ruling, one new civil action from the Indianapolis Division shall be opened, consistent with the following:

- a. Mark A. Brooks-Albrechtsen's shall be the plaintiff.
- b. The Nature of Suit is 440.
- c. The Cause of Action shall be 42:1983.
- d. The Second Amended Complaint shall be re-docketed as the complaint in the newly opened action.
- e. A copy of this Entry shall be docketed in the newly opened action.
- f. This action and the newly-opened action shall be shown as linked actions on the docket.
- g. The defendant shall be Officer Mitchell.
- h. The assignment of judicial officers shall be by random draw.

III.

All claims against Officer Mitchell are **dismissed without prejudice**. Officer Mitchell is terminated as a defendant in this action.

This action docketed as No. 1:15-cv-786-TWP-TAB shall proceed as to City of Indianapolis, Marion County, Police Merit Board, Richard Hite, Mark A. Brown, and Kathleen L. Depew.

With the exception of Count VII (the claims against Officer Mitchell), the Court will not dismiss any claims raised in the Second Amended Complaint *sua sponte* pursuant to 28 U.S.C. § 1915(e). That said, nothing in this Entry forecloses the defendants from filing a motion to dismiss pursuant to 12(b)(6) of the Federal Rules of Civil Procedure, if deemed appropriate.

The defendants proceeding in this action have appeared by counsel and shall have **through December 22, 2015**, in which to answer or otherwise respond to the second amended complaint filed November 10, 2015.

IT IS SO ORDERED.

Date: 11/19/2015



TANYA WALTON PRATT, JUDGE
United States District Court
Southern District of Indiana

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