

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROMAINE ROBINSON,

Plaintiff,

Case No. 16-cv-12713

Hon. Matthew F. Leitman

v.

CITY OF DETROIT FIRE
DEPARTMENT *et al.*,

Defendants.

ORDER GRANTING IN PART AND DENYING IN PART
DEFENDANTS' MOTION TO DISMISS (ECF #25)

In this action, Plaintiff Romaine Robinson (“Robinson”) bring claims against the City of Detroit Fire Department, City of Detroit, Brian Bachynski, Jack Combs, and Bryon Beales (collectively, “Defendants”). Bachynski, Combs, and Beales (collectively, the “Individual Defendants”) are emergency medical technicians employed by the City of Detroit and assigned to the Emergency Medical Services division of the City of Detroit Fire Department. Robinson alleges that the Individual Defendants restrained and attacked him when they were dispatched to his house to provide emergency medical assistance.

Robinson filed his Complaint against Defendants on July 21, 2016. (*See* ECF #1.) The claims in the Complaint are as follows: Count One asserts a claim under 42 U.S.C. § 1983 against the Individual Defendants for violations of the 4th and 14th Amendments to the United States Constitution. Count Two alleges gross negligence, willful misconduct, and willful and wanton misconduct by the Individual Defendants. Count Three asserts a state law claim of assault and battery against the Individual Defendants. Count Four asserts a claim under 42 U.S.C. § 1983 against the City of Detroit Fire Department and the City of Detroit.

On October 14, 2016, Defendants moved to dismiss the Complaint (the “Motion”). (*See* ECF #25). Robinson filed a response to the Motion on November 07, 2016 (the “Response”). (*See* ECF #27.) The Court held a hearing on the Motion on January 31, 2017.

For the reasons stated on the record at the hearing, the Motion is **GRANTED IN PART** and **DENIED IN PART** as follows. The claims in Count I of the Complaint are **DISMISSED WITHOUT PREJUDICE**. The claims in Count II are **DISMISSED WITH PREJUDICE** because as explained on the record, they are not causes of action recognized under Michigan law. However, Plaintiff may include in his amended complaint the allegations of gross negligence, willful misconduct, and willful and wanton misconduct found in Count II of the Complaint – just not as stand-alone claims. The claims in Count IV against the City of Detroit Fire

Department are **DISMISSED WITH PREJUDICE** because the City of Detroit Fire Department is not subject to suit. The claims in Count IV against the City of Detroit are **DISMISSED WITHOUT PREJUDICE**. The Motion is **DENIED** with respect to Count III.

Robinson shall file an amended complaint against all Defendants except the City of Detroit Fire Department. The amended complaint shall include: (1) revised versions of the claims in the Complaint that were dismissed without prejudice; (2) the assault and battery claim found in Count III of the Complaint; and (3) any other claims that Robinson believes can be reasonably alleged. Robinson must file the amended complaint by February 28, 2017. Defendants shall file their response to the amended complaint by March 28, 2017.

IT IS SO ORDERED.

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: February 1, 2017

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on February 1, 2017, by electronic means and/or ordinary mail.

s/ Holly A. Monda
Case Manager
(313) 234-5241