

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

TANYA DENISE STEWART

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:07cv1270WJG-JMR

JACKSON COUNTY, MISSISSIPPI; SINGING
RIVER HOSPITAL SYSTEMS; SINGING
RIVER HOSPITAL; OCEAN SPRINGS
HOSPITAL; JOSEPH P. VICE, M.D.;
GREGORY HORN, M.D.; DEPARTMENT OF
HEALTH AND HUMAN SERVICES,
JACKSON COUNTY; HARRISON COUNTY,
MISSISSIPPI; DEPARTMENT OF HEALTH
AND HUMAN SERVICES, HARRISON
COUNTY; FAMILY AND CHILDREN
SERVICES; DEANNA CHASE; LANA M.
HODA; BILOXI POLICE DEPARTMENT;
HARRISON COUNTY YOUTH COURT,
MISSISSIPPI; FAMILY COURT, YOUTH
COURT OF HARRISON COUNTY,
MISSISSIPPI; MICHAEL H. WARD, YOUTH
COURT JUDGE; HERBERT WILSON,
YOUTH COURT PROSECUTOR; ANGELIQUE
WHITE, GUARDIAN AD LITEM

DEFENDANTS

ORDER

THIS MATTER is before the Court *sua sponte* pursuant to Rule 41 of the Federal Rules of Civil Procedure. This case was originally filed on December 20, 2007. (Ct. R., Doc. 1.)

There is no evidence that the Biloxi Police Department was ever served with process. (Ct. R., Doc. 19.) In light of the fact that it has been over a year since this suit was opened, with no effort made by the Plaintiff, Tanya Denise Stewart, to properly serve this Defendant with process, the

Court ordinarily would order Stewart to show cause to this Court why this case should not be dismissed against the Biloxi Police Department for failure to prosecute.

The capacity of an entity such as the Biloxi Police Department to sue or be sued "shall be determined by the law under which it was organized." FED. R. CIV. P. 17(b). Under Mississippi law, a city's police department is not considered to be an entity separate from the city. MISS. CODE ANN. § 21-17-1. Because the Biloxi Police Department is not a separate legal entity from the City of Biloxi, the Biloxi Police Department is not a proper party to this lawsuit. *See Darby v. Pasadena Police Dep't.*, 939 F.2d 311, 313 (5th Cir. 1991) (discusses Texas law). As there is no indication that the Biloxi Police Department enjoys a separate legal existence, the Court concludes that Biloxi Police Department is not a proper party to this lawsuit, and finds that it should be dismissed from this case, regardless of the status of Stewart's attempt to serve process on this entity. It is therefore,

ORDERED AND ADJUDGED that all claims advanced by Plaintiff against the Biloxi Police Department be, and are hereby, dismissed with prejudice. It is further,

ORDERED AND ADJUDGED that each party bear their respective costs associated with this motion.

SO ORDERED AND ADJUDGED, this the 16th day of September, 2008.

Walter J. Lee III
UNITED STATES SENIOR DISTRICT JUDGE