

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

ANAKA HUNTER,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:12-CV-4 ERW
)	
CITY OF SALEM, MISSOURI, et al.,)	
)	
Defendants.)	

MEMORANDUM IN SUPPORT OF PLAINTIFF’S MOTION TO STRIKE JURY DEMANDS

In support of her motion to strike Defendants’ jury demands, Plaintiff submits the following:

I. Background

On January 3, 2012, Plaintiff filed this action pursuant to 42 U.S.C. § 1983 against Defendants seeking declaratory judgment, injunctive relief, and nominal damages. (Doc. # 1). Defendant City of Salem, Missouri, has filed a motion to dismiss. (Doc. # 18). Defendants Board of Trustees of the Salem, Missouri, Public Library and Glenda Wofford have filed separate answers. (Doc. # 16, 17). In their respective answers, Board of Trustees and Wofford demand a trial by jury. *Id.*

II. Argument

Because Plaintiff seeks only equitable relief, Defendants are not entitled to a jury trial on any issue in this case. There is no right to a jury trial on equitable claims under § 1983. In addition, a claim for nominal damages is insufficient to trigger the Seventh Amendment right to a trial by jury.

There is no statutory right to a jury trial under section 1983. *City of Monterey v. Del Monte Dunes at Monterey*, 526 U.S. 687, 707 (1999). In the absence of a statutory right to trial

by jury, the question is whether or not the Seventh Amendment guarantees a right to trial by jury on the § 1983 claim at issue. *Id.* at 708. “It is settled law that the Seventh Amendment does not apply” in some contexts, including “suits seeking only injunctive relief” and “suits seeking only equitable relief.” *Id.* at 719. Because Plaintiff seeks only equitable relief against Defendants, they have no Seventh Amendment right to a jury trial.

The Seventh Amendment provides:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law. U.S. CONST. AMEND. VII.

The Supreme Court adopted a two-prong inquiry to determine whether the Seventh Amendment requires a jury trial. First, a court must determine whether the cause of action was tried at law at the time the Seventh Amendment was adopted or is analogous to a cause of action that was so tried. *City of Monterrey*, 526 U.S. at 719. If it was not, then there is no right to a jury trial. If it was, then the court must next determine “whether the particular trial decision must fall to the jury in order to preserve the substance of the common-law right as it existed in 1791.” *Id.* (internal citations omitted).

The *Monterrey* Court concluded that the Seventh Amendment applies not only to common-law causes of action, but also to statutory causes of action ““analogous to common-law causes of action ordinarily decided in English law courts in the late 18th century, *as opposed to those customarily heard by courts of equity or admiralty.*” *Id.* at 708-9 (emphasis added, internal citations omitted). Thus, the Court held “that a § 1983 suit seeking legal relief is an action at law within the meaning of the Seventh Amendment.” *Id.* at 709. The holding was premised on the settled proposition that “the Seventh Amendment jury guarantee extends to statutory claims unknown to the common law, so long as the claims can be said to ‘soun[d] basically in tort,’ and

seek legal relief.” *Id.* (internal citations omitted). In *Monterrey*, the Court found a right to a jury trial because the plaintiff sought damages. “Damages for a constitutional violation are a legal remedy.” *Id.*

This case does not pass the first prong’s inquiry. The question is whether Plaintiff’s claims against Defendants not only “sound in tort” but also constitute a “suit for legal relief.” *Id.* at 709-10. Plaintiff is aware of no precedent that would support a proposition that her equitable claims are, or are analogous to, “common-law cause[s] of action ordinarily decided by English law courts in the late 18th century, as opposed to those customarily heard by courts of equity or admiralty.” *Id.* at 708-9 (internal citations omitted). To the contrary, this is a classic example of an equity case.

In addition, *Monterrey* makes clear that challenges like this are not within the province of a jury. The Court noted that its holding concerning the right to jury trial “does not extend” to a case raising “a broad challenge to the constitutionality of [laws].” *Id.* at 722. In such cases, the determination of whether the purposes of the challenged law were legitimate or whether the purposes, though legitimate, were furthered by the ordinances, “might well fall within the province of the judge.” *See id.* Plaintiff’s claims assert just the type of broad challenge that the Supreme Court recognized to be within the province of the judge.

Even were the first prong on the inquiry satisfied, the second prong would not be. The constitutional issues Plaintiff has raised in this case are not “particular trial decision[s] [that] must fall to the jury in order to preserve the substance of the common-law right as it existed in 1791.” *Id.* at 708. Accordingly the issues are within the province of the court, not a jury.

The conclusion does not change because of Plaintiff’s request for nominal damages. The issue of whether a defendant has a right to a jury trial in a § 1983 case alleging violation of the First Amendment and seeking declaratory and injunctive relief as well as nominal damages is

thoroughly discussed in *Doe v. Barrow County, Georgia*, No. 2:03-cv-156-WCO, 2005 WL 6033020 (N.D. Ga.). Based on the reasoning of the *Barrow County* Court, the cases upon which that Court relied, and applicable precedent from the Eighth Circuit, there is no right to a jury trial on any claim in this case.

As discussed, *supra.*, any right to a jury trial in a § 1983 case comes from the Seventh Amendment, which preserves the right of trial by jury in suits where the value in controversy exceeds twenty dollars. *Barrow County*, at *2. (quoting U.S. CONST. AMEND. VII). “Where both damages and equitable relief are involved, moreover, the court will try any equitable issues while the jury will try the damage issue.” *Id.* (citing *Curtis v. Loether*, 415 U.S. 189, 198 (1974)). *Barrow County* is similar to this case. There the Plaintiff sought declaratory judgment, an injunction, and a judgment for nominal damages. *Id.* at *3. The Court observed,

An action seeking injunctive and declaratory relief is equitable in nature and not entitled to a jury trial. *See Wilson v. Bailey*, 934 F.2d 301, 305 n. 4 (11th Cir.1991). As a result, plaintiff’s first two requests for relief arise in equity and are issues solely for the court’s determination. Plaintiff’s request for an award of nominal damages, however, requires further consideration[.]

Id.; *see also Black v. Boyd*, 248 F.2d 156 (6th Cir. 1957)(an action that is equitable by nature is not triable by a jury). The issue then becomes whether a claim for nominal damages is a claim in excess of twenty dollars because a smaller claim is insufficient to make the Seventh Amendment right to trial by jury applicable. *Barrow County*, at *3 (citing *Burt v. Abel*, 583 F.2d 613, 619 n.7 (4th Cir. 1978)).

Regardless of whether Plaintiff’s request for nominal damages is in law or in equity, it is not a claim in excess of twenty dollars. One dollar is recognized as an appropriate value for nominal damages. *Corpus v. Bennett*, 430 F.3d 912, 916 (8th Cir. 2005). “Nominal damages are damages in name only, trivial sums such as six cents or \$1.” *Utah Animal Rights Coalition v. Salt Lake City*, 371 F.3d 1248, 1264 (10th Cir. 2004)(McConnell, J., concurring)(quoting 1 Dan

B. Dobbs, *Dobbs Law of Remedies* § 3.3(2), at 294 (2d ed. 1993)). They are ““a trivial sum—usually one cent or one dollar—awarded to a plaintiff whose legal right has been technically violated but who has proven no damage.”” *Borrow County*, at *5 (quoting *Howard v. International Molders & Allied Workers Union*, 779 F.2d 1546, 1553 (11th Cir. 1986)). “They do not purport to compensate for past wrongs. They are symbolic only.” *Utah Animal Rights Coalition*, 371 F.3d at 1263 (McConnell, J., concurring.).

Nominal damages arise from a violation of a constitutional right where there are no actual damages alleged. Plaintiff has expressly limited her potential relief to nominal damages. She has made no demand for actual damages nor made any attempt to allege that any actual damages exist. *See Barrow County*, at *5. Instead she has asserted a claim only to nominal damages, which courts presume to follow from a constitutional violation even where no actual damages have been alleged. *Id.* at *4; *see Lowry ex rel. Crow v. Watson Chapel Sch. Dist.*, 540 F.3d 752, 762 (8th Cir. 2008).

To the extent there is any concern that the nominal damages claimed in this case could exceed the trivial, symbolic amount that is generally presumed, Plaintiff expressly represents to this Court that she does not seek nominal damages of more than one dollar in this case. This is consistent not only with the common law understanding of nominal damages but also with Plaintiff’s allegations in this case and the Eighth Circuit model jury instruction on nominal damages.

Because the amount in dispute is less than twenty dollars, there is no Seventh Amendment right to a jury trial for any party in this case. In addition, there is also no statutory right to a jury trial in this case.

III. Conclusion

Because Defendants are not entitled to a jury trial on any issue raised in Plaintiff's Complaint, their jury demands should be stricken.

Respectfully submitted,

/s/ Anthony E. Rothert

Anthony E. Rothert, #44827MO

Grant R. Doty, #60788MO

454 Whittier Street

St. Louis, Missouri 63108

(314) 652-3114

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and a copy was made available electronically to counsel for defendants, who are an electronic filing participant.

/s/ Anthony E. Rothert