

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

CHARLES L. BURGETT,)
)
Plaintiff,)
)
vs.)
)
KANSAS CITY AREA)
TRANSPORTATION AUTHORITY,)
et al.,)
)
Defendants.)

Case No. 13-0494-CV-W-ODS

ORDER AND OPINION (1) GRANTING PLAINTIFF'S MOTION TO VACATE; (2) DISMISSING COUNTS I, II, AND III WITH RESPECT TO KCATA; AND (3) GRANTING DEFENDANT KANSAS CITY AREA TRANSPORTATION AUTHORITY'S MOTION FOR EXTENSION OF TIME TO RESPOND TO ANY REMAINING CLAIMS

On June 10, 2013, Plaintiff filed his First Amended Complaint, which alleged the following counts: Count I—Assault and Battery (against Defendants Cartwright, KCATA, Porter, and Lienhard); Count II—False Arrest and Imprisonment (against Defendants Cartwright, KCATA, Porter, and Lienhard); Count III—Malicious Prosecution (against Defendants Cartwright, KCATA, Porter, and Lienhard); Count IV—Negligent Training and Supervision (against Defendants McInerney, Brooks, Wasson-Hunt, Pelofsky, and James); and Count V—Negligent Training and Supervision (against KCATA).

On June 20, 2013, KCATA filed a Motion to Dismiss Plaintiff's First Amended Complaint. Plaintiff filed his Opposition to KCATA's Motion to Dismiss on July 8, 2013. On August 7, 2013, the Court granted KCATA's Motion to Dismiss. See Doc. # 11. The Court's Order inadvertently stated that Counts I, II, and III were the only Counts against KCATA. However, as noted above, Count V was also asserted against KCATA.

On September 9, 2013, Plaintiff filed a Motion to Vacate (Doc. # 17) the Court's August 7, 2013 Order. First, the Motion contains the same argument and authority originally set forth in Plaintiff's July 8, 2013 Opposition. Plaintiff argues that KCATA is akin to a municipal entity and not shielded by sovereign immunity. This argument remains unpersuasive. See *State ex rel. Trimble v. Ryan*, 745 S.W.2d 672, 674-75

(Mo. 1988). Second, the Motion brings to the Court's attention the fact that Count V of Plaintiff's First Amended Complaint was not addressed by the KCATA or the Court.

On November 27, 2013, Plaintiff filed a Third Amended Complaint (Doc. # 53), which adds Count VII, asserted against Defendants KCATA, Porter, and Lienhard.¹ The state and federal law claims against the KCATA in Counts I, II, III and V of the First Amended Complaint and the Third Amended Complaint are virtually identical. Accordingly, the Court hereby vacates the August 7, 2013 Order but only to the extent it completely dismisses KCATA from this case. Counts I, II, and III remain dismissed with respect to KCATA. KCATA is given up and until January 13, 2014, to respond to the remaining claims (Counts V and VII) asserted against it in Plaintiff's Third Amended Complaint.

IT IS SO ORDERED.

DATE: December 13, 2013

/s/ Ortrie D. Smith
ORTRIE D. SMITH, SENIOR JUDGE
UNITED STATES DISTRICT COURT

¹ Plaintiff's Third Amended Complaint also includes Count VI, which is not asserted against KCATA.