

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE**

**THE ESTATE OF DAVID DICKEY,
MARTHA DAVIS, ADMINISTRATOR,**

Plaintiff,

vs.

ROANE COUNTY, TENNESSEE, et al.,

Defendants.

No. 3:10-cv-297

(Campbell/Shirley)

ORDER

This matter came before the court on the Defendants' Motion for Summary Judgment (Docket No. 14). On October 24, 2012, the court held a hearing. Proper notice was sent. Only counsel for Defendants was in attendance. From the bench, based on the briefs submitted by the parties, the court granted the motion for summary judgment and directed counsel for the Defendants to submit a proposed order to the court after circulating it to Plaintiff's counsel. The Defendants' counsel did so, and Plaintiff's counsel filed an Objection to the Proposed Order (Docket No. 25).

The court has reviewed Plaintiff's objections and finds they are not persuasive. The court decided the matter on the briefs based on the written briefs, not argument. The court reaffirms that the Motion for Summary Judgment is GRANTED, and the court adopts the proposed order submitted by counsel for the Defendants as its own. The text of that order

follows:

ORDER

This cause came before the Court on a hearing on October 24, 2012. The Court set the hearing on Defendants' Motion for Summary Judgment (Doc. 14) and the Plaintiff's motion to deny summary judgment, or in the alternative, a continuance (Doc. 19) which is construed by the Court as a motion under Rule 56(d) for additional time to take discovery.

After reviewing the record in this case and hearing the argument of counsel, the Court finds that the Plaintiff's Motion for a Continuance to seek additional discovery is not well taken and should be denied. The Court finds that the Defendants' Motion for Summary Judgment should be granted.

This case was filed in the Circuit Court for Roane County on June 4, 2010 and removed to this Court on July 6, 2010. Defendants Mike Farmer, Tim Phillips and Jack Stockton were dismissed by Order of the Court on July 7, 2010.

On September 12, 2011, Defendants Roane County, Tennessee, Dustin Hensley and Brian Walker moved for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. The Plaintiffs moved for an extension and were given until October 14, 2011 to respond to the Motion for Summary Judgment. On October 14, 2011 the Plaintiff filed a Response, which the Court construes as a motion under Rule 56(d) for additional time to take discovery. Plaintiff did not dispute the facts or legal argument contained in the motion of the Defendants. Since that time, Plaintiff has made no effort to schedule any discovery in this case. Additionally, Plaintiff's counsel did not appear for the hearing noticed by the Court. The Court finds that the request for continuance does not set out any valid reasons why the Plaintiff needs a

continuance. The affidavit of Plaintiff's counsel states that any problem that he had with his health ended over a year ago. Plaintiff's counsel does not outline what facts he would obtain that would dispute the facts cited in Defendants' Motion for Summary Judgment. Accordingly, the Court finds that the Plaintiff has not made the necessary showing under Rule 56(d). The Court additionally notes that this is a case where the individual Defendants have pled qualified immunity and moved for summary judgment under qualified immunity and the individual Defendants should not have to face the burdens of litigation any longer.

Accordingly, the Court finds that the Plaintiff's motion for additional time is not well taken and should be denied. The Court finds that the Defendants are entitled to summary judgment for the reasons stated in Defendants' motion (Doc. 14) and memorandum of law (Doc. 15). The Court finds that the use of force by Deputy Hensley was justified. For the reasons stated in the motion and accompanying memorandum filed by the Defendants, the Motion for Summary Judgment is granted. The Defendants, Dustin Hensley, Brian Walker and Roane County, Tennessee will be dismissed from this case with full prejudice.

SO ORDERED this 17th day of December, 2012.

BY THE COURT:



TENA CAMPBELL
U.S. District Court Judge

ENTERED AS A JUDGMENT
s/ Debra C. Poplin
CLERK OF COURT