

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

LONITA GROSE-DOWDY,
Plaintiff,
VS.
CITY OF MEMPHIS, ET AL.,
Defendants.
No. 16-2589-JDT-cgc

ORDER ADOPTING REPORT AND RECOMMENDATION TO GRANT
MOTION TO DISMISS, CERTIFYING AN APPEAL WOULD NOT BE TAKEN
IN GOOD FAITH AND DENYING LEAVE TO APPEAL IN FORMA PAUPERIS

On July 15, 2016, Plaintiff Lonita Grose-Dowdy, a resident of Memphis, Tennessee,
filed a pro se complaint on the form used for commencing an action pursuant to 42 U.S.C.
§ 1983 and paid the civil filing fee. (ECF Nos. 1 & 2.) She sues the City of Memphis,¹
Memphis Mayor Jim Strickland and former Mayor AC Wharton, interim Police Director
Michael Rallings and former Police Director Tony Armstrong, various individuals with the
Memphis Police Department (“MPD”), and Gina Sweat, Director of the Memphis Fire
Department (“MFD”). The Defendants who have been served filed a motion to dismiss on
October 27, 2016. (ECF No. 21.) Plaintiff subsequently filed a motion to amend (ECF No.
22), a motion to extend the time to serve process (ECF No. 23), and a motion asking the

¹ Plaintiff’s claims against the Memphis Police and Fire Departments are properly
construed as claims against the City of Memphis.

Court to appoint a Special Counsel or other individual to investigate the allegations in her complaint (ECF No. 29). On January 6, 2017, U.S. Magistrate Judge Charmiane G. Claxton issued a Report and Recommendation (“R&R”) in which she recommended the Court dismiss the case *sua sponte* for lack of capacity to sue. (ECF No. 32.) Objections to the R&R were due within fourteen days, on or before January 23, 2017. *See* Fed. R. Civ. P. 72(b)(2); *see also* Fed. R. Civ. P. 6(d). However, Plaintiff has filed no objections.

Plaintiff alleges that she and Jefferson Grose, III are co-administrators and heirs of the Estate of Lucille Grose (“Estate”) and that there are four additional heirs. (ECF No. 1 at 1-2.) Plaintiff alleges the decedent died as a result of injuries sustained in a motor vehicle accident on July 18, 2015, in Memphis. (*Id.* at 4.) She alleges the MPD and MFD were negligent in their investigation of the accident and failed to follow their own policies in not issuing a traffic citation to or bringing criminal charges against the driver of the other vehicle in the accident, Charles Stone. (*Id.* at 6-9.)

Magistrate Judge Claxton determined that under Tennessee law Plaintiff and her co-administrator would have the capacity to sue on behalf of the Estate. However, such an action may be brought in federal court by an administrator acting *pro se* only if he or she is the sole beneficiary of the estate and the estate has no creditors. *See Bass v. Leatherwood*, 788 F.3d 228, 230 (6th Cir. 2015); 28 U.S.C. § 1654. In this case, the complaint makes it clear there are six heirs/beneficiaries of the Estate. Therefore, the Magistrate Judge found that Plaintiff cannot maintain this action in federal court unless she is represented by counsel.

Accordingly, she recommended the motions to dismiss be granted and the pending motions be denied as moot.

The Court finds no error in Magistrate Judge Claxton's conclusions and ADOPTS the R&R in its entirety. Accordingly, the Court GRANTS the Defendants' motion to dismiss and DENIES all pending motions as moot.

Pursuant to 28 U.S.C. § 1915(a)(3) and Federal Rule of Appellate Procedure 24(a), the Court CERTIFIES that an appeal by Plaintiff would not be taken in good faith and DENIES leave to appeal *in forma pauperis*. Accordingly, if Plaintiff files a notice of appeal, she must also pay the entire \$505 appellate filing fee or file a motion to proceed *in forma pauperis* and supporting affidavit in the Sixth Circuit Court of Appeals.

The Clerk is directed to prepare a judgment.

IT IS SO ORDERED.

s/ **James D. Todd**
JAMES D. TODD
UNITED STATES DISTRICT JUDGE