

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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THERESA R.L. CURTIS,

Plaintiff,

v.

CHAD P. STAGE,  
JASON A. ROENNEBURG,  
DIAMOND DETECTIVE AGENCY,  
and MICHAEL JONES,

Defendants.  
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OPINION AND ORDER

11-cv-185-bbc

Plaintiff Theresa R.L. Jones is suing defendants Chad P. Stage, Jason A. Roenneburg, Diamond Detective Agency and Michael Jones for damages resulting from an altercation at the Rock County Health Center on February 10, 2009. Plaintiff is alleging a state law claim of negligence against defendants Stage and Roenneburg, a state law claim of battery and a federal cause of action under 42 U.S.C. § 1983 (excessive force in violation of her rights under the Fourth and Fourteenth Amendments) against all three individual defendants and a state law claim of negligent hiring, training and supervision against defendant Diamond Detective Agency.

Plaintiff brought her suit in the Circuit Court for Rock County; defendants removed it to this court; and plaintiff moved for remand. Defendants contend that removal of the case against all defendants is proper under 28 U.S.C. § 1441 despite the fact that no federal claim is asserted against the detective agency. Plaintiff disagrees, arguing that 42 U.S.C. § 1983 does not specifically authorize pendent party jurisdiction, Aldinger v. Howard, 427 U.S. 1, 18 (1976), that the negligent hiring and supervision claim against the detective agency does not arise out of the same facts as those supporting the allegations against the individual defendants and that the state law claims of negligence and battery have very different defenses from those that could be raised in connection with the federal law claim of excessive force. Plaintiff asks the court to remand the state law claims to state court or, in the alternative, to hold them in abeyance until the federal claim is resolved and remand the state law claims at that time.

Plaintiff's motion for remand will be denied. 28 U.S.C. § 1367(a) abrogated Aldinger v. Howard, 427 U.S. 1. It allows federal courts to exercise supplemental jurisdiction over related claims and join necessary parties, even when there is no independent basis for jurisdiction over those claims and parties. The statute requires that the claims and parties be "related" or, in other words, that they derive from a common nucleus of operative fact. E.g., Hansen v. Board of Trustees of Hamilton Southeastern School Corp. 551 F.3d 599, 607 (7th Cir. 2008) ("federal courts may exercise supplemental jurisdiction over a state claim

if the state and federal claims “derive from a common nucleus of operative fact”) (quoting United Mine Workers v. Gibbs, 383 U.S. 715, 725 (1966)).

Plaintiff contends that the claims of battery, negligence and failure to train and supervise are so different from one another that they cannot serve as the basis for the exercise of supplemental jurisdiction, but this contention is implausible on its face. A fair reading of the complaint reveals that all the claims alleged arise out of an incident that occurred on February 10, 2009 at the Rock County Health Center involving plaintiff and the three individual defendants, two of whom are employed by defendant Diamond Detective Agency. Allegedly, the three individual defendants took actions against plaintiff that constituted either negligence, battery or excessive force in violation of the Constitution and two of them did so because they were not properly trained or supervised by the fourth defendant. At this stage of the proceedings, the allegations appear to derive from a common nucleus of operative fact. That the specific claims may have different factual bases from one another does not mean they must be severed and remanded.

Plaintiff asked for an award of fees and costs for her motion to remand. Because she did not prevail on this motion, she is not entitled to any award.

#### ORDER

IT IS ORDERED that plaintiff Theresa R.L. Curtis’s motion to remand this case to

state court is DENIED, along with her motion for an award of fees and costs.

Entered this 30th day of June, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge