

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

-----  
ANTHONY D. TAYLOR, SR.,

Plaintiff,

v.

OFFICER ROBERT LYNN,  
and OFFICER WITTE,

Defendants.  
-----

ORDER

13-cv-862-bbc

Pro se plaintiff Anthony Taylor is proceeding on claim that defendants Robert Lynn and Officer Witte searched his home, in violation of the Fourth and Fourteenth Amendment. In the order screening the complaint, I dismissed plaintiff's claim against the Beloit Police Department because he did not allege that the individual defendants were acting in accordance with a policy or custom of the city or the department, which is a requirement for municipal liability. Monell v. Department of Social Services, 436 U.S. 658, 691 (1978). Now plaintiff has filed a motion for leave to amend his complaint to reinstate the police department as a defendant. Dkt. #21. In addition, he has filed a document that he calls "amended complaint" in which he alleges that the individual defendants acted in accordance with the police department policies and practices. Dkt. ##26.

The document plaintiff filed is not accurately described as an amended complaint because the only allegations in the document related to municipal liability. He says nothing

about his other claims. The general rule is that "parties are not allowed to amend a pleading by simply adding to or subtracting from the original pleading in subsequent filings scattered about the docket. If [plaintiffs] wish to amend their complaint, they must file a proposed amended complaint that will completely replace the original complaint. . . . [T]here can be only one operative complaint in the case." Boriboune v. Berge, No. 04-C-15-C, 2005 WL 256525, \*1 (W.D. Wis. Jan. 31, 2005). The reason for such a rule is plain enough. If the "operative pleading" consists of multiple documents, the scope of the plaintiff's claims may become unclear and make it difficult for the defendants to file an answer.

However, in this case, defendants have not objected to the proposed amendment and the allegations plaintiff seeks to add are relatively simple and discrete. Accordingly, I will construe plaintiff's proposed amendment as a supplement to the complaint and treat both the supplement and the original complaint as one operative pleading.

A second potential problem with plaintiff's proposed amendment is that the Beloit Police Department is not a suable entity. Under Fed. R. Civ. P. 17(b), state law determines whether a particular entity has the capacity to be sued. As other courts have recognized, Wisconsin municipalities may be sued, Wis. Stat. § 62.25, but not individual agencies and departments, including police departments. Barlass v. Carpenter, 2010 WL 3521589, \*3 (W.D. Wis. Sept. 7, 2010) (dismissing Janesville police department); Lawrence v. Lewandowski, 2009 WL 2950611, \*7 (E.D. Wis. Sept. 9, 2009) (dismissing Wauwatosa police department as defendant and substituting City of Wauwatosa); Calnese v. Fleishauer, 2006 WL 3361204, \*3 (W.D. Wis. Nov. 17, 2006) (dismissing Madison police

department); see also Best v. City of Portland, 554 F.3d 698 (7th Cir. 2009) (Indiana police department not suable entity under § 1983); Chan v. Wodnicki, 123 F.3d 1005, 1007 (7th Cir. 1997) (Chicago police department not suable entity). Accordingly, I will grant plaintiff's motion, but I am substituting the city of Beloit for the Beloit police department. Lewis v. City of Chicago, 496 F.3d 645, 657 n.1 (7th Cir. 2007) ("The City of Chicago is the real party in interest for claims against the Chicago Police Department and therefore we have adjusted the caption accordingly.").

#### ORDER

IT IS ORDERED that

1. Plaintiff Anthony Taylor's motion for leave to amend his complaint, dkt. #21, is GRANTED. Plaintiff's original complaint, dkt. #1, and his supplement, dkt. #26, will serve as the operative pleading.

2. The city of Beloit is SUBSTITUTED for the Beloit police department in the complaint.

3. A summons and a copy of plaintiff's original complaint, dkt. #1, his supplement, dkt. #26, and this order are being forwarded to the United States Marshal for service on

defendant City of Beloit.

Entered this 3d day of March, 2015.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge