

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

C.T.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 06-2093-JWL
)	
LIBERAL SCHOOL DISTRICT,)	
USD # 480, et al.,)	
)	
Defendants.)	

ORDER

This matter comes before the court upon plaintiff's Motion for Leave to File Amended Complaint (Doc. 13), seeking leave to file an amended complaint in this matter after responsive pleadings have been filed. Plaintiff has attached a copy of his proposed amended complaint to his motion, in compliance with D. Kan. Rule 15.1.¹

This case was originally filed on March 10, 2006,² and defendants Liberal School District, USD #480, Gary Cornelson, Tom Scott, Dave Webb, and James Maskus filed their answer on July 7, 2006.³ Defendant Johnny Lynn Aubrey filed his "Answer/Reply" on August 9, 2006.⁴ Plaintiff also filed this Motion for Leave to File Amended Complaint on August 9, 2006.⁵

¹See Motion to Amend Complaint (Doc. 13 Ex. A).

² See Complaint (Doc. 1).

³See Answer (Doc. 6).

⁴See Answer/Reply (Doc. 11).

⁵See Motion to Amend Complaint (Doc. 13).

Defendants have not filed any response to plaintiff's motion, and the time to do so has now expired.⁶ Pursuant to D. Kan. Rule 7.4, the court ordinarily treats a motion, to which no timely response is filed, as uncontested and grants the motion without any further notice.⁷ The court has reviewed plaintiff's motion and is now prepared to rule.

Fed. R. Civ. P. 15(a) provides that leave to amend "shall be freely given where justice so requires." In this instance, plaintiff seeks leave to amend after responsive pleadings have been filed in order to assert additional negligence claims against defendants. Specifically, plaintiff claims negligent failure to supervise children, negligent supervision, retention and hiring, breach of fiduciary duty, and negligent entrustment.⁸

Plaintiff calls the court's attention to K.S.A. § 12-105b(d), which provides in part "[a]ny person having a claim against a municipality which could give rise to an action brought under the Kansas Tort Claims Act shall file a written notice as provided in this subsection before commencing such action." Plaintiff states that he has now complied with the requirements K.S.A. § 12-105b(d) and thus seeks to amend his complaint to reflect these ripe negligence claims.⁹ Plaintiff's motion

⁶ See D. Kan. Rule 6.1(d)(1) ("Responses to nondispositive motions. . . shall be filed and served within 14 days.").

⁷ D. Kan. Rule 7.4 provides in relevant part:

The failure to file a brief or response within the time specified within Rule 6.1(d) shall constitute a waiver fo the right thereafter to file such a brief or response, except upon a showing of excusable neglect. . . . If a respondent fails to file a response within the time required by Rule 6.1(d), the motion will be considered and decided as an uncontested motion, and ordinarily will be granted without further notice.

⁸ See Amended Complaint (Doc. 13 Ex. A)

⁹ See Amended Complaint (Doc. 13).

is silent as to plaintiff's compliance with the timing and procedural requirements of K.S.A. § 12-105b(d). However, because defendants have not responded to plaintiff's motion, there is nothing to indicate that plaintiff has not met the various procedural requirements of K.S.A. § 12-105b(d).

To date, there has been no scheduling order entered in the case and no time period established for the parties to seek amendments to the pleadings. As such, the court finds the requested amendment to be timely, and because discovery has not yet begun, it further finds that defendants will not be unfairly prejudiced by plaintiff being granted leave to amend. As such, the court finds that plaintiff's motion for leave to file his amended complaint should be granted.

IT IS THEREFORE ORDERED that plaintiff's Motion for Leave to Amend Original Complaint (Doc. 13) is hereby granted.

IT IS FURTHER ORDERED that plaintiff file plaintiff's first amended complaint, identical to the exhibit to plaintiff's motion (Doc. 13) without the word "proposed," as plaintiff's amended complaint in this matter within the next seven (7) days. Service will be effected upon defendants by electronic means, as provided by D. Kan. Rule 5.4.9, upon the filing of plaintiff's first amended complaint in the court's CM/ECF system by the clerk's office.

IT IS SO ORDERED.

Dated this 28th day of August, 2006, at Topeka, Kansas.

s/ K. Gary Sebelius
K. Gary Sebelius
U. S. Magistrate Judge