

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

JACK F. FRUITS, et. al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 07-1187-JTM
)	
CITY OF WINFIELD, KANSAS, et al.,)	
)	
Defendants.)	
)	

MEMORANDUM AND ORDER

This matter is before the court on plaintiffs' motion to amend (Doc. 42) to reflect:

1. Hilda Sumner and Daniel Stearns as the plaintiffs bringing all claims under 42 U.S.C. § 1983, as representatives of Daniel Fruits' estate;
2. Hilda Sumner and Daniel Stearns as the plaintiffs bringing the state law survival action as representatives of Daniel Fruits' estate;
3. Daniel Stearns as the only plaintiff bringing the state law wrongful death claim; and
4. No claim for punitive damages associated with plaintiffs' claim under 42 U.S.C. § 1983 against the City of Winfield.

The net effect of the amendment is 1) the dismissal of three plaintiffs from the case (Jack and Dorothy Fruits and Gretchen Kittleson); 2) Daniel Stearn rather than the whole Fruit family bringing the wrongful death claim against defendant Knoles; and 3) dismissal of any punitive damage claim under § 1983 against the City of Winfield. Plaintiffs contend that the proposed amendments resolve a number of pleading arguments asserted in defendants' motion for

summary judgment. Defendants request that the motion be deferred pending a ruling on their motion for summary judgment “in the interests of judicial economy.” Specifically, defendants argue that the motion to amend may become moot if their qualified immunity defense is sustained.

The court declines defendants’ request to defer the motion to amend. Regardless of the ruling on the issue of qualified immunity as a defense to the § 1983 action, other claims based on state law are alleged in the complaint and remain pending.¹ The motion to amend addresses other defenses asserted by defendants’ in their motion for summary judgment.

IT IS THEREFORE ORDERED that plaintiffs’ motion to amend their complaint **(Doc. 42)** is **GRANTED**. Plaintiffs shall file and serve their amended complaint on or before **March 12, 2008**.²

IT IS SO ORDERED.

Dated at Wichita, Kansas this 28th day of February 2008.

S/ Karen M. Humphreys

KAREN M. HUMPHREYS
United States Magistrate Judge

¹

It is not at all clear that a ruling in favor of the defendants on the qualified immunity defense would moot the remaining state law claims and the motion to amend.

²

On February 26, 2008, Judge Marten granted plaintiffs’ request for limited discovery in order to respond to defendants’ motion for summary judgment and established a briefing schedule. Defendants’ may supplement their summary judgment motion concerning the amended complaint on or before **March 14, 2008**. The scheduling order will be revisited after resolution of the summary judgment motion.