

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

DWAYNE ANDERSON,

Plaintiff,

vs.

Case No. 16-1376-JTM

NAOMI ARNOLD and TRINIDAD BALDERAS,

Defendants.

MEMORANDUM AND ORDER

Plaintiff Dewayne Anderson brought the present action against two Wichita Police Department officers, Naomi Arnold and Trinidad Balderas, alleging they violated his constitutional rights after he was involved in a two-car traffic accident. By separate order (Dkt. 27), the court granted the motion to dismiss filed by the other driver, also sued by Anderson. The matter is now before the court on a motion to dismiss by Officers Arnold and Balderas.

Anderson's Amended Complaint is a single page handwritten narrative in which he states that, when she was questioning him after the accident, Officer Arnold spoke "with a different tone in her voice," and that at one point she pulled out her taser when he turned away from her and reached inside his jacket. (Dkt. 37, at 1). Anderson dropped his jacket

and held his hands in the air, and Officer Arnold put the taser away, although she also placed her hand on her service gun. *Id.* Officer Balderas handcuffed Arnold and he had to wait in a squad car for 20 minutes, although he told officers his hand was injured. *Id.*

Defendants move to dismiss the action on several grounds. First, they contend that Anderson has failed to demonstrate any violation of his constitutional rights, since the taser was not used and no force was actually employed. (Dkt. 40, at 4-5). Second, they argue their actions are protected by qualified immunity, because their actions were not objectively unreasonable, and because plaintiff has not identified any controlling precedent indicating their actions were unlawful. (*Id.* at 5-7). *See Quinn v. Young*, 780 F.3d 998, 1005 (10th Cir. 2015).

Anderson has filed no response to the defendant's motion. Under such circumstances, "the court will consider and decide the motion as an uncontested motion." D.Kan.R. 7.4(b). Accordingly, both for good cause shown and pursuant to Rule 7.4, the court hereby grants defendant's motion to dismiss. (Dkt. 40).

IT IS SO ORDERED this 18th day of August, 2017.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE