

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

JOSHUA W. DEVILBISS, DECEASED,)
by and through LINDSEY DEVILBISS,)
WIDOW OF JOSHUA W. DEVILBISS,)
DECEASED,)
)
and)
)
E.A.D. and C.W.D., minor child of the)
DECEASED, by and through their next)
friend, LINDSEY DEVILBISS,)
)
Plaintiffs,)
)
v.)
)
MEADE COUNTY, KANSAS, BOARD OF)
COMMISSIONERS, et al.,)
)
Defendants.)

Case No. 19-2490-CM-KGG

MEMORANDUM AND ORDER

This case is before the court on defendants’ motions to dismiss (Docs. 27 and 29). One of these motions is fully briefed and the other is awaiting the reply brief. After these filings, plaintiffs filed a motion for leave file a second amended complaint—in part to “better articulate [p]laintiffs’ claims and [d]efendants’ responsibilities to [p]laintiffs.” If plaintiffs are permitted to amend, these changes may impact the pending motions to dismiss. And if there is a new operative complaint, the motions to amend the prior complaint will be moot.

To promote efficiency and to avoid having the motions to dismiss intertwined with the motion to amend to a degree that complicates the procedural posture of the case unnecessarily, the court denies the motions to dismiss without prejudice and without considering the merits of the motions. After the motion to amend is resolved, defendants may file new motions to dismiss with respect to the operative

complaint, if appropriate. If the content of the new motions to dismiss is largely the same as the current motions to dismiss (to which plaintiffs have already responded), defendants may so notify the court and request expedited briefing. In any event, discovery in this case is stayed, so defendants should not suffer prejudice by the delayed resolution of their motions.

IT IS THEREFORE ORDERED that defendants' motions to dismiss (Docs. 27 and 29) are denied without prejudice.

Dated this 15th day of January, 2019, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge