

[Doc. 123] *Aguirre* denied the motion to bifurcate, noting that “joinder of claims, parties and remedies is strongly encouraged,” citing *United Mine Workers v. Gibbs*, 383 U.S. 714, 724 (1966). The *Aguirre* opinion notes also that joinder of parties is strongly encouraged, particularly “in the employment discrimination context.” (Citing *Castillo v. Lennar Corp*, 2008 WL 442-5298, at*1 (S. D. Tex. Sept. 23, 2008) (citing *Alexander V Fulton Cnty.*, 207F. 3-D 1303, 13 to 2 (11th Cir. 2000) (en banc)). Thus, while bifurcation is allowable, it is not a favored approach toward the efficient management of the judicial docket. Bifurcation of issues for trial is “not the usual course that should be followed.” *McDaniel the Anheuser-Busch, Inc.* 987 F. 2d 298, 304 (5th Cir. 1993). *Aguirre, supra*, is actually the most recent authority cited by Defendants in their Motion to Bifurcate and its holding is exactly the opposite of what Defendants urge in their Motion to Bifurcate. Similarly, Defendants’ reliance on *Cox v. Columbia Cas. Co.* No. CIV A. 12- 306-SDD-SC, 2014 WL 5465803 to support their claim that federal courts “routinely and consistently grant requests for bifurcation of constitutional claims alleged against an individual and a governmental entity” is misplaced. In fact, the *Cox* opinion notes that bifurcated trials “should be the exception, not the rule.” *Id.* at *1 (internal citations omitted)

2. Bifurcation Is Not Efficient

Bifurcating this trial would not lead to efficient trial management in this instance. Defendants have waited until the eleventh hour to file their Motion. Counsel for Plaintiffs have already engaged in extensive pretrial trial preparation and planning. Requiring Plaintiffs to reorganize their trial preparations would require Plaintiffs to present a number of witnesses twice, first with regard to Mr. Reynolds’ individual liability and then once again with regard to liability of the Defendant Hospital District, of which he is the Chief Executive Officer.

3. No Evidence of Prejudice to Defendant Reynolds

Contrary to Defendants' assertion, Ray Reynolds will not suffer prejudice in the absence of bifurcation as alleged in both their Motion to Bifurcate and their Objections to the Magistrate's Order denying the same. Although Defendants make this blanket assertion, they have pointed to no specific evidence that would be presented to the jury which might create such a prejudice. A majority of the cases cited by Defendants in support of their assertion that bifurcation is appropriate to avoid prejudice to the individual defendant are police misconduct or police brutality cases. See e.g. *Cox v. Columbia Cas. Co.*, No. CIV.A. 12-306-SDD-SC, 2014 WL 5465803, at *1 (M.D. La. Oct. 28, 2014); *DiSorbo v. Hoy*, 343 F.3d 172, 179 (2d Cir. 2003) (bifurcating claims against government from Section 1983 claims against an individual); *Wilson v. Morgan*, 477 F.3d 326, 340 (6th Cir. 2007); *Treece v. Hochstetler*, 213 F.3d 360, 365 (7th Cir. 2000); *Quintanilla v. City of Downey*, 84 F.3d 353, 356 (9th Cir. 1996); *McIntosh v. District of Columbia*, 1997 U.S. Dist. LEXIS 23891 *5 (D.D.C., Dec. 9, 1997); *Anthony v. City of Bridgeport*, 97 F. R. Evid. Serv. 1145, 2015, WL 3745302 (D. Conn. June 15, 2015); *Phillips v. City of N.Y.*, 871 F.Supp.2d 200 (E.D.N.Y. 2012); *Wells v. City of Dayton*, 495 F.Supp.2d 793 (S.D. Ohio 2006); *Figueroa v. Gates*, 207 F.Supp.2d 1085 (C.D. Cal. 2002).

Under circumstances where an individual police officer is accused of abusive behavior, it makes sense that a court might choose to bifurcate the trial in order to avoid presenting the jury with a litany of similar abuses committed by other individual officers, which might prejudice the jury against the accused individual defendant working for the same governmental entity. Such is not the case here. The actions of Ray Reynolds are inextricably intertwined with the Hospital District's ongoing campaign to punish Dr. and Nurse Turk for their constitutionally protected

speech regarding public health and safety issues at the Glen Rose Medical Center. Ray Reynolds was instrumental in Shelley Turk's termination from employment as evidenced by the testimony of Chip Harrison to the effect that Ray Reynolds asked his permission before firing Shelley Turk and that Chip Harrison's approval was premised entirely upon Ray Reynold's representations to Chip Harrison, who was at that time the President of the Hospital District Board. (Doc 95-2, Appendix to Plaintiff Shelley Turk's Response in Opposition to Defendants' Motion for Summary Judgment, at S. TURK APPX. 0064.) Shelley Turk disputes the characterization of her comments and disputes the fact that she had made any such comments about her co-worker in the months prior to her termination. (Doc 95-2, Appendix to Plaintiff Shelley Turk's Response in Opposition to Defendants' Motion for Summary Judgment, at S. TURK APPX. 0045.) Ray Reynolds was both the Hospital 's CEO and supervised, either directly or indirectly, the Hospital's personnel and spearheaded the effort to terminate Dr. Turk's employment. He was also the Chief Executive Officer of Glen Rose Healthcare, Inc. which, according to the District's own organization chart is a subsidiary of Defendant Somervell County Hospital District.¹

4. No Evidence of Prejudice to Defendant Hospital District

If Defendants' logic were to be followed regarding prejudice to governmental entities, then trial courts would be required to bifurcate *every* case involving more than one theory of recovery or directed to more than one defendant. This is not the law. As discussed above, bifurcation is generally disfavored. While there are surely times when bifurcation is appropriate,

¹ Ray Reynolds is the Chief Executive Officer of Glen Rose Healthcare, Inc., a subsidiary of Glen Rose Medical Center. Although Defendants' Motion to Bifurcate presented as fact their assertion that Glen Rose Healthcare, Inc. is not governed by the Somervell District, the record facts are far from settled in this regard. The Defendants' argument that the Hospital District was not Dr. Turk's employer was extensively (and unsuccessfully) briefed by Defendants in their previous Partial Motion to Dismiss [Doc. 21] and their unsuccessful Motion for Summary Judgment [Doc. 87]. Having failed to convince the Court after multiple efforts, Defendants are now choosing to simply assume the truth of controverted facts and the validity of their previously unsuccessful legal arguments.

the claims and theories in this case arise from an interrelated series of occurrences involving Ray Reynolds as well as Dr. and Nurse Turk.

CONCLUSION

The Court is empowered and obligated to issue jury instructions to address multiple theories of recovery and different proof requirements. Plaintiffs are confident that this case can be tried normally, without resorting to bifurcation which, as noted the by United States Supreme Court in *United Mine Workers, supra*, is not a favored approach to efficient trial management.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served upon all counsel of record in accordance with F.R.C.P. 5(b) by electronic filing on the 11th day of September, 2018, as follows:

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