

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

ALBERT J. TURK, M.D. and SHELLEY
TURK, R.N.,
Plaintiffs,

v.

SOMERVELL COUNTY HOSPITAL
DISTRICT and RAY REYNOLDS,
INDIVIDUALLY, AND IN HIS
CAPACITY AS CHIEF EXECUTIVE
OFFICER OF GLEN ROSE MEDICAL
CENTER-SOMERVELL COUNTY
HOSPITAL DISTRICT,
Defendants.

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Civil Action No. 6:15-cv-00231-RP

**DEFENDANTS SOMERVELL COUNTY HOSPITAL DISTRICT AND RAY
REYNOLDS IN HIS OFFICIAL CAPACITY 12(C) MOTION REPLY**

Defendants file their Rule 12(c) Motion Reply so that justice may be done and to ensure key legal issues are properly decided and disposed of prior to presenting the case to a jury, and to prevent error. Plaintiffs' Response fails to adequately address the substantive issues – that Defendants have pointed to relevant state authority that renders Section 1983 inapplicable to Somervell County Hospital District and Reynolds in his official capacity. Plaintiffs ask this court to ignore the state authority, either because they believe it is wrong or due to the pending trial setting. Neither argument prevails. Under established law, the state authority must be followed. More, before the case goes to a jury, counsel has a duty to inform the court of *all* relevant, applicable controlling precedent to prevent error from trying a case on inapplicable law. Defendants have attempted to do that, and inasmuch as leave is required to do so, Defendants request that as well. Accordingly, Defendants respectfully request its 12(c) motion be granted.

I. ARGUMENT AND AUTHORITIES

A. Plaintiffs Fail to Refute that Arms of the State Cannot be Sued Under Section 1983.

As a preliminary matter, Plaintiffs' Response concedes that arms of the state cannot be sued under section 1983 pursuant to the Supreme Court's holdings. *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 63-70 (1989). Nor do Plaintiffs' contravene that if Defendants are an arm of the state, they likewise cannot be sued under Section 1983 due to sovereign immunity. *Edelman v. Jordan*, 415 U.S. 651 (1974); *Ford Motor Co. v. Dept. of Treasury*, 323 U.S. 459, 464-66 (1945). As shown below, Defendants are an arm of the state, rendering Section 1983 inapplicable.

B. Plaintiffs' Response Fails to Provide Any Authority Allowing this Court to Disregard State Law Findings that Texas Hospital Districts, Created by the Texas Constitution, Are an Arm of the State.

Plaintiffs' Response fails to argue that *May v. Nacogdoches Memorial Hospital* finds anything other than Texas hospital districts, like Defendants, are arms of the state and thus, not subject to Section 1983. 61 S.W.2d 623 (Tex.App.—Tyler 2001, no pet.). Plaintiffs' Response likewise fails to point to a single Texas state authority holding that a hospital district is subject to Section 1983 and, is a municipality, rather than an arm of the state. Instead, Plaintiffs' Response simply contends that the Texas court's holding that hospital districts are arms of the state, cloaked with sovereign immunity, and not suable under Section 1983, "was simply wrongly decided on the Eleventh Amendment issue." Plfs' Resp. at pp. 4-5. This entirely misses the point. Texas' decision, rightfully or wrongly, that its hospital districts are arms of the state, must be respected by Plaintiffs and the federal courts.

In fact, Plaintiffs' Response is completely devoid of any legal citation instructing this Court that it can ignore *May* – clear state law on the issue – in determining whether an entity is a state-arm or municipality. Plaintiffs do not because they cannot. The Supreme Court and Fifth Circuit have been clear that state law is determinative of whether a governmental entity is an arm of the

state. *Mt. Health City School Dis. Bd. of Education v. Doyle*, 429 U.S. 274, 280-81 (1977); *Goss v. San Jacinto Jr. College*, 588 F.2d 96, 98-99 (5th Cir. 1979).

C. Under Texas Law, A Hospital District is an Arm of the State and Thus, Cannot be Sued Under Section 1983.

In fact, the only state authority before this Court is *May*, the controlling Texas state law, which held that a hospital district formed pursuant to the Texas Constitution is an arm of the state and, thus, not subject to Section 1983. *May*, 61 S.W.3d at 629. Quite clearly, Defendant Somervell County Hospital District is an arm of the state. It was created was created in 2011 under the Texas constitution, Article IX, Section 9 of the Texas Constitution. More, the Texas Constitution through the Texas Legislature gave to it the power to levy and collect an ad valorem tax; to assume the payment of all outstanding bonded indebtedness; and to assume full responsibility for providing medical and hospital care to the indigent of the County. *See* Ch. 286 of Tex. Health & Safety Code. Specifically, in *May*, the Texas appellate court, looking at these factors, held that a hospital district created under Article IX, Section 9 of the Texas Constitution was an arm of the State and concluded that “since the Hospital, as ‘arm of the State,’ is not a ‘person’ under sections 1983 . . . the Hospital is protected from [plaintiff’s] lawsuit.” *May*, 61 S.W. 3d at 629.

Although there are federal court cases holding a Texas hospital district is a municipality, none of these discussed, addressed, or even appeared to have been aware of the Texas state law precedent to the contrary. No prior federal court case can be located where a court reviewed *May* and decided it was simply going to ignore it. Now that it is before the Court, it cannot be ignored and, quite simply, should be followed. *Doyle*, 429 U.S. at 280-81. ¹

¹ Plaintiffs argue that because other Texas courts decided other governmental entities (that were not hospital districts) were not “arms of the state,” the hospital district cannot be an arm of the state. This logic is flawed and none of the cases cited are persuasive or instructive. Plaintiffs cite *Hoff v. Nueces County*. However, *Hoff* addresses whether a county is an arm of the state, not a hospital district created by the Texas Constitution. Plaintiffs next cite to a Fifth Circuit case relating to a Mississippi school district. Mississippi state law and analysis relating to the same are not

D. Plaintiffs Failed to Address That Even Under the Municipality Standard They Fail to Demonstrate A Case That Includes the Elements of Municipality Liability.

As noted in Defendants' motion, a municipality can only be held liable for its direct actions. *Monell v. Dep't of Social Svcs.*, 436 U.S. 68, 690-94 (1978); *Oklahoma City v. Tuttle*, 471 U.S. 808, 830-31 (1985). Plaintiffs have not alleged or asserted in any pleading that the Hospital District has a formal unconstitutional policy, custom, provided indifferent training or supervision, or that a *final policymaker's* decision violated federal law.² Because Plaintiffs' pleadings are devoid of any allegations that trigger municipal liability, even if this Court considered Defendants a municipality, Plaintiffs claims are defective on the pleadings.

E. Defendants Are Not in Violation of Rule 12(c) and, to the Extent the Court Believes Defendants Should Seek Leave, Defendants Incorporate their Request for the Same in this Reply and Can Demonstrate Good Cause Exists.

Plaintiffs assert Defendants purposefully delayed filing the motion in an attempt to delay trial—this is not the case. Rule 12(c) only requires that the motion be filed *after* the close of pleadings and sufficiently prior to trial so as not to cause delay. All briefings on the issues were set to be complete before trial such that the Court could rule on the same prior to the original trial date (and now the reset date). Plaintiffs have shown no prejudice by the filing, and Defendants have complied with the 12(c) requirements. *See General Elec. Co. v. Sargent & Lundy*, 916 F.2d 1119, 1131 (6th Cir.1990) (trial court erred by denying 12(c) motion as untimely because the motion was well-supported and the non-moving party failed to articulate any prejudice caused by

instructive to Texas law. Lastly, Plaintiffs cite to *San Antonio Independent School District v. McKinney*. This case is also inapplicable—a school district is not remotely similar to a hospital district created pursuant to the Texas Constitution, and Plaintiffs provide no case citation or argument to the contrary.

² Pursuant to Texas state law, the Somervell County Hospital District Board is the municipal final policy-maker, not Reynolds. Chapter 286 of Texas Health & Safety Code; *see Bennett v. City of Slidell*, 735 F.2d 861, 862 (5th Cir.1984); *Gelin v. Housing Authority of New Orleans*, 456 F. 3d 525 (5th Cir. 2006) (Board of Housing Authority, not Executive Director was final policymaker); *Advanced Technology Building Solutions, L.L.C.*, 817 F. 3d 163 (5th Cir. 2016) (city council, not mayor was final policymaker); *Barrow v. Greensville Independent School District*, 480 F. 3d 377 (5th Cir. 2007)(school district's Board of Trustees, not superintendent was final policymaker)

the delay of trial); *Kishwaukee Community Health Serv. Ctr. v. Hospital Bldg. & Equip. Co.*, 638 F.Supp. 1492, 1494–95 (N.D.Ill.1986) (rejecting plaintiff's claim that motion was untimely, because trial date had been struck without setting a new date and because there was no evidence of a purpose of delay).

To the extent this Court finds Defendants need leave to file this motion, Defendants incorporate their request for leave in this Reply. A party seeking leave must demonstrate good cause for the same.³ Good cause exists. Although Plaintiffs suggest Defendants should have found the *May* case sooner, it is notable that the case and issue has been previously overlooked by Texas federal courts on several occasions (including cases subsequently decided by the Western District). Defendants previously relied upon such precedent, and upon discovering *May v. Nacogdoches* through diligent trial preparation, brought it immediately to the attention of the Court. Further, far from attempting to delay trial, to the contrary, Defendants filed the Motion to bring an important issue of state law to the Court's attention prior to trial to prevent error. While Defendants could have waited to spring this issue at trial on a Judgment as a Matter of Law (and been within their full right to do so), Defendants' goal was to bring a key legal issue (one that no other Texas federal court has addressed) to the Court's attention prior to empaneling a jury, proceeding to trial and to prevent error by submitting a legally defective case to the jury.

The issues are of first impression, are purely legal issues, and determination of the issues may significantly reduce the number of issues to be presented at trial. The legal issue presented is so important it is subject to interlocutory appeal. Defendants bring the issue before the Court now to ensure a proper legal case and to prevent error. With the trial presently reset to November 5

³ Good cause requires the party seeking relief to show that the deadlines could not reasonably be met despite the diligence of the party needing the extension. *S&W Enters., LLC v. SouthTrust Bank of Ala.*, 315 F.3d 533, 535 (5th Cir. 2003). Defendants relied on the prior Western District rulings on the issue, however, in extensive trial preparation Defendants discovered *May* and immediately brought this important legal issue to the attention of the Court.

(though the parties have requested it be further reset to early 2019 due to conflicts), there is still ample time for the court to consider and ensure that no party is prejudiced by the same. In short, Defendants should not be penalized for bringing this important legal issue before the Court prior to trial. This was not done for delay but so that justice could be done.

II. Conclusion

Defendants respectfully request this Court grant Defendants' Motion for Judgment on the Pleadings and all other such relief to which they are entitled.

Respectfully submitted,

/s/ Meredith Mills Gregston

Shafeeqa W. Giarratani

State Bar No. 24051493

shafeeqa.giarratani@ogletree.com

Meredith M. Gregston

State Bar No. 24073667

meredith.gregston@ogletree.com

Ogletree, Deakins, Nash,

Smoak & Stewart, P.C.

301 Congress Avenue, Suite 1150

Austin, Texas 78701

512.344.4700

512.344.4701 (Facsimile)

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on this the 6th day of September, 2018, I electronically submitted the foregoing document, *Defendants' Somervell County Hospital District and Ray Reynolds in his Official Capacity 12(C) Motion Reply* with the clerk of the court for the U.S. District Court, Western District of Texas, using the electronic case file system of the court. The electronic case files system sent a "Notice of Electronic Filing" to the following CM/ECF participants:

John E. Schulman
jschulman@schulmanlaw.com
Margaret K. Schulman
mschulman@schulmanlaw.com
The Schulman Law Firm
6440 N. Central Expressway, Suite 210
Dallas, Texas 75206

/s/ Meredith Mills Gregston

Meredith Mills Gregston

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