XI. APPENDIX

A

IN THE CRIMINAL COURT FOR ANDERSON COUNTY, TENNESSEE

STATE OF TENNESSEE,	)	
	)	
v.	)	**Docket # C1C00061 & 62**
	)	
NANCY ABBIE TALLENT.	)	

2022 JAN 26 PM 12:14
FILED AC CIRCUIT COURT

OMNIBUS ORDER AS TO DECEMBER 14, 2021 HEARING

This matter came on to be heard on the 14th day of December, 2021, for a status hearing and hearing of pending motions. From the testimony of the witnesses, the filings of the parties, argument of counsel/pro se party and the record as a whole the court finds as follows:

1. Prior to the hearing, the court had reviewed not only the court file and the motions filed, but had also seen and reviewed numerous emails from the Defendant addressed to the court clerk and others. Suffice it to say that many of these emails were accusatory in nature, to the point of being abusive. As a result, the court began the hearing by admonishing the Defendant for the tone and tenor of her communications and ORDERING the Defendant to conduct herself in this case in a civil manner. Attached hereto are several of the emails authored by the Defendant demonstrating an utter lack of basic civility on the part of the Defendant.
2. The Defendant qualifies as indigent. Although the Defendant had previously filled out an Affidavit of Indigency, this court required, over the Defendant's objection, the Defendant to complete a current Affidavit. After reviewing the Affidavit and questioning the Defendant under Oath as to her financial status, the court is satisfied that the Defendant is indigent for purposes of this litigation.

3. Having found the Defendant indigent, the court appointed the District Public Defender to represent the Defendant and stated that it would continue all pending motions and proceedings to allow counsel to prepare and attend. However, the Defendant refused the appointment until she could speak to the District Public Defender.[1] The court inquired as to what the Defendant's intentions were in that regard. Ultimately, it became clear to the court that the Defendant was not amenable to the appointment of the District Public Defender and that she desired to represent herself.

4. Having found the Defendant indigent, the court GRANTS the Defendant's Motion for Repayment of Costs associated with the issuance of subpoenas requested by the Defendant. Therefore, the clerk of the court is hereby ORDERED to refund to the Defendant the amount charged by the clerk's office for the issuance and/or service of the subpoenas at issue. However, having reviewed the court file in detail and, specifically, the subpoenas issued by the Defendant, the court notes that substantial questions exist as to whether some, many or all of these subpoenas, and/or the information sought therein, have any relevance to any of the issues in this case. As a result, this court has substantial concerns as to propriety of a now-declared indigent and self-represented party issuing subpoenas as to irrelevant matters, thereby subjecting the recipient of the subpoenas to time, effort and expense, as well as the county incurring the costs of the issuance and service of such subpoenas. Therefore, it is hereby ORDERED that Defendant shall file an *ex parte* motion with the clerk

[1] The court is awaiting receipt of the transcript from the lengthy hearing of December 14, 2021. However, due to the need to address certain of the rulings of December 14, 2021, this court has prepared this Order from its notes of the hearing. Should the transcript of the hearing be in conflict with any provision of this Order, the court will revisit the issue(s) in conflict.

requesting issuance of any subpoena, to be placed under seal by the clerk which will be followed by an *in camera* review of the subpoena and an *ex parte* hearing, if necessary.

5. The Defendant's Motion to Change Venue to Kentucky is DENIED. Despite the fact that changing venue of a state court criminal proceeding to another state is simply not available or permitted, the Defendant has established no reason to move this case to another county in the state of Tennessee.

6. Both of the Defendant's Motions to Suppress are DENIED.

   a. In case # C1C00062, the Defendant argues that the Blood Alcohol Content Report contains errors, i.e., her name is misspelled, her phone number is wrong, etc. More substantively, the Defendant argues that she did not give her informed consent to the blood draw. Officer Charles Faircloth of the Oak Ridge Police Department testified on behalf of the state. Officer Faircloth was the arresting officer who arrested the Defendant for D.U.I. Faircloth testified that he read to the Defendant the implied consent form either at the time of her arrest or shortly thereafter. He stated that he read the form "word for word" to the Defendant and that she signed the form at 22:07 giving her consent for the subsequent blood draw. He did note that there was an error on the form as to the date it was signed, i.e., it stated "09-21-09" instead of 09-21-19." The video of the Defendant's arrest was played. Frankly, the portion relevant to consent for the blood draw was (or is) inaudible.

   The Court DENIES the Motion to Suppress based upon the testimony of Officer Faircloth that he read "word-for-word" the consent form to the

Defendant, that she had verbally consented and that she had signed the consent form acknowledging her consent to have her blood drawn. However, the court does note that if the audio portion of the video dealing with the consent by the Defendant is able to be "separated," the court will certainly reconsider this ruling.

b. In case # C1C00061, the Defendant argues that the Blood Alcohol Content Report should be suppressed primarily arguing a lack of consent on her part. Officer Philip Knight of the Oak Ridge Police Department testified on behalf of the state. Officer Knight was the arresting officer who arrested the Defendant for D.U.I. on January 10, 2020. Knight testified that he read the Defendant the consent form, that the form bears his handwriting, that the Defendant gave her verbal consent and that she made a mark on the signature line of the form, but that "something happened" and he, Officer Knight retrieved a new form and the Defendant made a "mark" on the signature line again. Officer Knight stated that he obtained the Defendant's verbal consent which was given in front of her car and the form was filled out in the front seat of her car. An issue does exist as to whether the "mark" made by the defendant was strong enough to be legible or go through to the 4th page of the form. However, like case # C1C00062, a video was available and the Defendant can be heard clearly to give her verbal consent to the blood draw thereon. Further, the video confirms Officer Knight's testimony as to the events.

For the above reasons, the Motion to Suppress is denied.

7. The Defendant also filed, argued and put on proof as to her Motion to Dismiss. The Defendant's proof consisted of testimony from her mother and her son. The main thrust of her mother's testimony was an attempt to introduce an affidavit of a third person. The state's objection was sustained and nothing further of substance was elicited from this witness. The Defendant next called her son to the stand. He testified that he was the one driving the car and not his mother. This differed from the testimony of Officer Faircloth and therefore will be an issue for the jury to decide and is not grounds for dismissal. Therefore, the Defendant's Motion to Dismiss the Indictment is DENIED. However, should the Defendant choose to refile the motion and have the declarant whose affidavit the court ruled inadmissible testify at a subsequent hearing, the court will reconsider its ruling.

8. The Defendant filed several motions seeking expert services. After excusing counsel for the state from the courtroom, the court informed the Defendant that it would certainly consider any such motions she filed that complied, at least in part, with the Tennessee Rules of Criminal Procedure, in an *ex parte* manner. The court went on to explain to the Defendant why it was necessary to hear any such motions *ex parte* and gave the Defendant the opportunity to file or refile any such motions for the court's consideration. The court further instructed the clerk of the court to file any such motions filed by the Defendant under seal.

9. Finally, during the hearing, the Defendant repeatedly disobeyed the court's instructions and admonishments as to proper courtroom decorum, to the point that the court found the Defendant in civil contempt and imposed a $10.00 fine. After further consideration, the court will set aside the finding of contempt but will once again

admonish the Defendant that while she can certainly zealously defend herself against the charges set out in the indictment, she **must** do so while exercising basic civility to those involved in the proceedings. Failure to do so may result in finding of civil or criminal contempt.

10. Finally, given the Defendant's stated desire to file *ex parte* motions for expert services, the court *sua sponte* continued the trial setting of February 24, 2022. However, on that date, the court will hold a Status & Scheduling Conference at 9:00 a.m. in the Anderson County Courthouse in Clinton, Tennessee. Further, the court will hear all pending motions as well. The hearing/conference will take place in the circuit/criminal courtroom

This the ~~14th~~ 24th day of January, 2022.

Michael S. Pemberton
Criminal Court Judge (by interchange)

Re: RE: State of Tennessee v. Nancy Abble Tallent, 61 and 62

From:	Cheryl Hunter
To:	Shalea Prickett; Nancy Tallent
CC:	Melissa Denny
BC:	
Date:	Thursday - December 9, 2021 1:16 PM
Subject:	Re: RE: State of Tennessee v. Nancy Abble Tallent, 61 and 62

At this time the hearing is still set. I am working on finding a court reporter.

Cheryl S. Hunter, Judicial Assistant to
Michael S. Pemberton, Circuit Court Judge
9th Judicial District of Tennessee
P. O. Box 400, 1000 Bradford Way, Suite 400
Kingston, TN 37763
(865) 376-5776 (t); (865) 376-9051 (f)

>>> Shalea Prickett <sprickett@andersoncourts.org> 12/09/21 1:04 PM >>>
Ms. Tallent,

For the record, I did not set your court date. It was set per the order received by the judge.

If you would like me to clear up any other matters, please do not hesitate to let me know.

Shalea Prickett
Office Manager/Judicial Commissioner
Circuit/Criminal Court
100 N. Main St. Rm. 301
Clinton, TN 37716

Ph. 865-463-6822
Fax 865-264-6345

From: Nancy Tallent <ntallent1@bellsouth.net>
Sent: Thursday, December 9, 2021 12:52 PM
To: Shalea Prickett <sprickett@andersoncourts.org>
Subject: RE: State of Tennessee v. Nancy Abble Tallent, 61 and 62

Ms. Prickett:

The clerk sets the dates, not the judge. Unless the world is ending on December 14, this case should be been set on another date. As you were aware the criminal courtroom is not available, you would have told the Judge the same and another date would have been selected. If the judge wastes his time to come on December 14, for no reason that's on you. Of course, it could be you're just lying and there is no trial. I guess I'll see. I plan on attending the trial. See you then.

Nancy

court room is being used for a trial as we previously spoke about.

Shalea Prickett
Office Manager/Judicial Commissioner
Circuit/Criminal Court
100 N. Main St. Rm. 301
Clinton, TN 37716

Ph. 865-463-6822
Fax 865-264-6345

From: Nancy Tallent <ntallent1@bellsouth.net<mailto:ntallent1@bellsouth.net>>
Sent: Thursday, December 9, 2021 11:30 AM
To: Shalea Prickett <sprickett@andersoncourts.org<mailto:sprickett@andersoncourts.org>>
Subject: RE: State of Tennessee v. Nancy Abbie Tallent, 61 and 62

Would you explain to me why you put my case in Chancery Court when it's a criminal matter? As you have worked with the court system for five years, you would be aware that is improper.

From: Shalea Prickett <sprickett@andersoncourts.org<mailto:sprickett@andersoncourts.org>>
Sent: Thursday, December 9, 2021 11:15 AM
To: Nancy Tallent <ntallent1@bellsouth.net<mailto:ntallent1@bellsouth.net>>; cheryl.hunter@tncourts.gov<mailto:cheryl.hunter@tncourts.gov>; 'Melissa Denny' <KMDenny@tndagc.org<mailto:KMDenny@tndagc.org>>
Subject: RE: State of Tennessee v. Nancy Abbie Tallent, 61 and 62

Ms. Tallent,

I have no information regarding the continuation on your cases.

Thank you,

Shalea Prickett
Office Manager/Judicial Commissioner
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Fax 865-264-6345

From: Nancy Tallent <ntallent1@bellsouth.net<mailto:ntallent1@bellsouth.net>>
Sent: Thursday, December 9, 2021 11:07 AM
To: cheryl.hunter@tncourts.gov<mailto:cheryl.hunter@tncourts.gov>; Shalea Prickett <sprickett@andersoncourts.org<mailto:sprickett@andersoncourts.org>>; 'Melissa Denny' <KMDenny@tndagc.org<mailto:KMDenny@tndagc.org>>
Subject: FW: State of Tennessee v. Nancy Abbie Tallent, 61 and 62
Importance: High

Second request for a response. Please see below

From: Nancy Tallent <ntallent1@bellsouth.net<mailto:ntallent1@bellsouth.net>>

Sent: Wednesday, December 8, 2021 1:47 PM
To: 'cheryl.hunter@tncourts.gov' <cheryl.hunter@tncourts.gov<mailto:cheryl.hunter@tncourts.gov>>; 'Shalea Prickett' <sprickett@andersoncourts.org<mailto:sprickett@andersoncourts.org>>
Cc: 'Melissa Denny' <KMDenny@tndagc.org<mailto:KMDenny@tndagc.org>>
Subject: State of Tennessee v. Nancy Abbie Tallent, 61 and 62
Importance: High

Is the December 14th hearing going to be continued? Or is it just more rights violations? And I need to get expert and witness depositions. As of right now I only have couple months to complete 10 depositions or so. Is an Order soon forthcoming?

Thanks.

Nancy Tallent

RE: C1C00062 & 63 NANCY TALLENT ORDER DENYING MOTION

From:	"Nancy Tallent" <ntallent1@bellsouth.net>
To:	"'Shalea Prickett'" <sprickett@andersoncourts.org>, "'Melissa Denny'" <kmdenny@tndagc.org>, "'Megan V. Witzel DA'S OFFICE'" <mvwitzel@tndagc.org>, <CHERYL.HUNTER@TNCOURTS.GOV>
Date:	Friday - December 10, 2021 7:26 PM
Subject:	RE: C1C00062 & 63 NANCY TALLENT ORDER DENYING MOTION
Attachments:	Mime.822

Thank you. I'm assuming you mean 61 and 62, unless you're throwing a 63 on me that I am unaware of. Since this is Anderson County, that would not be unexpected.

As for 61 and 62, a court reporter, as noted many times previously does not allow entry of documents into the court record of which I have around 50 or so. I am exhausted with the Court's never-ending violation of my rights.

I will file a motion for the audio recording of the hearing to be preserved and for a copy given to me. As I have been in the legal field for many years, I am aware there is ALWAYS a recording made of hearings. If the court reporter does not plan to have one, I will be requesting that I can make a recording, personally, and will present a copy to the court. No human is that good at preserving what is said at a hearing without a recording.

If the court were not so horrifically corrupted, these actions abnormal requests would not be necessary. These cases would have been dismissed. Judge Elledge would be on the bench. Judge Bivins would still be Chief Justice, and the county wouldn't owe me $4 million.

See you Monday, Ms. Prickett.

Nancy

-----Original Message-----
From: Shalea Prickett <sprickett@andersoncourts.org>
Sent: Friday, December 10, 2021 3:28 PM
To: Nancy Tallent <ntallent1@bellsouth.net>; Melissa Denny <kmdenny@tndagc.org>; Megan V. Witzel DA'S OFFICE <mvwitzel@tndagc.org>; CHERYL.HUNTER@TNCOURTS.GOV
Subject: C1C00062 & 63 NANCY TALLENT ORDER DENYING MOTION

Thank you,

Shalea Prickett
Office Manager/Judicial Commissioner
Circuit/Criminal Court
100 N. Main St. Rm. 301
Clinton, TN 37716

Ph. 865-463-6822
Fax 865-264-6345

RE: RE: State of Tennessee v. Nancy Abbie Tallent, 61 and 62

From: "Nancy Tallent" <ntallent1@bellsouth.net>
To: "'Melissa Denny'" <kmdenny@tndagc.org>
CC: "'Cheryl Hunter'" <Cheryl.Hunter@tncourts.gov>, "'Shalea Prickett'" <sprickett@andersoncourts.org>
Date: Thursday - December 9, 2021 2:25 PM
Subject: RE: RE: State of Tennessee v. Nancy Abbie Tallent, 61 and 62
Attachments: Mime.822

I don't have a motion to be declared indigent. So that'll be hard to do. A court reporter will not solve the problem of entering items into the court record. You know what solves the problems? Hearing the case in criminal court with the criminal court reporter. At this point, I'm assuming that's where we will be.

All these violations and harassment, I hope it does something for you all personally, because it won't stop the inevitable ensuing lawsuits if these cases move forward.

Like I said, I'll be there hoping to see Davies.

-----Original Message-----
From: Melissa Denny <kmdenny@tndagc.org>
Sent: Thursday, December 9, 2021 2:19 PM
To: Nancy Tallent <ntallent1@bellsouth.net>; 'Cheryl Hunter' <Cheryl.Hunter@tncourts.gov>
Cc: 'Shalea Prickett' <sprickett@andersoncourts.org>
Subject: RE: RE: State of Tennessee v. Nancy Abbie Tallent, 61 and 62

Good afternoon!

I am not opposing Ms. Tallent's motion to be declared indigent for the purpose of hiring a court reporter. I believe that it is the best interest of everyone involved. From what I understand from previous cases, once the judge signs an order finding the defendant indigent for the purpose of hiring a court reporter, the order has to be submitted to the Administrative Office of the Courts who will issue an order authorizing the court reporter's participation in the case.

Melissa Denny

-----Original Message-----
From: Nancy Tallent <ntallent1@bellsouth.net>
Sent: Thursday, December 9, 2021 2:05 PM
To: 'Cheryl Hunter' <Cheryl.Hunter@tncourts.gov>
Cc: Melissa Denny <KMDenny@tndagc.org>; 'Shalea Prickett' <sprickett@andersoncourts.org>
Subject: RE: RE: State of Tennessee v. Nancy Abbie Tallent, 61 and 62

Oh, and the state needs to pay for whomever. Good luck with that.

-----Original Message-----
From: Nancy Tallent <ntallent1@bellsouth.net>
Sent: Thursday, December 9, 2021 2:00 PM
To: 'Cheryl Hunter' <Cheryl.Hunter@tncourts.gov>
Cc: 'Melissa Denny' <KMDenny@tndagc.org>; 'Shalea Prickett' <sprickett@andersoncourts.org>
Subject: RE: RE: State of Tennessee v. Nancy Abbie Tallent, 61 and 62

Great, I also need someone to enter documents into the court record. I believe Ms. Denny is under the impression we actually need an agreed order for anyone to do that. A visiting court reporter is not able to do that. So many issues in Anderson County to deal with. Let me know. I'm always ready to argue motions.

Thanks.

-----Original Message-----
From: Cheryl Hunter <Cheryl.Hunter@tncourts.gov>
Sent: Thursday, December 9, 2021 1:17 PM
To: sprickett@andersoncourts.org; ntallent1@bellsouth.net
Cc: kmdenny@tndagc.org
Subject: Re: RE: State of Tennessee v. Nancy Abbie Tallent, 61 and 62

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From: Shalea Prickett
<sprickett@andersoncourts.org<mailto:sprickett@andersoncourts.org>>
Sent: Thursday, December 9, 2021 12:42 PM
To: Nancy Tallent <ntallent1@bellsouth.net<mailto:ntallent1@bellsouth.net>>
Subject: RE: State of Tennessee v. Nancy Abbie Tallent, 61 and 62

Nancy,

Per the date we were given, we found a court room available for Judge Pemberton to hear your cases in. He is a criminal judge. Our court room is being used for a trial as we previously spoke about.

Shalea Prickett
Office Manager/Judicial Commissioner
Circuit/Criminal Court
100 N. Main St. Rm. 301
Clinton, TN 37716

Ph. 865-463-5822
Fax 865-264-6345

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<sprickett@andersoncourts.org<mailto:sprickett@andersoncourts.org>>
Cc: 'Melissa Denny' <KMDenny@tndagc.org<mailto:KMDenny@tndagc.org>>
Subject: State of Tennessee v. Nancy Abbie Tallent, 61 and 62
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Thanks.

Nancy Tallent

B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

NANCY ABBIE TALLENT, Plaintiff, v. POLICE OFFICER PHILLIP KNIGHT, CITY OF OAK RIDGE, TENNESSEE, JAIL ADMINISTRATOR RICHARD PARKER, SHERIFF RUSSELL BARKER, and ANDERSON COUNTY, TENNESSEE, Defendants.	)	No.: 3:20-CV-527-TAV-HBG

ORDER

For the reasons explained in the memorandum opinion entered contemporaneously with this order, plaintiff's motions to strike [Doc. 79] and for joinder [Docs. 94, 96] are **DENIED**. Moreover, Knight and City of Oak Ridge's motion for summary judgment [Doc. 76] and Parker, Barker, and Anderson County, Tennessee's motion for summary judgment [Doc. 85] are **GRANTED**. Plaintiff's federal claims against defendants are **DISMISSED with prejudice**; however, plaintiff's state claims are **DISMISSED without prejudice**. Accordingly, plaintiff's Motion for Court to Declare the Plaintiff Indigent [Doc. 93] is **DENIED as moot**.

There being no remaining claims before the Court, the Clerk of Court is **DIRECTED** to **CLOSE** the case.

IT IS SO ORDERED.

s/ Thomas A. Varlan
UNITED STATES DISTRICT JUDGE

ENTERED AS A JUDGMENT

LeAnna R. Wilson
CLERK OF COURT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

NANCY ABBIE TALLENT, Plaintiff, v. POLICE OFFICER PHILLIP KNIGHT, CITY OF OAK RIDGE, TENNESSEE, JAIL ADMINISTRATOR RICHARD PARKER, SHERIFF RUSSELL BARKER, and ANDERSON COUNTY, TENNESSEE, Defendants.	)	No.: 3:20-CV-527-TAV-HBG

MEMORANDUM OPINION

This civil action is before the Court on plaintiff's motion to strike [Doc. 79], defendants Knight and City of Oak Ridge's motion for summary judgment [Doc. 76], defendants Parker, Barker, and Anderson County, Tennessee's motion for summary judgment [Doc. 85], and plaintiff's motions for joinder [Docs. 94, 96]. Plaintiff filed responses to defendants' respective motions for summary judgment [Docs. 79, 91], and defendants filed respective replies [Docs. 80, 92]. Defendants also filed responses to plaintiff's motions for joinder [Docs. 97, 98, 99]. These motions are ripe for resolution.

For the following reasons, plaintiff's motions to strike [Doc. 79] and for joinder [Docs. 94, 96] will be **DENIED**. However, Knight and City of Oak Ridge's motion for summary judgment [Doc. 76] and Parker, Barker, and Anderson County, Tennessee's

motion for summary judgment [Doc. 85] will be **GRANTED**. Accordingly, because this case will be dismissed, plaintiff's outstanding motion [Doc. 93] will be **DENIED as moot**.

I. Background

There is no genuine dispute as to the following facts. On January 10, 2020, at around noon, Knight, an Oak Ridge Police Department officer, along with other officers, responded to an automobile accident that occurred when plaintiff backed her vehicle into a street-parked vehicle [Doc. 1 ¶ 29; Doc. 1-1 p. 1; Doc. 76-2 pp. 14–16]. Knight observed that plaintiff had a blank stare, bloodshot eyes, and was unsteady on her feet, and Knight smelled alcohol on plaintiff's breath and person [Doc. 1-1 p. 2; Doc. 76-2 pp. 16–18]. Consequently, Knight performed field sobriety tests, which plaintiff failed [Doc. 76-2 pp. 18–21; *see also* Docs. 76-3 (manual filing), 76-4 (manual filing)]. Knight arrested plaintiff, and ultimately, a grand jury indicted plaintiff for driving under the influence [Doc. 76-2 pp. 21–22; Doc. 76-5].[1]

Officers transported plaintiff to Anderson County Detention Facility ("ACDF"), and plaintiff arrived at 2:15 P.M. [Doc. 85-2 pp. 1–2, 5]. Pursuant to ACDF policy, because plaintiff was arrested for driving under the influence, a nurse visited plaintiff and personnel continuously monitored her and recorded notes via a detox log [Doc. 85-1 p. 5; Doc 85-2 pp. 2–3, 8, 15–16]. ACDF personnel noted no unusual behavior until the early morning of January 11, 2020, when personnel observed plaintiff lying on her back and breathing in a manner that suggested she needed emergency medical attention [Doc. 85-2 pp. 15–19].

[1] The state court also found probable cause for plaintiff's arrest [Docs. 25-1, 76-2].

ACDF personnel immediately attempted to obtain a response from plaintiff, and when efforts failed, personnel called emergency medical services, which transported plaintiff to the hospital [*Id.*]. Plaintiff received a diagnosis of, *inter alia*, alcohol withdrawal syndrome [*Id.* at 3; *see also* Doc. 90-1].

Based on these facts, plaintiff filed the instant action against Knight, Oak Ridge Police Department ("ORPD"), City of Oak Ridge, Parker, Barker, and Anderson County, Tennessee, asserting § 1983 and state law claims [Doc. 20 (amended complaint)]. The Court previously dismissed ORPD [Doc. 56], and the remaining defendants have filed the instant motions for summary judgment [Docs. 76, 85]. Thereafter, plaintiff filed her motions for joinder, which seek to join numerous additional defendants allegedly involved in the foregoing events [Docs. 94, 96].

II. Plaintiff's Motion to Strike

Before addressing defendants' respective motions for summary judgment and plaintiff's motion for joinder, the Court addresses plaintiff's motion to strike, which plaintiff includes in her response to Knight and City of Oak Ridge's motion for summary judgment [Doc. 79]. Specifically, plaintiff moves to strike from the record all documents filed by attorney Benjamin Lauderback, who represents Knight and City of Oak Ridge. Plaintiff argues Mr. Lauderback does not have authority to make filings because defendants never received proper service [*See id.*].

Plaintiff does not identify the authority under which she brings her motion, but Federal Rule of Civil Procedure 12(f) provides that a "court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). The decision to strike is left to the court's sound discretion. *Welch v. FFE Transp. Servs., Inc.*, No. 3:13-CV-336-TAV-CCS, 2015 WL 3795917, at *2 (E.D. Tenn. June 18, 2015) (citation omitted).

The Court will not strike any of Mr. Lauderback's filings. No filing is "redundant, immaterial, impertinent, or scandalous," and plaintiff does not even characterize any filings as such. *See* Fed. R. Civ. P. 12(f). Rather, plaintiff continues to challenge the veracity of service of process in this case. However, as United States Magistrate Judge H. Bruce Guyton has informed plaintiff multiple times, any challenge to service of process is moot because all defendants have filed answers and waived service [*See* Docs. 38, 42].

Therefore, plaintiff's motion to strike [Doc. 79] will be **DENIED**.

III. Defendants' Motions for Summary Judgment

Federal Rule of Civil Procedure 56(a) provides that "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." In ruling on a motion for summary judgment, the court must draw "all reasonable inferences in favor of the nonmoving party." *McLean v. 988011 Ontario, Ltd.*, 224 F.3d 797, 800 (6th Cir. 2000). The moving party bears the burden of establishing that no genuine issues of material fact exist and may meet this burden by affirmatively proving its case or by highlighting the absence of support for

the nonmoving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–25 (1986); *Leary v. Daeschner*, 349 F.3d 888, 897 (6th Cir. 2003).

"Once the moving party presents evidence sufficient to support a motion under Rule 56, the nonmoving party is not entitled to a trial merely on the basis of allegations." *Curtis v. Universal Match Corp., Inc.*, 778 F. Supp. 1421, 1423 (E.D. Tenn. 1991) (citation omitted). To establish a genuine issue as to the existence of a particular element, the nonmoving party must point to evidence in the record, including depositions, documents, affidavits, and other materials, upon which a reasonable finder of fact could find in its favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986); *see also* Fed. R. Civ. P. 56(c)(1)(A). There must be more than a "mere scintilla of evidence" to withstand a motion for summary judgment. *Smith Wholesale Co. v. R.J. Reynolds Tobacco Co.*, 477 F.3d 854, 861 (6th Cir. 2007) (citation omitted). And any genuine issue of fact must be material; that is, it must involve "facts that might affect the outcome of the suit under the governing law." *Anderson*, 477 U.S. at 248. The court may not weigh the evidence or assess credibility; its role is limited to determining whether the record contains sufficient evidence from which a jury could reasonably find for the nonmovant. *Id.* at 249. If a reasonable juror could not find for the nonmovant, the court must grant summary judgment. *See Celotex*, 477 U.S. at 323.[2]

[2] While plaintiff filed no evidence with her responses to the instant motions for summary judgment and the amended complaint contains no exhibits, in the interests of leniency to plaintiff, who is proceeding pro se, the Court considers exhibits plaintiff filed with the original complaint [*See* Docs. 1-1, 1-2, 1-3, 1-4, 1-5, 1-6, 1-7, 1-8] as well as all other evidence in the record.

A. Section 1983 Claims

As noted, plaintiff asserts § 1983 claims against all defendants, and defendants move to dismiss these claims. Section 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

42 U.S.C. § 1983. A plaintiff must plead and prove two elements to state a § 1983 claim: (1) a person has deprived the plaintiff of a federal right; and (2) the person did so under color of state law. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 150 (1970).

The Court addresses plaintiff's claims against each defendant in turn.[3]

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[3] Defendants aver the Court should dismiss plaintiff's claims because plaintiff's responses fail to address the merits of defendants' motions [*See* Docs. 80, 92]. It is true that plaintiff's responses do not address the merits of defendants' motions; rather, the responses attempt to relitigate already-addressed issues regarding service of process [*See* Docs. 79, 91].

As defendants assert, the Sixth Circuit's "jurisprudence on abandonment of claims is clear: a plaintiff is deemed to have abandoned a claim when a plaintiff fails to address it in response to a motion for summary judgment." *Brown v. VHS of Mich., Inc.*, 545 F. App'x 368, 372 (6th Cir. 2013) (citations omitted); *see also* E.D. Tenn. L.R. 7.2 ("Failure to respond to a motion may be deemed a waiver of any opposition to the relief sought."). But abandonment applies only if the court determines the movant has satisfied its initial Rule 56 burden because the movant—not the nonmovant—has the initial burden under Rule 56. *Briggs v. Univ. of Detroit-Mercy*, 611 F. App'x 865, 870–71 (6th Cir. 2015). Thus, before finding abandonment, the court must first determine whether the movant has satisfied its initial Rule 56 burden to show there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. *See id.*

The Court finds plaintiff has abandoned her claims. As discussed *infra*, defendants have satisfied their preliminary Rule 56 burden, and plaintiff has failed to address the merits of defendants' motions in her responses.

1. Knight

Plaintiff's claim against Knight primarily relies on two bases. First, plaintiff argues Knight arrested plaintiff without probable cause [Doc. 20 ¶¶ 12, 24, 29–32].[4] Second, plaintiff argues Knight directed the state judicial system to ensure plaintiff's illegal arrest and conviction [*See id.* ¶¶ 42–55]. Knight defends on, *inter alia*, qualified immunity grounds [Doc. 77 pp. 7–11].[5]

When a defendant raises qualified immunity, "the burden is on the plaintiff to demonstrate that the official[is] not entitled to qualified immunity." *Silberstein v. City of Dayton*, 440 F.3d 306, 311 (6th Cir. 2006). The plaintiff must establish: (1) "facts which, when taken in the light most favorable to [the plaintiff], show that the defendant-official's conduct violated a constitutionally protected right"; and (2) "that right was clearly established such that a reasonable official, at the time the act was committed, would have understood that his behavior violated that right." *Pittman v. Cuyahoga Cnty. Dep't of Child. & Fam. Servs.*, 640 F.3d 716, 727 (6th Cir. 2011) (citation omitted). The order in

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[4] Plaintiff suggests that "Phillip Knight does not exist. It is a classification given by [a state court judge] to mark [plaintiff] for destruction" [Doc. 20 ¶ 24]. Rather, plaintiff avers Knight's alleged misconduct occurred through acts of an unnamed officer [*Id.* ¶ 12]. To the extent plaintiff argues a factual dispute exists because she alleges Knight is not a real person, the Court finds this factual dispute not "genuine" because no reasonable juror would believe that Knight does not exist, especially considering evidence in the record—including plaintiff's own exhibit—repeatedly demonstrates that Knight arrested plaintiff [*See, e.g.*, Doc. 1-1]. *See Harvey v. Campbell Cnty.*, 453 F. App'x 557, 562 (6th Cir. 2011) (noting that a dispute of fact is genuine only if "based on evidence upon which a reasonable jury could return a verdict") (citation omitted). Moreover, to the extent plaintiff intends to assert claims against state officials other than Knight, the Court finds those claims fail for the same reasons discussed in this Section.

[5] Because the Court finds Knight is entitled to summary judgment for the reasons that follow, the Court will not address Knight's bankruptcy argument.

which to address the two prongs is left to the court's discretion, and a court need not address the remaining prong if the court finds the plaintiff failed to meet her burden as to the other prong. *Pearson v. Callahan*, 555 U.S. 223, 236 (2009); *see Smith v. City of Columbus*, No. 2:09-CV-95, 2010 WL 3258556, at *5 (S.D. Ohio Aug. 17, 2010) (citation omitted).

Regarding plaintiff's argument that Knight arrested her without probable cause, the Court finds Knight is entitled to qualified immunity. In the false arrest context, to establish a violation of a constitutional right, the plaintiff must demonstrate the arresting officer lacked probable cause to arrest the plaintiff. *Robertson v. Lucas*, 753 F.3d 606, 615 (6th Cir. 2014). Generally, "the finding of an indictment, fair upon its face, by a properly constituted grand jury, conclusively determines the existence of probable cause . . . ." *Grogg v. Tennessee*, No. 2:15-CV-299-JRG-MCLC, 2018 WL 3234170, at *5 (E.D. Tenn. July 2, 2018) (citing *Radvansky v. City of Olmsted Falls*, 395 F.3d 291, 307 n.13 (6th Cir. 2005)). An exception exists where law enforcement officers knowingly presented false evidence to the grand jury to secure the indictment. *Robertson*, 753 F.3d at 616 (citations omitted).

The Court finds plaintiff has failed to meet her burden to establish Knight lacked probable cause to arrest her. Knight provides a state court indictment whereby a grand jury indicted plaintiff for driving under the influence of alcohol [Doc. 76-5]. And while plaintiff generally suggests Knight fabricated evidence to establish probable cause at a preliminary hearing [Doc. 20 ¶ 28A], plaintiff provides no evidence to support this assertion or that the state court indictment was invalid. Indeed, plaintiff does not allege that Knight "presented

any testimony at all to the grand jury, let alone false testimony." *Grogg*, 2018 WL 3234170, at *5. Therefore, the state court indictment conclusively establishes that Knight had probable cause to arrest plaintiff.[6] Accordingly, plaintiff cannot demonstrate Knight violated her constitutional rights and thus Knight is entitled to qualified immunity.

Plaintiff next argues Knight directed the state judicial system throughout her state court proceedings to ensure her wrongful conviction. The Court construes this argument as one for malicious prosecution. *See Robertson*, 753 F.3d at 616 (describing the nature of a malicious prosecution claim (citing *Sykes v. Anderson*, 625 F.3d 294, 308 (6th Cir. 2010))). To succeed on a malicious prosecution claim, the plaintiff must demonstrate: "(1) a criminal prosecution was initiated against the plaintiff and the defendant made, influenced, or participated in the decision to prosecute; (2) there was no probable cause for the criminal prosecution; (3) as a consequence of the legal proceeding, the plaintiff suffered a deprivation of liberty apart from the initial seizure; and (4) the criminal proceeding was resolved in the plaintiff's favor." *Id.* (citation omitted).

The Court finds that plaintiff's malicious prosecution claim against Knight fails. At the outset, plaintiff provides no evidence indicating that Knight's decision to prosecute her was improper. Moreover, plaintiff's state court indictment conclusively establishes that probable cause existed and therefore that plaintiff cannot demonstrate a constitutional violation. Accordingly, plaintiff's malicious prosecution claim fails.

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[6] Furthermore, even on the merits, evidence in the record—including plaintiff's own exhibit—supports that Knight in fact had probable cause to arrest her [*See* Doc. 1-1 p. 2; Doc. 76-2 pp. 16–22; *see also* Docs. 76-3 (manual filing), 76-4 (manual filing)].

Therefore, plaintiff's § 1983 claim against Knight will be **DISMISSED**.

2. City of Oak Ridge

Plaintiff's claim against City of Oak Ridge derives from the actions of Knight and other agents of previously-dismissed defendant ORPD [Doc. 20 ¶ 16]. City of Oak Ridge argues that because plaintiff cannot establish Knight violated plaintiff's rights, she cannot establish any imputed violation of City of Oak Ridge [Doc. 77 pp. 14–16].

In general, a plaintiff may not obtain relief from a municipality under § 1983 "on a *respondeat superior* theory—in other words, 'solely because it employs a tortfeasor.'" *D'Ambrosio v. Marino*, 747 F.3d 378, 388–89 (6th Cir. 2014) (quoting *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978)). Rather, "a municipality is liable under § 1983 only where, 'through its deliberate conduct,' it was 'the "moving force" behind the injury alleged.'" *Id.* (citation omitted). That is, a municipality may be liable only if the plaintiff identifies an "illegal policy or custom" that caused a violation of the plaintiff's constitutional rights. *See Burgess v. Fischer*, 735 F.3d 462, 478 (6th Cir. 2013). A plaintiff may demonstrate an illegal policy or custom by showing: "(1) the existence of an illegal official policy or legislative enactment; (2) that an official with final decision making authority ratified illegal actions; (3) the existence of a policy of inadequate training or supervision; or (4) the existence of a custom of tolerance or acquiescence of federal rights violations." *Id.* (citation omitted).

The Court finds plaintiff's claim against City of Oak Ridge fails. Plaintiff's entire claim against City of Oak Ridge is based on her other claims against Knight and ORPD.

Yet, as noted, plaintiff may not maintain a *respondeat superior* claim against a municipal defendant. *D'Ambrosio*, 747 F.3d at 388–89 (citation omitted). What is more, the Court has already found that plaintiff cannot demonstrate that Knight or ORPD violated her constitutional rights [*See* Doc. 56 (dismissing ORPD)]. Furthermore, plaintiff provides no evidence of a policy or custom of City of Oak Ridge that caused a violation of plaintiff's rights, and plaintiff does not even mention any such policy or custom in the amended complaint [*See* Doc. 20].[7]

Therefore, plaintiff's § 1983 claim against City of Oak Ridge will be **DISMISSED**.

3. Barker and Parker

Plaintiff's claims against Barker and Parker are based on Barker and Parker's supervisory capacities over ACDF [Doc. 20]. Specifically, plaintiff's claims against Barker and Parker derive from plaintiff's assertion that "plaintiff was denied medical treatment" by ACDF [*Id.* ¶ 22; *see also id.* ¶¶ 35–40]. Barker and Parker argue that they are entitled to qualified immunity, plaintiff does not identify actions they personally took to deprive plaintiff of her constitutional rights, and they did not in fact deprive plaintiff of her rights [Doc. 86 pp. 4–9].

When a defendant raises qualified immunity, "the burden is on the plaintiff to demonstrate that the official[is] not entitled to qualified immunity." *Silberstein v. City of*

[7] The Court notes City of Oak Ridge's additional arguments regarding alleged improper training [Doc. 77 pp. 15–16]. The Court does not address these arguments for two reasons. First, the reasons already stated are sufficient to grant City of Oak Ridge's motion. Second, all allegations in the amended complaint suggest ORPD—not City of Oak Ridge—is responsible for any alleged improper training of Knight [*See* Doc. 20 ¶¶ 13, 21, 56].

Dayton, 440 F.3d 306, 311 (6th Cir. 2006). The plaintiff must establish: (1) "facts which, when taken in the light most favorable to [the plaintiff], show that the defendant-official's conduct violated a constitutionally protected right"; and (2) "that right was clearly established such that a reasonable official, at the time the act was committed, would have understood that his behavior violated that right." *Pittman v. Cuyahoga Cnty. Dep't of Child. & Fam. Servs.*, 640 F.3d 716, 727 (6th Cir. 2011) (citation omitted). The order in which to address the two prongs is left to the court's discretion, and a court need not address the remaining prong if the court finds the plaintiff failed to meet her burden as to the other prong. *Pearson v. Callahan*, 555 U.S. 223, 236 (2009); *see Smith v. City of Columbus*, No. 2:09-CV-95, 2010 WL 3258556, at *5 (S.D. Ohio Aug. 17, 2010) (citation omitted).

At all relevant times, Barker and Parker were supervisors of ACDF. Like municipalities, "[a] supervisor may not be found liable under 42 U.S.C. § 1983 based on a *respondeat superior* theory." *Troutman v. Louisville Metro Dep't of Corr.*, 979 F.3d 472, 487 (6th Cir. 2020). Instead, a supervisor may be liable only if the supervisor "abdicated his or her job responsibility, and the '*active performance* of the [supervisor's] individual job function' [caused] the constitutional injury." *Id.* (alterations in original) (citation omitted). Thus, the plaintiff must demonstrate that the supervisor personally violated the plaintiff's rights or otherwise "implicitly authorized, approved[,] or knowingly acquiesced in the unconstitutional conduct of [an] offending subordinate." *Id.* at 487–88 (first alteration in original) (citation omitted); *see also Greene v. Barber*, 310 F.3d 889, 898 (6th

Cir. 2002) ("Supervisory liability . . . must be based on *active* unconstitutional behavior." (emphasis added) (citation omitted)).

The Court finds Barker and Parker are entitled to qualified immunity as plaintiff has not demonstrated they violated her constitutional rights. Plaintiff only alleges that Barker had "final responsibility for managing and operating" ACDF and that Parker was "responsible for the operations at" ACDF [Doc. 20 ¶¶ 14–15]. Yet, as noted, *respondeat superior* provides no basis for § 1983 liability of supervisors. *See Troutman*, 979 F.3d at 487. And while plaintiff alleges she did not receive proper treatment at ACDF, plaintiff does not provide evidence that Barker or Parker personally denied her medical care or authorized others to do so. Indeed, plaintiff does not even allege Parker or Barker had personal interaction with her or knew she needed medical care [*See id.* ¶¶ 37–40]. The only evidence in the record indicates that Barker and Parker did not in fact interact with plaintiff and that plaintiff received appropriate medical care [*See* Docs. 85-1, 85-2]. Without evidence that Barker or Parker actively violated plaintiff's constitutional rights, Barker and Parker are entitled to qualified immunity. *See Troutman*, 979 F.3d at 487.[8]

Therefore, plaintiff's § 1983 claims against Barker and Parker will be **DISMISSED**.

4. Anderson County, Tennessee

Plaintiff's claim against Anderson County, Tennessee derives from the actions of agents of ACDF [Doc. 20 ¶ 17]. Namely, plaintiff avers ACDF denied plaintiff medical

[8] Furthermore, the evidence demonstrates ACDF personnel in fact provided plaintiff proper medical care [Docs. 85-1, 85-2], and plaintiff cites no evidence to the contrary.

treatment [*Id.* ¶¶ 22, 35–40]. Anderson County, Tennessee defends that it is not subject to municipal liability under a *respondeat superior* theory [Doc. 86 pp. 9–11].

In general, a plaintiff may not obtain relief from a municipality under § 1983 "on a *respondeat superior* theory—in other words, 'solely because it employs a tortfeasor.'" *D'Ambrosio v. Marino*, 747 F.3d 378, 388–89 (6th Cir. 2014) (quoting *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978)). Rather, "a municipality is liable under § 1983 only where, 'through its deliberate conduct,' it was 'the "moving force" behind the injury alleged.'" *Id.* (citation omitted). That is, a municipality may be liable only if the plaintiff identifies an "illegal policy or custom" that caused a violation of the plaintiff's constitutional rights. *See Burgess v. Fischer*, 735 F.3d 462, 478 (6th Cir. 2013). A plaintiff may demonstrate an illegal policy or custom by showing: "(1) the existence of an illegal official policy or legislative enactment; (2) that an official with final decision making authority ratified illegal actions; (3) the existence of a policy of inadequate training or supervision; or (4) the existence of a custom of tolerance or acquiescence of federal rights violations." *Id.* (citation omitted).

The Court finds plaintiff's claim against Anderson County, Tennessee fails. Plaintiff's entire claim against Anderson County, Tennessee is based on the actions of ACDF [*See* Doc. 20 ¶ 17]. Yet, as noted, plaintiff may not maintain a *respondeat superior* claim against a municipal defendant. *D'Ambrosio*, 747 F.3d at 388–89 (citation omitted). What is more, plaintiff cites no evidence of a policy or custom of Anderson County,

Tennessee that caused a violation of her rights, and plaintiff does not even mention any such policy or custom in the amended complaint [*See* Doc. 20].[9]

Therefore, plaintiff's § 1983 claim against Anderson County, Tennessee will be **DISMISSED**.

B. State Law Claims

While the amended complaint primarily asserts § 1983 claims, it also appears to assert claims under Tennessee Code Annotated § 8-8-302 against all defendants [Doc. 20 ¶ 10] and a common-law false imprisonment claim against Knight [*Id.* ¶¶ 27, 47].[10] While a district court has supplemental jurisdiction over state law claims forming "part of the same case or controversy" as claims over which the court exercises original jurisdiction, a district court may decline to exercise supplemental jurisdiction if it has dismissed all claims over which the court has original jurisdiction. 28 U.S.C. § 1367(a), (c)(3); *see also Brooks v. Rothe*, 577 F.3d 701, 709 (6th Cir. 2009) ("If the federal claims are dismissed before trial, the state claims generally *should* be dismissed as well." (emphasis added) (citation omitted)).

As discussed above, the Court will dismiss all of plaintiff's federal claims. Therefore, plaintiff's state law claims will be **DISMISSED** as well.

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[9] Moreover, Anderson County, Tennessee provides evidence that it in fact provided plaintiff proper medical care [Docs. 85-1, 85-2], and plaintiff cites no evidence to the contrary.

[10] Plaintiff indicates Knight violated Tennessee's criminal false imprisonment statute [Doc. 20 ¶¶ 27, 47]. To the extent plaintiff intends to assert a false imprisonment claim, the Court recognizes it but declines to exercise supplemental jurisdiction over it as discussed *infra*.

IV. Plaintiff's Motions for Joinder

On December 20, 2021, plaintiff filed a motion seeking leave to join numerous defendants to this action [Doc. 94] and to amend the scheduling order [*Id.* at 13]. Plaintiff then filed an amended joinder motion on December 27, 2021, seeking leave to join even more defendants [Doc. 96]. The proposed claims against the proposed defendants arise from the same facts recounted in Part I [*See generally* Docs. 94, 95, 96, 97, 98, 99]. The existing defendants respond that the proposed joinder would be futile [Docs. 97, 98, 99].

A plaintiff must amend the complaint to join additional defendants. *See Despain v. Louisville Metro. Gov't*, No. 3:14-CV-P602-CHB, 2021 U.S. Dist. LEXIS 156889, at *9 (W.D. Ky. Aug. 19, 2021) (citation omitted). Federal Rule of Civil Procedure 15 governs amendments of pleadings. Pertinently, a court should allow an amendment only "[i]n the absence of . . . undue delay, bad faith or dilatory motive on the part of the movant . . . [or] futility of the amendment." *Wiggins v. Kimberly-Clark Corp.*, 641 F. App'x 545, 548 (6th Cir. 2016) (alterations in original) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)). "An amendment is futile 'if the amended complaint would not withstand a motion to dismiss for failure to state a claim.'" *Despain*, 2021 U.S. Dist. LEXIS 156889, at *11 (quoting *Doe v. Mich. State Univ.*, 989 F.3d 418, 427 (6th Cir. 2021)).

Plaintiff apparently seeks to add these defendants to maintain civil rights claims against them under § 1983 [*See* Doc. 94 p. 6 (suggesting the claims against the proposed parties derive from the alleged wrongful arrest and denial of medical care)]. The statute of

limitations for a § 1983 action "is governed by the limitations period for personal injury cases in the state in which the cause of action arose." *Despain*, 2021 U.S. Dist. LEXIS 156889, at *11 (citing *Wilson v. Garcia*, 471 U.S. 261, 275–80 (1985)). In Tennessee, personal injury actions are subject to a one-year statute of limitations. *Miller v. Shults*, No. 3:19-CV-308-TAV-DCP, 2021 WL 2168952, at *4 (E.D. Tenn. May 27, 2021) (first citing T.C.A. § 28-3-104(a); and then citing *Roberson v. Tennessee*, 399 F.3d 792, 794 (6th Cir. 2005)). A § 1983 claim accrues when the plaintiff knows or has reason to know of the basis for the claim, and this standard is satisfied when the plaintiff discovers or should discover the basis upon exercising reasonable diligence. *Id.* (citations omitted).

The Court finds an amendment to join the proposed parties would be futile. The proposed claims are under § 1983; thus, the applicable statute of limitations is one year. It is undisputed that the proposed claims derive from the same facts as the currently-existing claims. Thus, plaintiff should have known the factual basis underlying the claims against the proposed defendants at the latest by January 2020 when the events in question transpired. Indeed, plaintiff filed the instant motions for joinder over one year after plaintiff filed her initial complaint on December 11, 2020. Therefore, the one-year statute of limitations expired as to plaintiff's claims against the proposed defendants before she sought to join them. Accordingly, an amendment to join these defendants would be futile

as these defendants would be entitled to prompt dismissal.[11] *See Despain*, 2021 U.S. Dist. LEXIS 156889, at *11.[12]

The Court notes plaintiff's motion appears to request leave to join medical malpractice claims against certain proposed defendants who are doctors [*See* Doc. 96]. However, given that the Court will not allow joinder of these defendants, plaintiff's request to join malpractice claims against them is moot. Moreover, to the extent plaintiff seeks to join other state law claims as to the existing defendants, the Court declines to exercise supplemental jurisdiction over those claims for the reasons discussed in Part III.B.

Therefore, plaintiff's motions for joinder [Docs. 94, 96] will be **DENIED**.[13]

V. Conclusion

For the reasons set forth above, plaintiff's motions to strike [Doc. 79] and for joinder [Docs. 94, 96] will be **DENIED**. However, Knight and City of Oak Ridge's motion for summary judgment [Doc. 76] and Parker, Barker, and Anderson County, Tennessee's motion for summary judgment [Doc. 85] will be **GRANTED**. Plaintiff's federal claims against defendants will be **DISMISSED with prejudice**; however, plaintiff's state claims

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[11] Because plaintiff's joinder motions are futile as the applicable statute of limitations have expired, the Court need not address defendants' alternative argument for futility based on the Tennessee Governmental Tort Liability Act [*See* Doc. 98 p. 4].

[12] The relation-back doctrine does not change this result because there is no suggestion of a mistake regarding the proper defendants' identities. *See* Fed. R. Civ. P. 15(c)(1)(C).

[13] The Court notes that even if joinder was not futile, plaintiff's joinder motions are moot given the Court's decision to grant summary judgment for defendants. *See generally Ctr. for Bio-Ethical Reform, Inc. v. Napolitano*, No. 9-11441, 2010 U.S. Dist. LEXIS 30618 (E.D. Mich. Mar. 30, 2010) (denying as moot joinder motions when the court contemporaneously granted a motion to dismiss). For the same reason, plaintiff's request to amend the scheduling order is moot.

will be **DISMISSED without prejudice**. Accordingly, the remaining pending motion [Doc. 93] will be **DENIED as moot**.[14]

A separate order will enter.

ENTER:

s/ Thomas A. Varlan
UNITED STATES DISTRICT JUDGE

[14] In this outstanding motion, plaintiff seeks indigency status and requests the Court to cover her discovery expenses. This motion is moot because the Court is closing this case.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

NANCY ABBIE TALLENT, Plaintiff, v. POLICE OFFICER PHILLIP KNIGHT, CITY OF OAK RIDGE, TENNESSEE, JAIL ADMINISTRATOR RICHARD PARKER, SHERIFF RUSSELL BARKER, and ANDERSON COUNTY, TENNESSEE, Defendants.	)	No.: 3:20-CV-527-TAV-HBG

MEMORANDUM OPINION AND ORDER

This civil case is before the Court on plaintiff's pro se motion for entry of a default judgment against defendants Parker, Barker, and Anderson County, Tennessee [Doc. 72], amended requests for default against these defendants [Docs. 66, 68, 70], and various affidavits [Docs. 67, 69, 71, 73].[1] Defendants Parker, Barker, and Anderson County, Tennessee filed a response [Doc. 75]. On August 6, 2021, plaintiff filed a motion for entry of default against all defendants [Doc. 61]. However, United States Magistrate Judge H. Bruce Guyton denied plaintiff's motion because all defendants have filed answers in this case [Doc. 65 (citing Docs. 24, 27)]. Plaintiff now again requests entry of default and

[1] Plaintiff's motion requests a hearing [Doc. 72 p. 7]. The Court notes it has authority to rule on motions without a hearing and finds a hearing unnecessary in this case because plaintiff's requests for a default and default judgment are plainly procedurally improper as discussed *infra*. *See* Fed. R. Civ. P. 78(b); *see also* E.D. Tenn. L.R. 7.2.

separately, a default judgment against defendants Parker, Barker, and Anderson County, Tennessee. The Court notes that generally, pro se pleadings are to be "liberally construed" and "held to 'less stringent standards than formal pleadings drafted by lawyers.'" *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (citation omitted).

Federal Rule of Civil Procedure 55 sets forth the two-step procedure for requesting a default and a default judgment. First, a party must request that the clerk enter a default. Fed. R. Civ. P. 55(a). Default is appropriate if "a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend . . . ." *Id.* Second, after the clerk enters a default, the party may move for a default judgment. *Id.* R. 55(b).

The Court finds that neither a default nor a default judgment is appropriate in this case. As Magistrate Judge Guyton already found, default is inappropriate because all defendants have answered the complaint, including defendants Parker, Barker, and Anderson County, Tennessee [Docs. 24, 27]. Moreover, plaintiff's motion for a default judgment is procedurally improper because plaintiff has not yet obtained a default and therefore may not yet request a default judgment.[2]

Accordingly, plaintiff's requests for a default [Docs. 66, 68, 70] and motion for a default judgment [Doc. 72] are **DENIED**.

IT IS SO ORDERED.

s/ Thomas A. Varlan
UNITED STATES DISTRICT JUDGE

[2] The Court notes plaintiff's arguments regarding service of process. The Court disregards these arguments because as Magistrate Judge Guyton has explained, all issues regarding service of process are moot in light of defendants' waiver of service and answers [*See* Docs. 38, 42].

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

NANCY ABBIE TALLENT, Plaintiff, v. POLICE OFFICER PHILLIP KNIGHT, CITY OF OAK RIDGE, TENNESSEE, JAIL ADMINISTRATOR RICHARD PARKER, SHERIFF RUSSELL BARKER, and ANDERSON COUNTY, TENNESSEE, Defendants.	)	No.: 3:20-CV-527-TAV-HBG

MEMORANDUM OPINION AND ORDER

This civil action is before the Court on plaintiff's pro se motion for reconsideration [Doc. 59]. On July 12, 2021, the Court dismissed defendant Oak Ridge Police Department ("ORPD") from this action because, as a police department, ORPD is not an entity subject to lawsuit [Doc. 56]. Thereafter, plaintiff filed the instant motion for reconsideration.

The Court's July 12, 2021, order was interlocutory in character because it resolved "fewer than all the claims or the rights and liabilities of fewer than all the parties" to this action. Fed. R. Civ. P. 54(b). The United States Court of Appeals for the Sixth Circuit has recognized that "[d]istrict courts have authority both under [federal] common law and Rule 54(b) to reconsider interlocutory orders and to reopen any part of a case before entry of final judgment." *Rodriguez v. Tenn. Laborers Health & Welfare Fund*, 89 F. App'x 949, 959 (6th Cir. 2004) (citation omitted). This authority allows the court to "afford such

relief . . . as justice requires." *EEOC v. Dolgencorp, LCC*, 206 F. Supp. 3d 1309, 1312 (E.D. Tenn. 2016) (quoting *Rodriguez*, 89 F. App'x at 959). Reconsideration of an interlocutory order is proper when the movant shows either: "(1) an intervening change of controlling law; (2) new evidence available; or (3) a need to correct a clear error or prevent manifest injustice." *Louisville/Jefferson Cnty. Metro Gov't v. Hotels.com, L.P.*, 590 F.3d 381, 389 (6th Cir. 2009) (citation omitted). However, "motions for reconsideration are not intended to re-litigate issues previously considered by the Court or to present evidence that could have been raised earlier." *Ne. Ohio Coal. for the Homeless v. Brunner*, 652 F. Supp. 2d 871, 877 (S.D. Ohio 2009). Nor do such motions present an opportunity to raise new legal arguments that were available before the interlocutory order issued. *See Am. Meat Inst. v. Pridgeon*, 724 F.2d 45, 47 (6th Cir. 1984).

The Court finds plaintiff has not established any basis for reconsideration. Plaintiff's motion generally suggests the Court's actions are "impertinent and scandalous," but plaintiff's motion does not set forth any intervening change in the law, new evidence, or clear error of the Court such that reconsideration would be proper [Doc. 59 p. 2]. *Hotels.com, L.P.*, 590 F.3d at 389. Indeed, plaintiff appears to concede the Court's July 12, 2021, order was correctly decided when plaintiff states "there is no way to sue ORPD as there is no precedent . . . to allow suit [yet] [t]he Court needs to set the precedent but most likely won't until . . . some catastrophic event" occurs [Doc. 59 p. 1]. In any event, plaintiff does not challenge the Court's legal conclusion that ORPD is not subject to suit or cite any

authority to the contrary. And the Court has no authority to ignore the Sixth Circuit jurisprudence set forth in its July 12, 2021, order.

Accordingly, plaintiff's motion for reconsideration [Doc. 59] is **DENIED**.

IT IS SO ORDERED.

s/ Thomas A. Varlan
UNITED STATES DISTRICT JUDGE

No. 22-5126

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NANCY ABBIE TALLENT,

Plaintiff-Appellant,

v.

PHILLIP KNIGHT, Police Officer, et al.,

Defendants-Appellees.

ORDER

Before: STRANCH, Circuit Judge.

Nancy Abbie Tallent, proceeding pro se, appeals a district court order dismissing her civil rights complaint filed under 42 U.S.C. § 1983 and Tennessee law. The district court denied Tallent leave to proceed in forma pauperis on appeal. Tallent now requests permission from this court to proceed in forma pauperis. *See* Fed. R. App. P. 24(a)(5). She also moves to overturn the district court's decisions denying her motions for default judgment, joinder of defendants, and indigency status and granting the defendants' motions for summary judgment, and to grant her appeal and motions.

Tallent filed a complaint against Oak Ridge, Tennessee, Police Officer Phillip Knight; the Oak Ridge Police Department (ORPD); Anderson County, Tennessee, Detention Facility Administrator Richard Parker; Anderson County Sheriff Russell Barker; the City of Oak Ridge, Tennessee (City); and Anderson County, Tennessee (County). She later filed an amended complaint, which became the operative pleading, identifying the same defendants, although at one point in the amended complaint she asserted that Knight was not a real person, but merely "a classification" that was used to indicate that she had been arrested without probable cause. Tallent

otherwise asserted that she was arrested without probable cause by Knight for driving under the influence, fourth offense, on January 10, 2020. Tallent had backed her vehicle into a car parked across the street from her home and the owner of that car reported the accident to the police. When officers arrived, Tallent complained that she did not feel well, but her complaint of illness was ignored. She was arrested and taken to the Anderson County Detention Facility and denied requested medical attention. In the late evening of January 10 or early morning of January 11, 2020, Tallent was taken to a hospital and admitted for medical treatment. She was returned to the detention facility on January 13, 2020. Tallent asserted that Knight directed her arrest, detention, and subsequent court proceedings. She sought declaratory and monetary relief for false arrest, negligence, improper training, denial of medical treatment, denial of due process, false imprisonment, excessive bail, and malicious prosecution.

The district court granted the ORPD's Federal Rule of Civil Procedure 12(b)(6) motion to dismiss for failure to state a claim on which relief may be granted. A magistrate judge denied Tallent's request for entry of default against the defendants because the defendants had responded to her complaint. The district court denied her renewed requests for entry of default and motion for a default judgment, concluding that the requests for entry of default were improper because the defendants had filed answers to Tallent's complaint and the motion for a default judgment was procedurally improper. The district court denied Tallent's motion to strike the motion for summary judgment filed by Knight and the City and her motions for joinder of additional defendants, granted the defendants' Federal Rule of Civil Procedure 56(a) motions for summary judgment, and denied as moot Tallent's motion to declare herself indigent.

This court may grant a motion to proceed *in forma pauperis* if it determines that an appeal would be taken in good faith and the movant is indigent. *See Owens v. Keeling*, 461 F.3d 763, 776 (6th Cir. 2006). A frivolous appeal, one that "lacks an arguable basis either in law or in fact," would not be taken in good faith. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also Coppedge v. United States*, 369 U.S. 438, 445 (1962).

The district court reasoned that Tallent's claims against the ORPD were subject to dismissal because it is not a legal entity that may be sued under § 1983. Any challenge to that

ruling would lack an arguable basis in law. *See Matthews v. Jones*, 35 F.3d 1046, 1049 (6th Cir. 1994). The district court also held that Knight, a real person who testified at the preliminary hearing in Tallent's criminal case, was entitled to qualified immunity as to Tallent's claim that he arrested her without probable cause. A challenge to that ruling would likewise lack an arguable basis. "As a general rule, the finding of an indictment, fair upon its face, by a properly constituted grand jury, conclusively determines the existence of probable cause." *Robertson v. Lucas*, 753 F.3d 606, 616 (6th Cir. 2014) (quoting *Mott v. Mayer*, 524 F. App'x 179, 187 (6th Cir. 2013)). Although an exception applies "where the indictment was obtained wrongfully by defendant police officers who knowingly presented false testimony to the grand jury," *id.* (quoting *Mott*, 524 F. App'x at 187), Tallent produced no evidence to support her suggestion that Knight presented false testimony to obtain an indictment against her. Likewise, Tallent's malicious-prosecution claim against Knight failed because her state-court indictment conclusively established probable cause. Indeed, the elements of a malicious-prosecution claim include lack of probable cause for the plaintiff's criminal prosecution. *See id.*

The district court reasoned that Tallent's claims against the City and County were subject to dismissal because they were based on a respondeat superior theory of liability and she did not produce evidence that the City and County had a policy or custom that violated her constitutional rights. Any challenge to that ruling would lack an arguable basis in law. *See Monell v. Dep't of Soc. Servs. of N.Y.*, 436 U.S. 658, 691, 694 (1978). The district court reasoned that Barker and Parker were entitled to qualified immunity because, as supervisors, they cannot be liable under a respondeat superior theory and Tallent did not show that they were personally involved in any unconstitutional conduct. Liability under § 1983 requires a showing that the defendant was "personally responsible for the constitutional injury." *See Troutman v. Louisville Metro Dep't of Corr.*, 979 F.3d 472, 487-88 (6th Cir. 2020). The district court declined to exercise supplemental jurisdiction over Tallent's state-law claims, reasoning that they were subject to dismissal because all of her federal claims were dismissed. If a district court dismisses a plaintiff's federal claims, it is not required to exercise jurisdiction over her state-law claims. *See* 28 U.S.C. § 1367(c)(3); *Brooks v. Rothe*, 577 F.3d 701, 709 (6th Cir. 2009).

Any challenge to the district court's decisions to deny Tallent's motions for default judgment and to join additional defendants also would also be frivolous. The district court denied Tallent's motion for a default judgment because the court clerk had not entered a default, which is a prerequisite for a default judgment. *Devlin v. Kalm*, 493 F. App'x 678, 685 (6th Cir. 2012); *see* Fed. R. Civ. P. 55(b). The district court reasoned that Tallent's motions for joinder of additional defendants, filed on December 20 and 27, 2021, would be futile because her claims against the proposed defendants arose from her January 2020, arrest, detention, and medical treatment—the same incidents on which her initial complaint, filed on December 11, 2020, was based—and were untimely. The appropriate statute of limitations is one year. Tenn. Code Ann. § 28-3-104(a)(1); *see Wallace v. Kato*, 549 U.S. 384, 387 (2007); *Johnson v. Memphis Light Gas & Water Div.*, 777 F.3d 838, 843 (6th Cir. 2015) (discussing former version of Tennessee statute). The statute of limitations starts to run either "when the plaintiff has a complete and present cause of action" or "when the plaintiff discovered (or should have discovered) the cause of action." *Dibrell v. City of Knoxville, Tenn.*, 984 F.3d 1156, 1162 (6th Cir. 2021) (quoting *Rotkiske v. Klemm*, 140 S. Ct. 355, 360 (2019)). Regardless of the standard applied, any challenge of the district court's reasoning would lack arguable merit. And the district court was not required to exercise supplemental jurisdiction over additional state-law claims against the existing defendants because all of Tallent's federal claims were dismissed. *See* § 1367(c)(3); *Brooks*, 577 F.3d at 709.

For the reasons discussed above, an appeal in this case would not be taken in good faith. *See Neitzke*, 490 U.S. at 325. The motions to proceed in forma pauperis, to overturn the district court's decisions, and to grant appeal and motions are **DENIED**. Unless Tallent pays the $505 filing fee to the district court within 30 days of the entry of this order, this appeal will be dismissed for want of prosecution.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

D

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

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Filed: April 08, 2022

Nancy Abbie Tallent
P.O. Box 6301
Oak Ridge, TN 37830

Re: Case No. 22-5126, *Nancy Tallent v. Phillip Knight, et al*
Originating Case No. : 3:20-cv-00527

Dear Ms. Tallent,

A review of the District Court docket indicates your "Motion to Waive Court Fees and Cost Bond" filed in the District Court on February 16, 2022 was denied because it was not in the proper format. On February 23, 2022, the District Court issued an order which stated: "...the Court must deny plaintiff's motion because it does not meet any of the requirements set forth in Federal Rule of Appellate Procedure 24(a)(1)." The District Court further said: "Therefore, plaintiff's motion [Doc. 105] is DENIED. Plaintiff may refile her motion in a manner that complies with Federal Rule of Appellate Procedure 24(a)(1)(A)–(C)."

It appears that you have not refiled a proper motion for leave to proceed on appeal in the District Court. You have until **May 9, 2022** to either **pay the $505.00 appellate filing fee or file a proper motion for leave to proceed on appeal in forma pauperis and an accompanying financial affidavit. Either one must be paid/filed with the U.S. District Court.**

If the district court denies your refiled motion, in whole or in part, you have thirty (30) days from the date of that denial to either pay the appellate filing fee, or renew the in forma pauperis motion. If you choose to pay the $505.00 fee (or the amount stated by the district court), it must be submitted to the U.S. District Court. If you are dissatisfied with the district court's ruling on your motion and you choose to file the motion for leave to proceed on appeal in forma pauperis, a proper motion and an accompanying financial affidavit must be submitted to this court, the United States Court of Appeals for the Sixth Circuit.

Please note that if you do nothing, the appeal may be dismissed for want of prosecution without further notice.

Sincerely yours,

s/Julie Connor
Case Manager
Direct Dial No. 513-564-7033

cc: Ms. Caitlin Carlisle Burchette
Mr. Benjamin K. Lauderback