

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
OKLAHOMA

Marion Allen Whitten, Jr. v. McCurtain County Jail Trust; Larry
Hendrix, individually and in his official capacity; Trent Mitchell; Joe
Ebert; and Tyler Sivards, individually

Whitten · No. CIV-24-229-JFH-GLJ · Decided April 10, 2026

SUMMARY

This Report and Recommendation addresses Defendant Joe Ebert’s motion for judgment on the pleadings in a 42 U.S.C. § 1983 action arising from alleged excessive force and deliberate indifference during Plaintiff Marion Allen Whitten, Jr.’s incarceration at the McCurtain County Jail. The magistrate judge concludes that Oklahoma’s savings statute applies because the allegations in Plaintiff’s earlier pro se action sufficiently identified Ebert despite naming him as “Joe LNU.” The recommendation is that Ebert’s motion be denied.

CASE DETAILS

COURT	United States District Court for the Eastern District of Oklahoma
WRITING FOR THE COURT	Gerald L. Jackson
JURISDICTION	United States District Court for the Eastern District of Oklahoma
DECIDED	April 10, 2026
DOCKET	CIV-24-229-JFH-GLJ
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff brought claims under 42 U.S.C. § 1983 arising from alleged use of force and other conditions during his incarceration. Defendant Joe Ebert moved for judgment on the pleadings under Federal Rule of Civil Procedure 12(c), asserting that the remaining claims were barred by the statute of limitations and that Oklahoma’s savings statute did not apply. The magistrate judge issued a Report and Recommendation recommending denial of the motion.
STANDARD OF REVIEW	A Rule 12(c) motion is evaluated under the same standard as a Rule 12(b)(6) motion. The court accepts well-pleaded factual allegations as true, considers whether the complaint states a facially plausible claim, and generally may not consider matters outside the pleadings except facts subject to judicial notice.

PRECEDENTIAL VALUE	nonprecedential
PARTIES	Marion Allen Whitten, Jr. v. McCurtain County Jail Trust, Larry Hendrix, Trent Mitchell, Joe Ebert, Tyler Sivards

TOPICS

motion for judgment on the pleadings

statute of limitations

section 1983

civil procedure

fourteenth amendment

PRACTICE AREAS

civil rights

civil procedure

statute of limitations

QUESTIONS PRESENTED

1. Whether the remaining § 1983 claims against Ebert were barred by Oklahoma's two-year statute of limitations.
2. Whether Oklahoma's savings statute applied when the original action identified the alleged defendant as Joe LNU and described facts and a job title that made clear Ebert was the intended defendant.
3. Whether substituting the name Joe Zappala for Joe LNU in a later pleading caused the savings period to run from the substitution date rather than from the date judgment was entered in the original action.

HOLDINGS

1. Section 1983 claims in Oklahoma are subject to the state's two-year statute of limitations for personal-injury claims.
2. A party not properly named in the caption may nevertheless be treated as a defendant when the allegations in the body of the complaint make it plain that the party was intended as a defendant. Under that rule, the original action's reference to Joe LNU, together with the description of the restraint-chair incident and the night-supervisor job title, sufficiently identified Ebert.
3. Oklahoma's savings statute applied to Whitten's claims against Ebert because the original action failed for reasons other than the merits and the present action was filed within one year after judgment in the original action.

KEY QUOTATIONS

“A Motion for Judgment on the Pleadings is evaluated under the same standard as a Fed. R. Civ. P. 12(b)(6) motion.” (II)

“the Tenth Circuit has held that “a party not properly named in the caption of a complaint may still be properly before the court if the allegations in the body of the complaint make it plain the party is intended as a defendant.”” (III.A)

“The undersigned Magistrate Judge therefore finds, under Mitchell, 80 F.3d at 1441, and upon considering Plaintiff’s pro se status in the Original Case, that Ebert is properly named as a Defendant in this case

because the allegations of the Original Case Complaint are sufficiently distinguishable from those against a “John Doe” defendant.” (III.A)

FACTUAL BACKGROUND

Whitten alleged that on January 1, 2022, while incarcerated at the McCurtain County Jail, Joe Ebert and another officer removed him from his cell and placed him in a restraint chair after an argument. Whitten alleged that Ebert then struck him several times about the head and body and that Ebert was the jail's night supervisor. Whitten's original January 2023 action identified the alleged assailant as Joe LNU and described the restraint-chair incident and the individual's supervisory job title; a later pleading identified him as Joe Zappala. The present action names Joe Ebert and asserts remaining excessive-force and deliberate-indifference claims concerning the January 2022 incident.

PROCEDURAL HISTORY

Whitten initially filed a pro se § 1983 action in January 2023 concerning an alleged January 2022 incident at the McCurtain County Jail. That action was dismissed on July 13, 2023, for failure to pay the initial filing fee and failure to notify the court of a change of address. Whitten, represented by counsel, filed this action on July 5, 2024, and later filed the operative First Amended Complaint. After other motions narrowed the claims against Ebert, Ebert moved for judgment on the pleadings based on limitations. The magistrate judge recommended that the motion be denied, subject to objections under Rule 72(b).

DISPOSITION

other

REMAND INSTRUCTIONS

No remand was ordered. The magistrate judge recommended denial of Defendant Ebert's Motion for Judgment on the Pleadings. Any objections were required within fourteen days under 28 U.S.C. § 636(b)(1) and Rule 72(b).

CASES CITED

- *Jacobsen v. Deseret Book Co.*, 287 F.3d 936, 941 n.2 (10th Cir. 2002)
- *Atlantic Richfield Co. v. Farm Credit Bank of Wichita*, 226 F.3d 1138, 1160 (10th Cir. 2000)
- *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
- *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-57, 570 (2007)
- *Khalik v. United Air Lines*, 671 F.3d 1188, 1192 (10th Cir. 2012)
- *Lane v. Simon*, 495 F.3d 1182, 1186 (10th Cir. 2007)
- *Forest Guardians v. Forsgren*, 478 F.3d 1149, 1160 (10th Cir. 2007)
- *Goode v. Gaia, Inc.*, 2023 WL 7190732, at *3 (D. Colo. Nov. 1, 2023)
- *Chavez-Rodriguez v. City of Santa Fe*, 2008 WL 5992269, at *8 (D.N.M. Oct. 17, 2008)
- *Tal v. Hogan*, 453 F.3d 1244, 1264 n.24 (10th Cir. 2006)

- United States v. Ahidley, 486 F.3d 1184, 1192 n.5 (10th Cir. 2007)
- Hansen v. Harper Excavating, Inc., 641 F.3d 1216, 1219 n.2 (10th Cir. 2011)
- St. Louis Baptist Temple, Inc. v. FDIC, 605 F.2d 1169, 1172 (10th Cir. 1979)
- Herrera v. City of Espanola, 32 F.4th 980, 989-91 (10th Cir. 2022)
- Lawson v. Okmulgee County Criminal Justice Authority, 726 F. App'x 685, 690 (10th Cir. 2018)
- Eastom v. City of Tulsa, 563 F. App'x 595, 596 (10th Cir. 2014)
- Eastom v. City of Tulsa, 783 F.3d 1184 (10th Cir. 2015)
- Twashakarris, Inc. v. INS, 890 F.2d 236, 237 (10th Cir. 1989)
- Grider v. USX Corp., 1993 OK 13, 847 P.2d 779, 783
- Mitchell v. Maynard, 80 F.3d 1433, 1441 (10th Cir. 1996)
- Tracewell v. Silver, 2017 WL 58841, at *3 (N.D. Okla. Jan. 5, 2017)
- Morris v. City of Sapulpa, 2010 WL 3733527, at *4 (N.D. Okla. Sept. 17, 2010)
- Horrell v. Cherokee County Governmental Building Authority, 2024 WL 4493883, at *3 (E.D. Okla. Apr. 2, 2024)
- Hagy v. American Honda Motor Co., 125 F. Supp. 2d 456, 459 (W.D. Okla. 2000)

OPINION

Whitten

PER CURIAM.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA
MARION ALLEN WHITTEN, JR.,)

) Plaintiff,)) v.) Case No. CIV-24-229-JFH-GLJ)

MCCURTAIN COUNTY JAIL TRUST;)

LARRY HENDRIX, individually and in) his official capacity; TRENT) MITCHELL; JOE
EBERT; and) TYLER SIVARDS, individually,)) Defendants.)

REPORT AND RECOMMENDATION

This matter comes before the Court on Motion for Judgment on the Pleadings by Defendant Joe Ebert. Plaintiff Marion Allen Whitten sues, inter alia, former jailer Joe Ebert, alleging various Fourth and Fourteenth Amendment violations pursuant to 42 U.S.C. § 1983, arising out of his 2022 incarceration at the McCurtain County Jail in Idabel, Oklahoma. For the reasons set forth below, the undersigned Magistrate Judge recommends that Defendant Joe Ebert's Motion for Judgment on the Pleadings [Docket No. 124] be DENIED.

I. PROCEDURAL HISTORY

Plaintiff first filed suit on these events on January 4, 2023, by filing a pro se prisoner civil rights claim. See Eastern District of Oklahoma Case No. CIV-23-005-JFH-GLJ, Docket Nos. 1-2 ("Original Case"). The original Complaint named Defendants McCurtain County Jail Trust ("MCJT"), Larry Hendrix, Joe LNU, and J.C. LNU [Original Case, Docket No. 1]. In this

Complaint, Plaintiff's sole claim related to a January 2022 incident alleging that "Joe was night supervisor, he placed me in a restraint chair, then slapped or hit me on the side of my head, ears[.] Larry Hendrix and J.C. [McMillen] were Jail Administrators at time of incident. I put in 2 grievances that were not answered, never turned in to proper personel [sic]." Id., Docket No. 1, p. 5. On January 20, 2023, Plaintiff filed an Amended Complaint, naming Defendants Hendrix, Joe LNU, and Trent Mitchell [Id., Docket No. 6]. In this Amended Complaint, Plaintiff's Claim 1 refers to the January 2022 incident and asserts that, "[w]hile working as supervisor at McCurtain County Jail Trust, Joe LNU, ordered me into a restraint chair for spilling gravy on floor after denying a spoon for two days, became angry [and] struck [sic] me on the ears, head a total of 3 time causing hearing damage, psychological damage." Id., Docket No. 6, p. 5. On February 14, 2023, Plaintiff filed a Second Amended Complaint, naming MCJT, Joe Zappala, Hendrix, and J.C. "MacMillon" [Id., Docket No. 8]. Plaintiff's first Claim states, "On or about January 2022, [Plaintiff], a prisoner at [MCJT], was ordered into a restraint chair for asking for a spork. Jailor [sic] Joe Zappala then hit plaintiff on the ears[.]" Id., Docket No. 8, p. 5. The Court granted Plaintiff in forma pauperis status in this original case, but ultimately dismissed the case on July 13, 2023, for Plaintiff's failure to pay the initial filing fee and failing to advise the Court of his change of address [Id., Docket Nos. 11, 14]. Judgment was entered on July 13, 2023 [Id., Docket No. 15]. Plaintiff, represented by counsel, filed this case on July 5, 2024 [Docket Nos. 1-2], naming numerous Defendants including Ebert. The Court referred this case to the undersigned Magistrate Judge for all pretrial and discovery matters, pursuant to 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72 [Docket No. 49]. Upon invitation by the Court, Plaintiff filed his First Amended Complaint on March 5, 2025 [Docket No. 68], again naming Ebert among others, and it is the operative Complaint in this case. In broad terms, Plaintiff's First Amended Complaint alleges two separate instances in which force was used against him at MCJT. Plaintiff alleges the first incident occurred on January 1, 2022, when he and Ebert had an argument, at which time Ebert and another detention officer escorted him out of his cell and placed him in a restraint chair. Docket No. 68, pp. 13-14, ¶¶ 79-83. Plaintiff asserts that, immediately after he was placed in the restraint chair, Ebert "unnecessarily and without provocation began to beat Plaintiff about the head and body striking him several times," using excessive force. Id., ¶¶ 83, 85-89. Four days later, Ebert failed to report to work, which was sufficient to consider him terminated. Id., p. 15, ¶¶ 99, 102. The second incident occurred in April 2022, after Ebert's termination as an employee, and therefore does not pertain to Ebert, despite allegations that Ebert was present at this incident. Id., p. 20, ¶¶ 131-138. Plaintiff initially alleged seven causes of action in his First Amended Complaint: (I) § 1983 claim for a Fourth Amendment violation by use of excessive force, as to Ebert and Mitchell; (II) § 1983 claim for a Fourth Amendment violation by failing to intervene to prevent or stop the use of excessive force, as to Ebert, Mitchell, and Sivard; (III) § 1983 of failing to adequately train, supervise, and/or control, as to Hendrix in his official capacity and MCJT; (IV) § 1983 claim for a Fourteenth Amendment violation by deliberate indifference to serious medical needs of a pretrial

detainee, as to Hendrix, Mitchell, McMillen, Ebert, and Sivard; (V) § 1983 claim for a Fourteenth Amendment violation by deliberate indifference to health and safety of a pretrial detainee, as to Hendrix, Mitchell, McMillen, Ebert, and Sivard; (VI) § 1983 claim for a Fourteenth Amendment violation by use of excessive force against a pretrial detainee, as to Hendrix, Mitchell, McMillen, Ebert, and Sivard; and (VII) § 1983 municipal liability claim under Monell¹ as to MCJT. After certain motions practice, the following claims remain against Ebert: (1) Count I (Excessive Force), as to the January 2022 incident only; (2) Count V (Deliberate Indifference to Health and Safety of Pretrial Detainee), as to the January 2022 incident only; and (3) Count VI (Excessive Force, Fourteenth Amendment), as to the January 2022 incident only. See Docket Nos. 73, 75, 82, 85, 92. Ebert now moves for judgment on the pleadings, on statute of limitations grounds.

II. Legal Standards “After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.” Fed. R. Civ. P. 12(c). A Motion for Judgment on the Pleadings is evaluated under the same standard as a Fed. R. Civ. P. 12(b)(6) motion to dismiss. See, e. g., *Jacobsen v. Deseret Book Co.*, 287 F.3d 936, 941 n.2 (10th Cir. 2002) (“We use the same standard when evaluating 12(b)(6) and 12(c) motions.”) (citing *Atlantic Richfield Co. v. Farm Credit Bank of Wichita*, 226 F.3d 1138, 1160 (10th Cir. 2000)) (“A 1 *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658 (1978). motion for judgment on the pleading under Rule 12(c) is treated as a motion to dismiss under Rule 12(b)(6).”). To survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6), “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’ A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-557, 570 (2007)). Detailed factual allegations are not required, but the statement of the claim under Rule 8(a)(2) must be “more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555); see generally Fed. R. Civ. P. 8(a)(2) (complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief[.]”). “While the 12(b)(6) standard does not require that Plaintiff establish a prima facie case in h[is] complaint, the elements of each alleged cause of action help to determine whether Plaintiff has set forth a plausible claim.” *Khalik v. United Air Lines*, 671 F.3d 1188, 1192 (10th Cir. 2012). Thus, the appropriate inquiry is “‘whether the complaint sufficiently alleges facts supporting all the elements necessary to establish an entitlement to relief under the legal theory proposed.’” *Lane v. Simon*, 495 F.3d 1182, 1186 (10th Cir. 2007) (quoting *Forest Guardians v. Forsgren*, 478 F.3d 1149, 1160 (10th Cir. 2007)). “A pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do. Nor does a complaint suffice if it tenders naked assertion[s] devoid of further factual enhancement[.]” *Iqbal*, 556 U.S. at 678. “When considering Rule 12(c) motions, ‘the Court cannot consider any facts or allegations beyond the Complaint or Answer.’” *Goode v. Gaia, Inc.*, 2023 WL 7190732, at *3 (D. Colo. Nov. 1, 2023), report and recommendation adopted sub nom. 2024 WL 1509161 (D. Colo.

Mar. 29, 2024) (quoting *Chavez-Rodriguez v. City of Santa Fe*, 2008 WL 5992269, at *8 (D.N.M. Oct. 17, 2008)). Considering documents outside the Complaint ordinarily requires the court to convert a motion into one for summary judgment under Fed. R. Civ. P. 56, see Fed. R. Civ. P. 12(e), but an exception to this standard includes facts subject to judicial notice. “[F]acts subject to judicial notice may be considered in a Rule 12(b)(6) motion without converting the motion to dismiss into a motion for summary judgment. This allows the court to take judicial notice of its own files and records, as well as facts which are a matter of public record.” *Tal v. Hogan*, 453 F.3d 1244, 1264 n.24 (10th Cir. 2006) (quotations omitted). A fact subject to judicial notice is one that is “not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201. As such, the Court may take judicial notice of both its own docket sheets and other state or federal court docket sheets. *United States v. Ahidley*, 486 F.3d 1184, 1192, n. 5 (10th Cir. 2007) (“We may exercise our discretion to take judicial notice of publicly-filed records in our court and certain other courts concerning matters that bear directly upon the disposition of the case at hand.”). A court may also take judicial notice of other courts’ files and records as facts “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” See *Hansen v. Harper Excavating, Inc.*, 641 F.3d 1216, 1219 n.2 (10th Cir. 2011) (quoting Fed. R. Evid. 201(b)(2)). And the court may take judicial notice of filings in related cases. *St. Louis Baptist Temple, Inc. v. FDIC*, 605 F.2d 1169, 1172 (10th Cir. 1979).

III. ANALYSIS

Ebert contends the remaining claims against him are barred by the statute of limitations, and that relation back does not apply, because he was never named in the Original Case. 2 Plaintiff argues that the Original Case did include Ebert, and the savings statute therefore applies. A. Statute of Limitations and Oklahoma’s Savings Statute. The statute of limitations for § 1983 cases is determined by state law; in Oklahoma, it is two years. See *Herrera v. City of Espanola*, 32 F.4th 980, 989 (10th Cir. 2022) (“[A] federal court looks to the law of the forum state to determine the applicable statute of limitations for a § 1983 action. Typically, this entails looking toward the state statute of limitations for personal injury claims.”); *Lawson v. Okmulgee Cnty. Crim. Just. Auth.*, 726 Fed. Appx. 685, 690 (10th Cir. 2018) (“We have determined, as a matter of law, that every § 1983 claim is in essence an action for injury to personal rights, and thus apply the most analogous Oklahoma statute, which provides a two-year limitations period.”) (quotation omitted) (citing Okla. Stat. tit. 12, § 95(A)(3) (“Civil actions . . . can only be brought within 2 The undersigned Magistrate Judge notes that Ebert did not even raise this argument in his original Motion to Dismiss filed in this case. See Docket No. 73. [two years] after the cause of action shall have accrued, and not afterwards . . . for injury to the rights of another.”). The accrual date, in contrast, is a matter of federal law and determines “when the plaintiff can file suit and obtain relief.” *Herrera*, 32 F.4th at 990 (internal quotations omitted). Plaintiff alleges the first incident with Ebert

took place on January 1, 2022, meaning that Plaintiff originally had until January 1, 2024, in which to file a lawsuit on that claim. Plaintiff's Original Case, filed on January 4, 2023, named Joe LNU in the original and Amended Complaint, then Joe Zappala in the Second Amended Complaint (filed February 14, 2023). The Original Case was dismissed July 13, 2023. See Case No. CIV-23-05-JFH-GLJ, Docket Nos. 1, 6, 8, 14-15. Any claims brought pursuant to the savings statute thus had to be filed by July 13, 2025. Plaintiff filed the present case on July 5, 2025. Docket Nos. 1-2. "Oklahoma's savings statute, 12 Okla. Stat. tit. § 100, affords civil plaintiffs an additional year to refile if a case fails other than on the merits after the original limitations period has expired." *Eastom v. City of Tulsa*, 563 Fed. Appx. 595, 596 (10th Cir. 2014) (citing *Twashakarris, Inc. v. INS*, 890 F.2d 236, 237 (10th Cir. 1989); *Grider v. USX Corp.*, 1933 OK 13, ¶ 6, 847 P.2d 779, 783)). The Tenth Circuit has applied Oklahoma's savings statute to § 1983 claims. See *Eastom*, 783 F.3d at 1184 (citations omitted). Plaintiff contends the savings statute applies here and raises this in his First Amended Complaint by noting the relevant dates of the Original Case. Docket No. 68, p. 2, ¶¶ 3-6. *Herrera*, 32 F.4th at 991 ("If from the complaint, the dates on which the pertinent acts occurred are not in dispute, [then] the date a statute of limitations accrues is . . . a question of law suitable for resolution at the motion to dismiss stage.") (quotation omitted). Federal law requires that "[e]very pleading must have a caption with the court's name, a title, a file number, and a Rule 7(a) designation. The title of the complaint must name all the parties." Fed. R. Civ. P. 10(a). Notwithstanding the clear requirement of Fed. R. Civ. P. 10(a) to "name all the parties" in the caption of the complaint, the Tenth Circuit has held that "a party not properly named in the caption of a complaint may still be properly before the court if the allegations in the body of the complaint make it plain the party is intended as a defendant." *Mitchell v. Maynard*, 80 F.3d 1433, 1441 (10th Cir. 1996). In Plaintiff's Original Case, he names Joe LNU in the original and Amended Complaints, and Joe Zappala in the Second Amended Complaint, and includes facts related to the restraint chair incident, and Ebert's job title as night supervisor. See Docket Nos. 1, 6, 8; *Tracewell v. Silver*, 2017 WL 58841, at *3 (N.D. Okla. Jan. 5, 2017) ("Federal district courts in Oklahoma have similarly construed complaints to include people who are not listed in the caption, but whose actions are alleged elsewhere in the complaint, as party defendants."); cf. *Morris v. City of Sapulpa*, 2010 WL 3733527, at *4 (N.D. Okla. Sept. 17, 2010) ("Given the paucity of Oklahoma law on this subject, the interpretation of [12 Okla. Stat. § 994] by other courts, and the liberal construction afforded the savings statute by Oklahoma courts, this Court will not hold that dismissal of one party from an action on the merits precludes that party's inclusion in a later refiling for purposes of section 100.") (internal citation omitted). The undersigned Magistrate Judge notes Ebert's argument that Ebert was not named because Plaintiff named, at best, Joe LNU, and fictitious defendants may not be used to toll the statute of limitations. See, e.g. *Horrell v. Cherokee Cnty. Governmental Bldg. Auth.*, 2024 WL 4493883, at *3 (E.D. Okla. Apr. 2, 2024) ("Also pertinent here, naming a John Doe defendant in the caption of a complaint does not toll the statute of limitations.") (quotation omitted), report and

recommendation adopted, 2024 WL 4346715 (E.D. Okla. Sept. 30, 2024). The undersigned Magistrate Judge therefore finds that naming “Joe LNU,” along with a description of dates and a job title is distinguishable from simply naming a “Doe” Defendant or nameless Defendant. The undersigned Magistrate Judge therefore finds, under Mitchell, 80 F.3d at 1441, and upon considering Plaintiff’s pro se status in the Original Case, that Ebert is properly named as a Defendant in this case because the allegations of the Original Case Complaint are sufficiently distinguishable from those against a “John Doe” defendant. The body of the original Complaint in the Original Case, filed on January 4, 2023, and for which Judgment was not entered until July 13, 2023, makes it plain Ebert was intended as Defendant “Joe LNU” in the Original Case Complaint. See Original Case, Docket Nos. 1,

15. The undersigned Magistrate Judge thus construes the Original Case as inclusive of Ebert because it is clear Plaintiff intended him as a Defendant. The savings statute therefore should be applied to Plaintiff’s claims against Ebert. Defendant contends that even if the savings statute would have applied as to Ebert, it does not save Plaintiff’s claims against him here because “Joe Zappala” was substituted for “Joe LNU” on February 14, 2023. Rather than applying the Judgment date in the Original Case of July 13, 2023, in applying the saving statute, Ebert argues the savings statute expired as to himself on February 14, 2024, one year after Joe Zappala was substituted for Joe LNU. However, “[i]n Oklahoma, as in federal practice, an action is commenced by plaintiff’s filing an initial pleading (either a complaint or petition), Fed. R. Civ. P. 3; Okla. Stat. tit. 12, § 2003; and ends as to fewer than all parties in a multiparty action only if the court directs the entry of a final judgment as to one or more parties and makes an express determination that there is no just reason for delay, Fed. R. Civ. P. 54(b); Okla. Stat. tit. 12, § 994.” Hagy v. American Honda Motor Co., 125 F. Supp. 2d 456, 459 (W.D. Okla. 2000). The undersigned Magistrate Judge agrees with the Northern and Western Districts of Oklahoma in finding that “this Court ‘knows of no authority holding that a plaintiff may not include all prior defendants in the new case,’ and ‘in the absence of Oklahoma authority squarely on this point, we follow the federal jurisprudence.’” Morris, 2010 WL 3733527, at *4 (quoting Hagy, 125 F. Supp. 2d. at 459). The Oklahoma savings statute therefore applies to Plaintiff’s claims against Mitchell, and the motion for judgment on the pleadings should therefore be denied.

IV. CONCLUSION

Accordingly, the undersigned Magistrate Judge hereby RECOMMENDS that Defendant Joe Ebert’s Motion for Judgment on the Pleadings [Docket No. 124] be DENIED. Any objections to this Report and Recommendation must be filed within fourteen days. See 18 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Any objections and response shall each be limited to 10 pages and a reply is permitted only with leave of court upon a showing of good cause. DATED this 10th day of April, 2026. _____

GERALD L. JACKSON

UNITED STATES MAGISTRATE JUDGE

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