

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

ORDER

This matter comes before the court upon defendant Alex Bebb's Motion to Modify Order and Application for Stay (ECF No. 41). For the following reasons, defendant's requests are granted.

I.

Plaintiff, proceeding *pro se*, brings this civil rights action pursuant to 42 U.S.C. § 1983. He alleges he was subjected to excessive force by the defendants during his arrest on August 29, 2015. He has named the following defendants: former Wichita Police Chief Nelson Mosley, former Wichita police officer Alex Bebb, and two current Wichita police officers, Samuel Floyd and Brian Goward.

II.

On March 6, 2018, the court ordered counsel for defendants Floyd and Goward to submit “under seal the current or last known address information for defendant Bebb to the Clerk of the Court by March 18, 2018.” The purpose of the order was to assist in service of process upon defendant Bebb. On March 14, 2018, counsel for defendants Floyd and Goward entered an appearance on behalf of defendant Bebb and defendant Bebb waived service of process. On the same day, defendant Bebb filed the instant motion.

In the motion, defendant Bebb seeks to modify the court's order of March 6th. He asks that the court eliminate the requirement that his residential address be provided due to safety concerns and because his home address is not now relevant since he has waived service. The court finds the requirement that defendant Bebb's home address be provided is now moot. Counsel has entered an appearance for defendant Bebb and defendant Bebb has waived service. His home address is no longer necessary for service of process.

III.

Defendant Bebb also seeks a stay of this action under the Servicemembers Civil Relief Act (“SCRA”), 50 U.S.C. app. §§ 501–596. He asks for a stay of the proceedings against him for 400 days from April 3, 2018 until May 8, 2019. He states that he has been assigned to active duty for the United States Army to participate in Operation Enduring Freedom beginning April 3, 2018. He has provided a letter from his commanding officer in which it is confirmed that he has been ordered to active duty for approximately 400 days beginning April 3, 2018, is ineligible for leave, and unable to appear to defend plaintiff's claims during this period.

The SCRA allows an individual on military duty to move to stay any judicial or administrative proceedings initiated against him.¹ The court shall, upon application by a servicemember, stay a proceeding for not less than ninety days, if the application satisfies two conditions.² First, the application for stay must contain a letter or other communication establishing that the servicemember's military duty materially affects his ability to appear and stating when he will be able to appear.³ Second, the application must contain a letter or other

¹ 50 U.S.C. app. § 522.

² 50 U.S.C. app. § 522(b)(1).

³ 50 U.S.C. app. § 522(b)(1)(A).

communication from the servicemember's commanding officer stating that the servicemember's military duty prevents the servicemember's appearance and that leave is not authorized at the time of the letter.⁴

The letter supplied by defendant Bebb from his commanding officer meets the requirements for a stay under the SCRA. The objections raised by plaintiff lack merit. Thus, the court shall grant defendant Bebb's motion and stay this proceeding from April 3, 2018 until May 8, 2019.

IT IS THEREFORE ORDERED that defendant Bebb's motion to modify the court's order of March 6, 2018 (ECF No. 41) is granted. The requirement set forth in the court's order of March 6, 2018 that defendant Bebb's current or last known home address be provided is deleted as moot.

IT IS FURTHER ORDERED that defendant Bebb's motion for stay (ECF No. 41) is granted. This action is stayed from April 3, 2018 until May 8, 2019.

IT IS SO ORDERED.

Dated this 17th day of April, 2018, at Topeka, Kansas.

s/ James P. O'Hara
James P. O'Hara
U.S. Magistrate Judge

⁴ 50 U.S.C. app. § 522(b)(1)(B).