

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

REX D. LENOIR,

Plaintiff,

v.

Case No. 3:23-cv-1476-HES-JBT

PHILIP V. LOVE, et al.,

Defendants.

ORDER

Plaintiff Rex D. Lenoir, a detainee at the Duval County Jail, initiated this action on November 18, 2023, by filing a pro se Complaint for Violation of Civil Rights (Complaint; Doc. 1) under 42 U.S.C. § 1983. Lenoir names as Defendants: (1) Philip V. Love; (2) Sheriff Mike Williams; (3) Nicholas A. Theilacker; (4) Joshua A. Rodriguez; and (5) Otto H. Bottin. Complaint at 2–4. His allegations appear to arise from a June 14, 2021 arrest, during which he asserts Defendants used suggestive identification procedures, illegally searched him, and used excessive force. See id. at 5–6.

The Prison Litigation Reform Act (PLRA) requires the Court to dismiss this case at any time if the Court determines that the action is frivolous, malicious, fails to state a claim upon which relief can be granted or seeks

monetary relief against a defendant who is immune from such relief.¹ See 28 U.S.C. §§ 1915(e)(2)(B); 1915A. “A claim is frivolous if it is without arguable merit either in law or fact.” Bilal v. Driver, 251 F.3d 1346, 1349 (11th Cir. 2001) (citing Battle v. Cent. State Hosp., 898 F.2d 126, 129 (11th Cir. 1990)). A complaint filed in forma pauperis which fails to state a claim under Federal Rule of Civil Procedure 12(b)(6) is not automatically frivolous. Neitzke v. Williams, 490 U.S. 319, 328 (1989). Section 1915(e)(2)(B)(i) dismissals should only be ordered when the legal theories are “indisputably meritless,” id. at 327, or when the claims rely on factual allegations which are “clearly baseless.” Denton v. Hernandez, 504 U.S. 25, 32 (1992). “Frivolous claims include claims ‘describing fantastic or delusional scenarios, claims with which federal district judges are all too familiar.’” Bilal, 251 F.3d at 1349 (quoting Neitzke, 490 U.S. at 328). Additionally, a claim may be dismissed as frivolous when it appears that a plaintiff has little or no chance of success. Id. As to whether a complaint “fails to state a claim on which relief may be granted,” the language of the PLRA mirrors the language of Rule 12(b)(6), Federal Rules of Civil Procedure,

¹ Lenoir has neither paid the filing fee nor filed an application to proceed as a pauper. As such, for purposes of the Court’s required screening, the Court will assume he intends to proceed as a pauper.

and therefore courts apply the same standard in both contexts.² Mitchell v. Farcass, 112 F.3d 1483, 1490 (11th Cir. 1997); see also Alba v. Montford, 517 F.3d 1249, 1252 (11th Cir. 2008).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that (1) the defendant deprived him of a right secured under the United States Constitution or federal law, and (2) such deprivation occurred under color of state law. Salvato v. Miley, 790 F.3d 1286, 1295 (11th Cir. 2015); Bingham v. Thomas, 654 F.3d 1171, 1175 (11th Cir. 2011) (per curiam); Richardson v. Johnson, 598 F.3d 734, 737 (11th Cir. 2010) (per curiam). Moreover, under Eleventh Circuit precedent, to prevail in a § 1983 action, a plaintiff must show “an affirmative causal connection between the official’s acts or omissions and the alleged constitutional deprivation.” Zatler v. Wainwright, 802 F.2d 397, 401 (11th Cir. 1986) (citation omitted); Porter v. White, 483 F.3d 1294, 1306 n.10 (11th Cir. 2007).

Under the Federal Rules of Civil Procedure, a complaint need only contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. (8)(a)(2). In addition, all reasonable inferences

² “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)).

should be drawn in favor of the plaintiff. See Randall v. Scott, 610 F.3d 701, 705 (11th Cir. 2010). Nonetheless, the plaintiff still must meet some minimal pleading requirements. Jackson v. BellSouth Telecomms., 372 F.3d 1250, 1262–63 (11th Cir. 2004). Indeed, while “[s]pecific facts are not necessary[,]” the complaint should “give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” Erickson v. Pardus, 551 U.S. 89, 93 (2007) (per curiam) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Further, the plaintiff must allege “enough facts to state a claim to relief that is plausible on its face.” Twombly, 550 U.S. at 570. “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). While not required to include detailed factual allegations, a complaint must allege “more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” Id.

A “plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do[.]” Twombly, 550 U.S. at 555 (internal quotations omitted); see also Jackson, 372 F.3d at 1262 (explaining that “conclusory allegations, unwarranted deductions of facts or legal conclusions

masquerading as facts will not prevent dismissal” (original alteration omitted)). Indeed, “the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions[,]” which simply “are not entitled to [an] assumption of truth.” Iqbal, 556 U.S. at 678, 680. In the absence of well-pled facts suggesting a federal constitutional deprivation or violation of a federal right, a plaintiff cannot sustain a cause of action against the defendant.

In assessing the Complaint, the Court must read Lenoir’s pro se allegations in a liberal fashion. Haines v. Kerner, 404 U.S. 519 (1972). And, while “[p]ro se pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed,” Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998), “this leniency does not give the court a license to serve as de facto counsel for a party or to rewrite an otherwise deficient pleading in order to sustain an action.” Campbell v. Air Jamaica Ltd., 760 F.3d 1165, 1168–69 (11th Cir. 2014) (quoting GJR Invs., Inc. v. Cnty. of Escambia, 132 F.3d 1359, 1369 (11th Cir. 1998) (citations omitted), overruled in part on other grounds as recognized in Randall, 610 F.3d at 709).

Here, Lenoir’s Complaint fails to state a plausible § 1983 claim. As to Defendants Love, Theilacker, and Bottin, his claims are conclusory in nature

and devoid of facts that would allow the Court to draw a reasonable inference that they violated his rights. For instance, Lenoir alleges that Theilacker “surpass[ed] the mandates of Florida’s stop and frisk law by placing his hands inside of [Lenoir’s] pockets during a ‘pat down’ for weapons,” Complaint at 5, but he fails to describe the context of the search. As such, Lenoir does not plausibly establish that the search was unreasonable and amounted to a constitutional violation. See United States v. Johnson, 921 F.3d 991, 997 (11th Cir. 2019) (en banc) (“When an officer reasonably believes that a suspect threatens his safety or the safety of others, he may search the suspect and seize concealed objects that he reasonably believes may be weapons or other instruments of assault.”). As to Love and Bottin, he merely asserts that Love “sw[ore] falsely to violations of Fla. Stat. Law” and employed a “suggestive” identification procedure, Complaint at 5, while Bottin “smash[ed] [Lenoir’s] nose into a Jacksonville Sheriff’s Office patrol car,” id. at 6. Lenoir again provides minimal facts to support his allegations. Without more, his allegations are conclusory in nature and fail to state a claim for relief.

Lenoir sues the remaining Defendants—Rodriguez and former Sheriff Williams—in their official capacities only. The purpose of suing a government official in his or her individual capacity is to impose personal liability for

actions taken under color of state law. See Cook ex rel. Estate of Tessier v. Sheriff of Monroe Cnty., 402 F.3d 1092, 1115 (11th Cir. 2005) (quoting Kentucky v. Graham, 473 U.S. 159, 165–66 (1985)). Suing a government official in an official capacity, on the other hand, is an alternative way to assert a claim against the entity he or she represents, which in this case would be the Sheriff, or more appropriately, the County. Id. Since Lenoir sues Sheriff Williams in his official capacity, the official-capacity suit against Rodriguez is duplicative and should be dismissed. See Busby v. City of Orlando, 931 F.2d 764, 776 (11th Cir. 1991) (affirming directed verdict in favor of officers in their official capacities where the municipality was also a named defendant to avoid redundancy and confusing the jury); see also C.P. by and through Perez v. Collier Cnty., 145 F. Supp. 3d 1085, 1091 (M.D. Fla. 2015) (dismissing similar claims).³ The Court will consider Sheriff Williams’ official capacity liability in the context of those cases discussing county and municipal liability under § 1983.

³ The Court notes that although decisions of other district courts are not binding, they too may be cited as persuasive authority. See Stone v. First Union Corp., 371 F.3d 1305, 1310 (11th Cir. 2004) (noting that, “[a]lthough a district court would not be bound to follow any other district court’s determination, the decision would have significant persuasive effects.”).

To the extent that Lenoir seeks to hold Duval County through former Sheriff Williams vicariously liable for the actions or omissions of the employees responsible for Lenoir's alleged injuries, Lenoir has failed to state a claim upon which relief can be granted. The United States Supreme Court has soundly rejected the theory of respondeat superior as a basis for liability in § 1983 actions. See Monell v. Dep't of Soc. Servs. of N.Y., 436 U.S. 658 (1978). Instead, a county or municipality may be liable in a § 1983 action "only where the municipality itself causes the constitutional violation at issue." Cook ex rel. Estate of Tessier, 402 F.3d at 1115 (citations omitted). Thus, a plaintiff must establish that an official policy or custom of the municipality was the "moving force" behind the alleged constitutional deprivation. See Monell, 436 U.S. at 693–94. "A policy is a decision that is officially adopted by the municipality, or created by an official of such rank that he or she could be said to be acting on behalf of the municipality." Sewell v. Town of Lake Hamilton, 117 F.3d 488, 489 (11th Cir. 1997) (citation omitted). The policy requirement is designed to "distinguish acts of the municipality from acts of employees of the municipality, and thereby make clear that municipal liability is limited to action for which the municipality is actually responsible." Grech v. Clayton Cnty., 335 F.3d 1326, 1329 n.5 (11th Cir. 2003) (en banc) (quotation omitted).

Indeed, municipal liability arises under § 1983 only where “a deliberate choice to follow a course of action is made from among various alternatives’ by city policymakers.” City of Canton v. Harris, 489 U.S. 378, 389 (1989) (quoting Pembaur v. Cincinnati, 475 U.S. 469, 483–84 (1986)). A municipality will rarely have an officially-adopted policy that permits a particular constitutional violation, therefore, in order to state a cause of action for damages under § 1983, most plaintiffs must demonstrate that the municipality has a custom or practice of permitting the violation. See Grech, 335 F.3d at 1330; McDowell v. Brown, 392 F.3d 1283, 1289 (11th Cir. 2004). The Eleventh Circuit has defined “custom” as “a practice that is so settled and permanent that it takes on the force of law” or a “persistent and wide-spread practice.” Sewell, 117 F.3d at 489.

In some circumstances, “the failure to provide proper training may fairly be said to represent a policy for which the city may be held liable if it actually causes injury.” City of Canton, 489 U.S. at 390. Failure to train can lead to municipal liability “only where a municipality’s failure to train its employees in a relevant respect evidences a ‘deliberate indifference’ to the rights of its inhabitants [such that the failure to train] can be properly thought of as a city ‘policy or custom’ that is actionable under § 1983.” Id. at 388–89 (alteration

added). Thus, in order to assert such a claim, a plaintiff must “present some evidence that the municipality knew of a need to train and/or supervise in a particular area and the municipality made a deliberate choice not to take any action.” Gold v. City of Miami, 151 F.3d 1346, 1350 (11th Cir. 1998). The Eleventh Circuit has repeatedly held that “without notice of a need to train or supervise in a particular area, a municipality is not liable as a matter of law for any failure to train or supervise.” Id. at 1351. Indeed, “the need for such training must be plainly obvious to [County] decisionmakers,” such as where there is “evidence of a history of widespread prior abuse.” Wright v. Sheppard, 919 F.2d 665, 674 (11th Cir. 1990) (alteration added); see also Rucker v. City of Ocala, 355 F. App’x 312, 314 (11th Cir. 2009) (per curiam). Here, Lenoir alleges that Sheriff Williams was “complicit in all violations committed by his officers . . . [because he] was responsible for the training and conduct of his subordinates.” Complaint at 5. His allegations are conclusory at best. He neither pleads facts suggesting that the alleged constitutional violations resulted from a failure to train, nor that Sheriff Williams would know of a need to train or supervise. Therefore, this case will be dismissed without prejudice to Lenoir’s right to refile his claims under 42 U.S.C. § 1983 with factual

allegations sufficient to support a claim for relief against a proper defendant if he elects to do so.

Accordingly, it is now

ORDERED:

1. This case is **DISMISSED without prejudice**.
2. The **Clerk of Court** shall enter judgment dismissing this case without prejudice, terminate any pending motions, and close the case.

DONE AND ORDERED at Jacksonville, Florida, this 4th day of April, 2024.



HARVEY E. SCHLESINGER
United States District Judge

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c: Rex D. Lenoir, #2021012338