

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

FRANK THOMAS,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 3:15-CV-988-NJR-DGW
)	
JOSEPH SPLITTORFF,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

ROSENSTENGEL, District Judge:

A Motion for Summary Judgment filed by Defendant Joseph Splittorff is pending before this Court. For the reasons set forth below, the Motion for Summary Judgment is denied.

FACTUAL AND PROCEDURAL BACKGROUND

Frank Thomas filed this *pro se* civil rights action pursuant to 42 U.S.C. § 1983 alleging multiple violations of his constitutional rights. Thomas originally filed his complaint on September 4, 2015. (Doc. 1). The Court dismissed that complaint on October 5, 2015, for failure to state a claim and directed Thomas to file an amended complaint no later than November 2, 2015. (Doc. 6). Thomas filed his Amended Complaint on October 21, 2015. (Doc. 10). The Court subsequently reviewed the Amended Complaint and severed the claims into separate actions. (Doc. 14, p. 8). Remaining here are Thomas’s claims that Joseph Splittorff, a police officer employed by

the City of Alton, Illinois: (1) arrested Thomas without a warrant or probable cause, in violation of the Fourth Amendment; (2) improperly interrogated Thomas in violation of the Fifth Amendment; and (3) searched and confiscated Thomas's property without a warrant or probable cause, in violation of the Fourth Amendment. (Doc. 14, pp. 1, 8).

Thomas was housed at the Madison County Jail when he filed his original Complaint on September 4, 2015. (Doc. 2, ¶1). Multiple filings sent by Thomas from the Madison County Jail were received by this Court through December 23, 2015. (Docs. 8-13). In its August 9, 2016 Order severing three of Thomas's claims, however, the Court noted that records from the Illinois Department of Corrections showed Thomas had been transferred to Robinson Correctional Center. (Doc. 14, p. 3). Thomas had not filed a notice of change of address as required by Local Rule 3.1(b) and the Court's earlier Order (Doc. 6, p. 7).

Subsequently, Splittorff filed a Motion for Summary Judgment. (Doc. 26). A notice regarding the filing of the motion was sent to Thomas at Robinson Correctional Center. (Doc. 29, p. 4). On October 3, 2016, Magistrate Judge Donald G. Wilkerson issued an Order directing Thomas to show cause in writing why this matter should not be dismissed for failure to follow the Local Rules regarding notice of change of address, and informing Thomas that he must respond to the pending Motion for Summary Judgment.¹ (Doc. 30, pp. 1-2). The Order to Show Cause (Doc. 30), along with the Scheduling Order (Doc. 24), were sent to Thomas at both his address of record (the

¹ Magistrate Judge Wilkerson's order required Thomas to respond to the Order to Show Cause by October 17, 2016 and the Motion for Summary Judgment by October 31, 2016. (Doc. 30, pp. 1-2).

Madison County Jail) and his more recent address at the Robinson Correctional Center (Doc. 30, p. 1).²

Thomas filed a notice of change of address on October 31, 2016, stating that he was housed at the Robinson Correctional Center. (Doc. 34). As of the date of this order, however, Thomas has not responded to the Motion for Summary Judgment.³

ANALYSIS

I. LEGAL STANDARD

Summary judgment is proper only where there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. *Spurling v. C & M Fine Pack, Inc.*, 739 F.3d 1055, 1060 (7th Cir. 2014) (quoting FED. R. CIV. P. 56(a)). Courts review the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, to determine whether there are genuine issues of fact or the moving party is entitled to a judgment as a matter of law. *Albiero v. City of Kankakee*, 246 F.3d 927, 931-32 (7th Cir. 2001). The court must view the record, and any inferences to be drawn from the underlying facts, in the light most favorable to the party opposing the motion. *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962); *Albiero v. City of Kankakee*, 246 F.3d 927, 931-32 (7th Cir. 2001) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)). If material issues of fact exist that would allow a reasonable jury to

² The Order to Show Cause sent to the Madison County Jail was returned as undeliverable, but the order sent to the Robinson Correctional Center was not returned. (Doc. 33).

³ Thomas's filing of a change of address is not technically an answer to the Order to Show Cause, and it was not filed by the October 17th deadline. Because the filing occurred on October 31, 2017—the second deadline in the Order to Show Cause—and the filing cured the address defect, the Court accepts the filing as a response.

find in favor of the non-moving party, summary judgment is inappropriate. *Spurling*, 739 F.3d at 1060.

The Court notes that Thomas did not file a response to the Motion for Summary Judgment. This does not, however, absolve the Court of its obligation to determine whether material issues of fact exist and Splittorff is entitled to judgment as a matter of law. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 161 (1970). Because the movant bears the initial burden, if the evidence produced in support of summary judgment is insufficient, “summary judgment must be denied *even if no opposing evidentiary matter is presented.*” *Id.* at 160 (emphasis added).

Further, the Court has discretion to consider the affidavits filed by Thomas with his Amended Complaint for purposes of determining whether to grant the Motion for Summary Judgment. FED. R. CIV. P. 56(c)(3). Given the *pro se* nature of the action and the fact that Thomas’s request for appointment of counsel was denied (Doc. 18, p. 1), the Court chooses to exercise its discretion. The Court cautions Mr. Thomas, however, that further failure to respond to motions, discovery requests, or orders of this Court will likely result in his claims being dismissed for failure to prosecute.

II. ANALYSIS OF SUMMARY JUDGMENT

When assessing summary judgment on a § 1983 claim, a Court must determine: (1) whether the conduct complained of was committed by a person acting under color of state law; and (2) whether this conduct deprived a person of rights, privileges, or immunities secured by the Constitution or laws of the United States. *Armato v. Grounds*, 766 F.3d 713, 720 (7th Cir. 2014) (quoting *Parratt v. Taylor*, 451 U.S. 527, 535 (1981)).

A. UNDER COLOR OF STATE LAW

An action qualifies as under color of state law when it involves a misuse of power that is only made possible because the wrongdoer is clothed with the authority of state law. *Honaker v. Smith*, 256 F.3d 477, 484 (7th Cir. 2001) (internal quotation marks and citation omitted). An action can be considered under color of state law if it is related to the performance of a police officer's official duties. *Pickrel v. City of Springfield, Ill.*, 45 F.3d 1115, 1118 (7th Cir. 1995); *Honaker*, 256 F.3d at 485. Thomas's Fourth and Fifth Amendment claims all stem from his arrest, interrogation, and the search of his property (Doc. 10); acts that appear on their face to be part of a police officer's official duties. Splittorff's motion does not argue otherwise. The only evidence submitted in Splittorff's affidavit, and the sole argument raised in the motion, is the claim that Splittorff is not the person who conducted those activities. (Doc. 26, p. 1; Doc. 27-1, ¶¶ 4-5). In effect, that Thomas has identified the wrong officer.

Thomas's Amended Complaint and related affidavits, however, stand in stark contrast to Splittorff's claim.⁴ In his signed statement, Thomas specifically identifies Splittorff as the officer who removed him from the holding cell, questioned him in the hallway and an interrogation room, and coerced him into making a false confession.

⁴ Courts can properly rely on deposition testimony, affidavits, responses to interrogatories, and other written statements when deciding summary judgment. *Hill v. Tangherlini*, 724 F.3d 965, 967 (7th Cir. 2013) (overruling cases discrediting this evidence as self-serving). Evidence presented in an affidavit or deposition, even if "self-serving," is enough to thwart a summary judgment motion. *Kellar v. Summit Seating, Inc.*, 664 F.3d 169, 175 (7th Cir. 2011) (citing *Payne v. Pauley*, 337 F.3d 767, 773 (7th Cir. 2003)). Here, Thomas attached to his Amended Complaint various documents identified as affidavits that lay out specific facts based on Thomas's personal knowledge. (Doc. 10). The Court notes the affidavits are signed but not notarized. In an apparent effort to explain the lack of a notary signature and seal, Thomas also attached as an exhibit three handwritten requests to Madison County Jail officials for notary services. All three requests are marked as "no response." (Doc. 10-4). The Court accepts these documents as affidavits for purposes of this motion.

(Doc. 10, pp. 4-5, 7). Thomas also identifies Splittorff as one of the officers who arrested him and searched his property without a warrant or probable cause. (Doc. 10, p. 1, 7). Because material issues of fact exist as to whether it was Splittorff who committed the acts complained of by Thomas, summary judgment is inappropriate.

B. DEPRIVATIONS OF RIGHTS

On initial review, pursuant to 42 U.S.C. § 1983, this Court identified three claims based on the Fourth and Fifth Amendments as cognizable. (See Doc. 14, p. 5). A complaint is considered cognizable, or plausible on its face, “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). Splittorff points to nothing in the record, and he presents no evidence with his motion, to contradict Thomas’s claims that his Fourth and Fifth Amendment right were violated. Splittorff’s only argument is that he is not the individual who allegedly violated those rights. (Doc. 26, p. 1; Doc. 27-1, ¶¶ 4-5). As discussed above, since a material issue of fact exists as to whether Splittorff participated in the complained of arrest, interviews, and searches that form the basis for Thomas’s constitutional claims, summary judgment is inappropriate.

For these reasons, the Motion for Summary Judgment (Doc. 26) is **DENIED**.

IT IS SO ORDERED.

DATED: July 19, 2017



NANCY J. ROSENSTENGEL
United States District Judge