

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

SUSAN COLLINS,	:	
	:	
Plaintiff,	:	C.A. No: 04C-06-009 (RBY)
	:	
v.	:	
	:	
PTLM. EDWARD FIGUEIRA,	:	
PTLM. CARLA GALVECKY,	:	
CHIEF SAM MACKERT and	:	
others as Police Officers for	:	
Dewey Beach Police Dept., and the	:	
TOWN OF DEWEY BEACH,	:	
	:	
Defendants.	:	

Submitted: June 16, 2006
Decided: June 23, 2006

Susan Collins, *pro se.*

Kevin J. Connors, Esq., Marshall, Dennehey, Warner, Coleman & Goggin,
Wilmington, Delaware for Defendants.

Upon Defendants' Motion to Dismiss
GRANTED

Young, J.

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This matter comes before the Court on the Motion of Defendants to Dismiss all claims. The case was presented, as scheduled, on Friday, June 16, 2006. Plaintiff, though duly notified, failed to appear.

The following is the Court's decision upon review of the matters in issue.

Defendants, Chief Sam Mackert, the Dewey Beach Police Department, and the Town of Dewey, move this Court for an order dismissing the Complaint of Plaintiff, Susan Collins. On June 10, 2004, Plaintiff filed suit against Defendants for injuries she sustained as the result of an incident that occurred while Plaintiff was in the custody of the Dewey Police on June 11, 2002. Defendants argue that Plaintiff's claims should be dismissed for failure to state a claim.¹

FACTS

The police report submitted in support of Defendants' motion indicates that Plaintiff was arrested by Dewey Beach Police after an individual complained that Plaintiff, who was intoxicated, continued to touch him, despite his repeated objections. Police approached Plaintiff, who was intoxicated, belligerent, and abusive. She threatened the officers with bodily harm, and verbally assaulted them with profanity. In addition, the police report indicates that she physically assaulted a female officer, and attempted to kick another officer, for which she was pepper-sprayed. Finally, while en route to State Police Troop 4 for processing, Plaintiff kicked out the rear window of the police cruiser with her bare feet.

¹ Super. Ct. Civ. R. 12(b)(6).

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Plaintiff's Complaint alleges that she sustained personal injuries, while in custody of the police. Plaintiff claims that the Dewey Beach Police Department was negligent in failing to supervise its officers, and the individual officers were liable for second degree assault and negligent infliction of emotional distress. Further, the Plaintiff makes claims of civil rights violations, pursuant to 42 U.S.C. § 1983. Plaintiff voluntarily dismissed the claims against the individual police officers, which this Court ordered on September 17, 2004. Therefore, the only claims that survive are those alleging negligent supervision and § 1983 violations.

An arbitration was held in this matter on May 10, 2005. The docket sheet reflects that Plaintiff's appeal from the Arbitrator's decision was filed on June 8, 2005, twenty-eight (28) days later.

On July 11, 2005, Plaintiff's attorney, Darryl K. Fountain received a three-year suspension from practicing law in Delaware. Plaintiff has not retained new counsel. She represents herself *pro se*.

DISCUSSION

In considering a motion to dismiss for failure to state a claim under Del. Super. Ct. Civ. R. 12(b)(6), this Court "must assume all well-pleaded facts in the complaint to be true."² As such, "[a] complaint will not be dismissed unless plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances susceptible of proof."³ A complaint will not be dismissed for failure to state a claim

² *Read v. Carpenter*, 1995 WL 945544, at *1 (citation omitted).

³ *Id.*

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“unless it is clearly without merit, which may be a matter of law or fact.”⁴ In addition, a complaint will not be dismissed unless “ ‘[i]t appears to a certainty that, under no set of facts which could be proved to support the claim asserted, would the plaintiff be entitled to relief.’ ”⁵ Rather, if the plaintiff may recover under a reasonably conceived set of circumstances, then the motion to dismiss must be denied.⁶

I. Plaintiff cannot maintain a claim against the Dewey Beach Police Department for negligent failure to supervise the patrolmen.

Count I of Plaintiff’s Complaint alleges that the Dewey Beach Police Department is liable for Plaintiff’s injuries, because it negligently failed to supervise the patrolmen who were involved in the incident. Plaintiff’s claims make broad generalizations, alleging that the Dewey Beach Police Department was negligent, because it failed to ensure that the patrolmen complied with the department’s procedures and fundamental guarantees of the United States Constitution. Plaintiff’s claim, however, cannot be maintained, because the Dewey Beach Police Department is immune from liability pursuant to the Tort Claims Act.⁷ The Tort Claims Act provides immunity for all governmental entities and their employees with certain

⁴ *Diamond State Tel. Co. v. Univ. of Del.*, 269 A.2d 52, 58 (Del.1970).

⁵ *Dunlap v. State Farm Fire and Cas. Co.*, 2004 WL 1427001, at *2 (Del. Super.)(quoting *Diamond State Tel. Co. v. Univ. of Del.*, 269 A.2d 52, 58 (Del.1970)).

⁶ *Id.*

⁷ 10 Del.C. § 4011.

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narrow exceptions provided in § 4012.⁸ None of those exceptions is applicable in the case at issue; therefore, Plaintiff's claims of negligent failure to supervise against the Dewey Beach Police Department are **DISMISSED**.

II. Defendants are not liable for violating Plaintiff's civil rights.

Plaintiff also alleges that Chief Mackert and the Town of Dewey Beach violated her Fourth, Fifth, and Fourteenth Amendments rights, pursuant to 42 U.S.C. § 1983. Plaintiff claims that the Town of Dewey Beach violated her civil rights, because the Town failed to monitor adequately the inner workings of the Dewey Beach Police Department. Similarly, Plaintiff claims that Chief Mackert violated her civil rights, because he failed to train, supervise or control the officers under his direct command adequately. Plaintiff maintains that the actions of the Town of

⁸ § 4012 provides that “[a] governmental entity shall be exposed to liability for its negligent acts or omissions causing property damage, bodily injury or death in the following instances:

- (1) In its ownership, maintenance or use of any motor vehicle, special mobile equipment, trailer, aircraft or other machinery or equipment, whether mobile or stationary.
- (2) In the construction, operation or maintenance of any public building or the appurtenances thereto, except as to historic sites or buildings, structures, facilities or equipment designed for use primarily by the public in connection with public outdoor recreation.
- (3) In the sudden and accidental discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalines and toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water.”

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Dewey Beach and Chief Mackert rise to a level of gross negligence and recklessness that shocks the conscience.

A. Town of Dewey Beach

Section 1983 permits an individual to bring suit against a “person, who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia” deprives that individual “of any rights, privileges, or immunities secured by the Constitution and laws.” Although the language of § 1983 seems to limit the remedy for acts of a “person,” the United Supreme Court has extended the application of § 1983 to municipalities and other local government units.⁹ However, municipalities will not be liable under § 1983 under a theory of *respondeat superior* “solely because it employs a tortfeasor.”¹⁰ To sustain an action against a municipality, the plaintiff must “identify a municipal ‘policy’ or ‘custom’ that caused the injury.”¹¹ In addition, the municipality must be a ‘moving force’ that caused the alleged injury through its deliberate conduct.¹² “[A] plaintiff must show that the municipal action was taken with the requisite degree of culpability and must demonstrate a direct causal link between the municipal action and the deprivation of federal rights.”¹³

⁹ *Monell v. Dept. of Social Services*, 436 U.S. 658, 690 (1978).

¹⁰ *Bd. Of County Com'rs of Bryan County, Okl. v. Brown*, 520 U.S. 397, 403 (1997).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

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In the present action, Plaintiff's conclusory statement that the Town of Dewey Beach violated her civil rights, because it negligently and recklessly monitored the inner workings of the Dewey Beach Police Department is insufficient to establish a § 1983 claim. Plaintiff has failed to allege a claim that the Town of Dewey Beach had a policy or custom that caused Plaintiff to suffer a violation of her constitutional rights. Additionally, Plaintiff's § 1983 claim is deficient, because Plaintiff has not proffered any facts supporting a causal link between the Town of Dewey Beach's alleged negligent and reckless monitoring of the Dewey Beach Police Department to the injuries Plaintiff allegedly sustained while in the custody of the Dewey Beach Police Department. For those reasons, Plaintiff's civil rights claims against the Town of Dewey Beach are **DISMISSED**.

B. Chief Sam Mackert.

Plaintiff also asserts a civil rights claim against Chief Mackert for his alleged failure to train, supervise or control the officers under his command. Government officials or actors may also be subject to liability under § 1983, if the plaintiff can prove that (1) the alleged conduct was "committed by a person acting under the color of state law," and (2) the plaintiff was deprived of a constitutional right as a result of that conduct.¹⁴ Further, to maintain a § 1983 claim, the plaintiff must establish a "causal link" between the official conduct and the alleged deprivation of a

¹⁴ *Reynolds v. State*, 1999 WL 1427760, at *12 (Del. Super.) (citing *Teat v. Neal*, Del. Super., C.A. No. 93C-12-206, Quillen, J. (Jan. 9, 1996) at 5, *app. disp.*, Del. Supr., No. 64, 1996, Berger, J. (March 12, 1996)(ORDER)).

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constitutional right.”¹⁵ Unlike state employees,¹⁶ other government actors are not shielded from liability for § 1983 claims. State laws, like the Torts Claim Act, do not provide government actors with any additional protection from liability for a § 1983 claim.¹⁷

However a government employee in a supervisory role “cannot be liable under 42 U.S.C. § 1983 merely because those under his supervision violate the constitutional rights of another.”¹⁸ A supervisor can only be liable if “he was the ‘moving force [behind] the constitutional violation,’ or ‘exhibited deliberate indifference to the plight of the person deprived.’ ”¹⁹ A supervisor’s liability under § 1983 must be based on actual knowledge and acquiescence rather than *respondeat superior*.²⁰

Similar to Plaintiff’s civil rights claims against the Town of Dewey Beach, the claims against Chief Mackert cannot survive, because the Plaintiff does not allege and

¹⁵ *Id.* (citing *Gunzl v. Spayd*, 1995 WL 160352, at *5 (Del.Super.)).

¹⁶ *Davis v. Winslow*, 1994 WL 555315, at *2 (Del. Super.)(citing *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989))(holding that Delaware State Trooper, acting in an official capacity, was immune from § 1983 action).

¹⁷ *Gunzl*, 1995 WL 160352, at *4 (citing *Martinez v. California*, 444 U.S. 277, 284 n. 8, *reh'g denied*, 445 U.S. 920 (1980); *Kirschling v. Lake Forest School District*, D.Del., 687 F.Supp. 927, 937 (1988)).

¹⁸ *Alley v. Taylor*, 2001 WL 337245, at *3 (Del.Super.)(citing *Dickens v. Brewington-Carr*, 1999 WL 1240910 (Del.Super.)).

¹⁹ *Id.* (quoting *Sample v. Diecks*, 885 F.2d 1099, 1118 (3rd Cir. 1989)).

²⁰ *Id.* (citing *Brown v. Stewart*, 910 F.Supp. 1064, 1074-75 (D. Pa. 1996)).

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cannot establish a “causal link” between Chief Mackert’s alleged failure to train, supervise or control the officers under his command and the alleged violation of Plaintiff’s civil rights. In addition, Chief Mackert cannot be liable for the officers’ alleged violations of Plaintiff’s civil rights, because Plaintiff has failed to establish that Chief Mackert was the moving force behind the violations. Plaintiff has also failed to demonstrate that Chief Mackert exhibited any deliberate indifference to Plaintiff. Finally, Plaintiff’s claims against Chief Mackert cannot survive, because Plaintiff cannot establish that Chief Mackert had any actual knowledge about the alleged violations. She does not allege and cannot show that Chief Mackert acquiesced to the officers’ conduct. For those reasons, Plaintiff’s civil rights claims against Chief Mackert are **DISMISSED**.

Accordingly, Defendants’ Motion to Dismiss is **GRANTED**.

SO ORDERED.

/S/ ROBERT B. YOUNG

J.

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oc: Prothonotary
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