

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-03418-GPG

JEREMYAH WOOLBRIGHT,

Plaintiff,

v.

MESA COUNTY JAIL,  
MESA COUNTY SHERIFF'S DEPT., and  
C.O. WILSON,

Defendants.

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ORDER TO DISMISS IN PART AND TO DRAW CASE

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Plaintiff, Jeremyah Woolbright, is a prisoner in the custody of the Colorado Department of Corrections currently incarcerated at the correctional facility in Sterling, Colorado. He initiated this action by filing, *pro se*, a Prisoner Complaint pursuant to 28 U.S.C. § 1343 and 42 U.S.C. § 1983 asserting a deprivation of his constitutional rights.

On December 22, 2014, Magistrate Judge Gordon P. Gallagher reviewed the Complaint and determined that it was deficient because Mr. Woolbright failed to state a cognizable claim under § 1983 and failed to allege the personal participation of each Defendant in a deprivation of his constitutional rights. The Court therefore ordered Mr. Woolbright to file an amended complaint within thirty (30) days. On January 6, 2015, Mr. Woolbright filed an Amended Complaint adding one municipality Defendant. (ECF No. 6).

On January 15, 2015, Magistrate Judge Gallagher reviewed the Amended Complaint and determined that it was deficient because Mr. Woolbright failed to allege

facts to show that a policy or custom of the municipality Defendant caused the alleged constitutional deprivation(s) and because Plaintiff's allegations of personal participation were inadequate. Magistrate Judge Gallagher therefore directed the Plaintiff to file a second amended complaint within thirty (30) days of the January 15 Order. Mr. Woolbright filed, on February 2, 2015, a Second Amended Complaint adding a second municipality Defendant.

Mr. Woolbright has been granted leave to proceed pursuant to the *in forma pauperis* statute, 28 U.S.C. § 1915. Pursuant to § 1915(e)(2)(B)(I), the Court must dismiss the action if Plaintiff's claims are frivolous or malicious. A legally frivolous claim is one in which the plaintiff asserts the violation of a legal interest that clearly does not exist or asserts facts that do not support an arguable claim. See *Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989). Subsection (e)(2)(B)(iii) of § 1915 requires a court to dismiss at any time an action that seeks monetary relief against a defendant who is immune from such relief.

The Court must construe the Second Amended Complaint liberally because Mr. Woolbright is not represented by an attorney. See *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). However, the Court should not act as an advocate for *pro se* litigants. See *Hall*, 935 F.2d at 1110. For the reasons discussed below, this action will be dismissed, in part.

Mr. Woolbright alleges in the Second Amended Complaint that in April 2013, Defendant Wilson violated his constitutional rights by using excessive force and causing physical injury (claim one) as well as engaging in misconduct (claim two). Mr. Woolbright also alleges that he was denied adequate medical care (claim three) after

the April 2013 altercation. He further alleges that Defendants Mesa County Jail and Mesa County Sheriff's Department ("the municipality Defendants") are liable because they failed to properly supervise and train Defendant Wilson. He seeks monetary and injunctive relief.

Mr. Woolbright cannot maintain a § 1983 claim against the municipality Defendants. Plaintiff was warned in the January 15 Order that to hold a municipality liable under 42 U.S.C. § 1983, a plaintiff must show that an unconstitutional policy or custom exists and that there is a direct causal link between the policy or custom and the injury alleged. *City of Canton, Ohio v. Harris*, 489 U.S. 378, 385 (1989); *Myers v. Oklahoma County Bd. of County Comm'rs*, 151 F.3d 1313, 1316-20 (10th Cir. 1998). Municipalities are not liable under 42 U.S.C. § 1983 solely because their employees inflict injury on a plaintiff. *Monell v. New York City Dep't of Social Servs.*, 436 U.S. 658, 694 (1978); *Hinton v. City of Elwood, Kan.*, 997 F.2d 774, 782 (10th Cir. 1993). Mr. Woolbright does not identify any custom, practice, or policy of the Mesa County Jail and Mesa County Sheriff's Department or allege any facts to suggest a direct causal link between any action of the local government entity and a constitutional violation. See *Board of County Com'rs of Bryan County, Okl. v. Brown*, 520 U.S. 397, 404 (1997); *Hollingsworth v. Hill*, 110 F.3d 733, 742 (10th Cir. 1997).

Moreover, Mr. Woolbright seeks to hold the municipality Defendants liable under the theory that they failed to properly supervise and train Defendant Wilson. Plaintiff implies that the municipality Defendants should have supervised Defendant Wilson more closely because "Officer Wilson has been involved in a similar incident." However, Mr. Woolbright does not provide any further factual allegations regarding the

alleged “repeat incident.” Nor has Mr. Woolbright adequately alleged deliberate indifference. See, e.g., *Riddle v. Mondragon*, 83 F.3d 1197, 1205 (10th Cir. 1996) (general, conclusory allegations, without supporting factual averments, are insufficient to state a claim for deliberate indifference in violation of the Eighth Amendment); *Levine v. City of Alameda*, 525 F.3d 903, 907 (9th Cir. 2008) (municipal liability attaches only when the entity's policy, practice, or custom “amounted to a deliberate indifference to the constitutional right and was the moving force behind the constitutional violation”) (internal quotation marks omitted); *Reynolds v. Giuliani*, 506 F.3d 183, 192 (2d Cir. 2007) (A municipality may be liable for the failure to supervise or discipline its employees “only where the need to act is so obvious, and the inadequacy of the current practices so likely to result in a deprivation of federal rights, that the municipality or official can be found deliberately indifferent to the need.”). In sum, the claims against the municipality Defendants consist of nothing more than conclusory allegations. There are no well-pled facts that demonstrate the existence of an established government policy or custom that deprived Plaintiff of his constitutional rights, or no well-pled facts that demonstrate specific deficiencies in the training or supervision that actually caused the injuries alleged by Plaintiff. Cf. *Kramer v. Wasatch County Sheriff's Office*, 743 F.3d 726, 759 (10th Cir. 2014) (rejecting plaintiff's § 1983 causation theory that predicated liability on the defendants' inaction; to establish deliberate indifference, plaintiff must establish that the need for more or different action was “so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need”). Accordingly, Defendants Mesa County Jail and Mesa County Sheriff's Department are improper parties to this action and will be dismissed.

Finally, Mr. Woolbright also makes conclusory allegations that he was denied proper medical treatment after the alleged physical altercation with Defendant Wilson. However, these allegations do not state an arguable constitutional claim against the remaining named Defendant and therefore claim three is dismissed.

After review pursuant to D.C.COLO.LCivR 8.1(b), the Court has determined that Mr. Woolbright's § 1983 claims against Defendant Wilson appear to be inappropriate for summary dismissal and that the case should be drawn to a presiding judge and, if appropriate, to a magistrate judge. See D.C.COLO.LCivR 8.1(c). Accordingly, it is

ORDERED that Defendants Mesa County Jail and Mesa County Sheriff's Department are DISMISSED from this action for Plaintiff's failure to allege their personal participation in the alleged constitutional deprivations. It is

FURTHER ORDERED that Plaintiff's claims against Defendant Wilson shall be drawn to a presiding judge and, if appropriate, to a magistrate judge, pursuant to D.C.COLO.LCivR 40.1(a).

DATED at Denver, Colorado, this 5<sup>th</sup> day of February, 2015.

BY THE COURT:

s/Lewis T. Babcock  
LEWIS T. BABCOCK, Senior Judge  
United States District Court