

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

JAMES R. WEBB, JR.,)
)
 Plaintiff,)
)
 vs.)
)
 OFFICER WEBB,)
 MURPHYSBORO CHIEF OF POLICE, and)
 FOUR UNKNOWN OFFICERS,)

Case No. 16-cv-1337-JPG

Defendants.

MEMORANDUM AND ORDER

GILBERT, District Judge:

At the time of filing, Plaintiff James Webb was an inmate in Jackson County Jail. However, Plaintiff presently resides at the Alton Mental Health Center. Plaintiff brings this action for deprivations of his constitutional rights pursuant to 42 U.S.C. § 1983. Plaintiff’s claim relates to an incident involving the Murphysboro Police Department in 2014, before Plaintiff was an inmate in Jackson County Jail. Plaintiff seeks removal from probation, monetary damages, and declarative relief.

BACKGROUND

On December 12, 2016, Plaintiff, proceeding *pro se*, filed the instant action. (Doc. 1). Plaintiff alleged that in December 2014, he was the victim of excessive force. In connection with his excessive force claim, Plaintiff named the Murphysboro Police Department. A police department, however, is not a suable entity apart from the city which operates it. *See West By and Through Norris v. Waymire*, 114 F.3d 646, 646–47 (7th Cir. 1997). Further, a municipality may only be sued in a civil rights action if the constitutional deprivations were the result of an

official policy, custom, or practice of the municipality. *Monell v. Dept. of Soc. Servs.*, 436 U.S. 658, 691 (1978); *see also Pourghoraishi v. Flying J, Inc.*, 449 F.3d 751, 765 (7th Cir.2006).

Accordingly, the Court dismissed the original Complaint without prejudice and granted leave to amend. (Doc. 11). The Order of Dismissal directed Plaintiff to sue an appropriate legal entity or an individual or individuals who caused or participated in the alleged constitutional deprivation. *Id.* On April 26, 2017, Plaintiff timely filed a First Amended Complaint. (Doc. 12).

Merits Review

The First Amended Complaint is now before the Court for a preliminary review pursuant to 28 U.S.C. § 1915A, which provides:

(a) **Screening** – The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

(b) **Grounds for Dismissal** – On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint–

- (1) is frivolous, malicious, or fails to state a claim on which relief may be granted; or
- (2) seeks monetary relief from a defendant who is immune from such relief.

An action or claim is frivolous if “it lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Frivolousness is an objective standard that refers to a claim that any reasonable person would find meritless. *Lee v. Clinton*, 209 F.3d 1025, 1026-27 (7th Cir. 2000). An action fails to state a claim upon which relief can be granted if it does not plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The claim of entitlement to relief must cross “the line between possibility and plausibility.” *Id.* at 557. At this juncture, the factual allegations of the

pro se complaint are to be liberally construed. See *Rodriguez v. Plymouth Ambulance Serv.*, 577 F.3d 816, 821 (7th Cir. 2009).

The First Amended Complaint

According to the First Amended Complaint, sometime in 2014, Plaintiff and his girlfriend became locked out of the apartment they were leasing. (Doc. 12, p. 5). Plaintiff somehow gained entry into the apartment and a neighbor called the police. *Id.* Police officers arrived on the scene and knocked on the door. *Id.* When Plaintiff answered the door, the chief of police grabbed him and threw him against a wall, stating: “Why are you breaking in?” *Id.* Plaintiff indicated that he was not breaking in. *Id.* He stated that he leased the apartment and lived there. *Id.* At that point, “they” shook Plaintiff and pushed him down the stairs. *Id.* Plaintiff rolled to the bottom of the stairs. *Id.* When Plaintiff landed on the bottom of the stairs, Webb and the Chief of Police started tazing Plaintiff. *Id.* Either Webb or the Chief of Police tazed Plaintiff in the back of the head. *Id.* Plaintiff tried to get away but “they” all kept tazing him with four tazers simultaneously. Initially, Plaintiff was compliant with the officers’ requests, but at this point he began “fighting for [his] life” because “they” were out of control and hurt Plaintiff badly. *Id.*

Discussion

The Court finds it convenient to divide the *pro se* action into a single count. The parties and the Court will use this designation in all future pleadings and orders, unless otherwise directed by a judicial officer of this Court. Any other claim that is mentioned in the Complaint but not addressed in this Order should be considered dismissed without prejudice as inadequately pled under the *Twombly* pleading standard.

Count 1 – Officer Webb, Murphysboro Chief of Police, and Four Unknown Officers used excessive force in effectuating Plaintiff’s arrest.

Under the Fourth Amendment, an officer's right to arrest an individual includes the right to use some degree of physical force, but the use of force must be objectively reasonable in light of the totality of the circumstances. *Graham v. Connor*, 490 U.S. 386, 396, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989). “Determining whether the force used to effect a particular seizure is reasonable under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake.” *Id.* (quotation marks and citations omitted). Factors to consider include the severity of the crime at issue, whether the suspect posed an immediate threat to the safety of the officers or others, and whether he was resisting arrest or attempting to evade arrest by flight. *Id.*

Plaintiff's description of his arrest is sketchy and the Defendants may well have been justified in using the force that they did. After all, the First Amended Complaint suggests Defendants were responding to what they thought was a burglary in progress. Nevertheless, giving Plaintiff the inferences to which he is entitled at this stage, the Court finds that Plaintiff has alleged a plausible excessive force claim against Officer Webb and the Murphysboro Chief of Police. Specifically, Plaintiff alleges that after he informed the Chief of Police he lived in the apartment, Plaintiff was pushed to the bottom of the stairs. At that point, apparently while Plaintiff was on the ground at the bottom of the stairs, Webb, the Chief of Police, and possibly other unidentified officers¹ began tazing Plaintiff simultaneously. Plaintiff alleges that he originally complied with the officers' directives but eventually began fighting for his life.

The specific allegations as to Webb and the Chief of Police suggest that the allegations directed at “they” are meant to include both Webb and the Chief of Police. Although the lack of

¹ As is discussed more fully below, the role of the unknown officers is unclear.

clarity with respect to these allegations is not ideal, Plaintiff has provided enough information to state a plausible claim as to these two Defendants. Conversely, the First Amended Complaint does not provide enough information with respect to the involvement of the four unknown officers. No specific conduct is attributed to any of the unknown officers and it is unclear what, if any, role they played in the alleged use of excessive force. Accordingly, the four unknown officers shall be dismissed without prejudice.

Pending Motions

Plaintiff's Motion for Recruitment of Counsel (Doc. 13) shall be referred to a United States Magistrate Judge for disposition.

Disposition

IT IS HEREBY ORDERED that the First Amended Complaint shall receive further review as to **OFFICER WEBB** and the **MURPHYSBORO CHIEF OF POLICE**. The **FOUR UNKNOWN OFFICERS** are **DISMISSED** without prejudice for failure to state a claim.

The Clerk is **DIRECTED** to terminate **THE FOUR UNKNOWN OFFICERS** as parties in CM/ECF.

IT IS ORDERED that the Clerk of Court shall prepare for Defendants **OFFICER WEBB** and the **MURPHYSBORO CHIEF OF POLICE**.: (1) Form 5 (Notice of a Lawsuit and Request to Waive Service of a Summons), and (2) Form 6 (Waiver of Service of Summons). The Clerk is **DIRECTED** to mail these forms, a copy of the Complaint, and this Memorandum and Order to each Defendant's place of employment as identified by Plaintiff. If a Defendant fails to sign and return the Waiver of Service of Summons (Form 6) to the Clerk within 30 days from the date the forms were sent, the Clerk shall take appropriate steps to effect formal service on that Defendant, and the Court will require that Defendant to pay the full costs of formal

service, to the extent authorized by the Federal Rules of Civil Procedure.

With respect to a Defendant who no longer can be found at the work address provided by Plaintiff, the employer shall furnish the Clerk with the Defendant's current work address, or, if not known, the Defendant's last-known address. This information shall be used only for sending the forms as directed above or for formally effecting service. Any documentation of the address shall be retained only by the Clerk. Address information shall not be maintained in the court file or disclosed by the Clerk.

Plaintiff shall serve upon Defendants (or upon defense counsel once an appearance is entered), a copy of every pleading or other document submitted for consideration by the Court. Plaintiff shall include with the original paper to be filed a certificate stating the date on which a true and correct copy of the document was served on Defendants or counsel. Any paper received by a district judge or magistrate judge that has not been filed with the Clerk or that fails to include a certificate of service will be disregarded by the Court.

Defendants are **ORDERED** to timely file an appropriate responsive pleading to the Complaint and shall not waive filing a reply pursuant to 42 U.S.C. § 1997e(g).

Pursuant to Local Rule 72.1(a)(2), this action is **REFERRED** to a United States Magistrate Judge for further pre-trial proceedings, including Plaintiff's Motion for Recruitment of Counsel (Doc. 13). Further, this entire matter shall be **REFERRED** to a United States Magistrate for disposition, pursuant to Local Rule 72.2(b)(2) and 28 U.S.C. § 636(c), *if all parties consent to such a referral*.

If judgment is rendered against Plaintiff, and the judgment includes the payment of costs under § 1915, Plaintiff will be required to pay the full amount of the costs, regardless of whether his application to proceed *in forma pauperis* is granted. *See* 28 U.S.C. § 1915(f)(2)(A).

Plaintiff is **ADVISED** that at the time application was made under 28 U.S.C. § 1915 for leave to commence this civil action without being required to prepay fees and costs or give security for the same, the applicant and his or her attorney were deemed to have entered into a stipulation that the recovery, if any, secured in the action shall be paid to the Clerk of the Court, who shall pay therefrom all unpaid costs taxed against plaintiff and remit the balance to plaintiff. Local Rule 3.1(c)(1).

Finally, Plaintiff is **ADVISED** that he is under a continuing obligation to keep the Clerk of Court and each opposing party informed of any change in his address; the Court will not independently investigate his whereabouts. This shall be done in writing and not later than **7 days** after a transfer or other change in address occurs. Failure to comply with this order will cause a delay in the transmission of court documents and may result in dismissal of this action for want of prosecution. *See* FED. R. CIV. P. 41(b).

IT IS SO ORDERED.

DATED: July 17, 2017

s/J. Phil Gilbert
J. PHIL GILBERT
United States District Judge