

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT OWENSBORO  
CIVIL ACTION NO. 4:20CV-P27-JHM**

**KEVIN KASSINGER**

**PLAINTIFF**

**v.**

**JAILER ART MAGLINGER et al.**

**DEFENDANTS**

**MEMORANDUM OPINION**

Plaintiff Kevin Kassinger filed the instant pro se 42 U.S.C. § 1983 action proceeding in forma pauperis. This matter is before the Court on the initial review of the complaint pursuant to 28 U.S.C. § 1915A. Upon review, the Court will dismiss the action for the reasons stated herein.

**I. SUMMARY OF ALLEGATIONS**

Plaintiff, a convicted inmate at the Daviess County Detention Center (DCDC), sues DCDC Jailer Art Maglinger and Major Jack Jones in their official capacities only.

Plaintiff states that he was placed “in rule infraction” on December 18, 2019. He reports that while he was there, “the jail lost personal property of mine; including a radio and several books . . . .” He states that he filed several grievances concerning the lost property. He states, “The jail is refusing to replace or pay for the items lost.”

Plaintiff also reports that he is no longer “in rule infraction” but that he does not have “access to things other inmates do such as hot/cold cart, games, a T.V., and recreation.” He states, “I’m currently housed in Administrative Segregation on my own request and not for any kind of punishment, but still do not have access to the things listed above, every other inmate in the facility does.” He represents that he has submitted grievances regarding this issue, as well.

As relief, Plaintiff seeks compensatory damages and injunctive relief.

## II. STANDARD

When a prisoner initiates a civil action seeking redress from a governmental entity, officer, or employee, the trial court must review the complaint and dismiss the complaint, or any portion of it, if the court determines that the complaint is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. See § 1915A(b)(1), (2); *McGore v. Wrigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199 (2007).

In order to survive dismissal for failure to state a claim, “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) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “[A] district court must (1) view the complaint in the light most favorable to the plaintiff and (2) take all well-pleaded factual allegations as true.” *Tackett v. M & G Polymers, USA, LLC*, 561 F.3d 478, 488 (6th Cir. 2009) (citing *Gunasekera v. Irwin*, 551 F.3d 461, 466 (6th Cir. 2009) (citations omitted)). “But the district court need not accept a ‘bare assertion of legal conclusions.’” *Tackett*, 561 F.3d at 488 (quoting *Columbia Natural Res., Inc. v. Tatum*, 58 F.3d 1101, 1109 (6th Cir. 1995)). Although this Court recognizes that pro se pleadings are to be held to a less stringent standard than formal pleadings drafted by lawyers, *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Jourdan v. Jabe*, 951 F.2d 108, 110 (6th Cir. 1991), “[o]ur duty to be ‘less stringent’ with pro se complaints does not require us to conjure up unpled allegations.” *McDonald v. Hall*, 610 F.2d 16, 19 (1st Cir. 1979) (citation omitted).

## III. ANALYSIS

Plaintiff sues Defendants in their official capacities only. However, “[o]fficial-capacity suits . . . ‘generally represent [] another way of pleading an action against an entity of which an

officer is an agent.” *Kentucky v. Graham*, 473 U.S. 159, 165 (1985) (quoting *Monell v. New York City Dep’t of Soc. Servs.*, 436 U.S. 658, 690 n.55 (1978)). The Court therefore construes Plaintiff’s official-capacity claims against their employer, Daviess County.

When a § 1983 claim is made against a municipality, this Court must analyze two distinct issues: (1) whether Plaintiff’s harm was caused by a constitutional violation; and (2) if so, whether the municipality is responsible for that violation. *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 120 (1992). In regards to the second prong, a municipality cannot be held responsible for a constitutional deprivation unless there is a direct causal link between a municipal policy or custom and the alleged constitutional deprivation. *Monell*, 436 U.S. at 691; *Deaton v. Montgomery Cty., Ohio*, 989 F.2d 885, 889 (6th Cir. 1993). To demonstrate municipal liability, a plaintiff “must (1) identify the municipal policy or custom, (2) connect the policy to the municipality, and (3) show that his particular injury was incurred due to execution of that policy.” *Alkire v. Irving*, 330 F.3d 802, 815 (6th Cir. 2003) (citing *Garner v. Memphis Police Dep’t*, 8 F.3d 358, 364 (6th Cir. 1993)). The policy or custom “must be ‘the moving force of the constitutional violation’ in order to establish the liability of a government body under § 1983.” *Searcy v. City of Dayton*, 38 F.3d 282, 286 (6th Cir. 1994) (quoting *Polk Cty. v. Dodson*, 454 U.S. 312, 326 (1981) (citation omitted)).

In the instant case, Plaintiff alleges that his property was taken and that he has been denied access to the “hot/cold cart,” games, television, and recreation. However, he does not allege that any alleged action occurred as a result of a policy or custom implemented or endorsed by Daviess County. Plaintiff alleges an isolated occurrence affecting only him. See *Fox v. Van Oosterum*, 176 F.3d 342, 348 (6th Cir. 1999) (“No evidence indicates that this was anything more than a one-time, isolated event for which the county is not responsible.”). Accordingly,

Plaintiff's official-capacity claims must be dismissed for failure to state a claim upon which relief may be granted.

For the foregoing reasons, the Court will dismiss the action by separate Order.

Date: July 14, 2020



Joseph H. McKinley Jr., Senior Judge  
United States District Court

cc: Plaintiff, pro se  
Defendants  
Daviess County Attorney  
4414.010