

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

TODD WILLIS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. CIV-17-620-M
	)	
CITY OF OKLAHOMA CITY,	)	
a municipality, and GRAN WHEELER,	)	
individually,	)	
	)	
Defendants.	)	

**ORDER**

Before the Court is defendant City of Oklahoma City’s (“City”) Motion to Dismiss, filed June 5, 2017. On June 26, 2017, plaintiff filed his response, and on July 3, 2017, City filed its reply.

**I. Background**

On May 18, 2016, plaintiff’s wife called the police and told them that plaintiff was not allowed to be at his current location. Defendant Officer Gran Wheeler located plaintiff, arrested him, and kept him in the Oklahoma County Jail for three nights. Plaintiff alleges that he was wrongfully arrested, without any probable cause or reasonable suspicion, by Defendant Wheeler and that he was kept in the Oklahoma County Jail without cause.

On May 12, 2017, plaintiff filed the instant action in the District Court of Oklahoma County, State of Oklahoma. Plaintiff asserts the following claims against defendants: (1) unlawful seizure under the Fourth Amendment to the United States Constitution and the Oklahoma Constitution; (2) assault and battery and negligent entrustment; (3) false arrest; (4) negligence; and (5) intentional infliction of emotional distress. These claims are brought under the Oklahoma Governmental Tort Claims Act (“GTCA”) and 42 U.S.C. § 1983. On June 5, 2017, City removed

this action to this Court. City now moves, pursuant to Federal Rule of Civil Procedure 12(b)(1) and (6), to dismiss it from this action.

II. Discussion

A. State law claims

City asserts that it is entitled to dismissal on plaintiff's state law claims because plaintiff failed to comply with the notice provisions of the GTCA prior to filing this action. "Notice is a jurisdictional prerequisite to bringing an action under the GTCA. Failure to present written notice as required by the GTCA results in a permanent bar of any action derivative of the tort claim." *Harmon v. Craddock*, 286 P.3d 643, 652 (Okla. 2012) (internal citations omitted). The GTCA provides, in pertinent part:

A. Any person having a claim against the state or a political subdivision within the scope of Section 151 et seq. of this title shall present a claim to the state or political subdivision for any appropriate relief including the award of money damages.

B. Except as provided in subsection H of this section, and notwithstanding any other provision of law, claims against the state or a political subdivision are to be presented within one (1) year of the date the loss occurs. A claim against the state or a political subdivision shall be forever barred unless notice thereof is presented within one (1) year after the loss occurs.

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D. A claim against a political subdivision shall be in writing and filed with the office of the clerk of the governing body.

Okla. Stat. tit. 51, § 156 (A),(B),(D).

In his response, plaintiff admits he did not serve the City Clerk of the City of Oklahoma City as required under the GTCA. Plaintiff contends that he was informed that the Oklahoma City Police Department is under the direction and control of the Oklahoma City Office of Management and Enterprises.<sup>1</sup> However, the Oklahoma City Office of Management and Enterprises does not

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<sup>1</sup> Plaintiff does not state by whom he was given this information.

exist and the Oklahoma City Police Department is under the direction and control of the City Council of the City of Oklahoma City.

Accordingly, because plaintiff did not present written notice of his claim to the City Clerk of the City of Oklahoma City as required by the GTCA, the Court finds that plaintiff's state law claims against City are barred and should be dismissed.

B. § 1983 claim

City asserts that plaintiff's § 1983 claim should be dismissed for failure to state a claim. Regarding the standard for determining whether to dismiss a claim pursuant to Rule 12(b)(6) for failure to state a claim upon which relief may be granted, the United States Supreme Court has held:

To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief.

*Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotations and citations omitted). Further, "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged - but it has not shown - that the pleader is entitled to relief." *Id.* at 679 (internal quotations and citations omitted). Additionally, "[a] pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do. Nor does a complaint suffice if it tenders naked assertion[s] devoid of further factual enhancement." *Id.* at 678 (internal quotations and citations omitted). A court "must determine whether the complaint sufficiently alleges facts supporting all the elements necessary to establish an entitlement to relief

under the legal theory proposed.” *Lane v. Simon*, 495 F.3d 1182, 1186 (10th Cir. 2007) (internal quotations and citation omitted). Finally, “[a] court reviewing the sufficiency of a complaint presumes all of plaintiff’s factual allegations are true and construes them in the light most favorable to the plaintiff.” *Hall v. Bellmon*, 935 F.2d 1106, 1109 (10th Cir. 1991).


“[A] municipality cannot be held liable *solely* because it employs a tortfeasor – or, in other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory.” *Monell v. Dep’t of Social Servs. of the City of New York*, 436 U.S. 658, 691 (1978). In order to establish municipal liability, a plaintiff must identify a government’s policy or custom that caused the injury and that was enacted or maintained with deliberate indifference to an almost inevitable constitutional injury. *See Schneider v. City of Grand Junction Police Dep’t*, 717 F.3d 760, 769 (10th Cir. 2013).

Having carefully reviewed plaintiff’s Petition, the Court finds that plaintiff has failed to state a § 1983 claim against City. Specifically, the Court finds that plaintiff has not set forth sufficient facts showing City had a policy or custom that caused plaintiff’s injury. In his Petition, plaintiff does not allege any specific policy or custom or allege how said policy or custom caused plaintiff’s injury. Plaintiff simply appears to be seeking to hold City liable under § 1983 on a *respondeat superior* theory. Accordingly, the Court finds that plaintiff’s § 1983 claim against City should be dismissed.

III.    Conclusion

For the reasons set forth above, the Court GRANTS City's Motion to Dismiss [docket no. 4] and DISMISSES plaintiff's claims against defendant City of Oklahoma City.

**IT IS SO ORDERED this 19th day of July, 2017.**

  
VICKI MILES-LaGRANGE  
UNITED STATES DISTRICT JUDGE