UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MICHAEL PARISH, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	No. 07 C 4369
-vs-	)	
	)	Judge Matthew F. Kennelly
SHERIFF OF COOK COUNTY	)	
and COOK COUNTY,	)	
Defendants.	)	

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT SHERIFF OF COOK COUNTY'S MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT

Defendant, the SHERIFF OF COOK COUNTY, through his attorney, RICHARD A. DEVINE, State's Attorney of Cook County, by his Assistant State's Attorney, Dan iel J. Fahlgren, moves this Honorable Court pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure to dismiss Plaintiffs' Second Amended Complaint for failure to state a claim for which relief can be granted. In support of this motion Defendant states the following.

INTRODUCTION

Plaintiffs bring this civil rights action against The Sheriff of County in his official capacity, and against Cook County based on the policies of Cermak Health Services—the medical facility for the Cook County Jail , pursuant to 42 U.S.C. § 1983. (Second Amended Complaint, ¶¶ 1, 2) Plaintiffs, who were pretrial detainees at the Cook County Jail at various times and for various periods of time, sue on behalf of many other persons who were admitted

into the Cook County jail during a two year period. (Second Amended Complaint, pp. 2 et seq.) These present and former detainees seek to have this court certify this as a class action. (*Id*. p.15)

Plaintiffs allege that as a result of the policies and practices of Cermak Health Services for screening and examining new detainees, each of them suffered a violation of their constitutional rights. Specifically they allege that acting pursuant to Cermak policies, Medical personnel, who are referred to in the Second Amended Complaint as " Psych workers," medical technicians" and "physicians," in the jail refused them or delayed providing prescription medications and refused or delayed prescribing for them psychotropic medications. (Second Amended Complaint, generally). There is no allegation in the complaint that correctional officers or deputy Sheriffs or of any official from Cook County Jail who is not medical personnel from Cermak committed or omitted any act in violation of any Plaintiff's constitutional rights .

Thomas J. Dart, Sheriff of Cook County moves to dismiss the Second Amended Complaint against him because Plaintiffs have not alleged any policy for which he is responsible that may have caused them or other unnamed persons to suffer a violation of his or her constitutional rights. Therefore, Plaintiffs have not alleged a cognizable Section 1983 claim against him in his official capacity, and the Sheriff should be dismissed as a defendant.

STANDARD OF REVIEW

Federal Rule of Civil Procedure 12(b)(6) authorizes dismissal of complaints that do not state an actionable claim. The Seventh Circuit Court reaffirmed the "liberal system of notice pleading" in civil rights actions brought under 42 U.S.C. § 1983. *McCormick v. City of Chicago, et al.,* 230 F. 3d 319, 2000 U.S. App. LEXIS 25686 (7th Cir. 2000) *citing Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 113 S.Ct. 1160, 1161 (1993) However, a

court is not required to "'ignore any facts set forth in the complaint that undermine the plaintiff's claim...'" *Martin v. Davies*, 917 F.2d 336, 341 (7th Cir. 1990), *quoting Gray v. Dane County*, 854 F.2d 179, 182 (7th Cir. 1988). Moreover, a court should not strain to find inferences not plainly apparent from the face of the complaint. *Coates v. Illinois St. Bd. of Ed.*, 559 F.2d 445, 447 (7th Cir. 1988). A plaintiff may not avoid dismissal by attaching bare legal conclusions to narrated facts that fail to outline the basis of his claims. *Perkins v. Silverstein*, 939 F.2d 463, 472 (7th Cir. 1991).

ARGUMENT

Plaintiffs Have Not Alleged a Section 1983 Official Capacity Claim Against The Sheriff of Cook County

Plaintiffs' Second Amended Complaint does not state a Section 1983 claim against the Sheriff of Cook County in his official capacity, and should be dismissed. Actions brought against government officers in their official capacities are actually claims against the government entity for which the officers work. *Kentucky v. Graham,* 473 U.S. 159, 167 (1985). It is well settled that governmental employees cannot be held liable in their official capacities in a Section 1983 action unless a plaintiff can show that he suffered injuries of a constitutional magnitude as the result of an official custom, policy or practice. *Monell v. Department of Social Services of the City of New York,* 98 S.Ct. 2018, 2036 (1977). The *Monell* court rejected a theory of *de facto respondeat superior* liability on governmental entities. *Id.* at 2037.

Courts have identified three instances in which a municipality or official can be said to have violated the rights of a person because of its policy: (1) an express policy that, when enforced, causes a constitutional deprivation, (2) a widespread practice that, although not authorized by written law or express municipal policy, is "so permanent and well settled as to constitute a 'custom or usage' with the force of law," or (3) an allegation that the constitutional

injury was caused by a person with "final policymaking authority." *Baxter by Baxter v. Vigo County School Corp.,* 26 F.3d 728, 735 (7th Cir. 1994)(citatio ns omitted). More importantly, a plaintiff must demonstrate that a municipality, through its own deliberate conduct, was the moving force behind the alleged injury. *County Comm'r of Bryan County v. Brown,* 117 S. Ct. 1382, 1388 (1997); *Polk County v. Dodson,* 102 S. Ct. 445 (1981).

In *Jackson v. Marion County,* 66 F.2d 151, 153 -54 (7th Cir. 1995), the Seventh Circuit stated:

"Allegations in a complaint are binding admissions...and admissions can of course admit the admitter to the exit from the federal courtho use...So when as in *Baxter by Baxter v. Vigo County School Corp.* 26 F.3d 728 (7th Cir. 1994) the complaint names an official in his official capacity (making it a suit against the office, that is, the governmental entity itself) without a clue as to what the authority of the office is or what policy of the office the plaintiff believes violated his rights, the suit is properly dismissed on the pleadings." (citations omitted).

Although a plaintiff is not held to a heightened standard of pleading in order to state a *Monell* claim, his official capacity claim must at a minimum include allegations in conclusory language that a policy existed, buttressed by facts alleging wrongdoing by the governmental entity. *McCormick v. City of Chicago, et al.,* 230 F. 3d 319, 325 2000 U.S. App. LEXIS 25686,**16 (7th Cir. 2000).

Even applying the liberal notice pleading standard, Plaintiffs ' allegations are insufficient to state an official capacity claim against the Sheriff of Cook County. Plaintiffs allege that medical personnel provided inadequate or delayed medical treatment in the Cook County jail as a result of the policies of Cermak Health Services in prescribing and providing medication for the putative class members. However, Plaintiffs do not allege that the inadequate medical treatment

policies were those of the Sheriff. Plaintiffs do not allege that the Sheriff had any role in formulating Cermak policies for assessing the psychological health of inmates or for prescribing medication for inmates. Nor do Plaintiffs allege that the Sheriff's policies caused them to receive inadequate or delayed medical care.

Cermak Health Services of Cook County is a department of the Cook County Bureau of Public Health, and not a department under the control of the Sheriff of Cook County. Cermak has responsibility for providing health care for those detained in the Cook County Jail. The quality of healthcare provided by professionals employed at Cermak Health Services has nothing to do with the § 1983 liability of the defendants Sheriff of Cook County, as Cermak Health Service is a legal entity distinct from that of Defendants. *Nyberg v. Puisis*, 93 C 6602, 1995 U.S. Dist. Lexis 14004; 55 ILCS 55-37001 (N.D. Ill, J. Plunkett).

There is no allegation in the complaint that correctional officer s or deputy Sheriffs or of any official from Cook County Jail who is not medical personnel from Cermak committed or omitted any act in violation of any Plaintiff's constitutional rights.

Plaintiffs' allegations are not sufficient to state a *Monell* policy claim against the Sheriff of Cook County. Plaintiffs fail to allege that a policy, custom, or practice for which the Sheriff of Cook County is responsible was a cause or contributing cause for their alleged constitutional injury. Accordingly, under *Monell, McCormick, Baxter by Baxter* and their progeny, Plaintiffs fail to state an official capacity claim pursuant to 42 U.S.C. § 1983, against the Sheriff, and he should be dismissed from this case.

CONCLUSION

For the foregoing reasons, the Second Amended Complaint should be dismissed against defendant Sheriff of Cook County for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Respectfully Submitted,
RICHARD A. DEVINE
State's Attorney of Cook County

By: *s/Daniel J. Fahlgren*

Daniel J. Fahlgren
Assistant State's Attorney
Torts and Civil Rights Litigation Section
500 Richard J. Daley Center
Chicago, IL 60602
(312) 603-3304
6201163