Circuit Court for Howard County
Case No. C-13-CV-22-000816

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2079

September Term, 2022

KESI COLE

v.

HOWARD COUNTY POLICE DEPARTMENT, ET AL.

Reed,
Friedman,
Zic,

JJ.

Opinion by Zic, J.

Filed: June 21, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

The appellant, Kesi Cole, appeals from the dismissal of her amended complaint filed in the Circuit Court for Howard County against appellees, Howard County Police Department (the "Department") and Howard County (the "County").

Ms. Cole presents the following questions for our review:

I. Did [Ms. Cole] state a viable cause of action against [the Department and the County]?

II. Did the [t]rial [c]ourt err when the court granted the motion to dismiss with prejudice?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

BACKGROUND

Ms. Cole filed a complaint in the circuit court against the Department, alleging that on April 6, 2021, Department police officers responded to a call from Ms. Cole's neighbor who reported that Ms. Cole was "choking her minor daughter." Ms. Cole further alleged that the police officers, believing that she was having a "manic episode" forcibly "dragged [her] out of [her] family home into a police cruiser completely naked" and transported her to Howard General Hospital. Ms. Cole did not name the individual police officers as defendants in the complaint.

Ms. Cole claimed that she suffered "severe, painful injuries about her head, body and limbs" and emotional distress as a result of the actions of the Department's police officers. She claimed that the Department "failed to have a policy, protocol, and/or procedure which would allow for [her] to get dressed before being removed from her home in order to preserve her privacy as much as possible, while not posing a threat of

harm to anyone, and not to be subject to an unreasonable search and seizure and detention in violation of the Maryland Declaration of Rights, Article 24."

The Department filed a motion to dismiss the complaint and memorandum of law. On December 2, 2022, Ms. Cole filed an amended complaint against the County.[1] On December 16, 2022, the County filed a motion to dismiss the amended complaint and memorandum of law. Ms. Cole filed an opposition to the County's motion to dismiss the amended complaint. On January 10, 2023, in a one-page order, the court granted the Department's motion and dismissed the amended complaint with prejudice. The court's order was docketed on January 11, 2023. Ms. Cole noted an appeal on January 30, 2023.

STANDARD OF REVIEW

This Court "review[s] the grant of a motion to dismiss for failure to state a claim de novo." *Sullivan v. Caruso Builder Belle Oak, LLC*, 253 Md. App. 304, 316 (2021) (citation omitted). "In conducting this review, we assume that the facts and allegations in the complaint, and any inferences that may be drawn from them, are true and view them in a light most favorable to the non-moving party." *Balfour Beatty Infrastructure, Inc. v. Rummel Klepper & Kahl, LLP*, 451 Md. 600, 609 (2017) (citation omitted). We "must determine whether the [c]omplaint, *on its face*, discloses a legally sufficient cause of action." *Pittway Corp. v. Collins*, 409 Md. 218, 234 (2009) (emphasis in original). A court's decision granting a motion to dismiss is proper where the alleged facts and

[1] The amended complaint stated that the complaint was amended by adding the County. In the caption of the amended complaint, however, the County was substituted for the Department.

permissible inferences, even if proven, would afford no relief to the plaintiff. *Scarbrough v. Transplant Res. Ctr. of Maryland*, 242 Md. App. 453, 472 (2019) (citation omitted).

DISCUSSION

Ms. Cole argues that the circuit court erred in dismissing her amended complaint because she stated a viable claim against the County under *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978). She contends that the County is liable for failing to have a policy or procedure in place to protect her from the constitutional violation she suffered when she was removed from her home unclothed. She further contends that the circuit court erred in dismissing her amended complaint with prejudice.

The County responds that the circuit court's dismissal of Ms. Cole's amended complaint was proper because she failed to plead a cause of action in her amended complaint, as required by Md. Rule 2-303(a), and she failed to sufficiently plead a "pattern or practice claim" under *Monell*, 436 U.S. 658, or *Prince George's County v. Longtin*, 419 Md. 450 (2011). The County further asserts that the circuit court properly exercised its sound discretion in dismissing Ms. Cole's amended complaint with prejudice.

I. THE CIRCUIT COURT DID NOT ERR IN DISMISSING MS. COLE'S AMENDED COMPLAINT.

A party pleading a cause of action in a complaint must comply with the requirements of Md. Rule 2-303. Specifically, Md. Rule 2-303(a) requires that "[a]ll averments of clam or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of

circumstances[,]" and "[e]ach cause of action shall be set forth in a separately numbered count." This pleading rule "serves four important purposes: (1) it provides notice to the parties as to the nature of the claim or defense; (2) it states the facts upon which the claim or defense allegedly exists; (3) it defines the boundaries of litigation; and (4) it provides for the speedy resolution of frivolous claims and defenses." *Ledvinka v. Ledvinka*, 154 Md. App. 420, 429 (2003) (citation omitted). A complaint that fails to set forth separate causes of action in separate counts is deficient, and dismissal may be warranted on that ground. *Tavakoli-Nouri v. State*, 139 Md. App. 716, 733 (2001) (citation omitted).

In this case, Ms. Cole's amended complaint consisted of 16 consecutively numbered paragraphs, none of which specifically identified a cause of action in a numbered count. To the extent that the circuit court's dismissal of the amended complaint was based on this technical ground, it would not have been improper. *See id*. Because the allegations in the amended complaint placed the County on notice that she was pursuing a claim for damages based on a *Monell* "pattern or practice" claim, and the County moved for dismissal of the amended complaint for failure to adequately plead a *Monell* claim, we shall address the merits of her argument as to that claim.

In *Monell*, the Supreme Court of the United States held that a municipality is liable under the federal Civil Rights Act, 42 U.S.C. § 1983, for a constitutional violation that was caused by the execution of the municipality's policy or custom, "whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy[.]" 436 U.S. at 694. To establish liability, a plaintiff must demonstrate that a municipal policy or custom was the "moving force [behind] the constitutional

violation[.]" *Id*. Where, however, injuries were inflicted solely by the municipality's employees or agents, a municipality is not liable for injuries under a theory of *respondeat superior*. 436 U.S. at 693-94.

In *Longtin*, the Supreme Court of Maryland considered whether a "*Monell*-type" claim was viable in Maryland based on a "pattern or practice" violation of the Maryland Constitution or Declaration of Rights. 419 Md. at 458. There, Longtin was arrested and charged with raping and murdering his wife, and imprisoned for over eight months, the last six months of which occurred after police had obtained DNA test results that excluded Longtin as the perpetrator. *Id.* at 459, 462. Longtin alleged that the police department's then-police chief and Criminal Investigations Division "'maintained a policy of unconstitutional and unlawful detention and interrogation' and that his arrest and detention were not 'a single isolated, accidental, or peculiar event[.]'" *Id*. at 490. Longtin further alleged the existence of "a regular pattern and practice of conduct similar to that complained of here[,]" that had "manifested in other prior incidents involving officers, and employees of the [police department]." *Id*.

In analyzing *Monell*, the Court distinguished federal law from Maryland common law, stating "'that local governmental entities do, indeed, have *respondeat superior* liability for civil damages resulting from State Constitutional violations committed by their agents and employees within the scope of employment.'" *Id*. at 494 (quoting *DiPino v. Davis*, 354 Md. 18, 51-52 (1999)); *accord Cunningham v. Baltimore County*, 246 Md. App. 630, 695 (2020). The Court noted that "Maryland's constitution requires more of its municipalities, and accordingly this Court has declined to shield

municipalities from the unconstitutional acts of its officials." *Longtin*, at 493 (citing *DiPino*, 354 Md. 18). "[U]nlike federal law, Maryland's constitution imposed an affirmative obligation to avoid constitutional violations by its employees through 'adequate training and supervision' and by 'discharging or disciplining negligent or incompetent employees.'" *Id*. at 495 (citing *DiPino*, 354 Md. at 53). The Court explained that "[a] pattern or practice claim is merely a more egregious subset of the actions that are prohibited by Maryland constitutional law." *Id*.

To establish a "pattern or practice" claim, a plaintiff "must point to a 'persistent and widespread practice[] of municipal officials,' the 'duration and frequency' of which indicate that policymakers (1) had actual or constructive knowledge of the conduct, and (2) failed to correct it due to their 'deliberate indifference.'" *Owens v. Baltimore City State's Attorneys Office*, 767 F.3d 379, 402 (4th Cir. 2014) (quoting *Spell v. McDaniel*, 824 F.2d 1380, 1386-91 (4th Cir. 1987)). A plaintiff can establish "[a] sufficiently close causal link between such a known but uncorrected custom or usage and a specific violation" so long as "occurrence of the specific violation was made reasonably probable by permitted continuation of the custom." *Spell*, 824 F.2d at 1391 (affirming verdict imposing liability on municipality based on "voluminous" evidence that use of excessive force, specifically the physical restraint technique used on the plaintiff, was a municipal policy that was "condoned and encouraged" by the police chief and enforced with a "code of silence" (*Id*. at 1393-94)).

Here, Ms. Cole asserted a single claim against the County for the unconstitutional absence of a County "policy, protocol, and/or procedure which would allow for [her] to

get dressed before being removed from her home[.]" A claim relating to the absence of a policy, or inadequacy of a policy, however, must be supported by a showing that the injury resulted from a practice, usage, or custom attributable to the municipality. *See City of Oklahoma City v. Tuttle*, 471 U.S. 808, 823-34 (1985); *Carter v. Morris*, 164 F.3d 215, 219-20 (4th Cir. 1999) (affirming summary judgment in favor of a municipality on a *Monell* claim where the plaintiff's failure to show a "relevant incident prior to her own case of which the [municipality] could have had knowledge and in which it acquiesced" failed to establish a practice that rose to the level of a municipal custom).

Ms. Cole's amended complaint failed to identify any other incidents that would indicate a persistent practice of the Department's officers in their handling of situations similar to the one she experienced. Though she states in her brief that "this arrest procedure" was not a "single isolated, accidental or peculiar event," she failed to make that assertion in her amended complaint or allege facts to support that assertion. Generally "[i]solated, unprecedented incidents [of police action] are insufficient to create municipal liability." *Doe v. Broderick*, 225 F.3d 440, 456 (4th Cir. 2000) (affirming dismissal of a *Monell* claim based on a lack of evidence that a police search of methadone clinic was part of "a 'persistent and widespread' practice" such that the county could be held liable). Generally, "[p]roof of a single incident of unconstitutional activity is not sufficient to impose liability under *Monell,* unless proof of the incident includes proof that it was caused by an existing, unconstitutional municipal policy, which policy can be attributed to a municipal policymaker." *Tuttle*, 471 U.S. at 823-34; *accord Reid v. Munyan*, No. WMN-12-1345, 2012 WL 4324908, at *3 (D. Md. Sept. 18, 2012) ("The

Complaint details a single incident of misconduct and a single incident alone establishes neither a policy or custom . . . nor a claim for inadequate training.") (internal citations omitted).

Because Ms. Cole failed to plead facts showing that her injury was caused by a persistent, widespread practice or custom within the Department, we conclude that the circuit court did not err in dismissing her amended complaint for failure to state a claim upon which relief can be granted.

II. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN DISMISSING MS. COLE'S CLAIM WITH PREJUDICE.

We review a trial court's decision to dismiss a case with prejudice for an abuse of discretion. *Zdravkovich v. Siegert*, 151 Md. App. 295, 310 (2003). "Generally speaking, a dismissal with prejudice is ordered in cases where the dismissal is based on an appraisal of the legal sufficiency of the claim" and "the substantive merits of the case." *Mohiuddin v. Drs. Billing & Mgmt. Sols. Inc*., 196 Md. App. 439, 452 (2010). In contrast, a dismissal without prejudice is more likely to be granted in a case involving a procedural issue "that does not engage the merits of *res judicata* and that can be readily rectified on the next try." *Id*.

In this case, Ms. Cole's failure to allege facts establishing a cause of action against the County for a *Monell*- style violation was a substantive deficiency, not a procedural one. Ms. Cole had the opportunity to amend her complaint and include additional relevant facts to support her claim, but she failed to do so. Accordingly, we see no abuse of discretion in the circuit court's decision to dismiss her claim with prejudice.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.