

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-13208-EE

BRENDA J. BURCH,

Plaintiff - Appellant,

versus

**ATLANTA CITY COURT,
FULTON COUNTY,**

Defendants - Appellees.

**Appeal from the United States District Court
for the Northern District of Georgia**

BEFORE: MARTIN, JILL PRYOR and BLACK, Circuit Judges.

PER CURIAM:

The petition(s) for panel rehearing filed by BRENDA J. BURCH is DENIED.

ENTERED FOR THE COURT:



UNITED STATES CIRCUIT JUDGE

ORD-41

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-13208
Non-Argument Calendar

D.C. Docket No. 1:17-cv-00516-TCB

BRENDA J. BURCH,

Plaintiff-Appellant,

versus

ATLANTA CITY COURT,
FULTON COUNTY,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

(June 28, 2018)

Before MARTIN, JILL PRYOR and BLACK, Circuit Judges.

PER CURIAM:

Brenda J. Burch appeals the district court's dismissal of her pro se complaint seeking damages under 42 U.S.C. § 1983. As required by 28 U.S.C. § 1915(e)(2)(B), the district court reviewed her complaint to determine whether it alleged facts sufficient to state a claim. Concluding it did not, the district court gave Burch an opportunity to amend her complaint to correct its deficiencies. Burch supplemented her complaint, but the district court determined the complaint still failed to state a plausible federal claim. In addition, the district court determined Burch sought damages against defendants who were immune from such claims under the Eleventh Amendment. It therefore dismissed Burch's complaint, and Burch timely appealed. After careful review,¹ we affirm.²

¹ We review a district court's *sua sponte* dismissal for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B)(ii) *de novo*, viewing all allegations in the complaint as true. *Hughes v. Lott*, 350 F.3d 1157, 1159–60 (11th Cir. 2003). Pro se pleadings are construed liberally, and we hold them “to a less stringent standard than pleadings drafted by attorneys.” *Id.* at 1160 (quotation omitted). Issues of immunity under the Eleventh Amendment are also reviewed *de novo*. *United States v. Ala. Dep't of Mental Health & Mental Retardation*, 673 F.3d 1320, 1324 (11th Cir. 2012).

² We affirm on the basis that Burch failed to state a plausible federal claim. Because this action was dismissed by the district court *sua sponte*, Defendants have not appeared in the case. Thus, neither Atlanta City Court nor Fulton County has asserted a sovereign-immunity defense to Burch's claims. We are therefore free to resolve the merits of Burch's claims before addressing whether her claims would otherwise be barred by the Eleventh Amendment. *See McLendon v. Ga. Dep't of Comty. Health*, 261 F.3d 1252, 1257–59 (11th Cir. 2001) (holding that the merits of a plaintiff's claims may sometimes be reached before addressing the issue of immunity under the Eleventh Amendment); *see also U.S. ex rel. Burlbaw. v. Orenduff*, 548 F.3d 931, 942 (10th Cir. 2008) (“This is not a case in which the State defendant (or those purportedly covered by the State's immunity) has directly asserted Eleventh Amendment immunity. If a State defendant had asserted it, addressing the threshold jurisdictional matter would be obligatory. Without such an assertion, we are not obligated to resolve the Eleventh Amendment issue.” (footnote omitted)). This approach is particularly appropriate here, where the merits are straightforward and there is no adversarial process to assist the Court in determining the more

Burch failed to state a claim because she did not allege facts sufficient to demonstrate her injuries were caused by a custom or policy that was deliberately indifferent to her civil rights. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690–91 (1978); *McDowell v. Brown*, 392 F.3d 1283, 1289 (11th Cir. 2004). Although Burch alleged facts suggesting Defendants failed to properly maintain their records of her traffic violations and court appearances, which led to her erroneous arrest, she merely speculates as to the reason why those records were not updated properly—unlawful discrimination. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–56 (2007) (“Factual allegations must be enough to raise a right to relief above the speculative level.”).

At a minimum, Burch needed to plead facts demonstrating Defendants’ failure to update their records went beyond mere negligence. *See Cannon v. Macon Cty.*, 1 F.3d 1558, 1563 (11th Cir. 1993) (“[N]egligent conduct does not give rise to § 1983 liability for resulting unintended loss of or injury to life, liberty, or property.”). Even construed liberally, Burch failed to allege such facts. We therefore conclude the district court did not err by dismissing her complaint.

AFFIRMED.

complicated issue of whether a Georgia municipal court is an “arm of the State” for purposes of the Eleventh Amendment. *See Tennessee v. Lane*, 541 U.S. 509, 527 n.16 (2004) (citing favorably cases where federal appellate courts concluded municipal courts in certain states are entitled to Eleventh Amendment immunity); *Tuveson v. Fla. Governor’s Council on Indian Affairs, Inc.*, 734 F.2d 730, 732 (11th Cir. 1984) (providing four-factor test for determining whether a particular entity is entitled to immunity under the Eleventh Amendment).

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

BRENDA J. BURCH,

Plaintiff,

v.

ATLANTA CITY COURT and
FULTON COUNTY,

Defendants.

CIVIL ACTION FILE

NUMBER 1:17-cv-516-TCB

O R D E R

On June 14, 2017, as part of a frivolity review pursuant to 28 U.S.C. § 1915(e)(2), the Court ordered Plaintiff Brenda J. Burch to file an amended complaint that addressed the deficiencies in her initial pleading. [6]. The Court indicated that the “new complaint must state, with more clarity, the basis for Burch’s § 1983 claims, the extent of her allegations of discrimination, and the relief she is seeking. Otherwise, this case will be dismissed pursuant to 28 U.S.C. § 1915(e).” *Id.* at 4.

On June 23, Burch filed her “amendment documents.” [7]. The filing is not an amended complaint, but instead is supplemental material designed to augment the original complaint. Burch explains

that she's seeking various types of damages—nonmonetary, monetary, and punitive damages—and described the mental anguish she has suffered as a result of Defendants' alleged tortious actions. Next—in a response to one of the questions the Court raised in the previous order—she states that she was bonded out of Fulton County Jail on February 7, 2017, and goes on to describe a dispute she has with the bond agent concerning paperwork pertaining to her case. The rest of the filing consists of supporting documents that show some of the fines Burch faced for vehicular misdemeanors and her efforts to satisfy those fines.

At the onset, Burch did not follow the Court's instructions to file an amended complaint. The two-page document she filed is inadequate as a pleading, and therefore this case could be dismissed for failure to follow a lawful court order. *See LR 41.3(A)(2), NDGa.*

Moreover, even if the Court incorporated Burch's latest filing into her original complaint, the case would still warrant dismissed under 28 U.S.C. § 1915(e). Dismissal is appropriate where a claim "lacks an arguable basis either in law or fact." *Neitzke v. Williams*, 490 U.S. 319,

325 (1989). Additionally, a complaint may be dismissed for failure 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 Atl. Corp. v. Twombly*, 550 U.S. 544, 547 (2007).

Even taking account of Burch’s latest filing, she has essentially alleged only that Fulton County, Georgia has negligently maintained its database concerning bench warrants, thus causing her to be arrested without cause.¹ However, negligent action is insufficient to state a federal claim under §1983 against a municipality. *See Grech v. Clayton Cty., Ga.*, 335 F.3d 1326, 1329–30 (11th Cir. 2003). Burch does not allege that the arresting officers knew the bench warrant information was inaccurate, nor that the decision to arrest her was wanton or malicious. *See Fullman v. Graddick*, 739 F.2d 553, 561 (11th Cir. 1984) (denying § 1983 liability where police relied in good-faith on a facially valid arrest warrant); *Harvey v. State*, 469 S.E.2d 176, 178–79 (Ga.

¹ The complaint does reference discrimination—accusing Fulton County of “[l]ocking up innocent Black Men and Women”—but Burch never connects these oblique references to her own case. [1-1] at 3. Absent any allegation that she herself has suffered discrimination, the only allegation that remains is that of Fulton County’s negligence.

1996) (holding that police had probable cause to arrest defendant, notwithstanding later discovery that bench warrant had been recalled). Accordingly, she has failed to state a claim under 42 U.S.C. § 1983, meaning there would be no subject-matter jurisdiction for the Court to hear her claims.²

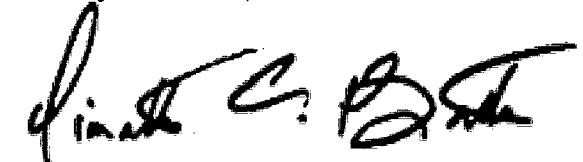
Additionally, the putative Defendants—the “Atlanta City Court” and Fulton County—are immune from suit. A state’s court system is entitled to sovereign immunity, *McBrearty v. Koji*, 348 F. App’x 437, 440 (11th Cir. 2009) (per curiam), and any judges in the court system are protected by absolute judicial immunity, *see Smith v. Shook*, 237 F.3d 1322, 1325 (11th Cir. 2001) (“Generally, judicial immunity applies to a judge who dealt with the plaintiff in a judicial capacity and did not act in the clear absence of all jurisdiction.” (quotation marks omitted)). Fulton Community, as an arm of the state, is also entitled to sovereign immunity, *Gilbert v. Richardson*, 452 S.E.2d 476, 478–79 (Ga. 1994),

² Burch does not allege any other federal claims, nor does she allege that diversity jurisdiction exists.

and the Court is not aware of any waiver of sovereign immunity that would cover Burch's claims.

Accordingly, the case is dismissed for failure to state a claim pursuant to 28 U.S.C. § 1915(e). The Clerk is directed to close this case.

IT IS SO ORDERED this 30th day of June, 2017.



Timothy C. Batten, Sr.
United States District Judge

**Additional material
from this filing is
available in the
Clerk's Office.**