NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted July 20, 2022*
Decided July 20, 2022

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 21-2433

DEBRA SAUER,
Plaintiff-Appellant,

v.

CITY OF CHICAGO, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 14-cv-07191

Andrea R. Wood,
Judge.

ORDER

Debra Sauer sued the City of Chicago, two police officers, plus Northwestern Memorial Hospital, Methodist Hospital of Chicago, and their staff, after she was involuntarily hospitalized. Over the course of eight amended or proposed amended complaints, Sauer dropped her claims against the hospitals and their staff, but then

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* We have agreed to decide this case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

sought to bring those claims back in her final operative complaint. The district court eventually granted summary judgment to the City and the police officers and dismissed all of Sauer's other claims for failure to serve the remaining defendants. A year later, Sauer moved for relief from the judgment seeking to revive her claims against one hospital and doctors affiliated with both hospitals. When that motion was denied, she moved for reconsideration, and the court partially granted that request, vacating its prior order but still leaving the judgment intact. Sauer now appeals the order resolving her motion to reconsider her motion for relief from the judgment. Because the district court did not abuse its discretion by declining to reopen Sauer's case, we affirm.

This case has a long and complex history. It began a decade ago, when police officers responded to a domestic dispute and determined Sauer was a danger to herself and others. They brought her to Northwestern for involuntary treatment, and that hospital then transferred her to Methodist for further treatment before she was released two weeks later. In 2014, she sued the officers, the City, the two hospitals, and the staff that treated her, alleging the officers violated her rights under the constitution and bringing state-law claims against the various medical defendants. Sauer amended her complaint and otherwise dropped or added claims repeatedly. In 2015, she voluntarily dismissed her claims against Northwestern and staff at both hospitals, ostensibly under Rule 41(a) of the Federal Rules of Civil Procedure.

A year later, however, she filed a fifth amended complaint without the court's leave and sought to add back the dismissed claims. The court struck that complaint, allowed Sauer to refile, and ordered her to serve any new or returning defendants. *See* FED. R. CIV. P. 4(m). Methodist Hospital settled, and the claims against it were dismissed, while the participating defendants that remained—the City and police officers—moved for summary judgment. Despite multiple extensions, Sauer did not timely file a response. Eventually, in March 2020, the district court granted the City and the officers judgment as a matter of law on Sauer's constitutional claims. It then dismissed her claims against any other defendants named in the complaint without prejudice because she had not served any of them with her fifth amended complaint, as she had been ordered. Sauer did not appeal.

One year after the court entered judgment, Sauer (now without a lawyer) moved for relief from the judgment under Rule 60(b) of the Federal Rules of Civil Procedure. She sought to revive her claims against one of the hospitals and doctors from both hospitals, but the court denied the motion as untimely, on the view that she had voluntarily dismissed the claims back in 2015. Sauer filed a notice of appeal and, at the

same time, moved in the district court to reconsider its ruling on her Rule 60 motion. She pointed out that she had realleged her claims against Northwestern and the doctors in her fifth amended complaint and contended it was her lawyer's fault the complaint was not served. We dismissed her appeal as untimely. *See Sauer v. City of Chicago*, No. 21–1924 (7th Cir. dismissed Jul 23, 2021).

The district court, meanwhile, granted in part Sauer's motion to reconsider its ruling on her Rule 60 motion. The court acknowledged that its prior order had overlooked the revived allegations in the fifth amended complaint, so it vacated that order. But it still declined to reopen the case. The court explained that it had already entered judgment on the constitutional claims against the officers and the City and had dismissed all the remaining claims without prejudice for failure to serve the complaint. It now explained that it also would have relinquished supplemental jurisdiction over those state-law claims under 28 U.S.C. § 1367(c)(3), which would have had the same effect.

Sauer appealed again, and this appeal is timely only with respect to the order denying her motion to reconsider the denial of her Rule 60 motion. *See* 28 U.S.C. § 2107(a); *Bell v. McAdory*, 820 F.3d 880, 882 (7th Cir. 2016). Regarding that order, she maintains only that the district court's refusal to reopen the case improperly penalized her for the mistakes of her "miscreant lawyer." Ineffective assistance of counsel, though, is never grounds to reopen a judgment in a civil case. *See Bell v. Eastman Kodak Co.*, 214 F.3d 798, 802 (7th Cir. 2000). The district court did not abuse its discretion in letting the judgment stand despite Sauer's protests.

Otherwise, Sauer seeks to challenge the underlying summary judgment for the police officers and the City, asserting that the district court improperly construed disputed facts against her. But we lack jurisdiction to review that order. A notice of appeal must be filed within 30 days of the judgment, FED. R. APP. P. 4(a); *Bowles v. Russell*, 551 U.S. 205, 210 (2007), and Sauer noticed this appeal more than a year after that deadline passed.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS

Debra Sauer,

Plaintiff(s),

v.

Methodist Hospital, Northwestern Memorial Hospital, City of Chicago, Olivia Stovall, S Rogos, Maher AlKoubaytari, Aaron Grossman, Maxim Chasanov, Christopher Lowden, Ronald Gordineer, Cerritos, Clarito Sarangay,

Defendant(s).

Case No. 14-cv-07191
Judge Andrea R. Wood

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

☐ in favor of plaintiff(s)
and against defendant(s)
in the amount of $,

which ☐ includes pre–judgment interest.
☐ does not include pre–judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

☒ in favor of defendant(s) Olivia Stovall, Scott Rogus, and the City of Chicago
and against plaintiff(s) Debra Sauer.
Defendant(s) shall recover costs from plaintiff(s).

☐ other:

This action was *(check one)*:

☐ tried by a jury with Judge presiding, and the jury has rendered a verdict.
☐ tried by Judge without a jury and the above decision was reached.
☒ decided by Judge Andrea Wood on a motion for summary judgment [232].

Date: 3/11/2020

Thomas G. Bruton, Clerk of Court
/s/Enjoli Fletcher, Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DEBRA SAUER,	)	
	)	
Plaintiff,	)	
	)	No. 14-cv-07191
v.	)	
	)	Judge Andrea R. Wood
METHODIST HOSPITAL, et al.,	)	
	)	
Defendants.	)	

ORDER

Defendants' motion for summary judgment [232] is granted. The Clerk is directed to enter Judgment in favor of Defendants Olivia Stovall, Scott Rogus, and the City of Chicago. The remaining Defendants named in the Fifth Amended Complaint are dismissed without prejudice under Federal Rule of Civil Procedure 4(m) due to Plaintiff's failure to serve them within 90 days of filing the Fifth Amended Complaint. Any other pending motions and hearing dates are stricken. Civil case terminated. See the accompanying Statement for details.

STATEMENT

Plaintiff Debra Sauer was visiting her mother when the two got into a heated argument that ultimately escalated to the point that the police were called. When Defendants, Chicago Police Officers Olivia Stovall and Scott Rogus,[1] arrived on the scene, they concluded that Sauer presented a threat to the safety of herself and others. Therefore, they took Sauer to the hospital and filed a petition for involuntary admission. Sauer subsequently filed the present action against Defendants under 42 U.S.C. § 1983, claiming that they violated her rights under the Fourth Amendment and the Fourteenth Amendment's Due Process Clause when they involuntarily committed her. Defendants now move for summary judgment on both of those claims. (Dkt. No. 232.) For the reasons that follow, Defendants' motion for summary judgment is granted.

I.

Defendants filed their motion for summary judgment on March 8, 2019. Subsequently, Sauer's counsel filed two successive motions for extensions of time to file Sauer's opposition. (Dkt. Nos. 237, 241.) Yet the new May 24, 2019 deadline passed without Sauer filing her opposition. It was not until July 29, 2019 that Sauer's counsel moved again for an extension of time to file her opposition. (Dkt. No. 245.) After Sauer's counsel filed a declaration explaining the

[1] The City of Chicago is also named as a Defendant. However, because it is named only for indemnification purposes, the Court will use "Defendants" when referring to Stovall and Rogus collectively.

reasons for his delay, the Court gave Sauer one final extension. Nonetheless, Sauer's counsel failed to meet that deadline. Instead, on September 11, 2019—five days after the final deadline—Sauer's counsel filed a motion for an extension of time that attached Sauer's opposition to Defendants' motion for summary judgment. (Dkt. No. 251.) The Court denied the motion for an extension of time and took Defendants' motion for summary judgment under advisement as unopposed.

In light of Sauer's failure to timely file her opposition, the following facts taken from Defendants' Statement of Material Facts ("DSMF") are treated as undisputed so long as they are supported by the record. *See Rodriguez-Bey v. Galiger*, No. 11 C 7288, 2013 WL 139877, at *2 (N.D. Ill. Jan. 10, 2013) ("When a party fails to respond to a motion for summary judgment, its failure constitutes an admission that there are no disputed issues of genuine fact warranting a trial." (internal quotation marks omitted)).

II.

On September 15, 2012, Sauer was at a condominium owned by her 86-year-old mother, Sedelle Sauer ("Sedelle"). (DSMF ¶¶ 3–4, Dkt. No. 234.) While there, Sauer got into an argument with her mother about replacing a broken television. (*Id.* ¶ 3.) During the argument, Sauer raised her voice to intimidate Sedelle and called her several derogatory names. (*Id.* ¶ 5.) By the end of the argument, Sedelle had to go into her bedroom to lie down because her blood pressure had increased. (*Id.* ¶ 6.) Sedelle also called her other daughter, Sharon Sauer ("Sharon"), to help mediate the dispute. (*Id.* ¶ 8.)

When Sharon arrived at Sedelle's condominium, Sedelle was still in her bedroom and Sauer was in the living room. (*Id.* ¶ 10.) As she entered the apartment, Sharon encountered Sauer, who told Sharon that "If I keep bugging Sedelle, she'll die." (*Id.* ¶ 10.) Sharon interpreted those words as a threat and believed that if Sauer did not leave, she would harm Sedelle. (*Id.* ¶ 11.) Consequently, Sharon called her daughter, Mareva Lindo, and asked her to come over and help. (*Id.* ¶ 12.) She also told Lindo that Sedelle was having shortness of breath and saying "my heart, my heart." (*Id.*)

Lindo arrived at Sedelle's condominium and found Sedelle lying down and looking distressed as Sauer tried to interact with her. (*Id.* ¶ 13.) According to Lindo, Sauer was very upset and pacing. (*Id.* ¶ 14.) In addition, Sauer appeared paranoid and spoke in a disorganized and illogical manner. (*Id.* ¶ 15.) After Lindo tried to separate Sauer from Sedelle, Sauer reacted in a very aggressive manner and attempted to record the interaction on her phone. (*Id.* ¶ 16.) Concerned that Sauer might "do something" and fearing for Sedelle's safety, Lindo called the police. (*Id.* ¶¶ 16–17.) Lindo was also worried that Sauer was a threat to her own safety. (*Id.* ¶ 18.)

Defendants Stovall and Rogus, responded to Lindo's call. (*Id.* ¶ 19.) Upon their arrival, they spoke with both Lindo and Sharon. (*Id.* ¶¶ 20–21.) Lindo told Defendants about what she described as Sauer's "alarming behavior" toward Sedelle and expressed concerns about Sauer's mental health. (*Id.* ¶ 20.) Similarly, Sharon told Defendants that Sauer was not behaving in a normal manner, was emotionally erratic, and had threatened to harm herself if she did not get her

way. (*Id.* ¶ 21.) In addition, Sharon expressed concern for Sedelle's well-being. (*Id.*) Defendants then spoke with Sedelle, who told Defendants that Sauer was yelling at her and causing her blood pressure to increase. (*Id.* ¶ 24.) Sedelle also told Defendants that Sauer had previously experienced manic episodes and had attempted suicide in the past. (*Id.* ¶ 22.) One past attempt occurred in June 2012, when Sauer threatened suicide and then took 20 sleeping pills after Sharon refused to loan her money. (*Id.* ¶ 23.) Sauer also had recently been held in a psychiatric ward for a week. (*Id.* ¶ 25.)

Based on their discussions with Lindo, Sharon, and Sedelle, Defendants concluded that Sauer posed a risk to herself or others and that she needed to be hospitalized. (*Id.* ¶ 26.) Both Defendants' conclusions were reinforced by their personal observations of Sauer speaking in a disorganized and illogical manner and appearing paranoid. (*Id.* ¶¶ 27–28.) Defendants took Sauer—who was not handcuffed—to Northwestern Hospital. (*Id.* ¶¶ 29–30.) Sedelle did not object to Defendants' decision, as she believed that it may be for the best for Sauer to go in for observation and hoped that Sauer would receive help and medication. (*Id.* ¶¶ 31–32.) At Northwestern Hospital, Stovall signed a petition for involuntary admission. (*Id.* ¶ 33.) Her petition stated that Sauer should be involuntarily admitted because she was a person with mental illness who, because of her illness, was reasonably expected to harm herself or others without inpatient treatment and was in need of immediate hospitalization to prevent such harm. (*Id.* ¶ 35.) It further indicated that Sauer was agitated and upset, had disorganized thoughts, and appeared to be talking to herself. (*Id.* ¶ 36.) On the petition, Stovall had checked a box indicating that she did not wish to be notified if Sauer was approved for voluntary or informal admission prior to adjudication or was committed or discharged by the court. (*Id.* ¶ 37.) After leaving Sauer at Northwestern Hospital, Defendants had no further involvement with Sauer or her case. (*Id.* ¶ 46.)

At Northwestern Hospital, Sauer was interviewed by Dr. Christopher Lowden, who determined that Sauer was subject to involuntary patient admission and in need of immediate hospitalization to prevent harm to herself or others. (*Id.* ¶¶ 38–39, 45.) Sauer spent the night at Northwestern Hospital and was transferred to Methodist Hospital the next day. (*Id.* ¶ 47.) A doctor at Methodist Hospital who examined Sauer also deemed her in need of involuntary inpatient admission and immediate hospitalization. (*Id.* ¶¶ 48–49.)

A case management conference regarding Sauer's hospitalization was set for September 18, 2012. (*Id.* ¶ 51.) On September 17, 2012, Sauer received notice of that hearing along with a copy of the petition for involuntary admission and a form outlining her rights. (*Id.* ¶¶ 52–53, 55.) The case management conference was continued twice. (*Id.* ¶¶ 56–57.) By October 2, 2012, when the conference was set to go forward, Sauer had already been discharged from Methodist Hospital and the matter was voluntarily dismissed. (*Id.* ¶ 58.)

III.

Summary judgment is appropriate if the admissible evidence considered as a whole shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law, even after all reasonable inferences are drawn in the non-movant's favor. *Dynegy Mktg. & Trade v. Multiut Corp.*, 648 F.3d 506, 517 (7th Cir. 2011). Sauer has brought two claims against Defendants. First, she claims that Defendants violated her Fourth Amendment rights when

they effectuated an involuntary mental health commitment without probable cause. Second, Sauer contends that Defendants violated her rights under the Due Process Clause of the Fourteenth Amendment by failing to serve her notice of the court dates concerning her involuntary commitment and depriving her of notice and an opportunity to respond to their petition for involuntary commitment.

An involuntary mental health commitment is a seizure governed by the Fourth Amendment and its probable cause standard. *Fitzgerald v. Santoro*, 707 F.3d 725, 732 (7th Cir. 2013). Probable cause exists "only if there are reasonable grounds for believing that the person seized is subject to seizure under the governing legal standard." *Id.* (internal quotation marks omitted). In Illinois, that legal standard is set out in 405 ILCS 5/3-606, which states

> A peace officer may take a person into custody and transport him to a mental health facility when the peace officer has reasonable grounds to believe that the person is subject to involuntary admission on an inpatient basis and in need of immediate hospitalization to protect such person or others from physical harm.

The probable cause inquiry is an objective inquiry that cannot be invalidated by a defendant's subjective motivations. *Fitzgerald*, 707 F.3d at 732.

The undisputed facts here establish that Defendants had probable cause to involuntarily commit Sauer. Before Defendants arrived at Sedelle's house, Sauer had already gotten into a heated argument with her mother and made comments that Sharon interpreted as threatening harm to Sedelle. Defendants then spoke to Sharon and Lindo, who described Sauer's alarming and emotionally erratic behavior. They also told Defendants that they were concerned for Sauer's mental health and believed that Sauer presented a threat to herself and others. Moreover, Defendants spoke with Sedelle, who told them that Sauer had previously had manic episodes, a history of suicide attempts, and a recent mental health hospitalization. Finally, Defendants had the opportunity to observe personally Sauer acting paranoid and speaking in a disorganized and illogical manner. Based on all these facts, there is no question that Defendants had reasonable grounds to believe it necessary to involuntarily commit Sauer to protect herself or others from physical harm. Consequently, the Court grants summary judgment in favor of Defendants on Sauer's Fourth Amendment claim.

Next, Sauer argues that Defendants violated her rights under the Fourteenth Amendment's Due Process Clause by failing to provide her notice of the court dates regarding her involuntary commitment and by depriving her of notice and opportunity to respond to the petition for involuntary commitment. Given that Sauer did not timely file a response to Defendants' motion for summary judgment, the Court is somewhat unclear as to the precise contours of Sauer's due process claim. As best as this Court can tell, Sauer believes Defendants did not follow certain procedures set out under state law. But while state law can give rise to property and liberty interests protected by the Due Process Clause, "it is not the source of the procedural entitlements that constitute due process of law." *Villanova v. Abrams*, 972 F.2d 792, 798 (7th Cir. 1992). Rather, the Due Process Clause "itself prescribes the procedures that the holder of the substantive entitlements that the clause protects is entitled to demand." *Id.*

In any case, the undisputed facts show that Sauer did receive the process she was due under state law. Relevant here, within 12 hours after an individual's admission to a mental health facility, the confined individual must be provided a copy of the petition for involuntary commitment and a statement of rights. 405 ILCS 5/3-609. It is undisputed that Sauer did receive those documents along with a notice of her case management conference the day after she was admitted to Northwestern Hospital. And while the facts do not unequivocally establish that Sauer received those documents within 12 hours, that is an issue of state law irrelevant to the due process issue. All due process requires is "notice of the potential deprivation . . . and a meaningful opportunity to be heard." *Cochran v. Ill. State Toll Highway Auth.*, 828 F.3d 597, 600 (7th Cir. 2016). Sauer received both, and therefore she has no claim for a violation of her due process rights.[2] Therefore, the Court grants Defendants summary judgment on the due process claim.

Because this Court concludes that the undisputed facts demonstrate that Defendants are entitled to judgment as a matter of law on the Fourth and Fourteenth Amendment claims, the Court grants Defendants' motion for summary judgment. Although Sauer's Fifth Amended Complaint asserts twenty other claims, none of those claims concern Defendants who have appeared here. Moreover, the defendants named in those claims were not served with the Fifth Amended Complaint, despite the Court ordering Sauer to do so. (*See* Dkt. No. 116.) For that reason, the Court dismisses the remaining defendants without prejudice. *See Conover v. Lein*, 87 F.3d 905, 908–09 (7th Cir. 1996).

Dated: March 11, 2020

Andrea R. Wood
United States District Judge

[2] Even if Sauer had a viable due process claim related to the lack of notice, her claim would not lie against Defendants. Indeed, once Defendants submitted the petition for involuntary confinement, their involvement in her case was over. Under state law, it is the facility director that is responsible for ensuring that an involuntarily committed patient receives proper notice and a statement of her rights. *See* 405 ILCS 5/3-611 (requiring the director of the facility where a patient is committed to submit to the court in the county in which the facility is located proof that the patient received a copy of the petition for involuntary commitment and a statement of her rights).

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

October 28, 2022

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 21-2433

DEBRA SAUER,
Plaintiff-Appellant,

v.

CITY OF CHICAGO, et al,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois.

No. 1:14-cv-07191

Andrea R. Wood,
Judge.

ORDER

Upon consideration of Plaintiff-Appellant's motion for reconsideration filed on October 20, 2022, and construed as a petition for panel rehearing, all members of the original panel have voted to deny the petition.

Accordingly, the petition for rehearing is hereby DENIED.

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