

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-7011

September Term, 2022

1:22-cv-00693-UNA

Filed On: June 7, 2023

May Chen,

Appellant

v.

Metropolitan Police Department, et al.,

Appellees

BEFORE: Wilkins and Katsas, Circuit Judges, and Sentelle, Senior Circuit Judge

ORDER

Upon consideration of the petition for rehearing and supplement thereto, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-7011

September Term, 2022

1:22-cv-00693-UNA

Filed On: May 23, 2023

May Chen,

Appellant

v.

Metropolitan Police Department, et al.,

Appellees

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

BEFORE: Wilkins and Katsas, Circuit Judges, and Sentelle, Senior Circuit Judge

JUDGMENT

This appeal was considered on the record from the United States District Court for the District of Columbia and on the brief filed by appellant. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). Upon consideration of the foregoing and the motion for entry of judgment and the supplement thereto, it is

ORDERED that the motion for entry of judgment be denied. It is

FURTHER ORDERED AND ADJUDGED that the district court's December 16, 2022 order be affirmed. The district court did not abuse its discretion in denying appellant's motion for relief from judgment. See Smalls v. United States, 471 F.3d 186, 191 (D.C. Cir. 2006) (district court's denial of relief under Rule 60(b) reviewed for abuse of discretion); United States v. Civ. Aeronautics Bd., 510 F.2d 769, 773 (D.C. Cir. 1975) (same, for denial of relief under Rule 60(a)). Entry of default or default judgment was not warranted where the case was dismissed before the defendants were served. See Keegel v. Key W. & Caribbean Trading Co., 627 F.2d 372, 374 (D.C. Cir. 1980) ("No obligation to answer arose until after service was effected.").

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-7011

September Term, 2022

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MAY CHEN,)
Plaintiff,)
v.) Civil Action No. 1:22-cv-00693 (UNA)
METROPOLITAN POLICE)
DEPARTMENT, *et al.*,)
Defendants.)

ORDER

This matter was dismissed without prejudice on June 9, 2022, for want of subject matter jurisdiction and failure to meet the minimal pleading standard of Federal Rule of Civil Procedure 8(a). *See* Memorandum Opinion, ECF No. 5. Plaintiff has now filed a “continued opposing dismissal action & notice to collect judgment.” This submission is far from a model of clarity, but the court will generously construe it as a motion for relief from judgment pursuant to Fed. R. Civ. P. 60(a)–(b).

Plaintiff's pending motion totals 49 pages. She takes issue with the court's prior determinations to twice deny her leave to file submissions. She contends that those two prior submissions were attempts to reopen the case "pursuant to Federal Rules of Civil Procedure[] 55." This court notes that those two prior submissions, *see* ECF Nos. 7, 9, were both "request[s] to enforce writs of execution," and in no way resembled motions for reconsideration. To whatever extent plaintiff sought an entry of default pursuant to Federal Rule 55, such request would be patently improper; this case was dismissed *sua sponte* and was never even assigned to a judge, and no summonses were ever certified and issued by the Clerk of Court. Moreover, because plaintiff was proceeding *in forma pauperis*, the court, and not the plaintiff, would have been

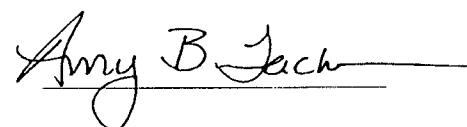
responsible for service of process. *See* 28 U.S.C. § 1915(d). Put simply, there was no personal service on any defendant, and there can be no default.

In the pending motion, plaintiff mostly reiterates that default should still be entered against defendants now, and that this matter should be reopened for that purpose. But for the same reasons explained above, there is absolutely no basis for the entry of default against the defendants in this dismissed matter.

“ ‘The decision to grant or deny a rule 60(b) motion is committed to the discretion of the District Court.’ ” *Kareem v. FDIC*, 811 F. Supp. 2d 279, 282 (D.D.C. 2011) (quoting *United Mine Workers of Am. 1974 Pension v. Pittston Co.*, 984 F.2d 469, 476 (D.C. Cir. 1993)). Motions for reconsideration are “disfavored” and “granting . . . such a motion is . . . an unusual measure [.]” *Cornish v. Dudas*, 813 F. Supp. 2d 147, 148 (D.D.C. 2011) (internal quotation marks omitted) (citing *Kittner v. Gates*, 783 F. Supp. 2d 170, 172 (D.D.C. 2011)); *see also Wright v. FBI*, 598 F. Supp. 2d 76, 77 (D.D.C. 2009). Plaintiff has failed to identify any justification under Rule 60, or under any other interpretation, to vacate the existing judgment of this court.

Accordingly, plaintiff’s “continued opposing dismissal action & notice to collect judgment” is **DENIED**.

SO ORDERED.



AMY BERMAN JACKSON
United States District Judge

Date: December 16, 2022

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MAY CHEN,)
)
Plaintiff,)
)
v.) Civil Action No. 22-0693 (UNA)
)
METROPOLITAN POLICE)
DEPARTMENT, *et al.*,)
)
Defendants.)

ORDER

For the reasons stated in the accompanying Memorandum Opinion, it is hereby
ORDERED that plaintiff's application to proceed *in forma pauperis* [2] is GRANTED; it
is further
ORDERED that plaintiff's motion for default judgment [3] is DENIED; and it is further
ORDERED that the complaint, as amended, and this civil action are DISMISSED
WITHOUT PREJUDICE.

This is a final appealable Order.

The Clerk of Court shall TERMINATE this case.

SO ORDERED.

DATE: June 9, 2022



TREVOR N. McFADDEN
United States District Judge

2022.06.09
10:04:42 -04'00'

**U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:22-cv-00693-UNA**

CHEN v. METROPOLITAN POLICE
DEPARTMENT et al
Assigned to: Unassigned
Case in other court: USCA, 23-07011
Cause: 42:1981 Civil Rights

Date Filed: 03/13/2022
Date Terminated: 06/09/2022
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights:
Other
Jurisdiction: Federal Question

Plaintiff

MAY CHEN
nationalhealthcarefdn@gmail.com

represented by **MAY CHEN**
Acookeek, MD
(301) 979-2823
PRO SE

V.

Defendant

**METROPOLITAN POLICE
DEPARTMENT**

Defendant

TILDEN GARDEN, INC.

Defendant

**DEPARTMENT OF BEHAVIOR
HEALTH**
TERMINATED: 04/11/2022

Defendant

GEICO INSURANCE COMPANY
TERMINATED: 04/11/2022

Defendant

WEST COVINA STATE OF
CALIFORNIA

Defendant

PRINCE GEORGE'S COUNTY
STATE OF MARYLAND

| Date Filed | # | Docket Text |
|------------|----------|---|
| 03/13/2022 | | Initiating Pleading & IFP Application Received on 3/13/2022. A copy of the docket sheet has been mailed to the address of record for the pro se party. (rj) (Entered: 03/22/2022) |
| 03/13/2022 | <u>1</u> | COMPLAINT against All Defendants with Jury Demand filed by MAY CHEN. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Exhibits, # <u>3</u> Summons)(rj) (Entered: 03/22/2022) |
| 03/13/2022 | <u>2</u> | MOTION for Leave to Proceed in forma pauperis by MAY CHEN. (rj) (Entered: 03/22/2022) |
| 04/04/2022 | <u>3</u> | MOTION for Default Judgment as to Defendants by MAY CHEN. (znmg) (Entered: 04/06/2022) |
| 04/11/2022 | <u>4</u> | AMENDED COMPLAINT against METROPOLITAN POLICE DEPARTMENT, TILDEN GARDEN, INC., WEST COVINA STATE OF CALIFORNIA, PRINCE GEORGE'S COUNTY STATE OF MARYLAND filed by MAY CHEN.(znmg) Modified defendants on 4/15/2022 (znmw). (Entered: 04/13/2022) |
| 06/09/2022 | <u>5</u> | MEMORANDUM OPINION Signed by Judge Trevor N. McFadden on 06/09/2022. (znmg) (Entered: 06/09/2022) |
| 06/09/2022 | <u>6</u> | ORDER DISMISSING PRO SE CASE WITHOUT PREJUDICE. Ordered that the application of the plaintiff to proceed in forma pauperis is GRANTED. This is a final appealable Order. (See Order for full details) Pro Se party has been notified by first class mail. Signed by Judge Trevor N. McFadden on 06/09/2022. (znmg) (Entered: 06/09/2022) |
| 07/20/2022 | <u>7</u> | LEAVE TO FILE DENIED- MAY CHEN; Motion for the Issuance of Writ of Execution. "Leave to file DENIED. On June 9, 2022, the Court denied Plaintiff's motion for default judgment and dismissed the complaint and the case, leaving nothing to execute." This document is unavailable as the Court denied its filing. Signed by Judge Carl J. Nichols on |

07/20/2022. (znmg) (Entered: 07/26/2022)

08/24/2022 8 Mail Returned as Undeliverable re 6 Order Dismissing Pro Se Case, 5 Memorandum & Opinion Sent to MAY CHEN; New Address: unknown. (znmg) (Entered: 09/23/2022)

10/03/2022 9 LEAVE TO FILE DENIED- MAY CHEN; Request to Enforce Writ of Execution. This document is unavailable as the Court denied its filing. "Leave to file DENIED. On June 9, 2022, the Court denied Plaintiff's motion for default judgment and dismissed the the case, see ECF Nos. 5 , 6 , leaving nothing to execute." Signed by Judge Colleen Kollar-Kotelly on 10/03/2022. (znmg) (Entered: 10/06/2022)

11/21/2022 10 Mail Returned as Undeliverable re 7 Leave to File Denied, Sent to MAY CHEN; Resent to New Address: UNKNOWN (Entered: 12/05/2022)

12/16/2022 11 MOTION for Relief from Judgment by MAY CHEN. "Leave to file GRANTED. The Clerk of Court is directed to docket this submission as a Motion for Relief from Judgment," by Judge Amy Berman Jackson on 12/16/2022. (zljn) (Entered: 12/28/2022)

12/16/2022 12 ORDER denying 11 Motion for Relief from Judgment. Signed by Judge Amy Berman Jackson on 12/16/2022. (zljn) (Entered: 12/28/2022)

01/12/2023 13 NOTICE OF APPEAL TO DC CIRCUIT COURT as to 12 Order on Motion for Relief from Judgment by MAY CHEN. Fee Status: IFP. Parties have been notified. (Attachment: # 1 Exhibit)(zsl) (Entered: 01/30/2023)

01/30/2023 14 Transmission of the Notice of Appeal, Order Appealed (Memorandum Opinion), and Docket Sheet to US Court of Appeals. The fee was not paid because it was filed in forma pauperis re 13 Notice of Appeal to DC Circuit Court. (zsl) (Entered: 01/30/2023)

02/01/2023 USCA Case Number 23-7011 for 13 Notice of Appeal to DC Circuit Court filed by MAY CHEN. (zcb) (Entered: 02/01/2023)

06/15/2023 16 MANDATE of USCA as to 13 Notice of Appeal to DC Circuit Court filed by MAY CHEN ; USCA Case Number 23-7011. (Attachments: # 1 USCA Judgment 05/23/2023)(zljn) (Entered: 07/03/2023)

06/22/2023 15 LEAVE TO FILE DENIED- MAY CHEN; Complaint. This document is unavailable as the Court denied its filing. Pro Se party has been notified via NEF to the email address of record. "Leave to file DENIED. Case dismissed on 6/9/2022." Signed by Judge Carl J. Nichols on 06/22/2023. (zljn) (Entered: 06/22/2023)

**District of Columbia
Court of Appeals**

12/20/2022

No. 22-CV-0039

MAY CHEN,

Appellant,

2021-CA-004151-B

v.

DISTRICT OF COLUMBIA
METROPOLITAN POLICE DEPARTMENT,
Appellee.

Zabrina W. Dempson, Clerk
Superior Court of the District of Columbia

Dear Ms. Dempson:

The attached certified copy of the Decision in this case, pursuant to Rule 41(a) of the Rules of this Court, constitutes the mandate issued this date.

JULIO A. CASTILLO
Clerk of the Court

**District of Columbia
Court of Appeals**

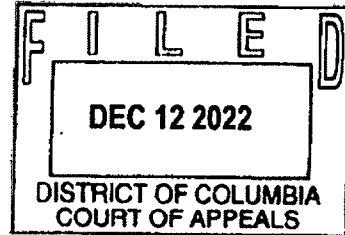
No. 22-CV-39

MAY CHEN,

Appellant,

v.

2021-CAB-4151



**DISTRICT OF COLUMBIA METROPOLITAN
POLICE DEPARTMENT,**

Appellee.

BEFORE: Blackburne-Rigsby, Chief Judge; Glickman, Beckwith,* Easterly,*
McLeese, Deahl, and Howard, Associate Judges; Fisher, Senior Judge.

O R D E R

On consideration of appellant's petition for rehearing or rehearing en banc, and it appearing that no judge of this court has called for a vote on the petition for rehearing en banc, it is

ORDERED by the merits division* that appellant's petition for rehearing is denied. It is

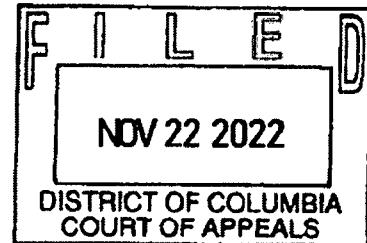
FURTHER ORDERED that appellant's petition for rehearing en banc is denied.

PER CURIAM

Associate Judge AliKhan did not participate in this case.

District of Columbia
Court of Appeals

No. 22-CV-39



MAY CHEN,

Appellant,

v.

2021 CAB 4151

D.C. METROPOLITAN
POLICE DEPARTMENT,
Appellee.

BEFORE: Beckwith and Easterly, Associate Judges, and Fisher, Senior Judge.

JUDGMENT

On consideration of the D.C. Metropolitan Police Department's motion for summary affirmance, May Chen's opposition thereto, Ms. Chen's brief and appendix, and the record on appeal, it is

ORDERED that MPD's motion for summary affirmance is granted. *See Oliver T. Carr Mgmt., Inc. v. Nat'l Delicatessen, Inc.*, 397 A.2d 914, 915 (D.C. 1979). We review Ms. Chen's complaint, filed without counsel, anew, accept her factual allegations as true and construe her claims liberally; we conclude that the Superior Court did not err in dismissing appellant's complaint under Super. Ct. Civ. R. 12(b)(6) for failure to state a claim upon which relief can be granted. *See Jaswant Sawhney Irrevocable Trust, Inc., v. District of Columbia*, 236 A.3d 401, 405-06 (D.C. 2020); *Elmore v. Stevens*, 824 A.2d 44, 46 (D.C. 2003).

Initially, we look to Ms. Chen, as the appellant, to make arguments about why the Superior Court's decision to dismiss her complaint was wrong. Ms. Chen's brief does not do this, and instead she merely repeats the claims she made before the Superior Court. *See In re Shearin*, 764 A.2d 774, 778 (D.C. 2000) ("Points not urged in a party's initial brief are treated as abandoned."). But even if we review the allegations made in her complaint, any challenge to the Superior Court's decision would be unsuccessful.

Even reviewing Ms. Chen's complaint liberally, it does not allege sufficient facts to show that MPD's conduct in removing her from her vehicle and transporting her for emergency psychiatric services was improper. Notably, the documentation

No. 22-CV-39

Ms. Chen presented to the Superior Court reflects that she was admitted to the hospital for emergency treatment. D.C. Code § 21-521 provides that “an officer authorized to make arrests” in the District can execute a mental-health seizure of a person believed to be “mentally ill and, because of the illness, . . . likely to injure [her]self or others. Therefore, Ms. Chen alleged no facts to support her claim that she was wrongfully arrested. *See Magwood v. Giddings*, 672 A.2d 1083, 1086 (D.C. 1996) (“If a person detains another with the authority of law, he cannot be liable in tort for the reasonable exercise of that authority.”).

Ms. Chen’s claim that MPD made “false accusations” against her also fails because she did not identify any statement made by the officers or explain how they were false. *See Beeton v. District of Columbia*, 779 A.2d 918, 923 (D.C. 2001) (articulating the elements to state a cause of action for defamation); *Bell v. First Invs. Servs. Corp.*, 256 A.3d 246, 258 (D.C. 2021) (affirming dismissal of defamation claim where appellant failed to describe the substance of the alleged defamatory statements or identify how they were false).

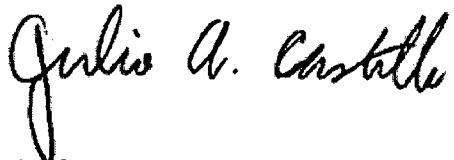
Further, Ms. Chen failed to allege facts to support her allegation that the officers used “excessive force” when “dragging” her from her vehicle, because her complaint does not contain any factual allegations explaining how the force that they used was excessive or that she suffered any injuries as a result of their actions. *See Jackson v. District of Columbia*, 412 A.2d 948, 956 (D.C. 1980) (“In making an arrest, . . . a police officer is privileged even to use force unless the ‘means employed are in excess of those which the actor reasonably believes to be necessary.’”); *see also Magwood*, 672 A.2d at 1088 (holding that involuntarily hospitalized appellant alleging that she was restrained from behind, suffered minor bruises on her legs and knees, and suffered mental pain and emotional distress did not establish defendant’s use of excessive force in detaining her).

Finally, the Superior Court did not err in denying Ms. Chen’s motion for default judgment because the record indicates that she did not properly serve the MPD with the complaint and summons as instructed by the court, and even if assuming service, Ms. Chen did not state a sufficient basis to grant relief. *See Elmore*, 824 A.2d at 45 (explaining “a defendant’s default does not in itself warrant [entry of] a default judgment.” (quoting *Hudson v. Ashley*, 411 A.2d 963, 968 (D.C. 1980))). It is

No. 22-CV-39

FURTHER ORDERED and ADJUDGED that the order on appeal is affirmed.

ENTERED BY DIRECTION OF THE COURT:



JULIO A. CASTILLO
Clerk of the Court

Copies e-served to:

Honorable Michael Rankin

QMU – Civil Division

Caroline Van Zile, Esquire
Solicitor General for DC

Marcella Coburn, Esquire
Assistant Attorney General

Copy mailed to:

May Chen
4713 Wisconsin Avenue, NW
Washington, DC 20016

cml