

APPENDIX
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APPENDIX A

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

[DATE STAMP]

United States Court of Appeals
Fifth Circuit
FILED
October 2, 2024
Lyle W. Cayce
Clerk

No. 24-40169
Summary Calendar

MASIKA BROWN RAY,
Plaintiff—Appellant,

versus

ANTHONY BOONE, Chief; MAXEY CERLIANO,
Sheriff; CITY OF LONGVIEW, TEXAS; KYLE
TUCKER, *Officer*; LESLIE SHERIDAN, *Officer*;
LUKE ALTMAN, *Sergeant*; JULIA RHYNER, CPS
caseworker; JENNIFER STOUT, *CPS caseworker*;
MALLORY WAUGH-BROWN, *CPS supervisor*;
TEXAS DEPARTMENT OF FAMILY AND
PROTECTIVE SERVICES; STATE OF TEXAS;
GREGG COUNTY, TEXAS,
Defendants—Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 2:23-CV-46

Before BARKSDALE, STEWART, and RAMIREZ,
Circuit Judges.

PER CURIAM:*

Masika Brown Ray, proceeding *pro se* in district court and on appeal, challenges the Rule 12(b)(6) dismissal of her civil-rights action under 42 U.S.C. § 1983. See FED. R. CIV. P. 12(b)(6) (dismissal for failure to state claim). In her third amended complaint, Ray claimed constitutional violations by various defendants related to her arrest, detention, and subsequent family-court proceedings, and largely restates the same on appeal.

Review of Rule 12(b)(6) dismissals is de novo. *E.g., Romero v. Cigy of Grapevine, Texas*, 888 F.3d 170, 176 (5th Cir. 2018). The complaint must contain “enough facts to state a claim to relief that is plausible on its face”. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, S70 (2007). “The court accepts all well-pleaded facts as true and must consider those facts in the light most favorable to the plaintiff.” *Romero*, 888 F.3d at 176. Although our court construes *pro se* pleadings liberally, “conclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to state a claim for relief”. *Coleman v. Lincoln Par. Der. Ctr.*, 858 F.3d 307, 309 (5th Cir. 2017) (citations omitted). For the reasons that follow, the district court properly dismissed the complaint.

* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

In its detailed order granting dismissal under Rule 12(b) (6), the court correctly noted that several of the named defendants were not subject to suit. Our court has held that, under Texas law, a county or municipal department is a non-jural entity, meaning it cannot be sued directly. *E.g., Darby v. Pasadena Police Dep't.*, 939 F.2d 311, 313-14 (5th Cir. 1991) (explaining city department must “enjoy a separate legal existence” to be sued). Additionally, the State of Texas is entitled to immunity under the Eleventh Amendment. *E.g., Quern 12. Jordan*, 440 U.S. 332, 339-40 (1979) (“State[s] [cannot] be joined as a defendant without violating the Eleventh Amendment[.]”).

Next, the district court concluded that many of Ray’s claims did not state a viable claim under § 1983. Section 1983 does not create substantive rights; rather, it “provides a remedy for the rights that it designates”. *Harrington v. Harris*, 118 F.3d 359, 365 (5th Cir. 1997) (citations omitted); *see also Oliver v. Collins*, 904 F.2d 278, 281 (5th Cir. 1990) (claim raised in action under § 1983 that is unrelated to constitutional violation “presents nothing for review”). Ray not only failed to connect many of her claims to a constitutional violation, but she also failed to allege specific facts even when she did claim constitutional violations (*e.g.*, Ray’s merely asserting “defendants’ discriminatory and harsh treatment” violated her constitutional rights is insufficient to state a claim under *Twombly*).

Finally, the court concluded Ray did not allege the personal involvement of any of the named defendants in a constitutional violation. “Personal

involvement is an essential element of demonstrating liability under § 1983.” *Turtle v. Sepolio*, 68 F.4th 969, 975 (5th Cir. 2023) (citations omitted). A plaintiff must “specify the personal involvement of each defendant . . . [and] cannot make generalized allegations, nor can [she] support a claim based on any vicarious liability theory”. *Murphy v. Kellar*, 950 F.2d 290, 292 n.7 (5th Cir. 1992). For every allegation that could potentially support a claim under § 1983, Ray groups all defendants together and simply refers to a potentially liable party as “defendants”. For example, despite Ray’s allegations regarding police brutality and her naming three individual police officers as defendants, she did not plead any facts related to those officers’ role in her arrest. To the extent she alleges the personal involvement of *any* of the defendants, the claims are unrelated to constitutional violations (*e.g.*, alleging Child Protective Services employee filed false affidavit in family court).

Insofar as her allegations implicate theories of *respondeat superior* or vicarious liability for institutional defendants, they fail to state a claim. As noted *supra*, vicarious liability does not apply to claims under § 1983. *E.g.*, *Williams v. Luna*, 909 F.2d 121, 123 (5th Cir. 1990); *Murphy*, 950 F.2d at 292 n.7. To establish supervisory liability under § 1983, Ray must show some degree of personal involvement by the supervisor, alleging that the supervisor either “affirmatively participates in the acts that cause the constitutional deprivation, or . . . implements unconstitutional policies that causally result in the constitutional injury”. *Pena v. City of Rio Grande*

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City, 879 F.3d 613, 620 (5th Cir. 2018) (citations omitted). Ray alleged neither.

AFFIRMED.

APPENDIX B

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

MASIKA BROWN RAY
vs.
GREGG CO. SHERIFF'S DEPT., ET. AL.

**FINAL JUDGMENT
CIVIL ACTION NO.**

2:23cv046

The Court, having considered Plaintiff's case and rendered its decision by opinion issued this same date, hereby ORDERS that Plaintiff's civil rights proceeding is DISMISSED, with prejudice, for the failure to state a claim upon which relief may be granted.

So ORDERED and SIGNED this 1st day of March, 2024.

RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

APPENDIX C

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

MASIKA BROWN RAY

VS.

GREGG CO. SHERIFF'S DEPT., ET. AL.

CIVIL ACTION NO. 2:23cv046

ORDER OF DISMISSAL

Plaintiff Masika Ray, proceeding *pro se*, filed this civil rights lawsuit. The cause of action was referred to United States Magistrate Judge Roy S. Payne for findings of fact, conclusions of law, and recommendations for the disposition of the case.

On February 16, 2024, Judge Payne issued a Report, (Dkt. No.57), recommending that Defendants' motions to dismiss, (Dkt. Nos. 44, 45), be granted and that Plaintiffs lawsuit be dismissed with prejudice. Specifically, the Magistrate Judge found that, despite three opportunities, Plaintiff's amended complaint fails to state a claim upon which relief may be granted because, among other things, it (1) pleads no facts establishing a causal connection between the acts/omissions of the Defendants and any ensuing constitutional violation; (2) sues non-jural entities; and (3) raises claims not cognizable under 42 U.S.C. §1983. Judge Payne further highlighted that mere

legal conclusions and generalizations do not establish a constitutional violation.

A copy of this Report was mailed to Plaintiff, who filed timely objections, (Dkt. No. 58). Defendants subsequently filed a motion to strike Plaintiffs objections, (Dkt. No. 59). Objections that simply rehash or mirror the underlying claims addressed in the Report are not sufficient to entitle the party to *de novo* review. *See, e.g., U.S. v. Morales*, 947 F. Supp.2d 166, 171 (D.P.R. 2013) (“Even though timely objections to a report and recommendation entitle the objecting party to *de novo* review of the findings, ‘the district court should be spared the chore of traversing ground already plowed by the Magistrate Judge.’”) (Rule 72(a) context).

In her objections, Plaintiff states that she “challenges the recommendation for the dismissal based on a deep belief” that her constitutional rights were violated, (Dkt. No. 58, pg. 2). A review of her objections, however, reveals the accuracy of the Magistrate Judge’s Report. Plaintiff fails to plead specific facts connecting any Defendant to an ensuing constitutional violation. Plaintiff alleges that she “described specific instances” of Defendants employing excessive force in paragraphs 72-75 and 77-80 of her Third Amended Complaint, (Dkt. No. 33). Those specific paragraphs appear as follows in Plaintiffs Third Amended Complaint:

72. Plaintiff incorporates by reference and re-avers each and every paragraph above.

73. The defendants' actions, as described in the factual allegations, caused the plaintiff to suffer severe emotional distress, resulting in a nervous breakdown and significant psychological harm.

74. The defendants, through their agents and employees, engaged in conduct that was negligent, intentional, and/or reckless, thereby causing the plaintiff to endure extreme and prolonged mental anguish, anxiety, and emotional turmoil.

75. The defendants' negligent, intentional, and/or reckless actions included, but are not limited to, subjecting the plaintiff to false arrest, imprisonment, humiliation, discriminatory treatment, excessive force, and harsh conditions during her detention.

76. As a direct and proximate result of the defendants' actions, the plaintiff experienced a nervous breakdown, which manifested in severe emotional distress and psychological trauma.

77. The plaintiff's nervous breakdown and emotional distress have resulted in a range of debilitating symptoms, including but not limited to severe depression, panic attacks, insomnia, loss of appetite, constant feelings of fear and vulnerability, difficulty concentrating, and impaired daily functioning.

78. The defendants, through their negligent, intentional, and/or reckless conduct, breached their duty of care owed to the plaintiff, causing her to suffer severe emotional harm and exacerbating her existing mental health conditions.

79. The defendants' conduct was extreme and outrageous, exceeding all bounds of decency and causing the plaintiff to suffer emotional distress that went beyond what a reasonable person could be expected to endure.

80. The defendants' actions were not only a direct cause of the plaintiff's nervous breakdown and emotional distress but also constituted a violation of her constitutional rights, including the right to be free from cruel and unusual punishment and the right to equal protection under the law.

(Dkt. No. 33, pg. 27-28.) Plaintiff's statements in these paragraphs are not specific, factual allegations of what allegedly occurred and *how* she was harmed. Rather, they are conclusory statements and generalized assertions. They are not descriptions of specific instances as she claims in her objections. Plaintiff's lack of specific allegations throughout her complaints is fatal to her lawsuit. *See Pechon v. La. Dept' Of Health & Hosp.*, 368 F. App'x 606, 610 (5th Cir. 2010). Furthermore, throughout her objections, Plaintiff merely reargues the claims originally presented. Plaintiff has not identified an error in the Magistrate Judge's Report, and her objections will therefore be overruled.

Turning to Defendants' motion to strike the objections, the Court notes that Defendants correctly argue that Plaintiff failed to file leave with the Court before filing her objections that exceed the page limits. *See* Local Rule CV-72(c). However, because *pro se* plaintiffs are afforded wide-ranging deference, the Court determines that striking her objections is not warranted at this time.

The Court has conducted a careful *de novo* review of the record and the Magistrate Judge's proposed findings and recommendations. *See* 28 U.S.C. §636(b)(1) (District Judge shall "make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made"). Upon such *de novo* review, the Court has determined that the Report of the United States Magistrate Judge is correct, and Plaintiffs objections are without merit.

Accordingly, it is **ORDERED** that the Report of the United States Magistrate Judge, (Dkt. No. 57), is **ADOPTED** as the opinion of the District Court. Plaintiffs objections, (Dkt. No. 58), are **OVERRULED**.

Finally, it is **ORDERED** that Defendants' motions to dismiss, (Dkt. Nos. 44, 45), are **GRANTED**. Plaintiffs lawsuit is **DISMISSED**, with prejudice, for the failure to state a claim upon which relief may be granted. Any other motions which may be pending in this action are hereby **DENIED-AS-MOOT**.

So **ORDERED** and **SIGNED** this 1st day of March, 2024.

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/s/

RODNEY GILSTRAP

UNITED STATES DISTRICT JUDGE