UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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FINAL JUDGMENT

November 12, 2024

Before

MICHAEL B. BRENNAN, *Circuit Judge*
THOMAS L. KIRSCH II, *Circuit Judge*
CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 24-1303	TONY CHANEY, Plaintiff - Appellant v. CHICAGO HOUSING AUTHORITY, Defendant - Appellee
Originating Case Information:	
District Court No: 1:23-cv-03279 Northern District of Illinois, Eastern Division District Judge Harry D. Leinenweber	

The judgment of the District Court is **AFFIRMED**, with costs, in accordance with the decision of this court entered on this date.

Clerk of Court

form name: **c7_FinalJudgment** (form ID: 132)

NONPRECEDENTIAL DISPOSITION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 October 22, 2024*
Decided November 12, 2024

Before

MICHAEL B. BRENNAN, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 24-1303

TONY CHANEY,
Plaintiff-Appellant,

v.

CHICAGO HOUSING AUTHORITY,
Defendant-Appellee.

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

No. 23 C 3279

Harry D. Leinenweber,
Judge.

ORDER

Tony Chaney sued the city agency that administered his housing subsidy for failing to provide him a hearing after he was evicted from his apartment. The district

* We have agreed to decide the 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).

court dismissed the case because Chaney failed to plead that the agency was directly responsible for any wrong. We affirm.

We accept the well-pleaded facts in Chaney's amended complaint as true and draw all inferences in his favor. *Thomas v. Neenah Joint Sch. Dist.*, 74 F.4th 521, 522 (7th Cir. 2023). In 2022, Chaney benefitted from subsidized housing through a program administered by the Chicago Housing Authority ("CHA"). Under this program, which is funded by the United States Department of Housing and Urban Development ("HUD"), CHA provides vouchers that subsidize beneficiaries' rent payments.

Using CHA subsidies, Chaney leased an apartment on Chicago's North Side. In July 2022, his landlord's property manager issued an eviction notice to him. Believing that CHA had terminated his subsidy, Chaney filed a request with CHA for an informal hearing concerning benefits termination. CHA has a policy of granting beneficiaries an informal hearing whenever it intends to terminate a subsidy, CHI. HOUS. AUTH., HOUS. CHOICE VOUCHER PROGRAM ADMIN. PLAN § 12-II.D, as required by federal regulations, *e.g.*, 42 U.S.C. § 1437d(k); 24 C.F.R. § 966.52. CHA initially approved Chaney's request for a hearing, but later a CHA employee called Chaney to tell him that the request had been denied.

In May 2023, Chaney sued CHA under 42 U.S.C. § 1983. The district court screened the complaint and dismissed it for failing to state a claim. 28 U.S.C. § 1915(e)(2). Chaney then amended the complaint to assert violations of, as relevant here, the Fourteenth Amendment's Due Process Clause and the City of Chicago's Residential Landlord and Tenant Ordinance, CHI., ILL., CODE ch. 5-12 (1986).

The district court dismissed the amended complaint for failing to state a claim and entered judgment against Chaney.[1] With respect to Chaney's claim under the City's Residential Landlord and Tenance Ordinance, the court explained that § 1983 does not afford relief for violations of state law. As for his due process claim, the court concluded that he failed to allege that any deprivation of his right to a hearing under the voucher program was caused by the municipal agency's policy, custom, or widespread practice—the first requirement of a claim under *Monell v. Department of*

[1] The court's order states that the dismissal was "without prejudice," a disposition that may deprive us of appellate jurisdiction. *See Hoskins v. Poelstra*, 320 F.3d 761, 763 (7th Cir. 2003). But the court also entered a judgment under Rule 58 of the Federal Rules of Civil Procedure, from which we conclude that the district court was finished with the case and its order final. *See* FED. R. CIV. P. 58(a); *Thornton v. M7 Aerospace LP*, 796 F.3d 757, 763 (7th Cir. 2015).

Social Services, 436 U.S. 658, 690, 694 (1978). Because Chaney could not state a claim of municipal liability under *Monell*, the court saw no need to assess his due process claim. *See Orozco v. Dart*, 64 F.4th 806, 827 (7th Cir. 2023).

On appeal, Chaney challenges only the district court's decision to dismiss his due process claim for failing to meet *Monell*'s pleading requirements. But the court's decision was correct. Even if Chaney had been denied due process, *Monell* shields the agency from liability unless the harm was caused by a policy or custom that demonstrates municipal fault. *Id.* at 823–24 ("[I]t is not sufficient for [plaintiff] to merely demonstrate a valid due process violation. He must go a step further and show the municipality itself is liable for the harm he suffered."). A "policy or custom" includes an express policy that created the deprivation, a practice so widespread that it effectively has the force of a policy, or the decision of a final policymaker that causes the constitutional injury. *See Thomas v. Neenah Joint Sch. Dist.*, 74 F.4th 521, 524 (7th Cir. 2023). Here, Chaney's complaint failed to sufficiently allege actions on the part of CHA that would plausibly support the existence of a municipal policy that deprived him of a hearing required by the Fourteenth Amendment. Chaney's reference to a single incident in which CHA failed to provide him an informal hearing is not enough to allege a policy or custom under *Monell*.

We have considered Chaney's remaining arguments, and none have merit.[2]

AFFIRMED

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[2] The dissent would remand to allow Chaney to seek leave amend his complaint. We note that Chaney did not accept the district court's invitation post-judgment to seek leave to amend, *see, e.g.*, FED R. CIV. P. 15(a)(2); *Crestview Vill. Apartments v. U.S. Dep't of Hous. & Urb. Dev.*, 383 F.3d 552, 557–58 (7th Cir. 2004), nor did he move to modify the judgment, *see, e.g.*, FED. R. CIV. P. 59(e), 60(b); *Runnion ex rel. Runnion v. Girl Scouts of Greater Chicago & Nw. Indiana*, 786 F.3d 510, 521 (7th Cir. 2015). Even on appeal, Chaney does not suggest any desire to amend his complaint. The dissent, in effect, proposes to grant Chaney a form of relief he has not requested. It is not our duty to devise a party's litigation strategy and then grant the relief that allows him to pursue it. *See Kiebala v. Boris*, 928 F.3d 680, 684–85 (7th Cir. 2019).

JACKSON-AKIWUMI, *Circuit Judge*, dissenting. I agree with the majority that Chaney's complaint fails to meet *Monell*'s pleading requirements. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978). However, given the mixed signals the district court gave to Chaney, a pro se plaintiff, and his continued efforts to pursue his claims in district court, I believe the better course of action would be to remand. Although the majority is correct that *Thornton v. M7 Aerospace LP*, 796 F.3d 757, 763-64 (7th Cir. 2015), holds that a Rule 58 judgment signals the finality necessary for an appeal, that case did not grapple with the mixed signals at issue here.

The chronology of the case docket shows the mixed signals Chaney received about whether the district court was finished with the case and its order was final. On January 23, 2024, the court dismissed Chaney's case without prejudice and entered judgment under Federal Rule of Civil Procedure 58. About two weeks later, on February 6, Chaney filed two motions. The first motion sought attorney representation. The second motion, although it acknowledged "the court's decision to render judgment" and incorrectly cited Federal Rule of Appellate Procedure 40(a)(1), sought an extension to file a motion and supporting memorandum "for a rehearing of plaintiff's complaint." On February 8, the court denied Chaney appointed counsel but invited him to seek leave to file an amended complaint, despite its earlier Rule 58 judgment, which it did not reference.

The majority contends that Chaney did not accept the district court's invitation to seek leave to amend or suggest any desire to do so. *See ante* at 3 n.2. But the court's invitation came *after* the court had already entered a Rule 58 judgment. That Rule 58 judgment was issued on January 23, so if the judgment truly was final, Chaney had only a couple of weeks left before losing his appeal rights. We have no way of knowing if Chaney filed this appeal rather than accepting the court's invitation to amend his complaint in order to preserve his appeal rights.

Moreover, Chaney did continue to advance his claims before the district court after entry of the Rule 58 judgment. Sure, he did not identify the correct rule he needed to use to overcome the court's Rule 58 judgment (that is, Rule 59(e) or Rule 60(b)), but he asked to file a memorandum "for a rehearing of plaintiff's complaint." *See Crestview Vill. Apartments v. U.S. Dep't of Hous. & Urb. Dev.*, 383 F.3d 552, 557–58 (7th Cir. 2004); *Runnion ex rel. Runnion v. Girl Scouts of Greater Chicago & Nw. Indiana*, 786 F.3d 510, 521 (7th Cir. 2015).

For these reasons, I would remand the case, thereby allowing Chaney, should he choose to do so, to accept the district court's invitation to seek leave to amend his complaint.

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

TONY CHANEY,	
Plaintiff,	
v.	**Case No. 23 C 3279**
CHICAGO HOUSING AUTHORITY,	**Judge Harry D. Leinenweber**
Defendant.	

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant Chicago Housing Authority's ("CHA") Motion to Dismiss *pro se* Plaintiff Tony Chaney's ("Chaney") Amended Complaint (Amended Complaint ("Compl.") Dkt. No. 15) pursuant to Federal Rules of Civil Procedure 12(b)(6); Plaintiff's Motion for Summary Judgment and Award of Punitive Damages (Dkt. No. 24); and Plaintiff's Motion for Default Judgment (Dkt. No. 32). For the reasons stated herein, the Court GRANTS Defendant's Motion to Dismiss, DENIES as moot Plaintiff's Motion for Summary Judgment and Award of Punitive Damages, and DENIES Plaintiff's Motion for Default Judgment.

I. DISCUSSION

A. Motion to Dismiss

This action arises out of CHA's alleged failure to provide Chaney with an informal hearing regarding his removal from CHA's Housing Choice Voucher ("HCV") program. The following facts are taken from Chaney's Amended Complaint. Chaney is a former

participant in the Housing Choice Voucher program administered by CHA. (Compl. ¶ 13.) Chaney and Kenmore Plaza Tenant Association (the "Landlord") were parties to a lease agreement under which the Landlord leased the premises located at 5225 N. Kenmore, Unit 10M, Chicago, IL 60640 (the "Premises") to Chaney for the term of October 1, 2021, to September 30, 2022. (*Id.*, Exhibit ("Ex.") I, ¶ 2.) Chaney's rent under the lease agreement was subsidized by HUD under the HCV program administered by CHA. (*Id.* Ex. I, ¶ 3.) The property manager assigned to manage the Premises was Candace Harrell ("Harrell"). (*Id.*, Ex. V, p. 4.)

On July 27, 2022, Harrell issued an eviction notice to Chaney. (Compl. ¶ 22.) On October 25, 2022, Chaney submitted an informal hearing request form regarding his removal from the HCV program. (*Id.* ¶ 5.) On November 9, 2022, CHA issued an informal hearing request decision approving Chaney's request for an informal hearing. (*Id.* ¶ 6.) Despite the approval, on February 17, 2023, Jakyra Nelson, a CHA employee, informed Chaney that CHA would not provide him with an informal hearing. (*Id.* ¶¶ 7-8.) There was no subsequent hearing that took place.

B. Amended Complaint

Count One of Chaney's *pro se* Amended Complaint brings a 42 U.S.C. § 1983 claim against CHA and Harrell for a violation of Chaney's Due Process Rights pursuant to the 14th Amendment, as well as rights under the City of Chicago Landlord and Tenant Act. The Court understands Chaney to be referencing the City of Chicago Residential Landlord and Tenant Ordinance ("RLTO").

"Section 1983 creates a federal cause of action for the deprivation [] of a citizen's rights . . . secured by the Constitution or laws of the United States." *McNulty v. Spikes*, 2007 WL 9815601, at *2 (N.D. Ill. Aug. 21, 2007) (internal quotation marks omitted). Because RLTO is a city ordinance and does not grant any federal rights that could be vindicated under Section 1983, Chaney's Section 1983 claim is dismissed with respect to RLTO. *Id.* ("Indeed, Section 1983 protects plaintiffs from constitutional violations, not violations of state laws or, in this case, departmental regulations and police practices.") (internal quotation marks omitted) (citing *Thompson v. City of Chicago*, 472 F.3d 444, 454 (7th Cir. 2006) (listing cases). "In other words, the violation of police regulations or even a state law is completely immaterial as to the question of whether a violation of the federal constitution has been established." *Id.* (citation omitted).

1. Count One – CHA

Chaney also brings a Section 1983 claim against CHA for a due process violation. Because Chaney brings a Section 1983 claim against CHA – a municipal government agency – his complaint must allege *Monell* liability. *Monell v. Department of Social Services of City of New York*, 436 U.S. 658, 690 (1978). A plaintiff bringing a *Monell* claim must prove that the municipality's action was the "moving force" behind the federal rights violation. *Bohanon v. City of Indianapolis*, 46 F.4th 669, 675 (7th Cir. 2022). There are "three requirements to establish a *Monell* claim — policy or custom, municipal fault, and 'moving force' causation." *Id.* at 676. It essentially requires a plaintiff to "prove that it was obvious that the municipality's action would lead to constitutional violations and that

the municipality consciously disregarded those consequences." *Id.* at 675. "This is not an easy showing." *Id.*

The Court understands the core of Chaney's Complaint to be the CHA's failure to provide him with a hearing regarding his eviction. But none of the facts in Chaney's Complaint allege that the deprivation of a due process right to an HVC hearing was caused by a CHA policy, custom, or widespread practice – the first requirement of a *Monell* claim. Rather, Chaney's Complaint alleges a single instance of CHA failing to provide Chaney with an informal hearing after approving Chaney's request for such a hearing. Hence, even if there were a deprivation, municipalities are not vicariously liable for the torts of its employees or agents; they may only be held liable for their own wrongs, not the isolated wrongs of their employees. *Monell*, 436 U.S. at 694. Chaney fails to allege municipal liability under *Monell*. Accordingly, it is not necessary to assess the due process claim against CHA. *See Orozco v. Dart*, 64 F.4th 806, 827 (7th Cir. 2023) ("We also conclude that Kroger cannot establish municipal liability even if his procedural due process claims were sound.")

2. Count One – Candace Harrell

Chaney also brings a Section 1983 due process claim against Harrell, the manager of Kenmore Plaza. (Compl. ¶¶ 33, 35.) The Court interprets the complaint as bringing a claim against Harrell in her *individual* capacity, since there are no facts to suggest Harrell had *supervisory* liability over Jakyra Nelson. But Chaney's complaint fails to allege individual liability. "An individual cannot be held liable in a Section 1983 action unless he caused or participated in an alleged constitutional deprivation." *Rascon v. Hardiman*, 803

F. 2d 269, 273 (7th Cir. 1986) (citation omitted). Because none of the facts in the complaint allege Harrell's involvement in the deprivation of Chaney's right to an HCV hearing, Chaney's Section 1983 claim against Harrell fails and the Court need not assess the due process claim. Count One is dismissed without prejudice.

3. Count Two – Declaratory Judgment

Count Two brings a claim of "Declaratory Judgment" pursuant to 28 U.S.C. § 2201, which also fails because "[t]he Declaratory Judgment Act does not . . . provide an independent cause of action. Its operation is procedural only — to provide a form of relief previously unavailable." *Garrard v. Rust-Oleum Corp.*, 575 F. Supp. 3d 995, 1004 (N.D. Ill. 2021) (citation omitted). Because the Declaratory Judgment Act provides a remedy and not an additional cause of action, it is not a cognizable independent cause of action, and Count Two is dismissed without prejudice. *Id.*

Chaney's Complaint is thus dismissed without prejudice in its entirety.

C. Plaintiff's Motions

Chaney filed a Motion for Summary Judgment and Award of Punitive Damages, as well as a Motion for Default Judgment (Dkt. Nos. 24, 32). Because Chaney's Complaint has been dismissed, the Court denies as moot Chaney's Motion for Summary Judgment and Award of Punitive Damages. Chaney also moved for default, arguing he was entitled to a default judgment because Defendants never filed an answer to Chaney's Complaint. This argument reflects a misunderstanding of the relevant Federal Rule. Federal Rule of Civil Procedure 12 governs the time to file a responsive pleading after the filing of a Complaint. Rule 12 permits a party to file a motion to dismiss a complaint in lieu of filing

an answer. Only if the court denies the motion does the defendant have to serve a responsive pleading such as an answer. FED. R. CIV. PRO. 12(a)(4). Here, Defendant filed a Motion to Dismiss within the appropriate time frame. Thus, Chaney's Motion for Default Judgment is meritless and must be denied.

II. CONCLUSION

For the reasons stated herein, the Court GRANTS Defendant's Motion to Dismiss and Chaney's complaint is dismissed without prejudice. Chaney's Motion for Summary Judgment and Award of Punitive Damages is DENIED as moot, and Chaney's Motion for Default Judgment is DENIED.

IT IS SO ORDERED.

Harry D. Leinenweber, Judge
United States District Court

Dated: 1/23/2024

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