NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 17-3945

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
May 18, 2018
DEBORAH S. HUNT, Clerk

JAIYANAH BEY, Plaintiff-Appellant, v. ELMWOOD PLACE POLICE DEPARTMENT, et al., Defendants-Appellees.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

ORDER

Before: KEITH, WHITE, and BUSH, Circuit Judges.

Jaiyanah Bey appeals the district court's dismissal of her civil rights action brought pursuant to 42 U.S.C. § 1983. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In her complaint, Bey alleged several causes of action, including denial of the right to travel, denial of due process, excessive force, false imprisonment, kidnapping, assault and battery, abuse of process, defamation, violation of the personal right to liberty, denial of "truth in evidence," false arrest, and racketeering. All of the defendants except Rodney Anderson moved for dismissal or judgment on the pleadings, and Bey moved for default judgment against Anderson. After determining that all of Bey's causes of action amounted to § 1983 claims, the district court dismissed the claims against the moving defendants and denied Bey's motion for default judgment against Anderson. Bey timely appealed.

Appendix A

In her brief, Bey advances arguments rooted in the theories of the sovereign citizen movement, and she fails to present a meaningful challenge to the district court's dismissal of her complaint. Put simply, she does not identify any facts alleged in her complaint that would make her claims plausible. As a result, she has forfeited any challenge concerning the dismissal of her complaint for failing to state a claim. *See, e.g.*, *Cooper v. Commercial Sav. Bank*, 591 F. App'x 508, 509 (6th Cir. 2015) (mem.) (finding appeal forfeited because the "brief on appeal fails to provide even a modicum of legal argument"), *cited by Grosswiler v. Freudenberg-Nok Sealing Techs.*, 642 F. App'x 596, 599 (6th Cir. 2016); *Geboy v. Brigano*, 489 F.3d 752, 767 (6th Cir. 2009).

Bey claims that the district court should have granted her motion for default judgment against Anderson. We disagree. A district court may deny a motion for default judgment if the moving party "failed first to obtain an *entry* of default" pursuant to Rule 55(a) of the Federal Rules of Civil Procedure. *Reed-Bey v. Pramstaller*, 607 F. App'x 445, 449 (6th Cir. 2015). Bey did not obtain an entry of default before filing her motion for default judgment, so she was not entitled to default judgment against Anderson.

For these reasons, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

STATE OF OHIO

Case Number: 16CR3208160

Date: _____

AFFIDAVIT

HAMILTON COUNTY MUNICIPAL COURT

Jasmin Nicole Artis

117 W 65th St,

Cincinnati OH, 45216

D115261945

Before me personally came _____ who, being duly sworn

according to law, states that on or about the 2 day of August, 2016, at

ELMWOOD PLACE, Jasmin Nicole Artis did

On 8/2/2016 at about 2116 hours, A/O did a random registration check on OH plate FXA9198 traveling North on Vine near Lombardy St. A/O initiated traffic stop at Linden at Highland. A/O advised subject that he pulled her over because her vehicle registration was expired form 10/31/2014. A/O also noticed a small child in the vehicle that was not in a safety restraint. She stated that she did not have to renew her registration because she is not driving and that she is traveling. A/O mentioned that he will tow her vehicle because the registration was expired. Subject then stated that A/O is not stealing her vehicle and that she will leave the traffic stop. A/O advised subject that it would be her best interest not to leave the traffic stop. Subject stated that the United States Constitution allows her to travel in her vehicle without interruption of Police Officers. While A/O was at the driver's side window, subject started her vehicle and placed it into the drive gear. Subject then left the traffic stop at a high rate of speed going west on Linden. A/O got back into his vehicle and turned on his emergency siren. Subject did not stop but continued to drive her vehicle for about a mile running two stop signs. Subject pulled into 117 W. 65th street where she got out of her vehicle in attempt to get her son out if the car. A/O told subject to place her hands behind her back. Subject refused and fought with A/O to get handcuffs put on. A/O had to ask for assistance from bystanders to get her into custody.

Location of offense 117 65th St W
Elmwood Place, OH

X P.O. Cross #1
(Complainant/Witness)

NOTARY PUBLIC STATE OF OHIO

Sworn to before me, and subscribed in my presence
this 2nd day of August, 2016

Notary Public, State of Ohio
My Commission Expires
September 3, 2019

(Notary Public/Deputy Clerk)

6118 Vine St, Elmwood Place, OH 45216
(Address)

List below Name, Address, and Telephone Number of Witnesses in order of their importance.

A TRUE COPY
SENSITIVE INFORMATION REDACTED
ATTEST
HAMILTON COUNTY CLERK OF COURTS
DEPUTY CLERK

MUNICIPAL COURT HAMILTON COUNTY, OHIO

Name Address Phone No.

Name Address

Name Address

Booking No: 2016000000091

Appendix B

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Case No. 17-3945

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER

JAIYANAH BEY

Plaintiff - Appellant

v.

ELMWOOD PLACE POLICE DEPARTMENT; WILLIAM PESKIN, Chief of Police; ERIC CROSSTY; WILLIAM WILSON, Mayor of Elmwood Place; VICTORIA BALDRICK; CHRIS BROWN; CAPTAIN JEFF CARROL; HAMILTON COUNTY JOBS AND FAMILY SERVICES; HAMILTON COUNTY SHERIFF; MAJOR CHARMAINE MCGUFFEY; CHIEF DEPUTY MARK SCHOONOVER; NICHOLAS VARNEY; MOIRA WEIR, Agency Director, Hamilton County Jobs and Family Services; KATIE WOODSIDE; CINCINNATI POLICE DEPARTMENT; CHIEF ELIOT ISAAC; RODNEY ANDERSON, dba Hot Rod Towing

Defendants - Appellees

BEFORE: KEITH, WHITE, and BUSH, Circuit Judges.

Upon consideration of the appellant's motion to stay the mandate,

It is **ORDERED** that the motion be and it hereby is **DENIED**.

ENTERED BY ORDER OF THE COURT
Deborah S. Hunt, Clerk

Issued: August 01, 2018

Appendix C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Jaiyanah Bey,

Plaintiff,

v.

Elmwood Place Police Department, *et al.*,

Defendants.

Case No. 1:16cv823

Judge Michael R. Barrett

ORDER

This matter is before the Court upon the Magistrate Judge's December 22, 2016 Report and Recommendation ("R&R") recommending that this Court grant the Motion to Dismiss filed by Defendants Victoria Baldrick, Chris Brown, Jeff Carrol, Hamilton County Jobs And Family Services ("HCJFS"), Hamilton County Sheriff, Charmaine McGuffey, Mark Schoonover, Nicholas Varney, Moira Weir, Katie Woodside ("the County Defendants") (Doc. 27); grant the Motion to Dismiss filed by Defendants Chief Eliot Isaac and Cincinnati Police Department ("the City Defendants") (Doc. 34); grant the Motion for Judgment on the Pleadings filed by Defendants Eric Crossty, Elmwood Place Police Department, William Wilson ("the Elmwood Place Defendants") (Doc. 40); and grant the Motion for Judgment on the Pleadings filed by Defendant William Peskin (Doc. 41). Also before the Court is the Plaintiff's Motion for Default Judgment filed against Defendant Rodney Anderson. (Doc. 59).

I. BACKGROUND

During a traffic stop on August 2, 2016, Plaintiff Jaiyanah Bey was arrested and

Appendix D

charged with one count of resisting arrest, one count of endangering children, and one count of failure to comply with an order or signal of a police officer. (Doc. 27-1). Plaintiff's son was present during the traffic stop. Plaintiff claims that as part of the traffic stop, Defendants Eric Crossty and Rodney Anderson stole her personal property and endangered her son. (Doc. 3). Plaintiff also claims that she was arrested without probable cause. (Doc. 3). On August 3, 2016, Plaintiff was released after posting bond. (Doc. 3). On August 4, 2016, employees of Defendant Hamilton County Job and Family Services ("HCJFS"), including Defendant Victoria Baldrick, went to Plaintiff's home to take physical custody of Plaintiff's son. (Id.) HCJFS filed for emergency custody of Plaintiff's son, and Defendant Magistrate Katie Woodside granted custody to HCJFS. (Id.)

Plaintiff's complaint contains the following causes of action: denial of right to travel, denial of due process, excessive and unreasonable force, false imprisonment and unlawful detention, kidnapping, denial of due process (assault and battery), abuse of process, defamation, violation of personal right to liberty, denied right to truth in evidence, false arrest, racketeering. Plaintiff brings these claims pursuant to the Civil Rights Act of 1871, 42 U.S.C. § 1983.

In her R&R, the Magistrate Judge recommends granting the County and City Defendants' Motions to Dismiss (Docs. 27, 34); and the Elmwood Place Defendants and Defendant Peskin's Motions for Judgment on the Pleadings (Docs. 40, 41). The Magistrate Judge also recommends that all remaining pending motions (Docs. 12, 28, 32, 36, 46, 47, 51) be denied as moot.

The parties were given proper notice pursuant to Federal Rule of Civil Procedure 72(b), including notice that the parties would waive further appeal if they failed to file objections to the R&R in a timely manner. *See United States v. Walters*, 638 F.2d 947, 949-950 (6th Cir. 1981). Plaintiff filed Objections to the R&R. (Doc. 54). Defendants filed Responses to Plaintiff's Objections. (Docs. 55, 56, 57). Plaintiff then responded to Defendants' Responses (Doc. 58).

II. ANALYSIS

A. Standards of review

Federal Rule of Civil Procedure 72(b)(2) states that if a party objects to a magistrate's report and recommendation, the party must file "specific written objections" to the recommendation. Fed. R. Civ. P. 72(b)(2). A general objection to a magistrate's report, without specifically indicating the issues of contention, does not satisfy the "specific written objections" requirement. *Howard v. Secretary of Health and Human Servs.*, 932 F.2d 505, 509 (6th Cir. 1991). Defendants argue that Plaintiff has failed to file specific objections. Such arguments are misplaced. In her objections, Plaintiff identifies and repeats statements made in the R&R and responds to each with an argument labelled as "rebuttal." (See Doc. 54). While some of these arguments contain general statements, these statements are not tantamount to a general objection to the entirety of the Magistrate Judge's R&R.

A complaint may be dismissed according to Federal Rule of Civil Procedure 12(b)(6), for a "failure to state a claim upon which relief can be granted." A motion for judgment on the pleadings under Rule 12(c) of the Federal Rules of Civil Procedure is reviewed under the same standard as a motion to dismiss under Rule 12(b)(6). *Mixon*

v. State of Ohio, 193 F.3d 389, 399-400 (6th Cir. 1999). In reviewing a motion to dismiss, the Court must accept the plaintiff's allegations as true and construe the complaint in the light most favorable to the plaintiff. *Bassett v. NCAA*, 528 F.3d 426, 430 (6th Cir. 2008). The complaint need not contain detailed factual allegations, yet it must provide "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007)). However, courts must apply "less stringent standards" in determining whether *pro se* pleadings state a claim for which relief can be granted. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976).

B. Section 1983

To state a claim under § 1983, a plaintiff must allege: "1) the deprivation of a right secured by the Constitution or laws of the United States and 2) the deprivation was caused by a person acting under color of state law." *Tahfs v. Proctor*, 316 F.3d 584, 590 (6th Cir. 2003). However, as the Sixth Circuit has explained: "It is not enough for a complaint under § 1983 to contain mere conclusory allegations of unconstitutional conduct by persons acting under color of state law. Some factual basis for such claims must be set forth in the pleadings." *Chapman v. City of Detroit*, 808 F.2d 459, 465 (6th Cir. 1986).

The Magistrate Judge identified several Defendants who were named in the caption of Plaintiff's Complaint, but not specifically mentioned anywhere else in the Complaint. These Defendants are: Baldrick, Varny, Brown, Robison, Weir, Isaac, Wilson and Peskin. "Merely listing names in the caption of the complaint and alleging constitutional violations in the body of the complaint is not enough to sustain recovery

under § 1983." *Gilmore v. Corr. Corp. of Am.*, 92 F. App'x 188, 190 (6th Cir. 2004) (citing *Flagg Bros. v. Brooks*, 436 U.S. 149, 155-57, 98 S.Ct. 1729, 56 L.Ed.2d 185 (1978)). Plaintiff has not identified additional factual allegations in her objections. Therefore, the Magistrate Judge did not err in concluding that Plaintiff failed to state a claim against Defendants Baldrick, Varny, Brown, Robison, Weir, Isaac, Wilson and Peskin.

Plaintiff does explain in her Complaint that Defendant Katie Woodside is a Magistrate for the Hamilton County Juvenile Court, and that Magistrate Woodside improperly stripped Plaintiff of custody of her son. Plaintiff alleges that Magistrate Woodside acted "in absence of all jurisdiction and due process of law," but provides no further detail regarding this claim. While pleadings filed by *pro se* litigants are to be construed liberally, Plaintiff's factual allegations must be enough to raise the claimed right to relief above the speculative level and to create a reasonable expectation that discovery will reveal evidence to support the claim. *Twombly*, 550 U.S. at 556. These allegations do not rise to that level, and therefore Plaintiff has failed to state a constitutional claim.

Plaintiff also alleges that Magistrate Woodside was a conspirator and a party to "racketeering acts." However, Plaintiff has not properly plead a conspiracy claim. *See Heyne v. Metro. Nashville Pub. Sch.*, 655 F.3d 556, 563 (6th Cir. 2011) ("Although circumstantial evidence may prove a conspiracy, it is well-settled that conspiracy claims must be pled with some degree of specificity and that vague and conclusory allegations unsupported by material facts will not be sufficient to state such a claim under § 1983.") (citation and quotation marks omitted). Therefore, the Magistrate Judge did not err in

finding that Plaintiff has failed to state a claim against Defendant Woodside.

Plaintiff identifies Major McGuffey, Captain Carroll, Deputy Schoonover and Sheriff Neil, and explains their roles within the Hamilton County Sheriff's Office. However, the factual allegations against these defendants are limited. Plaintiff alleges:

> "This travesty of justice is propelled by the Defendants in order to impose and collect fines and costs from Ohio Citizens and or inhabitants. It is further accomplished by granting EPPD the HCJFS executive and Sheriffian authority, in concert with KATIE WOODSIDE MAJOR CHARMAINE MCGUFFEY, and CAPTAIN JEFF CARROLL a corporate veil of impregnability." (Doc. 3, PAGEID # 27).

> "The plaintiff's religious national identification card was stolen by sheriff deputies under the command of Defendant CHARMAIN MCGUFFEY (MAJOR), JIM NEIL (SHERIFF), and DEPUTY MARK SCHOONOVER (CHIEF) under color of authority in violation of the 4th and 5th Amendments to the U.S. Constitution." (Doc. 3, PAGEID #28).

To the extent that Plaintiff alleges that Major McGuffey, Captain Carroll, Deputy Schoonover and Sheriff Neil participated in a conspiracy with Magistrate Woodside, the Court has explained that Plaintiff's allegations regarding this conspiracy have not been properly plead. To the extent that Plaintiff claims that Major McGuffey, Captain Carroll, Deputy Schoonover and Sheriff Neil failed to adequately supervise the officers who stole Plaintiff's religious national identification card, Plaintiff has failed to adequately plead such a claim. To state a claim for failure to adequately supervise, a plaintiff must sufficiently plead that "(1) the training or supervision was inadequate for the tasks performed; (2) the inadequacy was the result of the municipality's deliberate indifference; and (3) the inadequacy was closely related to or actually caused the injury." *Stillwagon v. City of Delaware*, 175 F. Supp. 3d 874, 905 (S.D. Ohio 2016) (quoting *Regets v. City of Plymouth*, 568 Fed.Appx. 380, 394 (6th Cir. 2014)). Plaintiff has not plead facts which would support this claim, and therefore the Magistrate Judge

did not err in concluding that the claims against Major McGuffey, Captain Carroll, Deputy Schoonover and Sheriff Neil should be dismissed.

Moreover, Plaintiff's underlying constitutional claim fails. The Due Process Clause of the Fourteenth Amendment protects against the unlawful taking of a person's property by public officers. In order to properly plead a procedural due process claim, a plaintiff must allege that "(1) [she] had a life, liberty, or property interest protected by the Due Process Clause; (2) [she] was deprived of this protected interest; and (3) the state did not afford [her] adequate procedural rights." *Daily Services, LLC v. Valentino*, 756 F.3d 893, 904 (6th Cir. 2014) (citing *Women's Med. Prof'l Corp. v. Baird*, 438 F.3d 595, 611 (6th Cir. 2006)). Because Plaintiff has failed to make these allegations, the Magistrate Judge was correct to recommend that this claim be dismissed.

Plaintiff alleges that HCJFS employees improperly and illegally took custody of Plaintiff's child. A municipal defendant, like Hamilton County, may be held liable under § 1983 "only where the municipality's policy or custom led to the violation." *Robertson v. Lucas*, 753 F.3d 606, 622 (6th Cir. 2014) (citing *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 694-95 (1978)). As the Magistrate Judge explained, Plaintiff did not assert any factual allegations against Hamilton County or HCJFS in the complaint, let alone identify a policy or custom that led to the alleged violation of her constitutional rights. Therefore, the Magistrate Judge did not err in concluding that the claims against HCJFS should be dismissed for failure to state a claim.

To the extent that Plaintiff alleges claims against the Hamilton County Sheriff's Office, the Magistrate Judge explained that the Sheriff's Office is not a separate legal entity subject to suit under § 1983. *See Carmichael v. City of Cleveland*, 571 F. App'x

426, 435 (6th Cir. 2014) (citing cases and explaining that "under Ohio law, a county sheriff's office is not a legal entity that is capable of being sued."). Therefore, the Magistrate Judge correctly concluded that the claims against the Hamilton County Sheriff's Office should be dismissed.

Similarly, the Magistrate Judge explained that the Cincinnati Police Department and the Elmwood Place Police Department are not legal entities capable of being sued. The Magistrate Judge was correct to conclude that these two parties should be dismissed. *Accord Hale v. Vance*, 267 F. Supp. 2d 725, 737 (S.D. Ohio 2003) ("the City of Trotwood Police Department, being a mere arm of the City of Trotwood, is not its own entity, and is not capable of being sued (i.e., it is not *sui juris*)."). In addition, with no factual allegations showing a formal policy or any prior incidents to support Plaintiff's *Monell* municipal-liability claim, any claims against the City of Cincinnati or Elmwood Place fail.

As to the claims against Officer Crossty, who initiated the traffic stop of Plaintiff's vehicle, the Magistrate Judge found that Plaintiff's allegations were wholly unsupported and contradicted by the public records. Plaintiff claims Crossty violated her constitutional rights by arresting her without a warrant or probable cause and hiring a tow truck company to steal her property. (See Doc. 3, PAGEID #28; Doc. 44, PAGEID # 313). Plaintiff also claims that she was physically abused by Crossty. (Id., PAGEID #28).

According to an affidavit filed by Officer Crossty, in Plaintiff's criminal proceedings in Hamilton County Municipal Court, Plaintiff was initially stopped because her vehicle registration was expired and Officer Crossty noticed a small child in the

vehicle who was not in a safety restraint. (Doc. 27-1, PAGEID # 199). Plaintiff explained that she did not need to renew her registration because she was not driving, but was instead "travelling;" and the United States Constitution allows her to travel in her vehicle without interruption of police officers. (Id.)[1] Plaintiff then left the traffic stop at a high rate of speed and drove for about one mile before stopping. (Id.) At that point, Officer Crossty handcuffed Plaintiff with the assistance of bystanders and arrested Plaintiff. (Id.) Court records show that Plaintiff was convicted of failing to comply with an order or signal of a police officer, resisting arrest, and endangering children. (Doc. 27-1, PAGEID #203-204).

As the Sixth Circuit has recently reiterated:

> A traffic stop is a "seizure" and it must therefore conform to the requirements of the Fourth Amendment, but "to justify this type of seizure, officers need only 'reasonable suspicion'—that is, a particularized and objective basis for suspecting the particular person stopped of breaking the law." *Heien v. North Carolina*, 574 U.S. ——, 135 S.Ct. 530, 536, 190 L.Ed.2d 475 (2014) (quotation marks and citations omitted).

Sampson v. Vill. of Mackinaw City, 685 F. App'x 407, 412 (6th Cir. 2017). Plaintiff has not alleged that her vehicle registration was not expired or that her son was in a safety restraint. Instead, Plaintiff only makes conclusory allegations that Officer Crossty arrested her without probable cause. These allegations do not support Plaintiff's claim of false arrest.

"Were an excessive force claim arises in the context of an arrest, it is analyzed under the Fourth Amendment and its reasonableness standard." *Marshall v. City of Farmington Hills*, No. 15-2380, 2017 WL 2380650, at *5 (6th Cir. June 1, 2017) (citing *Graham v. Connor*, 490 U.S. 386, 395, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989)). The

[1]This is an argument Plaintiff has repeated in her response to Defendant Crossty's Motion for Judgment on the Pleadings. (Doc. 44, PAGEID #312-13).

Sixth Circuit has found that an officer's use of force was not excessive when an individual resisted arrest after being removed from her vehicle. *See Ryan v. Hazel Park*, 279 F. App'x 335, 338-39 (6th Cir. 2008). Here, Plaintiff only alleges that she was physically abused by Officer Crossty. Without additional factual allegations, Plaintiff has failed to state a claim for excessive force.

Finally, as to Plaintiff's claim that Officer Crossty hired a tow truck to steal her property, it would appear from Plaintiff's allegations that her vehicle was impounded following her arrest at the traffic stop. However, such an allegation fails to state a Fifth Amendment claim. *See United States v. Harvey*, 16 F.3d 109, 112 (6th Cir. 1994) (finding the "police lawfully exercised their discretion in deciding to impound the vehicle in the absence of any licensed driver to attend to it").

Accordingly, the Magistrate Judge correctly concluded that the claims against the Officer Crossty should be dismissed.

C. Default Judgment

In her Motion for Default Judgment, Plaintiff seeks default judgment against Defendant Rodney Anderson

A party who has failed to plead or defend against a judgment may have a default judgment entered against them. Fed. R. Civ. P. 55. Federal Rule 55 contains a two-step process. *Id.* First, an entry of default must be made under Rule 55(a). Second, a party must move for a default judgment under Rule 55(b). The clerk may enter a default judgment pursuant to Rule 55(b)(1) if the plaintiff presents the clerk with an affidavit showing the amount due for claims that have a sum certain. In all other cases, the party seeking default judgment must apply to the court for a default judgment. *Id.*

A court may properly deny a motion for default judgment if an entry for default was not obtained first. *Reed-bey v. Pramstaller*, 607 Fed.Appx. 445, 449 (6th Cir. 2015). In this case, Plaintiff filed a motion for default judgment, but failed to obtain an entry of default. Therefore, Plaintiff's Motion for Default judgment against Defendant Rodney Anderson is denied.

III. CONCLUSION

Based on the foregoing, the Magistrate Judge's December 22, 2016 Report and Recommendation (Doc. 52) is **ADOPTED**. Accordingly, it is hereby **ORDERED** that:

1. Defendants Victoria Baldrick, Chris Brown, Jeff Carrol, Hamilton County Jobs And Family Services, Hamilton County Sheriff, Charmaine McGuffey, Mark Schoonover, Nicholas Varney, Moira Weir, Katie Woodside's Motion to Dismiss (Doc. 27) is GRANTED;

2. Defendants Chief Eliot Isaac and Cincinnati Police Department's Motion to Dismiss (Doc. 34) is GRANTED;

3. Defendants Eric Crossty, Elmwood Place Police Department, William Wilson's Motion for Judgment on the Pleadings (Doc. 40) is GRANTED;

4. Defendant William Peskin's Motion for Judgment on the Pleadings (Doc. 41) is GRANTED;

5. Plaintiff's Motion for Default judgment against Defendant Rodney Anderson (Doc. 59) is DENIED;

6. The remaining motions pending before the Court (Docs. 12, 28, 32, 36, 46, 47, 51) are DENIED as MOOT; and

7. This matter is CLOSED and TERMINATED from the active docket of this Court.

IT IS SO ORDERED.

/s/ Michael R. Barrett
JUDGE MICHAEL R. BARRETT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JAIYANAH BEY,

Plaintiff,

vs.

ELMWOOD PLACE POLICE DEPT., et al.,

Defendants.

Case No. 1:16-cv-823

Barrett, J.
Bowman, M.J.

REPORT AND RECOMMENDATION

This civil action is now before the Court on Defendants' motions to dismiss this action (Docs. 27, 34) as well as Defendants motions for judgment on the pleadings. (Doc. 40, 41). Upon careful consideration of the record in this matter, the undersigned finds that the pending motions are well-taken and dismissal of this matter is warranted as a matter of law.

I. Background and Facts

Plaintiff is "a North American national of Moroccan descent" who lives in Ohio. (See Doc. 3). On August 2, 2016, Plaintiff alleges that she was arrested for a traffic violation. Plaintiff was in fact arrested and charged with one count of resisting arrest, one count of endangering children, and one count of failure to comply with an order or signal of a police officer. (Doc. 27, Ex. A-C). In the course of the traffic stop, Plaintiff alleges that she was injured by Eric Crossty and Rodney Anderson, a police officer for the Elmwood Place Police Department and an employee of Hot Rod Towing, respectively. (Doc. 27, Ex. D). Plaintiff's son was present during the traffic stop.

Appendix E

On August 3, 2016, Plaintiff was released by police after she posted a bond. (Doc. 3 at 6). The next day, August 4, 2016, employees of Defendant Hamilton County Job and Family Services ("HCJFS"), including Defendant Victoria Baldrick went to Plaintiff's residence to take physical custody of Plaintiff's son. (*See* Doc. 3). Plaintiff told HCJFS that her son "could stay with family members but [could] not be taken unlawfully by [HCJFS]." (Id. at 7) After Plaintiff's family member(s) arrived, HCJFS informed Plaintiff that it would be filing for "emergency custody to strip [Plaintiff] of her parental rights." *Id.*

Thereafter, in the Hamilton County Juvenile Court Plaintiff lost legal custody of her son pursuant to an order of Magistrate Katie Woodside. (Doc. 3 at 7). Magistrate Woodside determined that Plaintiff's son was at imminent risk of serious physical harm in Plaintiff's custody and ordered that HCJFS take emergency custody of the child to protect the best interests of the child.

On August 10, 2016, Plaintiff then filed the instant action against the Elmwood Place Police Department, Elwood Place Chief of Police William Peskin, Elmwood Place Police Officer Eric Crossty, Elwood Place Mayer, William Wilson, Hamilton County Jobs and Family Services, Moira Weir, Agency Director of HCJFS, Victoria Baldrick, HCJFS personnel, Katie Woodside, Magistrate for the Hamilton County Juvenile Court, Nicolas Varney, Attorney for the Hamilton County Public Defender's Office, Chris Brown, attorney for the Hamilton County Prosecutor's Office, Jim Neil, Hamilton County Sheriff, Major Charmaine McGuffey, Commander for the Court & Jail Services Division, Captain Jeff Carroll, Hamilton County Sheriff's Office Court Services, Chief Deputy Mark Schoonover, Hamilton County Sheriff's Office, Eliot Isacc, Cincinnati Police Department

chief of Police, and the City of Cincinnati. Plaintiff's complaint contains the following causes of action

1. Denial of right to travel
2. Denial of Due Process
3. Excessive and Unreasonable Force
4. False Imprisonment and Unlawful Detention
5. Kidnapping
6. Denial of Due Process (Assault and Battery)
7. Abuse of Process
8. Defamation
9. Violation of Personal Right to Liberty
10. Denied Right to Truth in Evidence
11. False Arrest
12. Racketeering

(Doc. 3).

Plaintiff's claims stem from Plaintiff's August 2, 2016, arrest and the Magistrate's August 4, 2016, ruling on HCJFS' Motion for Interim Order of Custody. *Id.* Plaintiff asserts diversity jurisdiction and federal question jurisdiction. Defendants' motions to dismiss and for judgment on the pleadings will now be addressed in turn.

II. Defendants Motions to Dismiss (Docs. 27, 34)

Defendants Victoria Baldrick, Chris Brown, Jeff Carrol, Hamilton County Jobs And Family Services, Hamilton County Sheriff, Charmaine McGuffey, Mark Schoonover, Nicholas Varney, Moira Weir, Katie Woodside (collectively referred to as "County Defendants") and Defendants Chief Eliot Isaac and the Cincinnati Police Department (collectively referred to as the "City Defendants") move to dismiss Plaintiff's claims against them pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. (Doc. 27). The motions are well-taken.

A. Standard of Review

A motion to dismiss pursuant to Rule 12(b)(6) operates to test the sufficiency of

the claims. The court is required to construe the complaint in the light most favorable to the Plaintiff, and accept all well-pleaded factual allegations in the complaint as true. See *Scheuer v. Rhodes,* 416 U.S. 232, 236 (1974). A court, however, will not accept conclusions of law or unwarranted inferences which are presented as factual allegations. *Blackburn v. Fisk University*, 443 F.2d 121, 124 (6th Cir. 1974). A complaint must contain either direct or reasonable inferential allegations that support all material elements necessary to sustain a recovery under some viable legal theory. *Lewis v. ACB*, 135 F.3d at 405 (internal citations omitted). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted); *Association of Cleveland Fire Fighters v. City of Cleveland, Ohio*, 502 F.3d 545, 548 (6th Cir. 2007). Even though a complaint need not contain "detailed" factual allegations, its "[f]actual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Id.* (citations omitted).

B. Plaintiff's complaint fails to state a claim for relief against the County Defendants

To state a § 1983 claim, plaintiff must allege (1) the deprivation of a right secured by the Constitution or laws of the United States, and (2) the deprivation was caused by a person acting under color of state law. *See Hines v. Langhenry,* 462 Fed. Appx. 500, 503 (6th Cir.2011) (citing *Boykin v. Van Buren Twp.,* 479 F.3d 444, 451 (6th Cir.2007); *Tahfs v. Proctor,* 316 F.3d 584, 590 (6th Cir.2003)).

At the outset, the County defendants note that Plaintiff's complaint asserts that "the Defendants" as a large group have committed the acts that entitle her to relief. However, Plaintiff's causes of action arise from events that took place over the course of several days, in different location and involving distinct groups of individuals. Notably, when a complaint merely lists multiple defendants and then describes the facts generally without naming the specific defendants involved in each event and without setting forth with particularity which acts by each defendant caused each constitutional deprivation, the complaint is insufficient. *See Id.* "When monetary damages are sought under section 1983 ... a showing of some personal responsibility of the defendant is required." *Johnson v. Glick,* 481 F.2d 1028, 1034 (2d Cir.), *cert. denied,* 414 U.S. 1033 (1973). A plaintiff must prove that a particular defendant was personally involved in the deprivation of his rights. *Id.* A § 1983 complaint must allege that specific conduct by the defendant was the proximate cause of the injury. *King v. Massarweh,* 782 F.2d 825, 829 (9th Cir.1986).

Thus, "[c]ongress did not intend § 1983 liability to attach where causation is absent." *Deaton, et al. v. Montgomery Cty., et al.,* 989 F.2d 885, 889 (6th Cir.1993). To establish causation, a plaintiff must adduce "an affirmative link ... [a] moving force that animated the behavior ... that resulted in the constitutional violations alleged." *Id.* There is no § 1983 liability where the actions of one private individual leading to the injury or death of another individual are too remote from the allegedly wrongful state action. *Gazette v. City of Pontiac, et al.,* 41 F.3d 1061 (6th Cir.1994). *See also Janan v. Trammel,* 785 F.2d 557, 559 (discussing *Martinez v. California,* 444 U.S. 277, 285, 100 S.Ct. 553, 62 L.Ed.2d 481 (1980)); and *City of Canton v. Harris,* 489 U.S. 378, 385-86,

109 S.Ct. 1197, 103 L.Ed.2d 412 (1989).

Here, plaintiff has merely set forth a list of allegedly egregious acts and, thereafter, names a state agency and an employee of that agency as defendants without ever having specifically linked the particular employee to any complained-of action. Accordingly, as detailed below, the plaintiff has not sufficiently pled this action for it to go forward against the individually named county defendants as follows:

First, Plaintiff's complaint does not refer to Defendant Baldrick beyond general allegations as to the "Defendants." Next, other than being named in the caption of the complaint, Plaintiff's complaint does not contain any allegations against attorneys Nicholas Varney and Chris Brown. As such, Plaintiff's complaint fails to include sufficient factual support to state any claim for relief against Defendants Baldrick, Varney and Brown. Additionally, Plaintiff lists Mike Robison as a defendant on the certificate of service attached to the complaint; however the complaint or caption does not mention Mr. Robison.

Similarly, Plaintiff's complaint also fails to include sufficient factual allegations against defendants Moira Weir, Magistrate Woodside, Major McGuffey, Captain Carroll, Deputy Mark Schoonover, and Sheriff Jim Neil. Namely, beyond alleging that Ms. Weir is the director of HCJFS, the complaint does not allege that Ms. Weir was personally involved in the constitutional violations alleged. With respect to Magistrate Katie Woodside, the complaint alleges that she is a magistrate for the Hamilton County Juvenile Court and appears to sue her in both her official and individual capacities. Plaintiff alleges that Magistrate Woodside called an emergency custody hearing in order to improperly strip Plaintiff of custody of her son. Plaintiff further alleged that Magistrate

Woodside is a conspirator and a party to "racketeering acts". (Doc. 3). However, Plaintiff fails to include any factual basis to support such conclusory allegations.

Plaintiff further alleges that Major McGuffey, Captain Carroll, Deputy Schoonover and Sheriff Neil had command over deputies who stole Plaintiff's religious ID card. Such allegations fail to suggest that these Defendants deprived Plaintiff of a right secured by the constitution. *See Hines v. Langhenry,* 462 Fed. Appx. 500, 503 (6th Cir.2011).

Last, Plaintiff names HCJFS as a defendant on the case caption; however, the coamplaint alleges violations on behalf of HCJFS employees and does not assert claims against HCJFS.[1] Additionally, Plaintiff's complaint appears to assert claims against Hamilton County Sheriff's Office (although not identified in the case caption), alleging that "HCSO has unlawfully entered into a business arrangement with HCJFS to fame her good name, entice her into slavery, wrongfully imprison her, and strip her of custody of heir apparent J.B.[2]" (Doc. 3). Such unsupported conclusory allegations fail to state a plausible claim for relief. Furthermore, Hamilton County Sheriff's Office is not a separate legal entity subject to suit under § 1983. *Rhodes v. McDannel,* 945 F.2d 117, 120 (6th Cir.1991); *Marbry v. Corr. Med. Servs.,* No. 99–6706, 2000 WL 1720959 at * 2 (6th Cir. Nov.6, 2000). *Woods v. Hamilton Cty. Jail,* No. 1:09-CV-137, 2010 WL 1882113, at *5 (E.D. Tenn. May 10, 2010).

In light of the foregoing, the undersigned finds that the County Defendant's motion to dismiss is well-taken.

[1] Moreover, this Court has also found that HCDJFS is an "arm of the state" entitled to sovereign immunity for purposes of the activities implicated in this action. *See Gamble v. Ohio Dep't of Job & Family Servs.,* 1:03–CV–452, 2006 WL 38996 (S.D.Ohio Jan.5, 2006).

[2] Name is redacted by the Court.

C. The City Defendants' Motion to Dismiss is well-taken

Here, other than identifying the City Defendants in the caption and in paragraph 7 of the complaint, there is no other mention of the City Defendants in the complaint. As such, Plaintiff's complaint fails to include sufficient factual support to state any claim for relief against the City Defendants.

Moreover, the Cincinnati Police Department is not a legal entity subject to suit under 42 U.S.C. § 1983. *See Rhodes v. McDannel,* 945 F.2d 117, 120 (6th Cir.1991). Additionally, a person convicted of a crime may not raise claims under § 1983 if a judgment on the merits of those claims would affect the validity of his conviction or sentence, unless the conviction or sentence has been set aside. *See Edwards v. Balisok,* 520 U.S. 641, 646 (1997); *Heck v. Humphrey,* 512 U.S. 477, 486 (1994). Here, Plaintiff is challenging the validity of the traffic and criminal convictions. To assert these claims, she must first demonstrate that her conviction was declared invalid by either an Ohio state court or a federal habeas corpus decision. She has not done so. As such, the complaint fails to state a claim upon which relief may be granted and should be dismissed.

III. Defendants' Motions for Judgment on the Pleadings (Docs. 40, 41)

Defendants Elmwood Place Police Department ("EPPD"), Eric Crossty ("Crossty"), and William Wilson ("Wilson") (collectively "Elmwood Place Defendants") and Defendant William Peskin ("Peskin") move to dismiss Plaintiff's claims against them pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

A. Standard of Review

The standard for a motion for judgment on the pleadings is the same as the

standard for a motion to dismiss under Rule 12(b)(6). *See Morgan v. Church's Fried Chicken,* 829 F.2d 10, 11 (6th Cir.1987). When ruling on a defendant's Rule 12(c) motion, a district court "must construe the complaint in the light most favorable to the plaintiff [and] accept all of the complaint's factual allegations as true." *Ziegler v. IBP Hog Market, Inc.,* 249 F.3d 509, 512 (6th Cir.2001) (citations omitted). In ruling on a motion for judgment on the pleadings, a court may not consider material outside of the pleadings. Fed.R.Civ.P. 12(c); *see also Hickman v. Laskodi,* 45 F. App'x 451, 454 (6th Cir.2002).

B. Plaintiff's claims against the Elmwood Place Defendants are properly dismissed.

Plaintiff's complaint asserts that EPPD has been "cloth[ed] with the veil of state [and/or 'Sheriffian'] authority," has "violate[d] search and procedural warrant protocol," and "enforce[d] color of authority with arms and threat of imprisonment." Doc. 3. at PageID 26-27. Without any basis whatsoever, Plaintiff also concludes that EPPD "effectuat[es] false prosecution(s), collect[s] fines and bailments, and incarcerat[es] persons who [are] to be 'presumed innocent' at their beckon call due to latent and patented bias against the plaintiff."[3] *Id.* at PageID 26. Further, Plaintiff concludes that EPPD has "unlawfully entered into [a] business arrangement with HCJFS to defame [Plaintiff's] good name, entice her to slavery, wrongfully imprison her, and strip her of custody of heir apparent." *Id.* at PageID 27. Plaintiff also asserts that EPPD has either permitted others or been permitted by others to "bear false witness against Plaintiff in

[3] Plaintiff also asserts that EPPD "employed HOT ROD TOWING Company to steal Plaintiff's personal property and to assist in the kidnapping the [sic] Plaintiff." *See* Doc. 3, PageID 28. Plaintiff, however, provides no factual basis for this assertion. Furthermore, any purported claims asserted against Hot Rod Towing also fail as a matter of law, as there is no evidence that Hot Rod Towing was acting under color of state law as required to assert claims under §1983.

'kangaroo court' sham court proceedings." *Id.*

Such unsupported, and wholly improbable allegations, fail to state any plausible claim for relief against EPPD as required by *Twombly* and *Iqbal.* Furthermore, any claims against EPPD must fail as a matter of law because EPPD is not *sui juris*. See *Hale v. Vance*, 267 F.Supp.2d 725, 737 (S.D.Ohio 2003) (City of Trotwood Police Department was not *sui juris* and was not capable of being sued); *Elkins v. Summit County, Ohio*, 2008 WL 622038, *6 (N.D.Ohio Mar. 5, 2008) (dismissing claims against Barberton Police Department because it was not *sui juris); see also Burgess v. Doe*, 116 Ohio App.3d 61, 64, 686 N.E.2d 1141, 1143 (12th Dist. 1996) (Lebanon Police Department was dismissed "on the ground that the police department was not *sui juris* and lacked the capacity to be sued").

With respect to Officer Crossty (the Officer who initialed the traffic stop of Plaintiff's vehicle on August 2, 2016), Plaintiff alleges that Crossty stole from her, physically abused her, and/or verbally abused and endangered her son. *See* Doc. 3, PageID 28- 37. These allegations are wholly unsupported and contradicted by public records. Accordingly, Plaintiff has failed to state a plausible claim for relief against Defendant Crossty.

Moreover, although Plaintiff's names William Wilson as a defendant in this actions, the only time Wilson's name is mentioned in the Complaint, excluding the Complaint's caption, is when Plaintiff identifies him as the Mayor of the Village of Elmwood Place ("Elmwood Place") and a defendant being sued in his official capacity. (Doc. 3). Plaintiff does not allege that Wilson was involved in any way in any of the events precipitating the filing of this action. *Id.* Accordingly, Plaintiff has failed to state

any plausible claim for relief against Wilson.

For these reasons, Plaintiff's claims asserted against the Elmwood Place Defendants are properly dismissed

C. Defendant Peskin

Plaintiff's Complaint alleges twelve claims against Peskin purportedly as Chief of Police for the Elmwood Place Police Department ("EPPD"). However, Peskin is not currently the Chief of Police for the Elmwood Place Police Department and was not Chief of Police at the time of the events described in Plaintiff's Complaint and, therefore Peskin was not involved in the events described in Plaintiff's Complaint. Accordingly, Plaintiff has failed to allege any facts against Peskin to make liability against him appear plausible.

IV. Conclusion

Accordingly, for these reasons, it is therefore **RECOMMENDED** that Defendants' Motions to Dismiss (Docs. 27, 34) be **GRANTED**, Defendants' Motions for Judgment on the pleadings (Docs. 40, 41) be **GRANTED**; all remaining pending motions (12, 28, 32[4], 36, 46, 47, 51), be **DENIED as MOOT**, and this matter **TERMINATED** on the active docket of this Court.

s/ Stephanie K. Bowman
Stephanie K. Bowman
United States Magistrate Judge

[4] The County Defendants construed Plaintiff's "Emergency Complaint for Permanent Injunction and Other Equitable Relief" that relates to a "Motion for Emergency Hearing and Emergency Injunction" (*see* docs 12, 13) as an Amended Complaint and filed a motion to dismiss the Amended Complaint. However, Plaintiff's motion does not appear to be properly served. More importantly, Plaintiff asserts that the motions were not intended to be an Amended Complaint. (Doc.35). Accordingly, the motion to dismiss the purported amended complaint should be denied as moot.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JAIYANAH BEY,

Plaintiff,

vs.

ELMWOOD PLACE POLICE DEPT., et al.,

Defendants.

Case No. 1:16-cv-823

Barrett, J.
Bowman, M.J.

NOTICE

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation ("R&R") within **FOURTEEN (14) DAYS** after being served with a copy thereof. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent's objections within **FOURTEEN DAYS** after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn,* 474 U.S. 140 (1985); *United States v. Walters,* 638 F.2d 947 (6th Cir. 1981).