

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

HOWARD BROWN

CIVIL DOCKET NO.: 3:22-cv-00264

VERSUS

JUDGE DICK

CITY OF CENTRAL, ET AL.

MAGISTRATE BOURGEOIS

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS
PURSUANT TO FRCP RULE 12(b)(6)¹

MAY IT PLEASE THE COURT:

Plaintiff filed his complaint into the record and names the CITY OF CENTRAL as a defendant in the above stated matter. Defendant respectfully submits that plaintiff has failed to state a cause of action against mover upon which relief can be granted.

I. STANDARD FOR DISMISSAL UNDER FRCP 12(B)(6)

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) is designated to eliminate the unnecessary burden of discovery, with a minimum expenditure of time and expense, where "there is no reasonable prospect that the plaintiff can make out of a cause of action from the events related in the complaint." *Carl Sandburg Village Condominium Ass'n No. 1 v. First Condominium Development Co.*, 758 F.2d 203, 207 (7th Cir. 1985). "In order to avoid dismissal for failure to state a claim, a plaintiff must plead specific facts, not mere conclusory allegations . . ." *Guidry v. Bank of LaPlace*, 954 F.2d 278, 281 (5th Cir. 1992), *quoting Elliot v. Foufas*, 867 F.2d 877, 881 (5th Cir. 1989). See also *Tuchman v. DCS Communications Corp.*, 14 F.3d 1067 (5th Cir. 1994). Discovery and the development of evidence are irrelevant to the consideration of a motion to dismiss. *Murray v. Amoco Oil Co.*, 539 F.2d 627, 641 (5th Cir. 1981), *cert. dismissed*, 462 U.S. 1125, 103 S.Ct. 3100 (1983).

¹ Or alternatively, a Motion for Summary Judgment pursuant to Rule 56.

II. PLAINTIFF'S COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED.

Under Federal law, the Court shall dismiss the case at any time if the court determines that...the action or appeal is frivolous or malicious; fails to state a claim on which relief may be granted; or seeks monetary damages against a defendant who is immune from such relief. 28 U.S.C.A. Sec. 1915(e)(2)(B). The Court has the authority to dismiss a claim based on meritless legal theory as well as the power to dismiss all claims that are determined to be clearly baseless according to the facts. *Neitzke v. Williams*, 490 U.S. 319, 327 (1989). The Court has broad discretion in determining the frivolous nature of a complaint. *Cay v. Estelle*, 789 F.2d 318, 325 (5th Cir. 1986).

The law further states supervisory officials may be held liable under Section 1983 if the officials affirmatively participate in acts that cause constitutional deprivation; or the officials implement unconstitutional policies that causally result in plaintiff's injury. *Baker v. Putnal*, 75 F.3d 190, 199 (5th Cir. 1996); *Mouille v. City of Live Oak, Tex.*, 977 F.2d 924, 929 (5th Cir. 1992). They may also be liable for the actions of subordinates when the supervisor himself breached a duty imposed by state or local law and this breach caused plaintiff's constitutional injury. *Ham v. Brice*, 203 Fed. Appx. 631, 633 (5th Cir. 2006); *Smith v. Brenoettsy*, 158 F.3d 908, 911 (5th Cir. 1998). To hold a supervisory official liable under this theory, the plaintiff must show that: the supervisor either failed to supervise or train the subordinate official; a causal link existed between the failure to train or supervise and the violation of plaintiff's rights; and the failure to train or supervise amounted to deliberate indifference. *Id.* at 911-12.

Louisiana Civil Code Article 3492 states, in pertinent part: "Delictual actions are subject to a liberative prescription of one year. This prescription commences to run from the day injury or damages is sustained..."

Actions based upon, “intentional misconduct, negligence, abuse of right, and liability without negligence,” are subject to the one-year liberative prescription period generally applicable to delictual actions. *Hotard v. Malik*, 511 So. 2d 769, 770 (La. App. 5th Cir 1987). Plaintiffs assert Arceneaux and Stafford are responsible for damages incurred from defending the suit against the Markersons. The one-year period for delictual actions has been applied to an action for personal injuries under Louisiana law.

When a party has enough notice to excite attention and put him on guard and to call for inquiry, he has sufficient knowledge to start the running prescription. *Robert v. Murphy Oil Corporation*, 577 So.2d 308, 312 (La.App 4 Cir. 1991); *Cartwright v. Chrysler Corporation*, 232 So. 2d 285, 287 (La. 1970). In the present case, according to his own complaint, Plaintiff was involved in a traffic stop on August 6, 2020, from which all of his damages are claimed. (Document #1 – Complaint – Page 6) Thus, plaintiff had until August 6, 2021, to file his complaint. However, the complaint was not filed until April 16, 2022, which is more than eight months after the prescriptive period expired. (Document #1 – Complaint – Page 1) Given the information provided on the face of the complaint, the plaintiff has not met his burden of stating a claim upon which relief may be granted as the matter is prescribed. As such, this matter should be dismissed with prejudice.

III. ALTERNATIVELY, THE CITY OF CENTRAL’S OFFICERS ARE ENTITLED TO QUALIFIED IMMUNITY.

Plaintiff alleges under 42 U.S.C. § 1983, the City of Central, Chief Corcoran, Officer Porche, and former officers Noah McKneely and Darren Sibley, violated Plaintiff’s Fourth Amendment rights to the United States Constitution, acting under the color of state law. “The doctrine of Qualified Immunity provides that government officials performing discretionary functions generally are shielded from liability for civil damages to the extent that their conduct does not

violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Hudspeth v. City of Shreveport*, 2006 WL 3747446 (W.D. La. 12/18/06); *See also*, *Pearson v. Callahan*, 555 U.S. 223, 129 S.Ct. 808 (2009). This doctrine balances two separate interests: (1) “the need to hold public officials accountable when they exercise power irresponsibly,” and (2) “the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably.” *Pearson v. Callahan*, 555 U.S. 223, 129 S. Ct. 808, 815 (2009). This protection applies whether the government official’s error is “a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact.” *Id. citing, Groh v. Ramirez*, 540 U.S. 551, 567 (2004) (Kennedy, J., dissenting). The Supreme Court has stated that qualified immunity is **“an immunity from suit rather than a mere defense to liability...it is effectively lost if a case is erroneously permitted to go to trial.”** *Pearson, supra* at 815, *citing, Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985) (emphasis added). Therefore, qualified immunity provides “the right not to stand trial or confront other burdens of litigation, conditioned on the resolution of the essentially legal question whether the conduct of which the plaintiff complains violated clearly established law.” *Hudspeth, supra* at *6. Its purpose is to “ensure that insubstantial claims against government officials will be resolved prior to discovery.” *Pearson, supra* at 815, *citing, Anderson v. Creighton*, 483 U.S. 635, 640, n.2 (1987).

Generally, a court must examine (1) whether the facts alleged by the plaintiff constitute a violation of a constitutional right, and then, (2) whether the right at issue was “clearly established” at the time the defendant allegedly committed the misconduct. *Pearson, supra* at 815. Although the Court in *Saucier v. Katz*, 533 U.S. 194 (2001), held that these inquiries *must* proceed in this order, the Court has since modified its holding in *Pearson v. Callahan, supra*, stating “On reconsidering the procedure required in *Saucier*, we conclude that, while the sequence set forth

there is often appropriate, it should no longer be regarded as mandatory. The judges of the district courts and the courts of appeals should be permitted to exercise their discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand.” *Pearson, supra* at 818.

In addition, the United States Fifth Circuit Court of Appeals, sitting *en banc*, previously held that the “heightened pleading” requirement in *Elliott v. Perez*, 751 F.2d 1472 (5th Cir.1985), survived the United States Supreme Court ruling in *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 113 S. Ct. 1160, 122 L.Ed.2d 517 (1993). *Schultea v. Wood*, 47 F.3d 1427 (5th Cir. 1995). More particularly, the *Schultea* Court held that “notice pleading” was insufficient, without more, to defeat the defense of qualified immunity. Furthermore, since part of the purpose of qualified immunity is to stop frivolous claims prior to discovery, the Fifth Circuit requires the plaintiff’s complaint to contain factual allegations. *Schultea v. Wood*, 47 F.3d 1427 (5th Cir. 1995). Specifically, “a plaintiff must at least chart a factual path to the defeat of the defendant’s immunity, free of conclusion.” *Id.* at 1430. If the complaint does not adequately anticipate the defense of qualified immunity with a fact specific pleading, the *Schultea* Court recommended a Federal Rule of Civil Procedure Rule 7(a) reply be submitted. *Id.* at 1429.

Further, the Fifth Circuit “has reasoned that before a district court adjudicates the merits of a plaintiff’s claims, the plaintiff must overcome the bar of qualified immunity.” *Hudspeth, supra* at *6. After a defendant raises the defense of qualified immunity, the “plaintiff has the burden of rebutting the defense by demonstrating that the government official’s allegedly wrongful conduct violated clearly established law.” *Id.* In addition, the Fifth Circuit does not require that the “government official demonstrate that he did not violate clearly established federal rights because

the precedent of this Circuit places such burden on the plaintiff.” *Id.* Last, the Fifth Circuit has repeatedly held that “**if the reasonable public officials could differ on the lawfulness of the defendant’s actions, the defendant is entitled to qualified immunity.**” *Hudspeth, supra* at *6; *See also, Fraire v. City of Arlington*, 957 F.2d 1268, 1273 (5th Cir. 1992) (emphasis added)

In this case, the complaint simply does not provide a factual path to defeat the immunity of Chief Corcoran, Officer Porche, former Officer McKneely, or former Officer Sibley. None of them violated the Plaintiff’s civil rights. And if the individual officers did not violate the Plaintiff’s civil rights, then the City is not liable.

Plaintiff alleges that he was illegally detained at a traffic stop and that his motorcycle/vehicle was illegally seized. Officer Porche stopped Plaintiff because there was no license plate showing on the motorcycle. Plaintiff admits that there was no license plate showing in the complaint he filed with the Court. (Document #1 – Complaint – Page 6) Officer Porche asked for license and registration documents. (Document #1 – Complaint – Page 6) Plaintiff instead provided a notarized document containing ‘a strongly worded warning to official not to presume or assume anything about Plaintiff’. (Document #1 – Complaint – Page 7) Upon being provided the documentation, Officer Porche called for backup as his experience led him to think of this encounter as a sovereign citizen matter. (Document #1 – Complaint – Page 7)

Additional officers from various departments arrived at the scene. (Document #1 – Complaint – Page 7) When the title to the motorcycle was examined, the name of the person believed to be the owner of the motorcycle and believed to be the individual who was stopped became apparent. (Document #1 – Complaint – Page 8) Citations were issued in that name as it was the only name the officers were able to determine from the information provided by Plaintiff and from the documentation and the citations were then provided to Plaintiff. (Document #1 – Complaint – Page

9) Plaintiff indicates in his complaint that the person was actually the previous owner of the motorcycle.² (Document #1 – Complaint – Page 9) Since the motorcycle didn't have a valid license plate to be driving on the City streets, the officers then had the bike towed. (Document #1 – Complaint – Pages 9-10) There are no allegations about former Officer McKneely or former Officer Sibley other than that they were present and that each carried a weapon. (Document #1 – Complaint – Pages 6-7)

The actions of Chief Corcoran, Officer Porche, former Officer McKneely, and former Officer Sibley were objectively reasonable, and a reasonable official in those circumstances would understand that what he was doing did not violate the law. Therefore, qualified immunity as to Chief Corcoran, Officer Porche, former Officer McKneely, and former Officer Sibley should be upheld and they should be dismissed from this with prejudice. Further, if the City's Chief and its officers (current or former) are dismissed, there is no viable claim against the City, and as such, any and all claims against the City should be dismissed with prejudice.

IV. CONCLUSION

Accordingly, the plaintiff's claims against the City of Central are without basis in law or fact. Construing the complaint broadly, the Court should find that the plaintiff has not met his burden of stating a claim upon which relief may be granted as the matter is prescribed on its face. Additionally, the Chief and City's officers (current and former) are entitled to qualified immunity and as such, there is no valid claim against the City. Therefore, the defendant respectfully requests that this motion to dismiss, pursuant to *FRCP Rule 12(b)(6)*, be granted, and that plaintiff's claims

² Apparently, Plaintiff never registered the motorcycle in his name after purchase or didn't have those documents with the motorcycle.

against the defendant, in the above entitled and numbered cause be dismissed, with prejudice, at plaintiff's costs pursuant to 42 USC 1988.

Respectfully submitted,

s/ J. Scott Thomas

J. Scott Thomas (La. Bar Roll No. 22635)

700 North 10th Street, Suite 440 (70802)

Post Office Box 4327

Baton Rouge, Louisiana 70821

Telephone: (225) 344-5001

Facsimile: (225) 336-5277

Email: sthomas@lma.org

Attorney for the City of Central