

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

BENJAMIN MANN,)	
)	
Plaintiff,)	
)	
v.)	No. 14-2200
)	
CITY OF CHAMPAIGN, ILLINOIS,)	
et al.,)	
)	
Defendants.)	

**MOTION TO DISMISS COUNTS I AND II IN PART AND
COUNTS III, IV, V, VI AND VII IN TOTAL**

NOW COME Defendants, Champaign Police Officers CHRISTOPHER C. AIKMAN, DAVID BUTLER, NATHANIEL M. EPLING, KRISTINA HAUGEN, MARSHALL HENRY, MATT R. RUSH and CULLY T. SCHWESKA (hereinafter “Individual Defendants”), and the CITY OF CHAMPAIGN, ILLINOIS (hereinafter “City”), and move to dismiss each of the counts to Plaintiff’s Complaint either in part or in whole pursuant to Federal Rule of Civil Procedure 12(b)(6) and state:

1. Plaintiff, BENJAMIN MANN, has filed a nine count Complaint against individual Defendants in their personal and professional capacities and the City.
2. Counts I and IV are filed pursuant to 42 U.S.C. §1983.
3. Counts II, III, and VIII are not clearly delineated as to whether they are asserted under state law or 42 U.S.C. §1983.
4. Counts V, VI, VII, and IX are asserted under the laws of the State of Illinois.

COUNTS I AND II

5. Under Counts I and II, the Individual Defendants are sued alleging excessive force and false arrest in their individual and official capacities. A suit against Individual Defendants in their official capacities is a suit against the local government itself.

6. In order to be a sufficient pleading against the City, there must be facts which show a pattern or practice of constitutional violations sufficient to establish that the City was deliberately indifferent to constitutional violations.

7. Plaintiff makes no allegations against the City of Champaign as to excessive force and false arrest in Counts I and II.

8. If liability cannot be established against the City, the suits against the officers in their official capacities fail.

9. The portion of this motion which addresses Count IV provides the basis for the dismissal of Count IV, as well as Counts I and II.

WHEREFORE, Individual Defendants pray that Counts I and II, as they relate to the Individual Defendants in their official capacities, be dismissed.

COUNT III

10. Count III of the Complaint does not reveal whether the Plaintiff is proceeding against named Defendants in their personal or official capacities for failure to intervene.

11. If this count is addressed to the official capacities of the officers, the same arguments raised below, in response to Count IV and as applied to Counts I and II, apply here.

12. In paragraph 55, the Complaint alleges that certain officers either “partook in the beating” and/or failed to intervene in order to protect Plaintiff.

13. In order to allege that an individual officer failed to intervene, the Plaintiff must plead and prove that each officer individually had a reasonable opportunity to intervene to prevent a constitutional harm.

14. Plaintiff has failed to specifically allege how each individual officer had a reasonable opportunity to intervene to prevent a constitutional harm.

15. In addition, in the Facts Common to All Counts, the Plaintiff makes no allegations against Officer Haugen that she was in any way involved in the arrest or could have had any reasonable opportunity to intervene.

WHEREFORE, all Individual Defendants pray that Count III be dismissed for prejudice and for cost.

COUNT IV

16. Count IV alleges a failure to train, supervise or discipline its police officers by the City of Champaign.

17. In order to serve as a basis for §1983 liability, the Complaint must allege facts other than the mere allegations of excessive force or failure to intervene in this circumstance.

18. In order to be a sufficient pleading, there must be facts which show a pattern or practice of constitutional violations sufficient to establish that the City was deliberately indifferent to constitutional violations.

19. Plaintiff has failed to show a pattern or practice of constitutional violations by the City of Champaign.

WHEREFORE, all Individual Defendants pray that Count IV be dismissed for prejudice and for cost.

COUNT V

20. Count V alleges malicious prosecution under state law versus the named Defendants.

21. To proceed on this theory, the Plaintiff must plead and prove that there was no probable cause for a criminal prosecution to be commenced against Plaintiff. No facts have been alleged regarding that issue.

22. Once again the complaint fails to direct whether this count is against the named Defendants in their individual or official capacities. That flaw would, under the law, indicate that this count is proceeding against the officers in their official capacities only.

23. Plaintiff makes no allegation against the City of Champaign establishing a pattern or practice as to malicious prosecution and for the reasons stated in Count IV, this count should be dismissed.

24. In addition thereto, in order to sustain a claim for conspiracy, Plaintiff must allege that Defendants directed themselves toward an illegal action by virtue of a mutual understanding and support such allegations with facts suggesting a “meeting of the minds.”

25. Plaintiff has failed to allege those facts necessary to state a claim of conspiracy.

26. Finally, Plaintiff has failed to articulate how police officers instituted and continued a malicious criminal prosecution, when, in fact, the Champaign County State’s Attorney filed the charges that initiated the prosecution of the criminal case against Plaintiff. Attached hereto and made a part hereof is a certified copy of the Information filed in Champaign County Case No. 2014 CF 363, The People of the State of Illinois v. Benjamin T. Mann.

WHEREFORE, all Individual Defendants pray that Count V be dismissed for prejudice and for cost.

COUNT VI

27. Count VI alleges intentional infliction of emotional distress under Illinois common law.

28. Under Illinois law, a complaint for Intentional Infliction of Emotional Distress must include factual allegations establishing outrageous conduct and severe emotional distress.

29. Plaintiff fails to allege conduct by Defendants that is extreme or outrageous.

30. Plaintiff alleges sleep disruptions and anxiety, failing to make allegations establishing severe emotional distress.

WHEREFORE, all Individual Defendants pray that Count VI be dismissed for prejudice and for cost.

COUNT VII

31. This count alleges conspiracy under Illinois tort law.

32. Count VII alleges simply that the named Defendants and unidentified others, acted jointly.

33. Plaintiff fails to allege that the named Defendants agreed beforehand to commit torts or excessive use of force as is required in order to establish conspiracy.

WHEREFORE, all Individual Defendants pray that Count VII be dismissed for prejudice and for cost.

Respectfully submitted,

CITY OF CHAMPAIGN, ILLINOIS and Police Officers, CHRISTOPHER C. AIKMAN, DAVID BUTLER, NATHANIEL M. EPLING, KRISTINA HAUGEN, MARSHALL HENRY, MATT R. RUSH and CULLY T. SCHWESKA

BY: THOMAS, MAMER & HAUGHEY, LLP
s/ David E. Krchak

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CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to Shneur Nathan.

s/ David E. Krchak

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