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

DAVONTE D. WRIGHT, JORDAN BOYER, and MARSHERRIE FRANKLIN, personally and o/b/o her minor child U.F., PLAINTIFFS, V. CITY OF CHAMPAIGN POLICE OFFICER TYLER DARLING (#775), individually, and CITY OF CHAMPAIGN, ILLINOIS, a municipal corporation, DEFENDANTS.	CASE NO. 19-CV-2035-CSB-EIL JURY TRIAL DEMANDED

DEFENDANTS' MEMORANDUM SUPPORTING THEIR MOTION FOR PARTIAL DISMISSAL UNDER FED. R. CIV. P. 12(b)(6)

The Court must partially dismiss Count IV and wholly dismiss Counts V and VII. Those counts fail to state claims upon which relief can be granted, even accepting the well-pleaded allegations as true and drawing all reasonable inferences in Plaintiffs' favor.

ARGUMENT AND AUTHORITIES

1. The Court must partially dismiss Count IV—42 U.S.C. § 1983: Fabrication of Evidence & Unlawful Detention (Plaintiff Wright against Officer Darling).

This count partially fails for reasons outlined in another City of Champaign case recently before the Court. *See Brown v. City of Champaign et al.*, 19-cv-02004-CSB-EIL, Docs. 13, 29.

In Count IV, Plaintiff Wright claims that Officer Darling fabricated evidence and maliciously caused Plaintiff Wright to be charged with a crime. *See* Doc. 1 (in this case), ¶¶ 5, 24-25, 56, 58-60. This allegedly violated the Fourth Amendment, as well as the Fourteenth Amendment's due process clause. *Id.* at ¶¶ 57, 63.

Plaintiff Wright cannot rely on the Fourteenth Amendment's due process clause. In the

past, the Seventh Circuit recognized "a claim of malicious prosecution violative of due process." *Lewis v. City of Chicago*, 914 F.3d 472, 476 (7th Cir. 2019). Then, the Supreme Court "jettisoned the malicious-prosecution analogy and the due-process source of the right[.]" *Id.* Now, "all § 1983 claims for wrongful pretrial detention —whether based on fabricated evidence or some other defect—" rest "*exclusively* on the Fourth Amendment[,] . . . not the Due Process Clause" of the Fourteenth Amendment. *Id.* at 478-79 (emphasis in original). Contrary decisions have been "superseded" by the U.S. Supreme Court and "overruled" by the Seventh Circuit. *Id.* at 476, 478-79 (overruling *Hurt v. Wise*, 880 F.3d 831, 843–44 (7th Cir. 2018) which had relied upon *Whitlock v. Brueggemann*, 682 F.3d 567, 580 (7th Cir. 2012)).

Because Count IV must be grounded exclusively in the Fourth Amendment, this Court must dismiss, with prejudice, Plaintiff's attempt to also proceed under the due process clause.

2. **The Court must also dismiss Count V—Intentional Infliction of Emotional Distress (All Plaintiffs against Officer Darling).**

> An intentional infliction of emotional distress [("IIED")] claim under Illinois law requires proof of three elements:
>
> > First, the conduct involved must be truly extreme and outrageous.
> >
> > Second, the actor must either intend that his conduct inflict severe emotional distress, or know that there is at least a high probability that his conduct will cause severe emotional distress.
> >
> > Third, the conduct must in fact cause severe emotional distress.

Cairel v. Alderden, 821 F.3d 823, 835 (7th Cir. 2016) (internal quotation marks omitted).

Regarding the first element, the complaint alleges that Officer Darling believed he observed Plaintiff Wright driving without registration, commanded him to return to his vehicle, followed him (without probable cause, reasonable suspicion, exigent circumstances, consent, or a warrant) by shoving open the door of a house into which Plaintiff Wright was retreating, and then punched, pushed, and tackled him in front of the adults and child who lived there, even

though Plaintiff Wright was not resisting. Doc. 1, ¶¶ 13-25, 31, 68-69. In the process, Wright suffered a bleeding laceration above his right eye and lower back pain. *Id.* at ¶¶ 4, 19, 22.

In evaluating those allegations, this Court could take note that "Illinois courts have rejected IIED claims based on far more egregious conduct by police." *Redd v. Dougherty*, 578 F. Supp. 2d 1042, 1058 (N.D. Ill. 2008) (citing *Anderson v. Village of Forest Park*, 606 N.E.2d 205 (Ill. App. (1st Dist.) 1992) ("allegations that police officers entered bedroom of [a potentially mentally ill] plaintiff, who [also] had multiple sclerosis, interrogated her for several hours, refused to allow her to go to the bathroom, refused to allow her to change out of her nightgown [into warmer clothing before taking her outside in sub-freezing weather], and forcibly removed her from her home [roughly dragging her down a staircase,] when she was not resisting[,] failed to state claim for IIED"). The Court could also recognize that,:

> [i]n situations involving unlawful arrests or excessive force by police officers, there must be *more than* just a lack of probable cause or some excessive force. To qualify as extreme and outrageous, the force used must be *very extreme* or cause *very severe physical* injury. Whether a false arrest was *totally lacking* in justification will also be considered.

DuFour-Dowell v. Cogger, 969 F. Supp. 1107, 1123 (N.D. Ill. 1997) (emphasis added). That high bar likely is not satisfied by Plaintiffs' allegations. But, rather than wrestle with that fact-intensive issue, it is probably more efficient for the Court to dismiss the IIED claims based upon Plaintiffs' clear failure to adequately plead the second and third elements of IIED.

On the second element, Plaintiffs allege that Officer Darling acted "with wanton and reckless disregard of the probability of causing Plaintiffs to suffer severe emotional distress." Doc. 1 at ¶ 70.

> Nowhere, however, do[they] allege that [Officer Darling] *intended* for [his] conduct to inflict severe emotional distress or that [he was] "*aware of a high probability*" of doing so. . . . Accordingly, [Plaintiffs] cannot proceed with an IIED claim.

Davenport v. City of Chicago, 653 F. Supp. 2d 885, 894–95 (N.D. Ill. 2009) (emphasis added); *see also Redd*, 578 F. Supp. 2d at 1058 (dismissed for inadequate allegations on second element).

Similarly, on the third element, Plaintiffs Boyer, Franklin, and U.F. allege that Officer Darling's conduct caused them "mental anguish" and "extreme and severe emotional distress[.]" Doc. 1, ¶¶ 31, 71. But they:

> failed to allege any facts that support [their] conclusory assertions that [they] experienced severe emotional distress. "[T]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice."

Mnyofu v. Bd. of Educ. of Rich Twp. High Sch. Dist. 227, 832 F. Supp. 2d 940, 950 (N.D. Ill. 2011) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)); *see also Jasinski v. Glencoe Dep't of Pub. Safety*, 836 F. Supp. 2d 753, 759 (N.D. Ill. 2011) (dismissing IIED claim by arrestee's children who allegedly observed him being falsely arrested and subjected to excessive force, because, "apart from bare and formulaic language, [the children failed to allege] any injury that would constitute severe emotional distress").

Plaintiff Wright alleges slightly more information about his purported emotional distress, but it is still not enough to sufficiently plead the third element of IIED. He claims "ongoing emotional distress, including anxiety, stress, and trouble sleeping in fear of another attack by law enforcement for something as small as a traffic violation." Doc. 1, ¶ 31. Such allegations are:

> not evidence of the type of severe distress, unendurable by a reasonable person, that is actionable under Illinois law. "Although fright, horror, . . . humiliation, worry, etc. may fall within the ambit of the term 'emotional distress,' these mental conditions alone are not actionable."

Sornberger v. City of Knoxville, Ill., 434 F.3d 1006, 1030 (7th Cir. 2006). Stated differently, Plaintiff Wright's "emotional responses such as fear, . . . nervousness, . . . and restless sleep [are] inadequate to permit a reasonable inference that [he] experienced the level of emotional distress

necessary to support" an IIED claim. *See Jain v. Butler Sch. Dist. 53*, 303 F. Supp. 3d 672, 685 (N.D. Ill. 2018) (internal quotation marks omitted). "Plaintiff[Wright]'s Complaint contains no allegations of the type of severe emotional suffering, physical ramifications, medical treatment, or other factors that would point to severe emotional distress." *Redd*, 578 F. Supp. 2d at 1059. At best, he has pled "[g]arden-variety emotional distress [that] is insufficient to meet" the third element of IIED. *McGreal v. Vill. of Orland Park*, 850 F.3d 308, 315 (7th Cir. 2017).

Because Plaintiffs failed to plead sufficient facts, under both the second and third elements of IIED, the Court must dismiss Count V.

3. **The Court must also dismiss Count VII—*Respondeat Superior* (All Plaintiffs against Defendant City of Champaign).**

This count fails because Plaintiffs have no remaining claims to trigger *respondeat superior* liability. "[A] municipality cannot be held liable under § 1983 on a *respondeat superior* theory." *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 691 (1978). And Plaintiffs only state-law claim, IIED, must be dismissed as noted above. Without any claims to anchor *respondeat superior* liability, the Court must dismiss this count too.

CONCLUSION

For the reasons cited above, Defendants respectfully request that the Court partially dismiss Count IV with prejudice, and wholly dismiss Counts V and VII.

Respectfully submitted,

Dated: March 18, 2019

s/ Justin N. Brunner

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CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2019, I caused the foregoing document:

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to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notice to all attorneys of record.

s/ Justin N. Brunner
Justin N. Brunner (#6323496)
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