

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHARLENE BROWNE, : CIVIL ACTION
Plaintiff, :
 : NO. 97-2291
v. :
 :
CITY OF PHILADELPHIA, et al., :
Defendants. :

M E M O R A N D U M

BUCKWALTER, J.

May 28, 1997

I. INTRODUCTION

Plaintiff has filed this action against Police Commissioner Richard Neal, the City of Philadelphia, the Philadelphia Police Department and Sergeant Kevin Hodges alleging a violation of her constitutional rights.

Presently before the Court for disposition are the Motion to Dismiss of Defendants Police Commissioner Richard Neal, the City of Philadelphia and the Philadelphia Police Department and Plaintiff's response thereto. For the following reasons, I will grant Defendants' Motion in part and dismiss Plaintiff's claims against the Philadelphia Police Department and Police Commissioner Richard Neal.

II. BACKGROUND

On January 31, 1995, at approximately 4:00 A.M., Defendant Sergeant Kevin Hodges ("Hodges") and three unidentified police officers confronted Plaintiff as she was using a Mr.

Storage Facility. Complaint at ¶ 8. Hodges and the other officers then handcuffed and arrested Plaintiff for disorderly conduct. Complaint at ¶ 9. The officers then ordered Plaintiff into the back of a police van and proceeded to drive around Philadelphia for approximately one-half (1/2) hour in such a manner that Plaintiff sustained injury. Id.

Because of this arrest and the resulting injuries, Plaintiff filed suit in the Court of Common Pleas against the above-named defendants. Defendants then removed the case to this Court. In her Complaint, Plaintiff alleges multiple violations of her constitutional rights under the First, Fourth, Fifth, Eighth and Fourteenth Amendments and the constitution of the Commonwealth of Pennsylvania.

III. ARGUMENT

A. Standard

The purpose of a motion to dismiss under Federal Rules of Civil Procedure 12(b)(6) is to test the legal sufficiency of a complaint. Sturm v. Clark, 835 F.2d 1009, 1011 (3d Cir. 1987). A complaint may be dismissed for failure to state a claim upon which relief may be granted if the facts plead and reasonable inferences therefrom are legally insufficient to support the relief requested. Commonwealth ex. rel. Zimmerman v. PepsiCo, Inc., 836 F.2d 173, 179 (3d Cir. 1988). In reviewing a motion to dismiss, all allegations in the complaint and all reasonable inferences that can be drawn therefrom must be accepted as true

and viewed in the light most favorable to the nonmoving party. Wisniewski v. Johns-Manville Corp., 759 F.2d 271, 273 (3d Cir. 1985).

B. The Philadelphia Police Department

Plaintiff has named the Philadelphia Police Department as a party defendant. I will dismiss the Philadelphia Police Department because it does not have a separate corporate existence; suits against the department "shall be in the name of the City of Philadelphia." 53 Pa. C.S.A. § 16257. See Baldi v. City of Philadelphia, 609 F. Supp. 162, 167 (E.D. Pa. 1985).

C. The State Law Claims

Defendants argue that the state law claims should be dismissed as "[t]he City of Philadelphia and its employees enjoy absolute immunity against suit by virtue of the Political Subdivision Tort Claims Act, 42 Pa. C.S.A. § 8542." Plaintiff contends that this action falls within the "vehicle liability" exception to this statute because she was injured while riding in a police van. See 42 Pa. C.S.A. § 8542(b)(1).¹

1. Section 8542(b) provides that:

[t]he following acts by a local agency or any of its employees may result in the imposition of liability on a local agency:

(1) Vehicle liability - The operation of any motor vehicle in the possession or control of the local agency.

I conclude Plaintiff's claim falls within this exception and therefore will deny Defendants' motion in this regard. See Mickle v. City of Philadelphia, 669 A.2d 520, 523 (Pa. Commw. Ct.), appeal granted, 682 A.2d 312 (Pa. 1996) (liability is imposed where injured occurs as a result of operation of vehicle, not necessarily negligent operation of vehicle).

D. The Constitutional Claims

Defendants argue that Plaintiff has only asserted a claim for negligence. Defendants then conclude the Court should dismiss Plaintiff's action as the Supreme Court has explicitly rejected negligence as a basis for liability under the Fourteenth Amendment. After careful review of the Complaint, I find that Plaintiff has also asserted claims for recklessness and intentional misconduct as well as charges of failure to "train, supervise, discipline or in any other way control the behavior of Defendants...." At this early stage, the pleading complies, if barely, with federal notice pleading concepts. Accordingly, I will deny Plaintiff's motion to dismiss the constitutional claims.

E. Commissioner Richard Neal

Plaintiff has named Police Commissioner Richard Neal ("Commissioner Neal") as a defendant alleging that he did not "train, supervise, discipline or in any other way control the behavior of Defendants...." Defendants argue that Plaintiff

fails to allege that Commissioner Neal participated or had actual knowledge of the actions which form the basis of this suit. I agree with Defendants and will dismiss Plaintiff's claims against Commissioner Neal.

1. Official Liability

Official liability suits generally represent only another way of pleading an action against an entity of which an officer is an agent. Marshall v. Borough of Ambridge, 798 F. Supp. 1187, 1198 (W.D. Pa. 1992) (citing Kentucky v. Graham, 473 U.S. 159, 165-66 (1985)). As long as the government entity receives notice and an opportunity to respond, an official capacity suit is to be treated as a suit against the entity. Id.

Because a claim against a municipal official in his or her official capacity is tantamount to a claim against the entity, it is not necessary to bring official capacity actions against local government officials. Marshall, 798 F.Supp. at 1198. Therefore, I will dismiss any claims against Commissioner Neal in his official capacity.

2. Personal Liability

Personal capacity suits seek to impose personal liability upon a government official for actions he takes under color of state law. Marshall, 798 F.Supp. at 1198. A police official's failure to train, supervise or discipline subordinates cannot amount to a breach of clearly established constitutional duties "absent a showing of the official's direct involvement in

the subordinate's unconstitutional actions" Brown v. Grabowski, 922 F.2d 1097, 1120 (3d Cir. 1990), cert. denied, 501 U.S. 1218 (1991). Without such evidence, a police official is entitled to qualified immunity. Id.

As Plaintiff fails to allege that Commissioner Neal participated in or had personal knowledge of and acquiesced to the actions that cause her injuries, I will dismiss all claims against Commissioner Neal in his personal capacity.

IV. CONCLUSION

For the above reasons, I will grant Defendants' Motion to Dismiss in part and deny it in part. An order follows.

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O R D E R

AND NOW, this 28th day of May, 1997, upon consideration of the Motion to Dismiss of Defendants Police Commissioner Richard Neal, the City of Philadelphia and the Philadelphia Police Department (Docket No. 4) and the response of Plaintiff Charlene Browne (Docket No. 6) thereto, it is hereby ORDERED and DECREED that:

1. Defendants' Motion is GRANTED as to the Philadelphia Police Department.
2. Defendants' Motion is GRANTED as to Police Commissioner Richard Neal.
3. Defendants' Motion is DENIED as to the City of Philadelphia.

BY THE COURT:

RONALD L. BUCKWALTER, J.