UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

LOUIS REED, JR.	:	
	:	PRISONER
v.	:	Case No. 3:03CV2147 (SRU)
	:	
HARTFORD POLICE DEPARTMENT	:	
POLICE OFFICER DREW a/k/a John Doe	:	
GREATER HARTFORD URBAN LEAGUE	:	
J. WILLINGHAM	:	
CITY OF HARTFORD	:	
EDDIE PEREZ	:	

RULING AND ORDER

The plaintiff, Louis Reed, Jr. ("Reed"), an inmate currently incarcerated at the MacDougall-Walker Correctional Institution in Suffield, Connecticut, brings this civil rights action pro se and in forma pauperis pursuant to 28 U.S.C. § 1915. He alleges that defendant Drew came to his workplace and assaulted him without cause. For the reasons that follow, the complaint is dismissed in part.

I. Standard of Review

Reed has met the requirements of 28 U.S.C. § 1915(a) and has been granted leave to proceed in forma pauperis in this action. Pursuant to 28 U.S.C. § 1915(e)(2)(B), "the court shall dismiss the case at any time if the court determines that . . . the action . . . is frivolous or malicious; . . . fails to state a claim on which relief may be granted; or . . . seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B)(i) - (iii). Thus, the dismissal of a complaint by a district court under any of the three enumerated sections in 28 U.S.C. § 1915(e)(2)(B) is mandatory rather

than discretionary. See Cruz v. Gomez, 202 F.3d 593, 596 (2d Cir. 2000).

"When an in forma pauperis plaintiff raises a cognizable claim, his complaint may not be dismissed sua sponte for frivolousness under § 1915(e)(2)(B)(i) even if the complaint fails to 'flesh out all the required details.'" Livingston v. Adirondack Beverage Co., 141 F.3d 434, 437 (2d Cir. 1998) (quoting Benitez, 907 F.2d at 1295).

> An action is "frivolous" when either: (1) "the 'factual contentions are clearly baseless,' such as when allegations are the product of delusion or fantasy;" or (2) "the claim is 'based on an indisputably meritless legal theory.'" Nance v. Kelly, 912 F.2d 605, 606 (2d Cir. 1990) (per curiam) (quoting Neitzke v. Williams, 490 U.S. 319, 327, 109 S. Ct. 1827, 1833, 104 L. Ed. 2d 338 (1989)). A claim is based on an "indisputably meritless legal theory" when either the claim lacks an arguable basis in law, Benitez v. Wolff, 907 F.2d 1293, 1295 (2d Cir. 1990) (per curiam), or a dispositive defense clearly exists on the face of the complaint. See Pino v. Ryan, 49 F.3d 51, 53 (2d Cir. 1995).

Livingston, 141 F.3d at 437. The court exercises caution in dismissing a case under section 1915(e) because a claim that the court perceives as likely to be unsuccessful is not necessarily frivolous. See Neitzke v. Williams, 490 U.S. 319, 329 (1989).

A district court must also dismiss a complaint that fails to state a claim upon which relief may be granted. See 28 U.S.C. § 1915(e)(2)(B)(ii) ("court shall dismiss the case at any time if the court determines that . . . (B) the action or appeal . . . (ii) fails to state a claim upon which relief may be granted"); Gomez, 202 F.3d at 596 ("Prison Litigation Reform Act . . . which redesignated § 1915(d) as § 1915(e) [] provided that dismissal for failure to state a claim is mandatory"). In reviewing the complaint, the court "accept[s] as true all factual allegations in the complaint" and draws inferences from those allegations in the light most favorable to the plaintiff. Gomez, 202 F.3d at 596 (citing King

v. Simpson, 189 F.3d 284, 287 (2d Cir. 1999)). Dismissal of the complaint under 28 U.S.C. § 1915(e)(2)(B)(ii) is only appropriate if "'it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Gomez, 202 F.3d at 597 (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

In addition, "unless the court can rule out any possibility, however unlikely it might be, that an amended complaint would succeed in stating a claim," the court should permit "a pro se plaintiff who is proceeding in forma pauperis" to file an amended complaint that states a claim upon which relief may be granted. Gomez v. USAA Federal Savings Bank, 171 F.3d 794, 796 (2d Cir. 1999).

A district court is also required to dismiss a complaint if the plaintiff seeks monetary damages from a defendant who is immune from suit. See 28 U.S.C. § 1915(e)(2)(B)(iii); Spencer v. Doe, 139 F.3d 107, 111 (2d Cir. 1998) (affirming dismissal pursuant to § 1915(e)(2)(B)(iii) of official capacity claims in section 1983 action because "the Eleventh Amendment immunizes state officials sued for damages in their official capacity").

In order to state a claim for relief under section 1983 of the Civil Rights Act, the plaintiff must satisfy a two-part test. First, the plaintiff must allege facts demonstrating that the defendant acted under color of state law. Second, he must allege facts demonstrating that he has been deprived of a constitutionally or federally protected right. See Lugar v. Edmondson Oil Co., 457 U.S. 922, 930 (1982); Washington v. James, 782 F.2d 1134, 1138 (2d Cir. 1986).

II. Facts

The following allegations of the complaint are assumed to be true for present purposes. On January 27, 2003, Reed's wife called the Hartford Police Department and asked that an officer be sent

to speak with her at her home about her husband. Officer Drew responded to the call. Reed's wife did not want to press charges against him; she only wanted answers to some questions. Although asked not to go to Reed's workplace, Officer Drew ignored the request and went to the offices of the Greater Hartford Urban League where Reed worked on the cleaning crew.

Reed told Officer Drew that he had not broken any laws and did not want to speak to him. When Reed tried to walk swiftly away, Officer Drew hit Reed about the head with a metal night stick and "stomped" on his back. Reed suffered two ruptured disks in his lower back as well as emotional trauma.

III. Discussion

Reed asserts claims against six defendants: the City of Hartford, Hartford Police Department, Hartford Mayor Eddie Perez, Hartford Police Officer Drew, the Greater Hartford Urban League and it's Chairman, J. Willingham. The claims against four of these defendants are not cognizable in this action.

A. Hartford Police Department

The first named defendant is the Hartford Police Department. A municipality is subject to suit pursuant to 42 U.S.C. § 1983. See Monell v. Department of Social Services, 436 U.S. 658, 690 (1978). A municipal police department, however, is not a municipality. Rather, it is a sub-unit or agency of the municipal government through which the municipality fulfills its policing function. See Cowras v. Hard Copy, Case No. 3:95cv99 (AHN), slip op. at 25 (D. Conn. Sept. 29, 1997). Because a municipal police department is not an independent legal entity, it is not subject to suit under section 1983. See id. Other courts addressing this issue concur that a municipal police department is

not a "person" within the meaning of section 1983 and not subject to suit. See, e.g., Dean v. Barber, 951 F.2d 1210, 1215 (11th Cir. 1992) (affirming district court's dismissal of claims against county sheriff's department because, under state law, sheriff's department lacked capacity to be sued); Peterson v. Easton Police Dep't Criminal Investigations Divs., No. Civ.A. 99-4153, 1999 WL 718551, at *1 (E.D. Pa. Aug. 26, 1999) (holding that a police department is not a person within the meaning of section 1983); Smith-Berch, Inc. v. Baltimore County, 68 F. Supp. 2d 602, 626-27 (D. Md. 1999) (citing cases for the proposition that municipal departments, including police departments, are not persons within the meaning of section 1983); Gaines v. University of Pennsylvania Police Dep't, No. 97-3381, 1997 WL 624281, at *3 (E.D. Pa. Oct. 7, 1997) (holding "as a matter of law, that police departments are purely instrumentalities of the municipality with no separate identity; thus, they are not 'persons' for purposes of § 1983 and not capable of being sued under § 1983."); PBA Local No. 38 v. Woodbridge Police Dep't, 832 F. Supp. 808, 825-26 (D.N.J. 1993) (citing cases to support statement that courts considering this issue have unanimously concluded that municipal police departments are not proper defendants in section 1983 actions). Accordingly, all claims against the Hartford Police Department are dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

B. Eddie Perez

Reed alleges that Hartford Mayor Eddie Perez "should be held liable for the misconduct of his City Workers for inadequate Monitoring Supervision of ho [sic] personnel." Complaint at p. 7. A claim of supervisory liability is cognizable under limited circumstances.

It is settled law in this circuit that in a civil rights action for monetary damages against a defendant in his individual capacity, a plaintiff must demonstrate the defendant's direct or personal

involvement in the actions that are alleged to have caused the constitutional deprivation. See Wright v. Smith, 21 F.3d 496, 501 (2d Cir. 1994). "A supervisor may not be held liable under section 1983 merely because his subordinate committed a constitutional tort." Leonard v. Poe, 282 F.3d 123, 140 (2d Cir. 2002). Section 1983 imposes liability only on the official causing the violation. Thus, the doctrine of *respondeat superior* is inapplicable in section 1983 cases. See Blyden v. Mancusi, 186 F.3d 252, 264 (2d Cir. 1999); see also Monell v. New York City Dep't of Social Servs., 436 U.S. 658, 692-95 (1978).

> [A] supervisor may be found liable for his deliberate indifference to the rights of others by his failure to act on information indicating unconstitutional acts were occurring or for his gross negligence in failing to supervise his subordinates who commit such wrongful acts, provided that the plaintiff can show an affirmative causal link between the supervisor's inaction and [his] injury.

Leonard, 282 F.3d at 140.

The only reference to defendant Perez in the complaint is the single sentence quoted at the beginning of this section. Reed alleges no facts suggesting that defendant Perez was aware of the incident at the time or that he failed to provide proper supervision of his subordinates who would have directly supervised defendant Drew. Thus, the complaint is devoid of facts to show an affirmative causal link between Reed's injury and any inaction by defendant Perez. Accordingly, all claims against defendant Perez are dismissed without prejudice.

C. Greater Hartford Urban League and J. Willingham

Finally, Reed includes as defendants the Greater Hartford Urban League, a Connecticut corporation, and its chairman, J. Willingham.

Private parties are not generally liable under section 1983. In Lugar, the Supreme Court set forth a two-part test to determine when the actions of a private party may be attributed to the state so as to make the private party subject to liability under section 1983. First, "the deprivation must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible." Lugar, 457 U.S. at 937. "Second, the party charged with the deprivation must be a person who may fairly be said to be a state actor. This may be because he is a state official, because he has acted together with or obtained significant aid from state officials, or because his conduct is otherwise chargeable to the State." Id.; see also Dahlberg v. Becker, 748 F.2d 85, 89 (2d Cir. 1984) ("to establish deprivation of a federally protected right there must be both 'state action' and a 'state actor'"), cert. denied, 470 U.S. 1084 (1985).

Reed does not assert that the actions of the Greater Hartford Urban League or J. Willingham occurred as a result of a state-created right or rule of conduct. He states that the corporation operates in accordance with state law and alleges that the security guard permitted a police officer to enter the workplace after hours without determining whether Reed agreed to speak with him. Thus, Reed fails to allege any facts suggesting that the alleged wrongful activities of the Greater Hartford Urban League or J. Willingham were even remotely attributable to the state or any state actor.

In addition, Reed cannot satisfy the requirements to invoke this court's diversity jurisdiction. "The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000.00, exclusive of interest and costs, and is between (1) citizens of different states . . . ." 28 U.S.C. § 1332(a). A person's citizenship for purposes of diversity jurisdiction is his domicile, which is defined as the state in which a person is both present and intends to

remain for the indefinite future. See Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30, 48 (1989). Reed indicates that he is a citizen of Connecticut. He indicates in the complaint that his pre-incarceration address was in Hartford, Connecticut. Reed also states that these defendants also are citizens of Connecticut. Thus, the complaint fails to meet the requirements to invoke this court's diversity jurisdiction. Reed's claims against defendants Greater Hartford Urban League and J. Willingham are dismissed without prejudice to refiling in state court.

IV. Conclusion

All claims against defendants Hartford Police Department are DISMISSED and all claims against Eddie Perez, Greater Hartford Urban League and J. Willingham are DISMISSED without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). The case will proceed on the claims against Officer Drew and the City of Hartford.

To enable the U.S. Marshal to effect service on defendants City of Hartford and Officer Drew, Reed is directed to complete three service forms, USM-285: one for the City of Hartford c/o the Hartford City Clerk, one for Officer Drew c/o the Hartford City Clerk and one for Officer Drew using an address at which defendant Drew may be located. In addition, Reed shall complete two summons forms: one for the City of Hartford c/o the Hartford City Clerk and one for Officer Drew c/o the Hartford City Clerk as well as one set of Notice of Lawsuit and Waiver of Service of Summons forms for Officer Drew.

Reed is directed to return the completed forms to the Clerk of this Court within **thirty (30)** days from the date of this order. The Clerk is directed to forward the appropriate papers to the U.S. Marshal. The Marshal is directed to effect service on the City of Hartford and on defendant Drew in

his individual and official capacities and to file a return of service within **thirty (30)** days from the date the completed service packet is returned by Reed to the Clerk of this Court.

The City of Hartford and Officer Drew in his official capacity are directed to appear within **thirty (30)** days from the date of service of summons. Officer Drew is directed to appear in his individual capacity within **sixty (60)** days from the date he signs the Waiver of Service of Summons form.

SO ORDERED this 6th day of April 2004, at Bridgeport, Connecticut.

/s/ Stefan R. Underhill
Stefan R. Underhill
United States District Judge