UNITED STATES DISTRICT COURT DISTRICT OF SOUTH CAROLINA

SPARTANBURG DIVISION Adrian Lamar Glenn,) C/A No. 7:18-0275-HMH-KFM

Plaintiff,)

REPORT OF vs.) MAGISTRATE JUDGE

Officer John Walters,) Supervisory Sgt. Ronnie Forrester,) Spartanburg City Police Department,)

Defendants.) _____)

The plaintiff, Adrian Lamar Glenn ("Plaintif f"), a non-prisoner litigant proceeding pro se, filed this action against Officer John Walters, Supervisory Sgt. Ronnie Forrester, and the Spartanburg City Police Department, alleging malicious prosecution, negligent supervision, and abuse of process (doc. 1 at 1, 4). Plaintiff sues each defendant individually, but not in an official capacity (doc 1 at 2-3). Pursuant to the provisions of 28 U.S.C. § 636(b)(1), and Local Civil Rule 73.02(B)(2)(e) (D.S.C.), this case was referred to the undersigned United States Magistrate Judge for consideration.

STANDARD OF REVIEW Plaintiff filed this action pursuant to 28 U.S.C. § 1915, the in forma pauperis statute, and thus his complaint is subject to pre-service screening. This statute authorizes the District Court to dismiss a case if it is satisfied that the action "f ails to state a claim on which relief may be granted," is " frivolous or malicious," or "seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B); Michau v. Charleston County, S.C., 434 F.3d 725, 728 (4th Cir. 2006). A finding of frivolity can be made where the complaint lacks an arguable basis either in law or in fact. Denton v.

Hernandez, 504 U.S. 25, 31 (1992); Neitzke v. Williams, 490 U.S. 319, 325 (1989). A claim based on a meritless legal theory may be dismissed sua sponte "at any time" under 28 U.S.C. § 1915(e)(2)(B). Neitzke, 490 U.S. at 325. The statute " is designed largely to discourage the filing of, and waste of judicial and private resources upon, baseless lawsuits." Id. at 327.

As a pro se litigant, Plaintiff's pleadings are accorded liberal construction and held to a less stringent

standard than formal pleadings drafted by attorneys. See Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam). However, even under this less stringent standard, the pro se pleading remains subject to summary dismissal. The mandated liberal construction afforded to pro se pleadings means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so, but a district court may not rewrite a petition to include claims that were never presented, Barnett v. Hargett, 174 F.3d 1128, 1133 (10th Cir. 1999), or construct the plaintiff's legal arguments for him, Small v. Endicott, 998 F.2d 411, 417-18 (7th Cir. 1993), or "conjure up questions never squarely presented" to the court, Beaudett v. City of Hampton, 775 F.2d 1274, 1278 (4th Cir. 1985). The requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. See Weller v. Dep' t of Soc. Servs., 901 F.2d 387 (4th Cir. 1990).

Although the court must liberally construe the pro se complaint and Plaintiff is not required to plead facts sufficient to prove his case as an evidentiary matter in the complaint, the complaint nonetheless "m ust contain sufficient factual matter, accepted as

true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)); see also McCleary-Evans v. Maryland Dep' t of Transp., 780 F.3d 582, 585-87 (4th Cir. 2015) (noting that a plaintiff must plead enough to raise a right to relief above the speculative level); Francis v. Giacomelli, 588 F.3d 186, 193 (4th Cir. 2009) (explaining that a plaintiff may proceed in the litigation process only when his complaint is justified by both law and fact). "A claim has 'f acial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" Owens v. Baltimore City State' s Attorneys Office, 767 F.3d 379, 388 (4th Cir. 2014) (quoting Iqbal, 556 U.S. at 678).

BACKGROUND On August 8, 2017, Plaintiff and another man, Mr. Hames, were involved in a traffic collision in Spartanburg (doc. 1-1 at 1). Plaintiff alleges that on that date, defendant John Walters ("W alters"), an officer with the Spartanburg City Police Department, "erroneously abused the judicial process by unlawfully initiating a malicious prosecution against" Plaintif f by issuing a traffic ticket to him that showed he was at fault for the collision 1

(doc. 1 at 2; doc. 1-1 at 1). Plaintiff contends that Walters' issuance of the "unlaw ful ticket" caused Mr. Hames' insurance company to deny liability, which, in turn, caused Plaintiff pain and suffering (Id.). Plaintiff alleges that both Walters and his supervisor, the defendant Supervisory Sgt. Ronnie Forrester ("Forrester"), have refused 1 The court's rev iew of the Spartanburg County Seventh Judicial Circuit Public Index shows that Plaintiff was not issued any traffic tickets in 2017. See http://publicindex.sccourts.org/Spartanburg/PublicIndex/PISearch.aspx (followed by Plaintiff's nam e).

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to rescind the ticket (Id.). Plaintiff contends that Forrester initially told Plaintiff that both Plaintiff, and Mr. Hames had been ticketed for the accident. Subsequently, in court, the Spartanburg Clerk of Court told Plaintiff that Mr. Hames had not been ticketed. After Plaintiff confronted Forrester with this "new ly discovered evidence," Forrester " tampered with the evidence by changing the most critical part of the traffic collision report form" so that Plaintiff was no longer 100% responsible for the accident, but shared responsibility for the accident equally with Mr. Hames (Id.). Plaintiff claims both tickets have "m aliciously injured" him and caused him and his family stress and depression 2

(doc. 1-1 at 1-2). Plaintiff sets forth three causes of action: (1) malicious prosecution; (2) negligent supervision on Forrester's part because he failed to properly train, monitor, and supervise Walters; and (3) abuse of judicial process (doc. 1-1 at 2). Plaintiff also alleges that the defendants were "acting under a [sic] color of law [making] the Spartanburg City Police Department personally responsible for the defendants[] illegal actions." Plaintiff seeks actual and punitive damages totaling $4,050,000.00 (Id.).

DISCUSSION Plaintiff's complaint does not allege the violation of a specific federal statute, but he filled out the pre-printed form civil rights complaint and checked the box indicating he was bringing a Section 1983 claim against state or local officials (doc. 1 at 3). Section

2 To the extent that the pro se Plaintiff is attempting to assert claims on behalf of his family, he may not do so. See Myers v. Loudoun Cty. Pub. Sch., 418 F.3d 395, 401 (4th Cir. 2005) ("[N]on-attorney parents generally may not litigate the claims of their minor children in federal court.") (citations om itted); see also Hummer v. Dalton, 657 F.2d 621, 625-626 (4th Cir. 1981) (a pro se litigant cannot act as a "knig ht-errant" f or others).

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1983 "'is not itself a source of substantive rights,' but merely provides 'a method for vindicating federal rights elsewhere conferred.'" Albright v. Oliver, 510 U.S. 266, 271 (1994) (quoting Baker v. McCollan, 443 U.S. 137, 144, n.3 (1979)). To assert a claim under Section 1983, Plaintiff must allege the deprivation of rights, privileges, or immunities secured by the Constitution and laws by a person acting under color of state law. 42 U.S.C. § 1983; see West v. Atkins, 487 U.S. 42, 48 (1988).

Malicious Prosecution Construing Plaintiff's pro se complaint broadly, it appears that Plaintiff alleges a malicious prosecution claim against Walters, and perhaps against Forrester because of "[t]he issuance of the ticket against" him (doc. 1-1 at 2). As the Fourth Circuit has observed: "[I]t is not entirely clear whether the Constitution recognizes a separate constitutional right to be free from malicious prosecution." Snider v. Seung Lee, 584 F.3d 193, 199 (4th Cir. 2009). Thus, in this Circuit, a " malicious prosecution claim under § 1983 is properly understood as a Fourth Amendment claim for

unreasonable seizure which incorporates certain elements of the common law tort." Evans v. Chalmers, 703 F.3d 636, 647 (4th Cir. 2012) (quoting Lambert v. Williams, 223 F.3d 257, 261 (4th Cir. 2000)).

In South Carolina, the elements of the common law tort of malicious prosecution are: " (1) the institution o[r] continuation of original judicial proceedings, either civil or criminal; (2) by or at the instance of the defendant; (3) termination of such proceedings in the plaintiff's favor; (4) malice in instituting such proceedings; (5) want of probable cause; and (6) resulting injury or damage." Zimbelman v. Savage, 745 F. Supp. 2d 664, 683-84 (D.S.C. 2010) (citations omitted).

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In the present case, Plaintiff' s allegations appear to have satisfied the first and second elements of a claim for malicious prosecution, because he claims he received a traffic ticket from Walters, but Plaintiff fails to satisfy the third element of the claim because he does not allege that the traffic ticket issued to him has been terminated in his favor. "A § 1983 claim for malicious prosecution incorporates the common law element of favorable termination to state a cause of action." Williams v. Saluda Cty. Sheriff' s Office, No. 8:12-cv-03212-JMC, 2013 WL 2416319, at *4 (D.S.C. June 3, 2013) (citing Burrell v. Virginia, 395 F.3d 508, 514 (4th Cir. 2005)); Lambert, 223 F.3d at 261-62 & n.2)). Therefore, Plaintiff's claim for malicious prosecution is premature. See, e.g., McCormick v. Wright, C/A No. 2:10-0033-RBH-RSC, 2010 WL 565303, at *3 (D.S.C. Feb. 17, 2010) ("Plaintif f has certainly not alleged the element that the state criminal charges against him have been resolved in his favor so a malicious prosecution claim appears to be premature."). According ly, Plaintiff's claim should be dismissed without prejudice.

Negligent Supervision Plaintiff has alleged a Section 1983 negligent supervision claim against Forrester in his individual capacity (see doc. 1 at 2; see also 1-1 at 2). Plaintiff contends that Forrester negligently supervised Walters by:

Failing to properly train/monitor and supervise his subordinates and/or . . . [a]fter allegedly reviewing all the facts and talking to all the witnesses he still conspired to deprive the plaintiff of his right to life, liberty, and/or property by signing the collision report and maliciously upholding his subordinate's felonious actions. . . . More disturbing the defendants did this all while acting under a color of law. (Doc. 1-1 at 2). "[N]eg ligence is generally 'the failure to do what a reasonable and prudent person would ordinarily have done under the circumstances of the situation; or doing what

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such a person, under the existing circumstances, would not have done.'" Roberts v. City of Forest Acres, 902 F. Supp. 662, 673 (D.S.C. 1995) (quoting Jones v. Am. Fid. & Cas. Co., 43 S.E.2d 355, 359 (S.C. 1947)). A claim for negligent supervision, as alleged here, is construed by a federal court as a

state law claim. See, e.g., Blanding v. Richland Cty. Sheriff' s Dep' t, C/A 3:14-cv-0299-JMC, 2015 WL 4929251, at *1 (D.S.C. Aug. 17, 2015) (declining to exercise supplemental jurisdiction over plaintiff' s state law claim of negligent supervision).

Although the plaintiff has filed this action pursuant to Section 1983 in his attempt to bring suit in federal court, the undersigned's liberal construction of Plaintiff's complaint does not permit a conclusion that he has alleged that Forrester violated his constitutional rights, or a federal law, so as to support such a claim. "Superv isory liability under the doctrine of respondeat superior does not exist in § 1983 actions." Wyche v. City of Franklinton, 837 F. Supp. 137, 143 (E.D.N.C. 1993) (citing Monell v. Dep' t of Soc. Servs., 436 U.S. 658 (1978)); Hughes v. Blankenship, 672 F.2d 403, 406 (4th Cir. 1982). It is well-settled that the doctrines of vicarious liability and respondeat superior are not applicable in Section 1983 actions. See, e.g., Connick v. Thompson, 563 U.S. 51, 60 (2011) (a local government cannot be vicariously liable for its employees' actions); see also Polk Cty. v. Dodson, 454 U.S. 312, 325 (1981) ("Section 1983 will not support a claim based on a respondeat superior theory of liability."). For the foregoing reasons, the claim against Forrester should be dismissed.

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Abuse of Judicial Process Plaintiff appears to allege abuse of judicial process against Walters, and perhaps against Forrester (doc. 1-1 at 2). As it is recommended that Plaintiff's federal claims be dismissed, the District Court should decline to exercise supplemental jurisdiction over this state law claim. 3

See 28 U.S.C. § 1367(c)(3); see also United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1996); Tigrett v. Rector and Visitors of the Univ. of Va., 290 F.3d 620, 626 (4th Cir. 2002) (affirming district court's dismissal of state law claims when no federal claims remained in the case).

Spartanburg City Police Department The Spartanburg City Police Department is not a "person" subject to suit in a Section 1983 action. It is well settled that only "per sons" may act under color of state law; therefore, a defendant in a Section 1983 action must qualify as a "person." The Spartanburg City Police Department is a department, a group of buildings, or a facility. Inanimate objects such as buildings, facilities, and grounds cannot act under color of state law. See Allison v. California Adult Auth., 419 F.2d 822, 823 (9th Cir. 1969) (finding that California Adult Authority and San Quentin Prison are not "person[s]" subject to suit under 42 U.S.C. § 1983); Brooks v. Pembroke City Jail, 722 F. Supp. 1294, 1301 (E.D.N.C. 1989) ("Claim s under § 1983 are directed at 'persons' and the jail is not a person amenable to suit."). T herefore, Plaintiff has failed to state a cognizable claim against this defendant.

3 Under South Carolina law, an abuse of process claim has two elements: (1) an ulterior purpose; and (2) a willful act in the use of the process not proper in the conduct of the proceeding. Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions, 697 S.E.2d 551, 556 (S.C. 2010).

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CONCLUSION AND RECOMMENDATION Based upon the foregoing, Plaintiff's complaint is subject to dismissal as it fails to state a claim upon which relief may be granted against the defendants. It is recommended that the District Court dismiss the case without prejudice and without issuance and service of process. Furthermore, in the court's view, the plaintiff cannot cure any of the defects in his claims against the defendants by amending his complaint. See Goode v. Cent. Va. Legal Aid Soc' y, 807 F.3d 619, 623 (4th Cir. 2015). The court therefore declines to recommend that leave be automatically given to the plaintiff to amend his complaint.

s/ Kevin F. McDonald April 13, 2018 United States Magistrate Judge Greenville, South Carolina

Plaintiff's attention is directed to the important notice on the next page.

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Notice of Right to File Objections to Report and Recommendation The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. "[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk United States District Court 300 East Washington Street, Room 239

Greenville, South Carolina 29601 Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).

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