

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Brian Noel Hester,

Civil No. 11-CV-1690 ADM/JJK

Plaintiff,

vs.

Redwood County, Lon Walling, Steven Collins,
Patrick R. Rohland, Niel Melton,
Joan Kopcinski, The Lower Sioux Indian
Community of Minnesota, Gabe Prescott,
Jean Stacy, and Jonathan Meece,

Defendants.

REDWOOD COUNTY DEFENDANTS' REPLY MEMORANDUM

LEGAL ARGUMENT

I. HESTER'S § 1983 WRONGFUL ARREST CLAIM AND INTENTIONAL TORT CLAIMS ARE TIME-BARRED.

The two-year limitations period applies to Hester's § 1983 wrongful arrest claim, which accrued, at the latest, on December 17, 2008, when the Redwood County Attorney initiated criminal proceedings against Hester. Accordingly, his claim is time-barred because this lawsuit was not served before December 17, 2010. The Eighth Circuit specifically addressed the statute of limitations for § 1983 claims, which is generally the applicable state law period for personal injury torts. *See Strandlund v. Hawley*, 532 F.3d 741, 746 (8th Cir. 2008). In Minnesota, intentional personal injury torts are governed by

the two-year statute of limitations. *Id.* (citing Minn. Stat. § 541.07, subd. 1).

Accordingly, the two-year limitations period applies.

Hester argues his § 1983 claim did not accrue until his criminal conviction for test refusal was overturned and is thus timely. *Pl.'s Mem. in Opp.*, 6. Hester is mistaken; his § 1983 claim accrued, at the latest, on December 17, 2008. The accrual date of a § 1983 claim is governed by federal rules generally conforming to common-law tort principles. *Wallace v. Kato*, 549 U.S. 384, 388 (2007). In general, accrual occurs when the plaintiff has a complete and present cause of action. *Id.* In *Wallace*, the Court considered the accrual date of Wallace's § 1983 unlawful arrest claim. *Id.* at 387-92. The Court stated "[t]here can be no dispute Wallace could have filed suit as soon as the allegedly wrongful arrest occurred, subjecting him to the harm of involuntary detention, so the statute of limitations would normally commence to run from that date." *Id.* at 388. However, the Court acknowledged the limitations period in a tort action for false imprisonment begins to run when the alleged false imprisonment ends. *Id.* at 389. Thus, the Court held the statute of limitations on a § 1983 unlawful arrest claim, where the arrest was followed by criminal proceedings, begins to run at the time the plaintiff was detained pursuant to legal process. *Id.* at 397. Applying its holding, the Court concluded the statute of limitations on Wallace's § 1983 unlawful arrest claim began to run from the date he appeared before a magistrate. *Id.* at 391-92.

Here, Hester's § 1983 wrongful arrest claim accrued, at the latest, on December 17, 2008, when criminal charges were filed against Hester. Just as in *Wallace*, Hester was arrested without a warrant. Like Wallace's appearance before a magistrate, the filing

of the criminal complaint against Hester initiated legal process, thus concluding Hester's detention without legal process. Because this lawsuit was initiated after June 27, 2011, several months after the two-year limitations period expired, his § 1983 wrongful arrest claim is time-barred.

Hester's reliance on *Heck v. Humphrey* to toll the limitations period is misplaced because Hester does not allege a malicious prosecution claim, only a wrongful arrest claim. *See Pl. 's Mem. in Opp.*, 6; *see also Pl. 's Am. Compl.*, 7-19. Moreover, the Supreme Court has already rejected Hester's argument in *Wallace v. Kato*, 549 U.S. at 392-94 (rejecting plaintiff's contention that *Heck v. Humphrey* compelled the conclusion his § 1983 wrongful arrest claim could not accrue until criminal charges against him were dismissed).

Hester similarly asserts his intentional tort claims for "assault and battery" and "kidnapping and false imprisonment" are timely because they did not accrue until his conviction for criminal test refusal was overturned. *Pl. 's Mem. in Opp.*, 6-7; *see also Pl. 's Am. Compl.*, 9-10 (Counts 4 and 5). Hester is mistaken; his intentional tort claims accrued when he was arrested.

In tort cases, the cause of action generally accrues at the time of injury, which typically coincides with the act that caused the injury. *Dalton v. Dow Chem. Co.*, 158 N.W.2d 580, 583 (Minn. 1968). In *Borrero v. Gustafson*, the Court of Appeals affirmed summary judgment against an arrestee because his intentional tort claims for assault, battery and false imprisonment were barred by the statute of limitations. *Borrero v. Gustafson*, No. A07-0273, 2008 WL 2020396, *3 (Minn. Ct. App. May 13, 2008).

Borrero was arrested for selling drugs to undercover officers in 2003 and convicted in a federal court of possession with intent to distribute in 2005. *Id.* at *1. In 2006, Borrero initiated a civil suit against the undercover officers who arrested him. *Id.* On appeal, Borrero argued the statute of limitations did not bar his intentional tort claims because they did not accrue until entry of final judgment in the federal criminal case in 2005. *Id.* The Court of Appeals rejected this argument, holding Borrero's intentional tort claims accrued at the time of his arrest, because any injury Borrero suffered occurred at that time. *Id.* at *3.

Borrero is persuasive and Hester's intentional tort claims must be dismissed. Hester brings the exact same intentional tort claims as those alleged in *Borrero* and makes the same argument regarding accrual of those claims that was rejected in *Borrero*. The cases cited by Hester are inapposite because they do not address the accrual date of intentional tort claims in a civil lawsuit. *State v. Schmidt*, 712 N.W.2d 530, 533 (Minn. 2006) (criminal defendant's attempt to collaterally attack out-of-state convictions in order to avoid enhancement of current charges); *Travelers Ins. Co. v. Thompson*, 163 N.W.2d 289, 294 (Minn. 1968) (criminal conviction was conclusive in determining convict's rights to collect life insurance proceeds in civil action); *Noske v. Friedberg*, 670 N.W.2d 740, 744-45 (addressing accrual of a legal malpractice claim). Because Hester's intentional tort claims accrued on December 16, 2008 and this lawsuit was not served until after June 27, 2011, these claims are barred and must be dismissed.

II. ABSOLUTE PROSECUTORIAL IMMUNITY APPLIES.

County Attorney Collins and County Attorney Rohland are entitled to prosecutorial immunity. Hester concedes prosecutorial immunity applies to any conduct by the Redwood County Attorney in initiating and prosecuting criminal charges. *Pl. 's Mem. in Opp.*, 9. However, Hester asserts prosecutorial immunity does not protect the Redwood County Attorney from the “failure to ensure continued compliance with the terms” of the Mutual Aid Agreement. *Id.* This argument is premised upon the unsupported and faulty conclusion the Redwood County Attorney had a duty to ensure the Lower Sioux complied with state law as part of his “general administrative duties.” *Id.*

There is no factual or legal basis to conclude the Redwood County Attorney had a duty to ensure the Lower Sioux complied with state law. The Mutual Aid Agreement does not impose any duty whatsoever to ensure that compliance. Neither can any such duty be found in the statute referenced by the Mutual Aid Agreement. *See* Minn. Stat. § 626.91. Moreover, there is no basis to conclude the purported duty to ensure the Lower Sioux’s compliance constitutes a “general administrative duty” to which absolute prosecutorial immunity does not apply. Hester relies solely on *Buckley v. Fitzsimmons* which discussed and distinguished “investigative functions” similar to those generally performed by police detectives from “prosecutorial functions” such as evaluating evidence and interviewing witnesses. 509 U.S. 259, 272-74 (1993). Although *Buckley* did use the phrase “administrative duties,” it did not describe those duties with any specificity. *Id.* Because neither Attorney Collins nor Attorney Rohland, in their capacity

as the Redwood County Attorney, had a duty to ensure the Lower Sioux complied with state law, the purported failure to comply with such a duty does not bar application of prosecutorial immunity and all claims against Attorney Collins and Attorney Rohland must be dismissed.

III. HESTER'S STATE CONSTITUTIONAL CLAIMS ARE IMPROPER AND NOT ACTIONABLE.

Hester's Amended Complaint asserts violations of the Minnesota Constitution against all Defendants. *Pl. 's Am. Compl.*, 8-9 (Count 2). These state constitutional claims are improper because they are in violation of this Court's March 13, 2012 Order regarding Hester's Motion to Amend. That Order granted Hester's Motion *only* insofar as he sought leave to dismiss the State of Minnesota as a party and further granted Hester permission to add claims against Patrick Rohland, the former Redwood County Attorney, and Jean Stacy, the former president of the Lower Sioux. No other amendment was permitted. Nonetheless, Hester alleges new state constitutional claims against all Defendants.

Hester's state constitutional claims are not only improper, but not actionable. It is well-settled Minnesota courts do not recognize a private cause of action for damages based on violations of the Minnesota Constitution. *Mlnarik v. City of Minnetrista*, No. A09-910, 2010 WL 346402, *1 (Minn. Ct. App. Feb. 2, 2010) (citing *Guite v. Wright*, 976 F. Supp. 866, 871 (D. Minn. 1997), *aff'd on other grounds*, 147 F.3d 747 (8th Cir. 1998)). Accordingly, these claims are not actionable and must be dismissed.

IV. RES JUDICATA AND COLLATERAL ESTOPPEL APPLY.

Hester asserts neither res judicata nor collateral estoppel applies because the Minnesota Supreme Court reversed his criminal conviction and held Officer Meece was not a “peace officer.” *Pl. ’s Mem. in Opp.*, 9-13. Hester’s argument is based on an inaccurate interpretation of the Minnesota Supreme Court’s decision. The sole issue decided by the Minnesota Supreme Court was whether “a Lower Sioux Indian Community . . . police officer is a peace officer authorized to invoke the implied-consent law” *State v. Hester*, 796 N.W.2d 328, 329 (Minn. 2011). Thus, the Court did not address the issue of probable cause, let alone overrule the district court’s finding of probable cause at the Omnibus hearing. Accordingly, the probable cause finding remains valid and res judicata and collateral estoppel apply for the reasons outlined in the County Defendants’ Memorandum in Support.

V. HESTER’S AMENDED COMPLAINT FAILS TO STATE A VIABLE § 1983 CLAIM.

A. No individual capacity claims.

Hester’s Amended Complaint does not support a viable § 1983 claim against any individual County Defendants. Hester concedes there is no such actionable claim against Attorney Collins. *Pl. ’s Mem. in Opp.*, 13 (“Hester agrees that Attorney Collins, as the current Redwood County Attorney has no individual liability . . .”). However, Hester contends the Amended Complaint contains sufficient factual allegations against Attorney Rohland and Commissioner Walling. *Id.* Despite this contention, there is no claim against Attorney Rohland in the Amended Complaint. *See Pl. ’s Am. Compl.*, 7-19

(Counts 1-10). Further, the Amended Complaint contains no factual allegations whatsoever pertaining to Attorney Rohland or Commissioner Walling. Indeed, the sole reference to these two individuals is one paragraph, where Hester identifies the parties. *Pl. 's Am. Compl.*, 3. This complete lack of facts establishing Attorney Rohland or Commissioner Walling took any action whatsoever, let alone action that violated Hester's constitutional rights, is fatal to his § 1983 individual capacity claims against them and these claims must be dismissed.

In attempting to salvage his individual capacity claims, Hester focuses on the purported failure to ensure the Lower Sioux's compliance with state law. *Pl. 's Mem. in Opp.*, 14. However, Hester fails to identify which constitutional provision was violated by this alleged failure. *See Liggins v. Morris*, 749 F. Supp. 967, 971 (D. Minn. 1990) (“[c]onstitutional claims brought under 42 U.S.C. § 1983 are discrete claims” and practitioners should “prepare complaints alleging violations of 42 U.S.C. § 1983 in a fashion that will identify the specific claims of the individual plaintiffs for specific constitutional violations as against only culpable defendants”). Moreover, Hester does not offer any factual or legal basis in support of his conclusion Attorney Rohland and Commissioner Walling owed any such duty. Indeed, assuming, *arguendo*, any such duty exists, it would be based upon state law – which is not a legally sufficient basis for a § 1983 claim. *See, e.g., Williams v. Hopkins*, 130 F.3d 333, 337 (8th Cir. 1997) (“Ordinarily, an alleged violation of state law does not by itself state a claim redressable by a § 1983 action.”).

In short, Hester fails to establish viable individual capacity § 1983 claims against any County Defendant. Hester concedes he has no such claim as to Attorney Collins. As to Attorney Rohland and Commissioner Walling, the Amended Complaint fails to allege they personally violated Hester's rights, fails to identify which constitutional provision was purportedly violated, and relies on a purported duty based solely on state law.

B. No Monell claim.

For the first time in his Memorandum in Opposition, Hester identifies the Mutual Aid Agreement as the official policy that caused a violation of Hester's rights. *Pl. 's Mem. in Opp.*, 14-18. Hester's *Monell* claim fails in the absence of any evidence the decision to enter into the Mutual Aid Agreement or the purported failure to ensure the Lower Sioux complied with state law were done with deliberate indifference to Hester's rights.

"Where a policy is constitutional on its face, but it is asserted that a municipality should have done more to prevent constitutional violations by its employees, a plaintiff must establish the existence of a 'policy' by demonstrating that the inadequacies were a product of deliberate or conscious choice by policymakers." *Szabla v. City of Brooklyn Park*, 548 F.3d 385 (8th Cir. 2007). "[O]nly where a municipality's failure to adopt adequate safeguards was the produce of deliberate indifference to the constitutional rights of its inhabitants will the municipality be liable for an unconstitutional policy under § 1983." *Szabla*, 548 F.3d at 390.

Hester cannot establish a *Monell* claim based on the Mutual Aid Agreement. Hester makes no allegation and offers no proof the decision to enter into the Mutual Aid

Agreement was made with deliberate indifference to Hester's constitutional rights. Instead, Hester relies again on the purported failure to ensure the Lower Sioux complied with state law. However, Hester does not establish a violation of his constitutional rights was the known or obvious consequence of this purported failure. Indeed, this Court has already held the failure of the Lower Sioux officers to be adequately insured did not violate Hester's constitutional rights. *Memo. Op. and Order* (Mar. 13, 2012) (ECF Doc. No. 28). Accordingly, Hester's purported *Monell* claim must be dismissed.

C. No constitutional violation.

As expected, Hester argues his constitutional rights were violated because Officer Meece was not a "peace officer" and therefore lacked authority to arrest Hester. *Pl. 's Mem. in Opp.*, 19-20. However, Officer Meece's technical lack of authority under state law does not affect the constitutional standard at issue. *Virginia v. Moore*, 553 U.S. 164, 173 and 176 (2008). In *Johnson v. Phillips*, the Eighth Circuit held a police officer's lack of authority under state law to conduct a traffic stop or arrest did not establish his conduct in stopping and arresting the plaintiff violated the Fourth Amendment. 664 F.3d 232, 238 (8th Cir. 2011). In that case, the police officer was an auxiliary reserve officer, with limited authority under state law. *Id.* at 235.

Despite Hester's contrary assertion, the holding of *Virginia v. Moore* as applied in *Johnson v. Phillips* governs here. Here, assuming *arguendo* Officer Meece lacked authority to arrest Hester because he was not technically a "peace officer" as defined by Minn. Stat. § 169A.03, subd. 18, this statutory lack of authority is similar to the lack of arrest authority in *Johnson*. Just as in *Johnson*, this lack of authority does not establish

Officer Meece's conduct violated Hester's fourth amendment rights. As outlined in the County Defendants' Memorandum in Support, Officer Meece had probable cause to arrest Hester. Just as in *Johnson*, Officer Meece's probable cause satisfied the Fourth Amendment. Because there was probable cause for Hester's arrest, he cannot establish a fourth amendment violation and his § 1983 wrongful arrest claim must be dismissed.

VI. THE MUTUAL AID AGREEMENT DID NOT IMPOSE A DUTY ON THE COUNTY DEFENDANTS AND THE PUBLIC DUTY DOCTRINE APPLIES.

Hester alleges the County voluntarily assumed, then breached, a duty to ensure the Lower Sioux complied with state law by entering into the Mutual Aid Agreement. *See Pl.'s Mem. in Opp.*, 20. This conclusion is without legal or factual support. Hester has not pointed to any language in the Mutual Aid Agreement that imposes a duty on the County, because there is none. Nor does Hester cite to any authority establishing a municipality's entering into such an agreement creates a special duty. In the absence of a duty, Hester's negligence claim against the County fails.

In addition, the public duty doctrine applies. Hester alleges the doctrine does not apply because the County "acted directly" on Hester by prosecuting criminal charges against him. *Pl.'s Mem. in Opp.*, 21. However, Hester's negligence claim is not based on his criminal prosecution but upon the purported failure to ensure the Lower Sioux complied with state law. Based on the Amended Complaint itself, and assuming *arguendo* this duty exists, it is a duty owed to the public at large, not to Hester specifically.

VII. THE MUTUAL AID AGREEMENT DID NOT ESTABLISH AN AGENCY RELATIONSHIP BETWEEN THE COUNTY AND OFFICER MEECE; ALTERNATIVELY, VICARIOUS OFFICIAL IMMUNITY APPLIES.

Hester asserts, without support, the Mutual Aid Agreement established an agency relationship between the County and Officer Meece. The Mutual Aid Agreement does not establish an agency relationship and the County is not liable for Officer Meece's conduct under the doctrine of *respondeat superior*.

An agency relationship is a fiduciary relationship whereby a principal is bound by an agent's actions, provided they are within the scope of his or her authority. *Fingerhut Mfg. Co. v. Mack Trucks, Inc.*, 125 N.W.2d 734, 737 (Minn. 1964). The elements of an agency relationship are (1) a manifestation of mutual consent between a principal and an agent such that the agent will act on the principal's behalf; and (2) the right of control by the principal over the agent. *A. Gay Jensen Farms Co. v. Cargill, Inc.*, 309 N.W.2d 285, 290 (Minn. 1981); *Jurek v. Thompson*, 241 N.W.2d 788, 791 (Minn. 1976). Neither element is met in this case. The Mutual Aid Agreement does not manifest consent between the County and Officer Meece that he will act on the County's behalf. Further, Hester concedes Officer Meece is not a County employee; accordingly, the County has no right of control over Officer Meece.

Even assuming an agency relationship existed, the County is entitled to vicarious official immunity, despite Hester's contrary assertion. As outlined in the County Defendants' Memorandum in Support, Officer Meece was acting in his capacity as a Lower Sioux police officer during his interaction with Hester and his decision to arrest Hester was discretionary. Hester argues Officer Meece is not entitled to official

immunity because he was not technically a “peace officer” at the time of arrest. However, Officer Meece was still a police officer employed by the Lower Sioux Indian Community and thus a public officer to whom official immunity applies in the absence of willful or malicious conduct. Hester offers only the conclusory statement that “Defendants acted deliberately, intentionally and with malice” in his effort to avoid official immunity and vicarious official immunity. *Pl. ’s Am. Compl.*, 7. This unsupported conclusion is insufficient to avoid summary judgment and the County is entitled to vicarious official immunity, should this Court find an agency relationship existed between the County and Officer Meece.

CONCLUSION

For the foregoing reasons, the County Defendants respectfully request this Court dismiss Hester’s Complaint in its entirety, with prejudice, and award the County Defendants the relief requested in their Memorandum in Support.

IVERSON REUVERS

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