UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

Renee Kay Martin, Parent, individually and on behalf of TRL–Minor child of Brandon Richard Laducer; and BRW–Minor child of Brandon Richard Laducer, Plaintiffs, v. Kelan Gourneau, in his individual and official capacity; Michael Slater, in his individual and official capacity; Evan Parisien, in his individual and official capacity; Joseph Kaufman, in his individual and official capacity; Earl Charbonneau, in his individual and official capacity; Nathan Gustafson, in his individual and official capacity; Reed Mesman, in his individual and official capacity; Trenton Gunville, in his individual and official capacity; Jayde Slater, in her individual and official capacity; Mitchell Slater, in his individual and official capacity; Andrew Saari, Jr., in his individual and official capacity; William Poitra, in his individual and official capacity; Heather Baker, in her individual and official capacity; Annette Laducer, in her individual and official capacity; and United States of America, Defendants.	Civil No. 3:22-cv-00136 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS**

COMES NOW, Defendants, Joseph Kaufman, Nathan Gustafson, Trenton Gunville, William Poitra, Jayde Slater, Mitchell Slater, and Andrew Saari, Jr., individually

and in their official capacities[1], and make this Motion to Dismiss against the allegations pled in Renee Kay Martin's complaint on the grounds that the complaint lacks specific facts to support the allegations against each Defendant and fails to satisfy the well-established pleading requirements under Iqbal and Twombly.

FACTUAL BACKGROUND

[1] On August 23, 2020, Brandon Laducer (hereinafter "Laducer") was shot and killed by law enforcement officers on the Turtle Mountain Indian Reservation. Prior to his death, as the complaint acknowledges, Laducer was involved in "an incident that occurred off reservation" in neighboring Bottineau County. ECF 1, at p. 10. Plaintiff, Renee Kay Martin's (hereinafter "Martin"), complaint references the North Dakota Bureau of Criminal Investigation's (hereinafter "NDBCI") report and relies on it to form the basis of a number of her allegations.

[2] That report indicates that Laducer discharged a firearm at a bar in Bottineau County (the "incident" the complaint references) and was subsequently pursued by law enforcement officers. See ECF 64-1, at pg. 9. Plaintiff alleges that the decedent was "almost killed instantly" when "exiting his home." ECF 1, pg. 10. The NDCBI report indicates that "three spent 9 mm ammunition casings," were recovered from the deck where the decedent's body was located, corroborating the on-scene officers' claims that the decedent "did discharge the handgun multiple times on the deck." ECF 64-1, at pg. 14.

[3] Martin's complaint often generalizes to include all BIA, FBI, county, and local officers as having "shot several times." ECF 1, at p. 10. According to Martin's complaint,

[1] Hereinafter referred to individually or collectively as "Defendants".

Laducer was "was murdered by the Bureau of Indian Affairs (BIA) and Rolette County Sherriff's Department officers"; "was shot several times by officers including officers from Rolette County"; and claims that Officer Evan Parisien told a Bottineau business owner that he "delivered the deadly shot." Id. According to the complaint, multiple officers allegedly discharged their weapons that evening, but Martin did not attribute a deadly shot or shots to any law enforcement officer other than Parisien. Id. at 10.

LAW AND ARGUMENT

I. General standards applicable to reviewing a motion to dismiss under Rule 12(b)(6).

[4] The Defendants move to dismiss the complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. A Rule 12(b)(6) motion tests the legal sufficiency of a complaint to eliminate actions "which are fatally flawed in their legal premises and designed to fail, thereby sparing litigants the burden of unnecessary pretrial activity." Young v. City of St. Charles, MO., 244 F.3d 623, 627 (8th Cir. 2001). Courts must accept a complaint's allegations as true, Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555-56 (2007), and view them in the light most favorable to the nonmoving party. Braden v. Wal-Mart Stores, Inc., 588 F.3d 585, 595 (8th Cir. 2009).

[5] While complaints are construed in favor of plaintiffs, the complaint "must allege facts sufficient to state a claim as a matter of law." Stringer v. St. James R-1 School Dist., 446 F.3d 799, 802 (8th Cir.2006). Pro se complaints are construed liberally but must still allege sufficient facts to support the claims advanced. Id. See also Erickson v. Pardus, 551 U.S. 89, 94 (2007) (pro se complaints must be held to less stringent standards than pleadings drafted by lawyers).

[6] However, when allegations cannot raise a claim of entitlement to relief, this should "be exposed at the point of minimum expenditure of time and money by the parties and the court." Twombly, 550 U.S. at 558 (citation omitted). To survive dismissal, the plaintiff must "plead[] factual content that allows the court to draw the reasonable inference that [each] defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Courts must undertake the "context-specific task" of determining whether the allegations "nudge" their claims against each defendant "across the line from conceivable to plausible." Twombly, 550 U.S. at 570.

[7] In the specific context of claims brought against multiple individuals under 42 U.S.C. § 1983, Iqbal and Twombly require specific factual allegations that demonstrate the personal and direct involvement of each defendant. See, e.g., Martin, 780 F.2d at 1338 ("Appellant does not allege that Baltz was personally involved in or had direct responsibility for incidents that injured him. His claims, therefore, are not cognizable in § 1983 suits."). "Shotgun" complaints fail to state a claim and include those asserting "multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against." Weiland v. Palm Beach Cty. Sheriff's Office, 792 F.3d 1313, 1323 (11th Cir. 2015). Shotgun complaints "fail . . . to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests." Id.

II. The Complaint fails to state a claim for relief against each Defendant in their individual capacities.

[8] Even construed liberally, Martin's claims against the Defendants fail to state a claim for relief in their individual capacity. This complaint exemplifies the "shotgun" pleading criticized in Weiland. In Weiland, the court identified four categories of shotgun

pleadings, one of which is "a complaint that 'assert[s] multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against.'" Weiland, 792 F.3d at 1321–23. "The unifying characteristic of all types of shotgun pleadings is that they fail to one degree or another, and in one way or another, to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests." Id. at 1323.

[9] Here, Martin's complaint without a doubt falls into the Weiland category. Specifically, Martin groups Kaufman, Gustafson, J. Slater, Gunville, M. Slater, Saari, and Poitra with all the other named officers in the FBI, BIA, Rolette County Sherriff's Department, and Rolla Police Department and alleges they collectively violated 42 U.S.C. § 1983, for deprivation of civil rights. ECF 1, at p. 3.

[10] Martin failed to differentiate the allegations and inform each Defendant separately of the allegations surrounding his or her alleged participation. A § 1983 claim requires showing that Kaufman, Gustafson, J. Slater, Gunville, M. Slater, Saari, and Poitra separately 1) acted under color of state law and 2) deprived the plaintiff of rights secured by the Constitution. Brown v. Linder, 56 F.4th 1140, 1143 (8th Cir. 2023). While courts construe pro se complaints liberally, this complaint fails to allege sufficient facts to support a § 1983 claim against each Defendant. Stringer, 446 F.3d at 802.

[11] Further, a state official sued in an individual capacity can only be liable for money damages if a plaintiff shows the official was directly and personally involved in the constitutional violation. See, e.g., S.M. v. Krigbaum, 808 F.3d 335, 340 (8th Cir. 2015) ("Government officials are personally liable only for their own misconduct."); Dahl v.

Weber, 580 F.3d 730, 733 (8th Cir. 2009) ("Section 1983 liability is personal. To recover § 1983 damages from [defendant] individually, [plaintiff] must show that [defendant] was personally involved in, or directly responsible for, [plaintiff's] prolonged incarceration[.]").

[12] Here, neither Kaufman, Gustafson, J. Slater, Gunville, M. Slater, Saari, nor Poitra were mentioned in Martin's statement of claims to have been directly and personally involved in a constitutional violation. Further, the complaint contains no allegations that each Defendant violated Laducer's rights secured by the Constitution. ECF 1, at 10. No facts set forth in the complaint give each Defendant "fair notice of what the . . . claim is and the grounds upon which it rests." Twombly, 550 U.S. at 555.

[13] Put simply, Martin's complaint does not indicate "who is alleged to have done what to whom" and thus is unable "to provide each individual with fair notice as to the basis of the claims against him or her, as distinguished from collective allegations against the state." Robbins v. Oklahoma, 519 F.3d 1249-50 (10th Cir. 2008); see also Lanman v. Hinson, 529 F.3d 673, 684 (6th Cir. 2008). Thus, dismissal of these individuals on failure to allege personal participation is warranted.

III. The Complaint also fails to state a claim against each Defendant in their official capacities.

[14] Martin seeks $20 million for Laducer's children. ECF 1, at 12. It is well settled that the Eleventh Amendment bars actions, in Federal Court, which seek monetary damages from individual State Officers, in their official capacities, as well as State Agencies, because such lawsuits are essentially "for the recovery of money from the state." Ford Motor Co. v. Department of the Treasury, 323 U.S. 459, 464 (1945); see also Will v. Michigan Dep't of State Police, 491 U.S. 58 (1989) ("[N]either a State nor its officials acting in their official capacities are 'persons' under § 1983" when sued for damages.).

To the extent the complaint seeks money damages against the Defendants in their official capacity, the complaint fails to state a claim and must be dismissed.

[15] Furthermore, under Ex Parte Young, 209 U.S. 123 (1908), a federal court's authority to grant prospective equitable relief against state officials is limited to the prevention of *ongoing* violations of federal law. The Supreme Court has "refused to extend the reasoning of Young . . . to claims for retrospective relief" for alleged *past* violation of a constitutional right. Green v. Mansour, 474 U.S. 64, 68 (1985). Compensatory interests are "insufficient" to overcome the dictates of the Eleventh Amendment. Id. "There is a dispute about the lawfulness of respondent's past actions, but the Eleventh Amendment would prohibit the award of money damages or restitution . . .." Id. at 73. "[T]he defendants cannot be sued for money damages under § 1983 because claims against state officials in their official capacities are really suits against the state and the state is not a person for purposes of a claim for money damages under § 1983." Kruger v. Nebraska, 820 F.3d 295, 301 (8th Cir.2016) (internal citations omitted).

[16] Martin is not alleging that Kaufman, Gustafson, J. Slater, Gunville, M. Slater, Saari, and/or Poitra are part of any ongoing constitutional violations, at least as far as can be gleaned from the complaint. But even if there was an ongoing constitutional violation, the caselaw is clear that the Eleventh Amendment precludes a suit for money damages in each Defendant's official capacity.

IV. The Defendants are entitled to qualified immunity.

[17] Even if Martin successfully stated a § 1983 claim against Kaufman, Gustafson, J. Slater, Gunville, M. Slater, Saari, and/or Poitra, each Defendant would still be entitled to qualified immunity. Qualified immunity is an entitlement from suit … "rather than a mere

defense to lability; and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial." Mitchell v. Forsyth, 472 U.S. 511, 526 (1985). The qualified immunity doctrine is applied to civil rights claims brought against law enforcement officials engaged in their discretionary functions. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). The qualified immunity test consists of two prongs: (1) the facts, when viewed most favorably to her demonstrate the deprivation of a constitutional right; and (2) the right was *clearly established* at the time of the deprivation. Baribeau v. City of Minneapolis, 596 F.3d 465, 474 (8th Cir. 2010). As to the second prong, the dispositive point is whether a reasonable officer, in the same situation, clearly would understand that his actions were unlawful. J.T.H v. Missouri Dep't of Social Security Children's Div., 39 F.4th 489, 492 (8th Cir. 2022). The unlawfulness of the officer's actions must be "beyond debate." City v. Cnty. Of S.F. v. Sheehan, 575 U.S. 600, 611 (2015). This exacting standard gives government officials breathing room to make reasonable but mistaken judgments by protecting all but the plainly incompetent or those who knowingly violate the law." Id. at 610.

[18] Martin did not show a violation of Laducer's rights or how Kaufman, Gustafson, J. Slater, Gunville, M. Slater, Saari, and/or Poitra actions were unlawful, and clearly the Defendants did not knowingly violate any law.

[19] Even if Kaufman, Gustafson, J. Slater, Gunville, M. Slater, Saari, and/or Poitra discharged his or her weapon, Martin does not state a constitutional claim. Whether an officer used excessive force is analyzed under the Fourth Amendment's "objective reasonableness standard." Graham v. Connor, 490 U.S. 386, 388 (1989). That standard asks, "whether the officers' actions are 'objectively reasonable' in light of the facts and

circumstances confronting them, without regard to their underlying intent or motivation." Id. at 397. "In determining reasonableness, a court considers the totality of the circumstances and 'the severity of the crime at issue, the immediate threat the suspect poses to the safety of the officer or others, and whether the suspect is actively resisting or attempting to evade arrest by flight.'" Smith v. Kan. City, Mo. Police Dep't, 586 F.3d 576, 581 (8th Cir. 2009) (citation omitted). This list of factors is non-exhaustive. Retz v. Seaton, 741 F.3d 913, 918 (8th Cir. 2014). "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." Graham, 490 U.S. at 396. And "[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." Id. at 396-97. Finally, reasonableness must be "based upon the information the officers had when the conduct occurred." Cnty. of Los Angeles v. Mendez, 581 U.S. 420, 428 (2017) (quoting Saucier v. Katz, 533 U.S. 194, 207 (2001)). See also Shekleton v. Eichenberger, 677 F.3d 361 (8th Cir. 2012).

[20] The Supreme Court has held that the use of deadly force is reasonable where an officer has "probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others." Tennessee v. Garner, 471 U.S. 1, 11 (1985). This objective reasonableness analysis must be conducted separately for each search or seizure that is alleged to be unconstitutional. See Mendez, 581 U.S. at 428. Put simply, even if an officer has committed a different Fourth Amendment violation leading up to the use of deadly force, if said use of force was reasonable then there is no Fourth

Amendment violation for that use of deadly force. Id. at 423 ("A different Fourth Amendment violation cannot transform a later, reasonable use of force into an unreasonable seizure.").

[21] Here, Martin's complaint improperly conflates the alleged warrant confusion and lack of knowledge of who owned the subject property with the allegation of excessive force. However, the Supreme Court has held that such conflation is without merit. Mendez, 581 U.S. at 428. ("An excessive force claim is a claim that a law enforcement officer carried out an unreasonable seizure through a use of force that was not justified under the relevant circumstances. It is not a claim that an officer used reasonable force after committing a distinct Fourth Amendment violation such as an unreasonable entry.").

[22] Furthermore, Martin acknowledges that prior to Ladcuer's death, there was an "incident" in Bottineau County. ECF 1, at p. 10. Per the NDBCI report, Laducer used a gun in that incident. See ECF 64-1, at pg. 9. Thus, it was reasonable for the officers pursuing him to believe that Laducer was still armed. See Kohorst v. Smith, 968 F.3d 871, 877 (8th Cir. 2020). Based on this serious offense, it was objectively reasonable for Kaufman, Gustafson, J. Slater, Gunville, M. Slater, Saari, and/or Poitra to treat Laducer as a potential suspect who posed a threat to officer safety. Indeed, in Kohorst v. Smith, 968 F.3d 871, 877 (8th Cir. 2020), the officer learned that a suspect might have been involved in an altercation at a local theater. Based on that fact alone, the Eighth Circuit held that "it was reasonable for [the officer] to approach [the individual] as a potential suspect in an assault investigation who posed a threat to officer safety." Id. Not only did the incident in Bottineau County support the reasonableness of the use of force here, Martin cannot ignore that the NDBCI report that she relies on and incorporates in

numerous instances in her complaint also indicates that Laducer had a weapon and fired it that night on the porch. See Sinclair v. City of Des Moines, 268 F.3d 594, 596 (8th Cir. 2001) ("[N]o constitutional or statutory right exists that would prohibit a police officer from using deadly force when faced with an apparently loaded weapon."); Shannon v. Koehler, 616 F.3d 855, 863 (8th Cir. 2010) ("[T]here can be no doubt that officers are permitted to use force when their safety is threatened."). The fact that five officers faced with the same circumstances that night also discharged their weapons, underscores that Kaufman, Gustafson, J. Slater, Gunville, M. Slater, Saari, and Poitra's was constitutionally reasonable, and they are entitled to qualified immunity.

[23] Under the second prong of the analysis, an official is entitled to qualified immunity unless the asserted right was clearly established, which means it was "sufficiently clear that every reasonable official would have understood that what he is doing violates that right." Mullenix v. Luna, 577 U.S. 7, 11 (2015) (quotation omitted). If "a reasonable officer might not have known *for certain* that the conduct was unlawful" in light of pre-existing law, then he is immune from liability. Ziglar v. Abbasi, 582 U.S. 120, 152 (2017) (emphasis added). Here, Kaufman, Gustafson, J. Slater, Gunville, M. Slater, Saari, and Poitra are unaware of any case law that would have put every reasonable officer on notice that the Fourth Amendment required anything different than what five officers on the scene did in this case: shot at an individual they *reasonably believed* to be armed (and who as it turned out was armed and discharged his own weapon repeatedly on the porch that night). E.g., Kohorst, 968 F.3d at 877 (granting qualified immunity in use of force cases even where the subject ended up being unarmed).

CONCLUSION

[24] For the reasons stated above, Kaufman, Gustafson, J. Slater, Gunville, M. Slater, Saari, and Poitra respectfully request that the Court grant this Motion and dismiss them from the case with prejudice.

Dated this 24th day of May 2023.

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