

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

BENJAMIN K. HERRINGTON,

Plaintiff,

v.

GRUNDY COUNTY SHERIFF'S DEPUTY
AARON CORY and GRUNDY COUNTY,
ILLINOIS,

Defendants.

Case No. 1:24-cv-02940

DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT

Defendants, GRUNDY COUNTY and GRUNDY COUNTY SHERIFF AARON CORY, by and through their attorneys HAWKINS PARNELL & YOUNG, LLC, for their Motion to Dismiss Plaintiff's Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), states as follows:

INTRODUCTION

Plaintiff Benjamin K. Herrington alleges Defendant Deputy Aaron Cory (hereinafter "Deputy Cory") violated his constitutional rights pursuant to 42 U.S.C. § 1983 by using excessive force while attempting to arrest Plaintiff as he resisted. [Dkt. # 1]. Plaintiff denies he is bringing a federal claim against Defendant Grundy County (hereinafter the "County"), and, instead, claims the County is joined as the potential indemnitor of Deputy Cory. *Id.* at ¶ 4. Plaintiff failed to plead sufficient facts against the Deputy Cory and failed to plead Grundy County is liable under a theory of *respondeat superior*. For the reasons stated below, Plaintiff's Complaint should be dismissed with prejudice.

BACKGROUND

On April 25, 2022, Deputy Cory along with other law enforcement officers employed by the Illinois State Police and the Sheriff Department of Grundy County arrested Plaintiff. [Dkt. # 1 at ¶ 5]. Plaintiff does not challenge the existence of probable cause to arrest him. *Id.* at ¶ 6. Deputy Cory and two other officers approached Plaintiff and attempted to place him under arrest, which is depicted in Plaintiff's complaint.¹ *Id.* at ¶ 7. During the arrest, Deputy Cory – a canine officer – instructed his canine to bite Plaintiff on his right leg, which allegedly resulted in his injuries stated in the Complaint. *Id.* at ¶¶ 9 and 11.

LEGAL STANDARD

A motion to dismiss pursuant to Rule 12(b)(6) challenges the sufficiency of the complaint, not its merits. Fed. R. Civ. P. 12(b)(6); *Gibson v. City of Chicago*, 910 F.2d 1510, 1520 (7th Cir. 1990). Regarding a Rule 12(b)(6) motion, the court accepts as true all well-pleaded facts in the plaintiff's complaint and draws all reasonable inferences from those facts in the plaintiff's favor. *Kubiak v. City of Chicago*, 810 F.3d 476, 480-81 (7th Cir. 2016). A court is not “required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *Brown v. CACH, LLC*, No. 20-cv-4579, 2021 U.S. Dist. LEXIS 172037 *3 (N.D. Ill. Sep. 10, 2021). To survive a Rule 12(b)(6) motion, the complaint must assert a facially plausible claim and provide fair notice to the defendant of the claim's basis. *Lacy v. Cook Cnty.*, 2023 U.S. Dist. LEXIS 174736, *4 (N.D. Ill. September 28, 2023); see also *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A claim is facially plausible “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678.

¹ Plaintiff's complaint does not include any details about the events leading up to Plaintiff's arrest. The arrest occurred after a 70-mile chase on I-55 following Plaintiff stealing a Chicago Fire Department Ambulance.

ARGUMENT

I. Plaintiff Failed to State a Claim of Excessive Force Against Deputy Cory, Therefore, Plaintiff's Section 1983 Claim Must be Dismissed.

Plaintiff's Complaint consists of conclusory allegations and mere statements of the law which are insufficient to state a Section 1983 claim against Deputy Cory. The Fourth Amendment provides “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause.” U.S. Const. Amend. IV. All claims of excessive force against law enforcement officers should be analyzed under the Fourth Amendment and its reasonableness standard. *Doxtator v. O'Brien*, 39 F.4th 852, 860 (7th Cir. 2022). The reasonableness standard is objective, focusing on the circumstances presented, rather than the subjective intent of the officer. *Id.* Officers are faced with real challenges that often turn dangerous, “calling for ‘split-second judgments’ to safeguard both the public and the responding officers ‘in tense, uncertain, and rapidly evolving’ circumstances”. *Id.* at 861 (quoting *Graham v. Connor*, 490 U.S. 386, 397 (1989)).

Here, Plaintiff has failed to sufficiently plead Deputy Cory acted unreasonable. Plaintiff does not contest Deputy Cory had probable cause to pursue, stop, and arrest him on April 25, 2022. [Dkt. # 1 at ¶ 6]. Plaintiff alleges the officers, including Deputy Cory, subdued Plaintiff and then Deputy Officer instructed his canine to bite Plaintiff on his right leg. *Id.* at ¶ 9. Plaintiff admits, through their inclusion of two photos of the arrest, that Plaintiff was not subdued at the time Deputy Cory instructed his canine to bite Plaintiff. *Id.* at ¶¶ 7 and 10. Plaintiff claims he was not resisting at the time of arrest, and Deputy Cory had no reasonable basis to instruct his canine to bite him. *Id.* at ¶ 12. Deputy Cory thereby allegedly caused Plaintiff to be deprived of his rights secured by the Fourth Amendment. *Id.* There are no allegations to support the notion that Deputy Cory acted

unreasonable. The allegations are mere conclusory recitations of the law, which is insufficient to properly state a cause of action. Plaintiff does not allege facts sufficient to suggest Deputy Cory's actions in instructing his canine to bite Plaintiff during the arrest was objectionably unreasonable under the circumstances. No misconduct was pled by Plaintiff. A complaint that consists of conclusory allegations unsupported by factual assertions fails the standard of Rule 12(b)(6). This Court has held before that “[u]nsupported conclusory factual allegations do not state a § 1983 claim.” *Mong v. McKenzie*, No. 21 CV 2420, 2023 U.S. Dist. LEXIS 203557 *4 (N.D. Ill. Nov. 14, 2023) (citing *Bilek v. Fed. Ins. Co.*, 8 F.4th 581 (7th Cir. 2021)). Therefore, Plaintiff is unable to defeat a 12(b)(6) motion and Defendant Deputy Aaron Cory's Motion to Dismiss should be granted.

II. In the Alternative, Deputy Cory is Shielded by Qualified Immunity and He Should be Dismissed from Plaintiff's Complaint.

Deputy Cory is entitled to dismissal under the Doctrine of Qualified Immunity. Qualified immunity "protects government officials from liability for civil damages when their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Gonzalez v. Vill. of W. Milwaukee*, 671 F.3d 649, 657 (7th Cir. 2012) (quoting *McAllister v. Price*, 615 F.3d 877, 881 (7th Cir. 2010)). Qualified Immunity is a two-part test, and the court considers two questions: (1) whether the facts alleged, taken in the light most favorable to plaintiff, amount to a constitutional violation and (2) whether the constitutional right at issue was clearly established at the time of the alleged violation. *McComas v. Brickley*, 673 F.3d 722, 725 (7th Cir. 2012) (citing *Jones v. Clark*, 630 F.3d 677, 680 (7th Cir. 2011)).

Here, the Plaintiff does not dispute Deputy Cory had probable cause or reason to arrest

him.² [Dkt. # 1 at ¶ 6]. Plaintiff's only argument is that Deputy Cory had no reasonable basis to instruct his canine to bite Plaintiff at the time of instruction. *Id.* at ¶ 12. Plaintiff claims he was sufficiently subdued at the time he was bitten. *Id.* at ¶ 9. Plaintiff's allegations are defeated by his own complaint as he included two photos depicting the scene of the arrest at the time of Deputy Cory's instruction and the moment immediately after it. *Id.* at ¶¶ 7 and 11. Reasonable force is warranted and allowed when an offender is resisting arrest. Here, Plaintiff failed to state a claim for a constitutional violation. Defendant Deputy Aaron Cory should be dismissed.

III. Grundy County is Improperly Joined in this Action as the “Potential Indemnitor.”

Plaintiff alleges he joined Grundy County in this action as the potential indemnitor of [Deputy] Cory. *Id.* at ¶ 4. Plaintiff further admits he does not assert any federal claim against defendant Grundy County. *Id.* As Plaintiff is not asserting a cause of action against defendant Grundy County, this defendant should be dismissed with prejudice.

IV. Grundy County Can Not be Liable under *Respondeat Superior*.

Plaintiff does not explicitly assert a claim for *respondeat superior* against the County. Instead, Plaintiff implied the existence of *respondeat superior* against the County through their claim of “potential indemnitor of defendant Cory.” *Id.* at ¶ 4. In Illinois, “a county is not liable under *respondeat superior* for the acts of the sheriff” because the sheriff is not an employee of the county. *Wallace v. Masterson*, 345 F. Supp. 2d 917, 921 (N.D. Ill. 2004) (citing *Moy v. Cty. of Cook*, 159 Ill. 2d 519 (1994)). The Illinois Supreme Court stated in *May*, “the county is given no authority to control the office of the sheriff,’ *id.*, and without such control there can be no *respondeat superior* liability.” *Id.*

² Defendants assume, *arguendo*, Plaintiff does not contest the existence of probable cause to arrest as he continuously resisted arrest during the 70-mile chase.

Here, any implication by Plaintiff that the County is liable to Plaintiff pursuant to the theory of *respondeat superior*, is inapplicable and against Illinois law. As a matter of law Defendant Grundy County should be dismissed from Plaintiff's Complaint with prejudice.

CONCLUSION

For the reasons stated above, Defendants GRUNDY COUNTY and GRUNDY COUNTY SHERIFF AARON CORY, respectfully requests this Court grant their Motion to Dismiss Plaintiff's Complaint with prejudice against all Defendants, and grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/: Jordan K. Cray, Esq.

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CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2024, I electronically filed the foregoing document with the clerk of the court for the Northern District of Illinois, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of E-Filing” to the attorneys of record in this case.

/s/: Sabrina Amaya