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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

DONALD J. TOWNSEL,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellant,)	
)	
v.)	No. 2018 L 5755
)	
CITY OF CHICAGO,)	The Honorable
)	Daniel T. Gillespie,
Defendant-Appellee.)	Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court.
Justices Pierce and Walker concurred in the judgment.

ORDER

¶ 1 *Held:* Dismissal of plaintiff's second amended *pro se* complaint with prejudice is affirmed.

¶ 2 Donald Townsel, a non-lawyer who represents himself, appeals from a trial court order dismissing with prejudice his second amended complaint against the City of Chicago. Townsel's brief fails to comply in numerous ways with the supreme court rules governing appellate review (Ill. S.Ct. R. 341 (eff. Feb. 6, 2013)), causing review to be extremely problematic. Nonetheless, we review Townsel's challenge on the merits, based on the record before us, and the City's brief,

which adequately clarifies the legal issues raised by Townsel's appeal so that we can deal with them. *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001).

¶ 3 Townsel contends the trial court erred in dismissing his complaint under section 2-615 of the Code of Civil Procedure (Code) 735 ILCS 5/2-615 (West 2018). He also argues the trial court erred in denying his motion for default judgment and failing to consider the exhibits attached to those motions before dismissing his complaint. We affirm the trial court's dismissal with prejudice because Townsel's second amended complaint fails to state a cause of action. Further, Townsel's motion for default judgment was without merit as the City timely appeared and moved to dismiss his complaint.

¶ 4 **Background**

¶ 5 Self-represented litigant Donald Townsel filed his initial complaint against the City of Chicago, the Chicago Housing Authority, and Nicholas Confederat, his landlord, in June 2018. The allegations are difficult to discern, but appear to arise from an incident on December 5, 2017, that allegedly resulted in unnamed "criminals" living in his CHA apartment complex assaulting him, and then his being falsely arrested by Chicago police. As to the City, Townsel's complaint attempts to allege (i) a claim under section 1983 of the federal Civil Rights Act (42 U.S.C. § 1983 (2012)) for violations of his rights under the fourth and fourteenth amendments to the U.S. Constitution (U.S. Const. amends. IV and XIV) and (ii) claims for false arrest, "malicious prosecution," and negligence for failing to arrest his neighbor who threatened Townsel and later stabbed him.

¶ 6 In lieu of an answer, the City filed a motion to dismiss under section 2-615. (The other defendants filed separate motions to dismiss under section 2-603 and 2-615 of the Code.) The City argued that Townsel's complaint failed to set forth facts to state a cause of action under state or

federal law. The trial court dismissed Townsel's complaint with leave to file an amended complaint. Townsel filed an amended complaint, which also included unclear allegations. Again, defendants moved to dismiss. The trial court granted the dismissal motions and gave Townsel leave to file a second amended complaint.

¶ 7 Townsel filed second amended complaints separately against each defendant. Again, the facts are difficult to decipher, but Townsel appears to raise claims for negligence, false arrest, and violations of his due process and civil rights. The City again moved to dismiss under section 2-615. Townsel filed motions for default judgment against each of the defendants. After a hearing on the motions, the trial court granted the motion to dismiss, this time with prejudice. The trial court continued Townsel's motion for default judgment, only as to the CHA, but later denied it.

¶ 8 Townsel filed separate appeals against each defendant. (The CHA and Confederat are not parties to this appeal; a different division of this court dismissed Townsel's appeal against the CHA (No. 1-19-1530) in December 2019, and we affirmed dismissal of Townsel's complaint against Confederat (No. 1-19-1137) in January 2020.)

¶ 9 Analysis

¶ 10 Section 2-615

¶ 11 A motion to dismiss under section 2-615 of the Code challenges the legal sufficiency of the complaint based on defects apparent on its face. *Simpkins v. CSX Transportation, Inc.*, 2012 IL 110662, ¶ 13. We construe the allegations of the complaint in the light most favorable to the plaintiff and determine whether they state a cause of action on which relief can be granted. *Bogenberger v. Pi Kappa Alpha Corp.*, 2018 IL 120951, ¶ 23. In making this determination, we take as true all well-pleaded facts, and all reasonable inferences drawn from those facts. *Ferris, Thompson & Zweig, Ltd. v. Esposito*, 2017 IL 121297, ¶ 5. Dismissal requires finding no set of

facts that would permit the plaintiff to recover. *Cochran v. Securitas Security Services USA, Inc.*, 2017 IL 121200, ¶ 11. Review of a section 2-615 dismissal is *de novo*. *Id.*

¶ 12 Townsel's second amended complaint is insufficient under section 2-615 because he failed to present legally and factually sufficient claims as a basis for recovery or to plead facts which bring the claim within a legally recognized cause of action. *Chandler v. Illinois Central R.R. Co.*, 207 Ill. 2d 331, 348 (2003); *Coghlan v. Beck*, 2013 IL App (1st) 120891, ¶ 22. Townsel's complaint attempts to assert multiple causes of action against the City. He alleges a federal section 1983 claim that the police violated his fourth and fourteenth amendment rights by searching and arresting him without probable cause and refusing to arrest the people who he claims threatened and stabbed him. Townsel also attempts to raise separate state law claims for false arrest, malicious prosecution, and negligence. But his complaint does not plead facts that would permit him to recover under any of those causes of action.

¶ 13 Section 1983

¶ 14 Liability under section 1983 only attaches to a municipality where the plaintiff's injury was the product of an official policy, custom, or practice. *Estate of Strocchia v. City of Chicago*, 284 Ill. App. 3d 891, 902 (1996) ("no liability to a municipality will result unless an official of the municipality is the 'moving force' of the constitutional violation") (citing *Monell v. New York City Department of Social Services*, 436 U.S. 658 (1978)). A municipality cannot be held liable under section 1983 on a *respondeat superior* theory. *Id.* Townsel does not allege facts showing the City had an official policy that was the "moving force" behind the officers' conduct. He also fails to allege facts showing the police lacked probable cause to arrest him, which is required to support an unlawful arrest claim (*Kelley v. Myler*, 149 F. 3d 641, 646 (7th Cir 1998)), or lacked reasonable suspicion required to search him for a weapon. *United States v. Thomas*, 512 F. 3d 383, 386 (7th

Cir. 2008). Absent enough facts to support the allegations, the trial court did not err in dismissing Townsel's second amended complaint.

¶ 15 Townsel's claim that his fourth and fourteenth amendment rights were violated by the police officers' failure to arrest his alleged assailants also fails. The United States Supreme Court has held that a person does not have a due process right to have another person arrested for his or her own protection. *Town of Castle Rock v. Gonzalez*, 545 U.S. 748, 764-65 (2005). Thus, regardless of the facts alleged, Townsel cannot state a claim for the officers' failure to arrest the people who he alleges attacked him.

¶ 16 Other Claims

¶ 17 Townsel's other claims for false arrest under state law and negligence also fail to allege enough facts and the trial court properly dismissed them under section 2-615. As noted, Townsel fails to allege the police lacked probable cause to arrest him, which is required for a claim of false arrest. *Ross v. Mauro Chevrolet*, 369 Ill. App. 3d 794, 798 (1st Dist. 2006). A claim for malicious prosecution also requires the plaintiff to allege a lack of probable cause, as well as malice, a decision in the plaintiff's favor, and damages. *Reed v. Doctor's Associates, Inc.*, 355 Ill. App. 3d 865, 873 (2005). Townsel only states that the arrest "ended in [his] favor" but fails to allege any other facts to support his claim.

¶ 18 Townsel's complaint alleges the police were negligent for failing to arrest the people he alleges threatened him and later stabbed him. That claim fails under section 4-102 of the Tort Immunity Act, which provides in part, "[n]either a local public entity nor a public employee is liable for failure to *** prevent the commission of crimes, failure to detect or solve crimes, and failure to identify or apprehend criminals." 745 ILCS 10/4-102 (West 2018). Townsel contends tort immunity does not apply because the police officers conduct was "willful and wanton." But,

section 4-102 contains no exception for willful and wanton misconduct. *DeSmet v. County of Rock Island*, 219 Ill. 2d 497, 515 (2006). Absent enough facts to support any of these claims, the trial court did not err in dismissing it under section 2-615 of the Code. *Ottawa Savings Bank v. JDI Loans, Inc.*, 374 Ill. App. 3d 394, 401 (2007).

¶ 19 Motion for Default Judgment

¶ 20 Townsel contends the trial court erred by denying his motion for default judgment and failing to consider the exhibits attached to that motion before dismissing his complaint.

¶ 21 Townsel’s motion for default judgment is without merit. A default judgment may be entered for failing to appear or plead. 735 ILCS 5/2-1301(d) (West 2018). Under Illinois Supreme Court Rule 181(a) (eff. Jan. 1, 2018), a defendant may make an appearance by filing a motion within 30 days of receiving service and then must file an answer or other appropriate motion within the time directed by the court. Whether to grant or deny a motion for default judgment “is within the sound discretion of the trial court, and its decision will not be reversed absent an abuse of discretion or a denial of substantial justice.” *Jackson v. Bailey*, 384 Ill. App. 3d 546, 548 (2008).

¶ 22 Townsel served his original complaint on the City on June 27, 2018. The City timely filed an appearance and its motion to dismiss on July 23, 2018. The City similarly filed timely motions to dismiss Townsel’s first and second amended complaints. Thus, Townsel’s motion for default judgment lacked merit and the trial court did not abuse its discretion in denying it.

¶ 23 Further, the trial court was not required to consider the exhibits to Townsel’s motion when deciding the City’s motion to dismiss. The only matters to be considered in ruling on that motion are the allegations of the pleadings themselves. *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 485 (1994). As noted, Townsel’s complaint failed to state a cause of action and the trial court properly dismissed it.

¶ 24

Dismissal with Prejudice

¶ 25

The decision to dismiss an action with or without prejudice rests within the sound discretion of the trial court and will not be disturbed absent an abuse of discretion. *Caulfield v. Packer Group., Inc.*, 2016 IL App (1st) 151558, ¶ 67. We consider whether the trial court considered the unique and particular circumstances of the case to determine whether the trial court did or did not abuse its discretion. *Razor Capital v. Antaal*, 2012 IL App (2d) 110904, ¶ 28.

¶ 26

Townsel's initial complaint made numerous allegations that were difficult to comprehend. The court gave Townsel two more opportunities to amend his complaint. His second amended complaint is slightly more comprehensible, but it too failed to present a plain and concise statement of a cause of action. After dismissing his first amended complaint, the able trial court advised Townsel about how to file a proper pleading and recommended he seek the assistance of an attorney through the court's assistance programs. Townsel opted to continue to proceed on his own, which is his right. But, based on his earlier submissions, it was not unreasonable for the trial court to conclude that if Townsel was given another opportunity to amend, he would not be able to present a clear statement of his case. Thus, the trial court did not abuse its discretion by dismissing plaintiff's second amended complaint with prejudice. *Razor Capital*, 2012 IL App (2d) 110904, ¶ 28.

¶ 27

Affirmed.