FOURTH DIVISION
September 30, 2016

No. 1-15-3428

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ANTHONY ELDER,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 13 L 2010
	)	
COOK COUNTY DEPARTMENT OF CORRECTIONS, UNIDENTIFIED COOK COUNTY DEPARTMENT OF CORRECTIONS EMPLOYEES, and THOMAS DART, individually and in his official capacity as Cook County Sheriff,	)	Honorable
	)	James N. O'Hara,
Defendants-Appellees.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices McBride and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the trial court's judgment dismissing plaintiff's fifth amended complaint with prejudice for failure to state a claim of a deprivation of plaintiff's constitutional rights while in pretrial detention in the Cook County jail.

¶ 2 Plaintiff, Anthony Elder, a former pretrial detainee in the Cook County Department of Corrections, filed his fifth amended complaint against defendants, the Cook County Department

of Corrections, unidentified Cook County Department of Corrections employees, and Thomas Dart individually, and in his official capacity as Cook County Sheriff, alleging multiple violations of plaintiff's constitutional rights. The trial court granted defendants' motion to dismiss the complaint for failing to state a claim. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 On February 25, 2003, plaintiff, Anthony Elder, filed his initial complaint *pro se* in the circuit court of Cook County against the Cook County Department of Corrections (CCDOC), unnamed Cook County Department of Corrections employees, and Thomas Dart, the Sheriff of Cook County. After multiple amendments, in May 2015 the trial court dismissed plaintiff's amended complaint and ordered that plaintiff would have one final opportunity to amend his complaint to state a claim. This appeal arises from the trial court's order dismissing plaintiff's fifth amended complaint (hereinafter "complaint") with prejudice for failing to state a claim.

¶ 5 Plaintiff filed his complaint pursuant to 42 U.S.C. §§ 1983, 1985, and 1986. The complaint alleged that on October 26, 2012, plaintiff "was transported to the Cook County Department of Corrections facility *** and there remained until the 7th of December in the year 2012." Plaintiff further alleged that he was charged with multiple criminal offenses but that the criminal proceedings "were given termination in favor of the plaintiff in a manner indicating plaintiff was innocent." (Plaintiff did not allege the specific disposition of any of the charges, only types of dispositions "indicative of innocence.") The complaint alleged seven counts of violations of plaintiff's constitutional rights.

¶ 6 Count I of the complaint purported to state a claim for "False Detainment and Imprisonment." Plaintiff alleged he was transported from the emergency department at Roseland Hospital to the Cook County Department of Corrections. There, plaintiff alleged, he was "detained and imprisoned *** [*sic*] without reason to believe he had committed, was committing,

or was about to commit a crime." Plaintiff claimed he was "falsely detained and imprisoned." Plaintiff alleged he "was found innocent of all charges he was detained and imprisoned for as a hostage under protest and duress."

¶ 7 Count II of the complaint alleged denial of necessary medical care. Plaintiff alleged the Department of Corrections "had full knowledge of medical situation and history of plaintiff." The complaint alleges that when plaintiff arrived at the jail a physician examined him and as a result ordered "special living conditions, orders, and prescriptions" for plaintiff. This count in plaintiff's complaint is allegedly supported by an exhibit attached to the complaint. The exhibit is a printout of active medical orders for plaintiff. The orders list plaintiff's medications and state the jail is to be alerted that plaintiff is to have a cane, a lower bunk, and medical housing. Plaintiff alleged he was "transferred *** to a non-medical housing unit in complete disregard of prescribed orders." Count II alleged defendants, while acting within the scope of their employment and the "mandating authority" of defendant Dart, "ignored or denied orders and prescription of plaintiff," denied him use of a cane, and denied him "medically assessed treatment." Plaintiff alleged defendants continued to deny him medication and the medical orders until his release. Plaintiff filed a grievance of these issues on November 21, 2012, which plaintiff attached to his complaint.

¶ 8 Next, plaintiff claimed he was denied his right to vote. Plaintiff misnumbered this count but we will renumber the denial of voting rights claim as count III for clarity. In count III plaintiff alleged that between October 26 and November 5 he "made numerous requests for necessary qualification and ballot [*sic*] available to pretrial detainees" but defendants ignored him and disregarded his requests. He further alleged that defendants "made no attempt to qualify, register, or make accessible the right to vote" to plaintiff, although he was a "qualified and registered voter." Plaintiff wrote a grievance of this issue which he dated November 6 and

which was marked received on November 8, 2012. His grievance was denied on November 11 because voting was over.

¶ 9 Plaintiff next attempted to state a claim, which we will renumber as his count IV, for denial of his right to freely practice his religion. Plaintiff alleged he informed personnel at the jail that he was a Hermetic.[1] He alleged that every day of his detention he requested a copy of the Kybalion[2] "in compliance with Hermetic beliefs" but he was given a Christian bible. Plaintiff further alleged that defendants "offered manuscripts of other conventional religions and verbally assaulted [him] for unconventional beliefs." Defendants allegedly ignored plaintiff "in reference to religious materials, worship, practice, and manuscripts of Hermetic faith; while continuing verbal assaults against beliefs and individual of plaintiff." He further alleged that defendants "offered religious services of conventional religions to plaintiff, repeatedly, in disregard of plaintiff's right to religious practice." Plaintiff filed a grievance of this issue which he dated November 16, 2012, which is attached to his complaint. Neither in the complaint nor in the grievance does plaintiff allege he was denied any religious practices other than obtaining a copy of the Kybalion. In his grievance, plaintiff wrote that he "need only to acquire a 'Kybalion' copy to continue my spiritual practice."

---

[1] From Wikipedia: "Hermeticism, also called Hermetism,[1][2] is a religious, philosophical, and esoteric tradition based primarily upon writings attributed to Hermes Trismegistus ("Thrice Great").[3] These writings have greatly influenced the Western esoteric tradition and were considered to be of great importance during both the Renaissance[4] and the Reformation.[5] The tradition claims descent from a prisca theologia, a doctrine that affirms the existence of a single, true theology that is present in all religions and that was given by God to man in antiquity.[6][7]" https://en.wikipedia.org/wiki/Hermeticism (visited September 10, 2016).

[2] From Wikipedia: "*The Kybalion: Hermetic Philosophy*, originally published in 1908 by a person or persons under the pseudonym of "the Three Initiates", is a book claiming to be the essence of the teachings of Hermes Trismegistus." https://en.wikipedia.org/wiki/The_Kybalion (visited September 10, 2016).

¶ 10 Count V of the complaint is titled "Intentional Tort/Negligence-Use of Excessive Force/Assault & Battery to further deny necessary medical care." In count V plaintiff alleged that on November 16, 2012, plaintiff requested medical attention "due directly to defendants' denial or lack of prescribed medication and orders." Defendants allegedly called a supervisor by telephone and, "[a]t the conclusion of this phone call, the defendants approached the plaintiff with at least six individuals." Defendants allegedly told plaintiff: " 'If you do not move, you will be sorry [expletive.]' " Plaintiff alleged he attempted to respond but was suffering a back spasm and seizure. Before he could say anything, defendants allegedly slammed him to his face and chest, handcuffed him, and verbally assaulted him. Plaintiff alleged he was taken to a flight of stairs and was thrown into the air "to free fall down flight of stairs [*sic*] and violently into subsequent wall." He was then allegedly dragged down a second flight of stairs and later slammed down onto a bench. Defendants then allegedly "struck the plaintiff throughout [his] body and dug knees into [his] back/wretched [*sic*] arms in handcuffs." Plaintiff alleged a supervisor then "approached plaintiff while a multitude of defendants remained on top of plaintiff." He further alleged that supervisor "sexually assaulting, placed his pelvic area of body [*sic*] directly in plaintiff's face and said, 'Don't tell my officers nothing!' " Plaintiff alleged he continued to request medical attention but defendants forced him to hop back up the stairs to retrieve his cane, before he was escorted to a "psychological doctor." Plaintiff alleged the doctor "ordered defendants to properly respond to [plaintiff's] medical situation by sending plaintiff to *** Stroger Hospital." However, plaintiff alleges, he was sent back to his original housing unit. Plaintiff further alleged that the following day, in response to plaintiff's request for an option other than walking up and down stairs without his cane for food, another supervisor told plaintiff " 'I will slit your [expletive] throat if you don't come down those stairs.' " Plaintiff filed a grievance of this incident which he dated November 22, 2012.

¶ 11 Next, in count VI plaintiff attempted to allege failure to intervene to protect him from violations of his civil rights. In this count plaintiff alleged that all activities in the facility are recorded by multiple officials at multiple times and all actions are known to all officials and officers who come into contact with plaintiff. He also alleged his "necessities and orders" were known to defendants. Plaintiff alleged no one "attempted to intervene in order to protect any" of his rights or his person. Finally, in count VII plaintiff alleged defendants conspired to violate one or more of his civil rights. This count alleged "all actions and/or decisions, intentionally or negligently, are knowledgeable to all officials and/or officers" and defendants "acted knowingly, intentionally, willfully and maliciously." Plaintiff concluded by stating he "also claims violation of rights that may be protected by the laws of Illinois, such as false arrest, assault, battery, false imprisonment, malicious prosecution, conspiracy, and/or any other claim that may be supported by the allegations of this complaint."

¶ 12 Defendants filed a combined motion to dismiss pursuant to section 2-619.1 of the Code of Civil Procedure (Code). The trial court examined each count in plaintiff's complaint and determined that in each count plaintiff failed to plead sufficient facts to state the cause of action alleged.

¶ 13 This appeal followed.

¶ 14 ANALYSIS

¶ 15 Section 2-619.1 of the Code permits a party to combine a section 2-615 motion to dismiss and a section 2-619 motion to dismiss within a single pleading. *Andrews v. Marriott International, Inc.*, 2016 IL App (1st) 122731 ¶ 6; 735 ILCS 5/2-619.1 (West 2012). On appeal, defendants argue none of the counts in plaintiff's complaint contain sufficient factual allegations to state a claim, therefore the trial court properly dismissed the complaint pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)). When deciding a section 2-615 motion to

dismiss "[t]he question to be answered is whether the allegations of the complaint, when construed in the light most favorable to the plaintiff, state sufficient facts to establish a cause of action upon which relief may be granted. [Citation.] All facts apparent from the face of the complaint, including any attached exhibits, must be considered. A circuit court should not dismiss a complaint under section 2-615 unless it is clearly apparent no set of facts can be proved that would entitle the plaintiff to recovery. [Citation.] The standard of review is *de novo*. [Citation.]" *Hadley v. Doe*, 2015 IL 118000, ¶ 29.

¶ 16 Alternatively, defendants argue defendant Dart is entitled to qualified immunity on plaintiff's claims against Dart in his individual capacity under § 1983, and all defendants are entitled to immunity under section 4-105 of the Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act) (745 ILCS 10/4-105 (West 2012)). "The existence and preclusive effect of tort immunity are properly raised in a section 2-619(a)(9) motion to dismiss." *Smith v. Waukegan Park District*, 231 Ill. 2d 111, 115 (2008). Qualified immunity is also properly raised in a section 2-619(a)(9) motion to dismiss. *Redwood v. Lierman*, 331 Ill. App. 3d 1073, 1080 (2002) ("individual defendants had a qualified immunity, an 'other affirmative matter' that defeated the claims against them"). "We review the dismissal of a complaint pursuant to section 2-619(a)(9) *de novo*. [Citation.] We also review construction of the Tort Immunity Act *de novo*. [Citation.]" *Smith*, 231 Ill. 2d at 115.

¶ 17 We will first address whether plaintiff has alleged sufficient facts to state a claim for any of the causes of action alleged in his complaint before turning to the question of whether defendants enjoy immunity to any of plaintiff's claims. In conducting this examination we are mindful that the same pleading requirements apply to both a claim brought pursuant to § 1983 or under state law. See *Peraica v. Riverside-Brookfield High School District No. 208*, 2013 IL App (1st) 122351, ¶¶ 9-13; *Loftus v. Mingo*, 158 Ill. App. 3d 733, 741 (1987) ("Plaintiff's allegations

of harassment and intimidation by Mingo which deprived plaintiff of his right to liberty and freedom from unwarranted intrusions upon his property are conclusory and are unsupported by allegations of specific facts upon which such conclusions rest."). Illinois is a fact-pleading jurisdiction. Therefore, a plaintiff is required to set forth a legally recognized claim and plead facts in support of each element that bring the claim within the cause of action alleged. *Y-Not Project, Ltd. v. Fox Waterway Agency*, 2016 IL App (2d) 150502, ¶ 27. "[W]e must disregard conclusions of fact or law that are unsupported by specific factual allegations. [Citation.] Conclusions of fact or law are insufficient to state a cause of action regardless of whether they generally inform the defendant of the nature of the claim against him. [Citation.]" *Northbrook Bank & Trust Co. v. 2120 Division LLC*, 2015 IL App (1st) 133426, ¶ 23.

¶ 18 Count I: False Imprisonment

¶ 19 Defendants argue that plaintiff attempts to state civil rights violations pursuant to § 1983 for false arrest and false imprisonment, but plaintiff failed to indicate the circumstances surrounding his arrest and detention. Rather, plaintiff "just alleges, in conclusory fashion," that some unidentified person transported him from the Roseland Emergency Room to the Cook County Department of Corrections without cause. Defendants argue plaintiff "failed to plead sufficient facts to set forth a claim for false arrest or false imprisonment against defendant Dart in his personal capacity" and failed to allege "a widespread custom or practice that was the driving force behind any deprivation." Therefore, defendants argue, the trial court's dismissal of count I must be affirmed.

¶ 20 "The elements of false arrest and false imprisonment are the same. The essential elements of a cause of action for false arrest or false imprisonment are that the plaintiff was restrained or arrested by the defendant, and that the defendant acted without having reasonable grounds to believe that an offense was committed by the plaintiff. [Citation.]" (Internal

quotation marks omitted.) *Ryan v. Koester*, 78 F. Supp. 3d 935, 940 (C.D. Ill. 2015). A plaintiff may bring a claim for false imprisonment against a law enforcement official under both state law and § 1983. See *Bruce v. Perkins*, 701 F. Supp. 163 (N.D. Ill. 1988). Liberally construed as a whole, we find plaintiff attempted to state a claim for false imprisonment under state law and pursuant to § 1983. Regardless, plaintiff was required to plead sufficient facts to bring his claim within the cause of action. *Loftus*, 158 Ill. App. 3d at 741. We find plaintiff has failed to meet his burden.

¶ 21 Plaintiff fails to specifically allege who arrested him, or why, or that he was not told a reason he was arrested. Although plaintiff alleges the charges against him were dismissed "in a manner indicating plaintiff was innocent," he does not allege the specific disposition. An essential element of a false imprisonment claim is that the plaintiff was arrested without probable cause. *Ross v. Mauro Chevrolet*, 369 Ill. App. 3d 794, 798 (2006) (plaintiff claiming false arrest and false imprisonment has to show that she was unreasonably restrained without probable cause). Without specific facts indicating plaintiff was arrested without probable cause or that the charges against him were dismissed because his arrest was not supported by probable cause, plaintiff's complaint fails to state a cause of action for false arrest or false imprisonment.

¶ 22 Additionally, plaintiff alleges he was "detained and imprisoned by the Cook County Sheriff's Department without reason to believe he had committed, was committing, or was about to commit a crime."

> "In *Monell v. Department of Social Services*, 436 U.S. 658 (1978), the United States Supreme Court held that liability may be imposed on local governing bodies under section 1983 of the United States Code (42 U.S.C. § 1983 (1982)) for violations of Federal constitutional rights when the violation is due to the implementation or execution of an officially adopted governmental policy, or of

> an informal but pervasive governmental custom. ([Citation.]) To state a cause of action against a local governmental entity under *Monell*, the plaintiff must allege both that he has been deprived of a constitutionally-protected right, and that the deprivation was caused by a governmental policy or custom." *Weimann v. Kane County*, 150 Ill. App. 3d 962, 965 (1986).

Here, plaintiff did not allege that his confinement was due to the execution of an informal custom or an officially adopted governmental policy. Therefore, plaintiff fails to state a claim against the Cook County Department of Corrections.

¶ 23 Count II: Denial of Medical Care

¶ 24 Defendants argue plaintiff failed to plead facts showing what his medical condition was, that his medical condition was objectively serious, or that any of the defendants knew of and was deliberately indifferent to a medical condition.

> "Pretrial detainees have a right to receive reasonable medical treatment for a serious injury or medical need ***. [Citations.] Thus, a prisoner alleging a denial of medical care by correctional officers must demonstrate both that his medical condition was objectively serious and that the prison 'officials act[ed] with a sufficiently culpable state of mind.' [Citations.] A prisoner must allege 'acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs' in order to state a claim for denial of medical care under § 1983. [Citations.]
>
> A 'serious' medical need is one that has been diagnosed by a physician or other healthcare professional as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention. [Citation.] Such a need extends to medical conditions in which 'denial of medical

> care may result in pain and suffering which no one suggests would serve any penological purpose.' [Citation.] Indications of serious medical needs include the existence of an injury that a doctor or patient would find worthy of comment or treatment, a medical condition that has a significant affect on an inmate's daily activities, or the existence of 'chronic and substantial pain.' [Citation.]
>
> A prisoner alleging that prison officials wrongfully denied him access to necessary medical care must also demonstrate that those officials actually wished him harm or were at least totally unconcerned with his welfare. [Citation.] In order to demonstrate the requisite subjective intent, the prisoner must prove that the official was deliberately indifferent to his medical needs. [Citation.] The deliberate indifference standard is satisfied when a prison official 'fail[s] to act despite his knowledge of a substantial risk of serious harm' to a prisoner. [Citation.] The official must 'both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.' [Citation.] Mere negligence or even gross negligence related to medical problems is not enough to establish a constitutional violation. [Citation.] Rather, the act or omission must result in the prisoner being denied 'the minimal civilized measure of life's necessities.' [Citations.]" *Wells v. Bureau County*, 723 F. Supp. 2d 1061, 1072-73 (C.D. Ill. 2010).

¶ 25 Although plaintiff did not allege a specific medical condition, he did attach to his complaint medical orders directed to the Cook County Department of Corrections dated the day of his alleged detainment. According to those orders, plaintiff was to be provided with a cane, a lower bunk, and medical housing, as well as prescribed medications daily. "Exhibits attached to a complaint become part of the pleading for a motion to dismiss." *Thompson v. N.J.*, 2016 IL

App (1st) 142918, ¶ 28. Plaintiff's complaint actually alleged that defendants failed to follow those orders ("defendants, acting within scope of employment, ignored or denied orders and prescriptions of plaintiff;" "plaintiff was denied cane use by defendants;" "plaintiff was placed in non-medical housing"). However, plaintiff failed to allege that any defendants failed to act despite having knowledge of a substantial risk of serious harm to plaintiff. *Wells*, 723 F. Supp. 2d at 1072-73. Nor did plaintiff allege defendants were aware of facts from which the inference could be drawn that plaintiff faced a substantial risk of harm from being denied a cane, lower bunk, medical housing, of his medicine, or that defendants actually drew that inference. *Id.*

¶ 26 Plaintiff's only allegation is that the jail "had full knowledge of medical situation and history of plaintiff." However, the allegation of defendants' alleged knowledge of plaintiff's medical orders is not sufficient to state a constitutional claim. *Frahm v. Refugio County, Texas*, No. 6:11-CV-56, 2014 WL 198314, at *3 (S.D. Tex. Jan. 14, 2014) citing *Olabisiomotosho v. City of Houston*, 185 F.3d 521, at 527 (5th Cir. 1999) (defendants' mere knowledge of plaintiff's medical condition was not sufficient to infer their knowledge of a substantial risk of serious harm to plaintiff from that condition). "Mere negligence or even gross negligence related to medical problems is not enough to establish a constitutional violation. [Citation.]" *Wells*, 723 F. Supp. 2d at 1073. Even construing the complaint liberally in his favor, plaintiff has failed to allege sufficient facts to demonstrate any defendants who "ignored" his medical orders were not merely negligent. This conclusion is bolstered by the fact that in an exhibit attached to the complaint in support of this claim—a grievance of plaintiff's medical care—plaintiff states he had been deprived of his medications "due to the opinions of med-techs or unlicensed medical unprofessionals [*sic*]." The complaint as a whole supports an inference the alleged deprivation was not conducted with the requisite intent. Plaintiff also failed to allege an officially adopted

governmental policy or an informal but pervasive governmental custom to ignore medical orders. Therefore, plaintiff's complaint fails to state a claim for denial of medical care.

¶ 27 Further, the complaint does not allege any specific involvement by defendant Dart. Instead, the complaint alleges defendants acted "within scope of employment, according to mandating authority of co-defendant *** Dart."

> "To state a claim for personal liability under section 1983, a plaintiff must allege that defendants were personally involved in the deprivation of his constitutional rights. [Citation.] 'Personal involvement' requires an overt act, or a failure to act with a deliberate or reckless disregard of plaintiff's constitutional rights ***." [Citation.] The official need not have directly participated in the alleged constitutional deprivation. It is enough that the conduct causing the constitutional deprivation occurs at the direction or knowledge and consent of a defendant who is in a supervisory position over others. [Citation.] The supervisor must 'know about the conduct and facilitate it, approve it, condone it, or turn a blind eye.' [Citation.]" *McMurry v. Sheahan*, 927 F. Supp. 1082, 1087 (N.D. Ill. 1996).

¶ 28 The complaint does not allege defendant Dart's direct participation in the alleged denial of medical care. Nor are there any allegations of fact from which to infer defendant Dart knew about the conduct alleged in the complaint, facilitated it, approved it, condoned it, or turned a blind eye. Plaintiff alleges only that defendant Dart was the unnamed defendants' supervisor. "The doctrine of *respondeat superior*, under which a supervisor may be held liable for an employee's actions, has no application to Section 1983 actions." *Solivan v. Dart*, 897 F. Supp. 2d 694, 705 (N.D. Ill. 2012). For this reason as well, plaintiff's complaint fails to state a claim against defendant Dart in count II.

¶ 29 Count III: Denial of Right to Vote

¶ 30 Plaintiff alleged he requested a "ballot available to pretrial detainees" and defendants disregarded his request. To the extent plaintiff's complaint is against CCDOC and defendant Dart in his official or individual capacity, his complaint fails to state a claim. Plaintiff did not allege the Cook County Department of Corrections maintains an express or unwritten policy of denying its inmates the right to vote or that defendant Dart was involved in, or that Dart knew of and condoned, this alleged deprivation of plaintiff's right to vote or turned a blind eye to denials of plaintiff's requests for an absentee ballot. See *Henderson v. Sheahan*, No. 95-3279, 1997 WL 819832, at *2 (N.D. Ill. 1997) (citing *McTigue v. City of Chicago*, 60 F.3d 381, 382 (7th Cir. 1995); *Lanigan v. Village of East Hazel Crest*, 110 F.3d 467, 477 (7th Cir. 1997)).

¶ 31 Plaintiff's complaint could be liberally construed to allege individual unnamed defendant jail guards denied his right to vote by refusing his requests to obtain an absentee ballot. Defendants argue plaintiff "has alleged no facts to show that he requested an absentee ballot from the county clerk or Board of Elections as required by law. Nor has Plaintiff alleged any specific facts that would establish that the Sheriff or any employee of the CCDOC prevented Plaintiff from obtaining an absentee ballot, or mailing such a ballot as provided in [the] Election Code."

¶ 32 Section 19-2 of the Election Code states that any elector "may by mail ***, not more than 90 nor less than 5 days prior to the date of such election, *** make application to the county clerk or to the Board of Election Commissioners for an official ballot for the voter's precinct to be voted at such election." 10 ILCS 5/19-2 (West 2012). The Election Code provides the form for an application for vote by mail but also provides that "[a]ny person may produce, reproduce *** or return to an election authority the application for vote by mail ballot." 10 ILCS 5/19-3 (West 2012). The application need only be "in a form substantially similar to that required by this Section, including any substantially similar production or reproduction generated by the

applicant." *Id.* Defendants correctly argue that plaintiff failed to allege any facts to show he requested an absentee ballot. Plaintiff did not allege he attempted to reproduce and mail an application for an official ballot or that any defendant prevented him from doing so. Plaintiff's complaint can only be construed as alleging that he requested an absentee ballot directly from defendants. If that is true, and if defendants did not provide him one, it does not establish a constitutional violation. "It has been established beyond question that there is a fundamental right to vote. [Citations.] Despite this principle, however, there is no corresponding fundamental right to vote by absentee ballot. [Citations.]" (Internal quotation marks omitted.) *Qualkinbush v. Skubisz*, 357 Ill. App. 3d 594, 604 (2004). Where plaintiff does not allege that he even attempted to mail an application for an absentee ballot, plaintiff's complaint contains no facts that allege or from which it may reasonably be inferred that defendants denied plaintiff the exercise of the franchise; therefore, no constitutional violation occurred. See *McDonald v. Board of Election Commissioners of Chicago*, 394 U.S. 802, 807-08 (1969) (holding absentee voting statutes then in effect, which did not provide for absentee ballots for pretrial detainees who were detained in their home counties, did not violate the equal protection clause). The trial court properly dismissed count III of the complaint for failure to state a claim.

¶ 33 Count IV: Denial of Right to Religious Freedom and Practice

¶ 34 Defendants argue plaintiff's complaint contains no specific factual allegations that would support any claim that he was denied a reasonable opportunity to exercise his religious beliefs. We note plaintiff's complaint only attempts to allege a violation of the Free Exercise Clause. Plaintiff's complaint fails to state a claim because plaintiff does not allege that the failure to have a copy of the Kybalion on hand in the CCDOC was not related to a legitimate penological interest. *Al-Alamin v. Gramley*, 926 F.2d 680, 686 (7th Cir. 1991) ("incarcerated persons retain a right to practice their religion to the extent that such practice is compatible with the legitimate

penological demands of the state. Both security and economic concerns are legitimate penological demands. Prison administrators, like most government officials, have limited resources to provide the services they are called upon to administer."). Defendants further argue plaintiff "relies on general conclusory allegations against 'defendants' generally, without any specific factual allegations as to what any specific individual did to deny him the free exercise of his religion," therefore plaintiff failed to allege the "element of personal involvement necessary for individual liability under section 1983."

¶ 35 Again, we note Illinois is a fact pleading jurisdiction, and a plaintiff is required to make specific factual allegations rather than conclusions of fact or law. *2120 Division LLC*, 2015 IL App (1st) 133426, ¶ 23. "[A] pleading which merely paraphrases the elements of a cause of action in conclusory terms is not sufficient." *Chang Hyun Moon v. Kang Jun Liu*, 2015 IL App (1st) 143606, ¶ 24.

> "The Free Exercise Clause prohibits the state from imposing a 'substantial burden' on a central religious belief or practice. [Citations.] In the prison context, a regulation that impinges on an inmate's constitutional rights, such as one imposing a 'substantial burden' on free exercise, may be justified if it is reasonably related to legitimate penological interests. [Citations.] [T]he Establishment Clause may be violated even without a substantial burden on religious practice if the government favors one religion over another (or religion over nonreligion) without a legitimate secular reason for doing so." *Kaufman v. Pugh*, 733 F.3d 692, 696 (7th Cir. 2013).

¶ 36 Plaintiff's allegations in this count are vague and do not contain specific facts. Specifically, plaintiff does not explain what he means when he claims he was "ignored *** in reference to religious materials, worship, practice, and manuscripts" of his religion. Plaintiff

does not specifically allege that he requested any other materials, or was in any other way prevented from pursuing his faith when defendants allegedly "ignored" him. The only factual allegation in plaintiff's complaint is the assertion that plaintiff requested and did not receive a copy of a religious text. That allegation, however, is insufficient to state a denial of religious freedom claim. Plaintiff alleged no facts to show that the lack of a copy of the Kybalion imposed a substantial burden on his practice of Hermeticism or that he was unable to practice his religion without the book. See *Pugh*, 733 F.3d at 697. Plaintiff also failed to allege facts demonstrating that the failure to obtain a copy of the book was the result of any policy, or that it was intentional rather than negligent, and therefore failed to state a constitutional claim. *Larry v. Goetz*, No. 06-C-197-C, 2006 WL 1495784, at *4 (W.D. Wis. May 18, 2006) (citing *Sasnett v. Sullivan*, 91 F.3d 1018, 1020 (7th Cir. 1996) (the free exercise clause is violated only when the government intentionally targets a particular religion or religious practice)).

¶ 37 Count V: Excessive Force

¶ 38 Defendants argue the trial court properly dismissed count V of plaintiff's complaint because plaintiff failed to allege defendant Dart's personal involvement or that there was a policy or practice of using excessive force against detainees. We agree. As for any claim against defendant Dart in his personal capacity, "§ 1983 does not allow actions against individuals merely for their supervisory role of others, [citation], [i]ndividual liability under *** § 1983 can only be based on a finding that the defendant caused the deprivation at issue. [Citation.]" (Internal quotation marks omitted.) *Palmer v. Marion County*, 327 F.3d 588, 594 (7th Cir. 2003). Plaintiff also failed to state a claim against defendant Dart in his official capacity. § 1983 suits against sheriffs in their official capacities are in reality suits against the county sheriff's department. *Franklin v. Zaruba*, 150 F.3d 682, 686 (7th Cir. 1998). For a plaintiff to establish liability of an entity the plaintiff must show that the injury resulted from a policy, custom, or

widespread practice of that entity. *Pindak v. Dart*, 125 F. Supp. 3d 720, 743 (N.D. Ill. 2015). Plaintiff did not allege the existence of any policy regarding excessive force. The trial court properly dismissed count V against defendants CCDOC and Dart.

¶ 39 As for the unnamed CCDOC employees, defendants argue nothing specific is alleged against any particular defendant, and this "generalized form of pleading is facially deficient and warrants dismissal." Defendants cite *Carter v. Dolan*, No. 08 C 7464, 2009 WL 1809917, at *3 (N.D. Ill. June 25, 2009) for the proposition that "[a] complaint that refers to multiple police officer defendants collectively as 'defendant officers' in each of the factual allegations does not provide each defendant officer with sufficient notice of the wrongdoings alleged." *Carter v. Dolan*, No. 08 C 7464, 2009 WL 1809917, at *3 (N.D. Ill. June 25, 2009). A key factor in the *Carter* court's holding was the fact the plaintiff in that case "was given the opportunity to identify the individual conduct of each Defendant officer and failed to do so." *Id.* In *Carter*, the trial court ordered the parties to work together to determine a procedure which would allow the plaintiff to identify the unnamed defendants. *Id.* at *1. The trial court in this case did not enter a similar order for defendant Dart to assist plaintiff to identify the unidentified CCDOC employees. See *Evans v. Tavares*, No. 09 C 2817, 2009 WL 3187282, at *2 (N.D. Ill. Sept. 30, 2009) (distinguishing *Carter* on grounds "the plaintiff in that case failed to provide additional detail after being given the opportunity to view a photo array in order to identify the defendant officers who, she alleged, searched her apartment unlawfully"). Nonetheless, we hold the trial court properly dismissed plaintiff's complaint for failing to state a claim against the unknown defendants for excessive force.

¶ 40 The federal court has noted that "the use of fictitious names for defendants has been routinely approved even without discussion. See, *e.g.*, *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388." *Maclin v. Paulson*, 627 F.2d 83, 87 (7th Cir.

1980). In *U. S. ex rel. Lee v. People of State of Illinois*, 343 F.2d 120, 120-21 (7th Cir. 1965), the court held that "[t]he district court had no jurisdiction over defendants designated in the complaint as 'Unknown Subjects and Party(s)' since they were not named and served with summons and a copy of the complaint." *U. S. ex rel. Lee v. People of State of Illinois*, 343 F.2d 120, 120-21 (7th Cir. 1965). The *Paulson* court held that "when, as here, a party is ignorant of defendants' true identity, it is unnecessary to name them until their identity can be learned through discovery or through the aid of the trial court." *Id.* The court held that the trial court in that case should have ordered the disclosure of the names of the arresting officers left unidentified in the complaint (because "their names were surely in the arrest records") or the *pro se* plaintiff "should have been permitted to obtain their identity through limited discovery." *Id.* We find a different result is required in this case. In this case, nothing in the record indicates the trial court could have ordered defendant Dart to disclose the names of the unknown defendants. In this case, those persons are not as readily identifiable as were the unknown defendants in *Paulson* through an arrest report. The *Paulson* court distinguished *Lee* on the grounds that in *Lee*, there had been no attempt to serve the unnamed defendants. *Paulson*, 627 F.2d at 88 *fn* 6 (7th Cir. 1980) ("Similarly, our opinion in *United States ex rel. Lee v. People of the State of Illinois* ***, does not compel affirmance because in that case there was no attempt to serve the unnamed defendants."). *Paulson* is also inapplicable because here, plaintiff has made no attempt to serve or to identify the unnamed defendants.

¶ 41 Plaintiff failed to discover the names of the unknown officers through discovery despite being given the opportunity to amend his complaint four times. "Illinois courts have historically and uniformly held that suits brought against fictitious parties are void *ab initio*." *Bogseth v. Emanuel*, 166 Ill. 2d 507, 513 (1995). *Bogseth* involved suits for medical malpractice against "John Doe" defendants. *Id.* at 510. "A statute can confer jurisdiction to sue an unknown or

fictitious person. But because they are in derogation of the common law, those statutes which authorize filing suits against fictitious entities must do so explicitly." *Id.* at 514. Plaintiff has cited no explicit authority for a suit against unknown persons in this context. In examining *Bogseth*, the Second District wrote that "[i]t makes sense that a suit brought against a real person (who is participating in proceedings) but brought against a fictitious name would not be a nullity." *Hadley v. Doe*, 2014 IL App (2d) 130489, ¶ 58. *Hadley* is distinguishable, however, because the unknown defendants in plaintiff's complaint are not participating in the proceedings.

¶ 42 Plaintiff's complaint does not contain facts indicating the personal involvement of an individual in an excessive use of force and, therefore, fails to state a claim. In any event, the complaint against unknown defendants is a nullity, especially where plaintiff has been given numerous opportunities to amend and discover the names of the defendants. See *Bogseth*, 166 Ill. 2d at 513.

¶ 43 Count VI: Failure to Intervene

¶ 44 "The Seventh Circuit has held:

> [A]n officer who is present and fails to intervene to prevent other law enforcement officers from infringing the constitutional rights of citizens is liable under § 1983 if that officer had reason to know: (1) that excessive force was being used, (2) that a citizen has been unjustifiably arrested, or (3) that any constitutional violation has been committed by a law enforcement official; and the officer had a realistic opportunity to intervene to prevent the harm from occurring. [Citations.]" *Gay v. City of East Moline,* No. 412CV04066SLDJEH, 2014 WL 2927046, at *10 (C.D. Ill. June 27, 2014) (citing *Abdullahi v. City of Madison*, 423 F.3d 763, 774 (7th Cir. 2005) (quoting *Yang v. Hardin*, 37 F.3d 282, 285 (7th Cir. 1994)).

¶ 45 Plaintiff alleged only that "[n]o individual or official attempted to intervene in order to protect any rights of the Plaintiff." Plaintiff did not specifically allege to which alleged constitutional violation this count is directed or that any defendant has a realistic opportunity to intervene to prevent the alleged harm from occurring. The trial court properly dismissed count VI for failing to state a claim because the complaint does not contain specific allegations of fact in support of each element that bring the claim within the cause of action alleged. *Y-Not Project, Ltd.*, 2016 IL App (2d) 150502, ¶ 27.

¶ 46 Count VII: Conspiracy

¶ 47 "Under Illinois law, the elements of a civil conspiracy claim that a plaintiff must establish are: (1) an agreement between two or more persons, (2) for the purpose of accomplishing by some concerted action either an unlawful purpose or a lawful purpose by unlawful means, (3) in the furtherance of which one of the conspirators committed an overt tortious or unlawful act. [Citations.]" *Cebulske v. Johnson & Johnson*, No. 14-CV-627-DRH-SCW, 2015 WL 1257778, at *2 (S.D. Ill. Mar. 17, 2015) (citing *Fritz v. Johnston*, 209 Ill. 2d 302 (2004), citing *Adcock v. Brakegate, Ltd.*, 164 Ill. 2d 54 (1994)). Plaintiff alleges none of them, not even in conclusory fashion. "[T]o withstand a motion to dismiss based on section 2-615, a complaint must allege facts that set forth the essential elements of the cause of action." *Visvardis v. Ferleger*, 375 Ill. App. 3d 719, 724 (2007). The trial court properly dismissed count VII of plaintiff's complaint.

¶ 48 Plaintiff's complaint states that plaintiff claimed corresponding state law causes of action based on the allegations of the complaint. In addition to those claims addressed herein, for the reasons stated above, plaintiff failed to state any causes of action under state law. The trial court properly dismissed plaintiff's complaint in its entirety.

¶ 49 We also hold the trial court properly dismissed the complaint with prejudice. The trial court gave plaintiff numerous opportunities to amend. Plaintiff persistently failed to allege specific facts in support of his claims.

> "Amendment of the complaint generally rests within the sound discretion of the trial court. [Citation.] The Illinois Supreme Court established four factors to consider in determining whether the trial court abused that discretion: (1) whether the proposed amendment would cure the defective pleading; (2) whether other parties would sustain prejudice or surprise by virtue of the proposed amendment; (3) whether the proposed amendment is timely; and (4) whether previous opportunities to amend the pleading could be identified. ([Citation.])" *Bowe v. Abbott Labs., Inc.*, 240 Ill. App. 3d 382, 389 (1992).

¶ 50 This is not a case where plaintiff's theories of liability are not definitively resolved. Compare *Id.* at 391. The facts plaintiff was required to plead are well-established. In this case we find the trial court did not abuse its discretion in dismissing plaintiff's fifth amended complaint with prejudice. *Id.* See also *Cable America, Inc. v. Pace Electronics, Inc.*, 396 Ill. App. 3d 15, 22 (2009). Because we have concluded the dismissal of plaintiff's complaint with prejudice was proper on the grounds it failed to state a cause of action under each count, we have no need to address plaintiff's arguments regarding immunity.

¶ 51 CONCLUSION

¶ 52 For the foregoing reasons, the circuit court of Cook County is affirmed.

¶ 53 Affirmed.