IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Alberta Domonque Wilson, for herself and on behalf of her minor children, Roy Smart, Royal Smart, and Royalty Smart, Plaintiffs, v. City of Chicago, individually and as principal/employer of Chicago Police Officers Amelio (star #14395); Bardsley (star #13848); Champion (star #13695); James (star #4308); Jonas, (star #5069); Lt. Lamb (star #606); Minneci (star #19643); Murphy (star #19214); Nestorowicz (star #16883); Sgt. Nowacki (star #2373); Quinn (star #19828); Sgt. Rhein (star #2164); Zenere (star #17319); Dobbins (star #9225); Hecker (star #12229); Sgt. Hroma (star #1729); Lucki (star #3055); Marquez (star #17363); McNicholas (star #12550); Murphy (star #19214); Nemec (star #19704); Perez (star #15656); Renault (star #19250); Roberts (star #9269); Sebastian (star #1944); Sheahan (star #18667); Turcinovic (star #13509); Wozniak (star #4154); Turner (star #14932); and Zydek (star #5642), Defendants.	)	No. 19 L 8047

MEMORANDUM OPINION AND ORDER

Absent a legally recognized duty, a plaintiff cannot state a tort cause of action, and absent a factual record, a court cannot judge the arguable use of excessive force by police. In this case, no duty exists supporting the plaintiff's causes of action based on an alleged failure to train police officers. The current record is, however, insufficient to judge the police officers' conduct under the circumstances. For those reasons, one of the defendants' motions to dismiss is granted, but the other is denied.

Facts

On March 10, 2019, Chicago police officers received a tip from a John Doe informant that Denokey Midderhoff possessed a semi-automatic handgun and a bump stock assault rifle. Officer Nemec drafted a complaint for a search warrant that an assistant Cook County state's attorney approved and Judge Angela Petrone entered. The police then conducted a search warrant risk assessment and produced a mission plan concluding there existed a high risk in executing the warrant. The police based their conclusion on various facts that Midderhoff: (1) was a known Gangster Disciple; (2) had prior unlawful use of weapons offenses; (3) was expected to have the weapons, and (4) had a brother who smokes PCP and could be armed. The mission plan further indicated that Midderhoff's social media contained photos with the weapons, and noted that Midderhoff's mother, brother, and three children could be at the residence.

On March 15, 2019, the Chicago Police Department's SWAT team served the warrant and conducted a search at Alberta Domonique Wilson's residence at 8914 South Laflin Street. All eight persons in the residence at that time, including Midderhoff, Wilson, and her children, left the house and stood in the street in handcuffs while officers searched the residence. The police did not locate a handgun or an assault rifle and, therefore, did not arrest anyone.

On March 25, 2021, Wilson filed a second amended complaint naming as defendants the City and 30 police officers.

Wilson brings 12 causes of action: willful and wanton conduct against the SWAT officers (count one), willful and wanton conduct against officer Lucki (count two), assault (count three), illegal seizure under the Illinois Constitution (count four), intentional battery (count five), false arrest and false imprisonment (count six), intentional infliction of emotional distress (count seven), conversion of chattels and destruction of personal property (count eight), negligent training (count nine), willful and wanton training (count 10), *respondeat superior* (count 11), and indemnification (count 12). In counts nine and ten, Wilson claims the City and its officers "had a duty to exercise due care in training its police officers, including Defendant SWAT officers, in relation to their duties, including the duty not to use excessive force, especially against children, including pointing assault rifles at and handcuffing the children."

On April 19, 2021, the defendants filed two motions to dismiss. Apart from the pleadings, the existing record consists of the complaint for a warrant, the mission plan, two body-cam videos showing the residents detained in the street, the SWAT team's supplementary report, and the affidavits of sergeant Hroma and officer Nemec. Wilson responded to the motions, and the City filed reply briefs.

Analysis

The defendants bring two motions to dismiss, one pursuant to Code of Civil Procedure section 2-615 and the second pursuant to section 2-619. 735 ILCS 5/2-615 & 2-619. A section 2-615 motion to dismiss attacks a complaint's legal sufficiency. *See DeHart v. DeHart*, 2013 IL 114137, ¶ 18. Such a motion does not raise affirmative factual defenses, but alleges only defects appearing on the face of the complaint. *See Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 484-85 (1994). In contrast, a section 2-619 motion to dismiss authorizes the involuntary dismissal of a claim based on defects or defenses outside the pleadings. *Id.* at 485. A court considering either motion must accept as true all well-pleaded facts and reasonable inferences arising from them,

Doe v. Chicago Bd. of Ed., 213 Ill. 2d 19, 23-24 (2004), but not conclusions unsupported by facts, *Pooh-Bah Enterps., Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009). *See also Hanks v. Cotler*, 2011 IL App (1st) 101088, ¶ 17.

Section 2-615 Motion

One of the defendants' section 2-615 arguments as to counts nine and 10 is that Wilson has failed to identify a duty owed to her by the defendants. A legally cognizable duty is, of course, an essential element of any tort pleading. A legally recognized cause of action is one that alleges facts, not conclusions, which, if proven, would establish that: (1) the defendant owed the plaintiff a duty; (2) the defendant breached the duty; and (3) the breach proximately caused the plaintiff's injury. *Thompson v. Gordon*, 241 Ill. 2d 428, 438 (2011) (citing *Iseberg v. Gross*, 227 Ill. 2d 78, 86-87 (2007)). If any one of these elements is absent, the plaintiff has not stated a cause of action and defendant is entitled to dismissal pursuant to section 2-615.

In counts nine and 10, Wilson claims the defendants "had a duty to exercise due care in training its police officers, including Defendant SWAT officers, in relation to their duties, including the duty not to use excessive force, especially against children, including pointing assault rifles at and handcuffing the children." The defendants argue there is no such legal duty. In contrast, Wilson argues that the Police Training Act, 50 ILCS 705/7, and the Peace Officer and Probation Officer Firearm Training Act, 50 ILCS 710/2(a)(4), impose such a duty.

Wilson's arguments are without merit for a variety of reasons. First, neither statute establishes a duty prohibiting police from pointing guns at children or handcuffing them. Indeed, neither statute mentions juveniles or children at all. Second, the statutes set standards and guidelines for training police officers in the use of weapons, but neither establishes a duty owed to a person during a non-training scenario. Third, absent any statutorily imposed duty, Wilson has also failed to cite to a

single common law decision recognizing the specific duty she articulates. Fourth, were Wilson's argument correct, police would never be able to point an assault rifle at a child or handcuff one, even if a child pointed a deadly weapon at officers or another person. Such a constraint on police tactics is wholly unsupported in the law.

Given that Wilson has failed to identify in counts nine and 10 a legally cognizable duty owed to her and her children by the defendants, she has merely pleaded conclusions unsupported by facts. In sum, Wilson cannot state causes of action for negligent or willful and wanton training. Since those causes of action must be dismissed for the lack of a duty, there is no need to address any of the defendants' other arguments.

Section 2-619 Motion

The defendants argue that counts one (willful and wanton conduct against the SWAT officers), two (willful and wanton conduct against officer Lucki), three (assault), five (intentional battery), six (false arrest and false imprisonment), and seven (intentional infliction of emotional distress) are subject to dismissal because the valid search warrant voids the legal effect of Wilson's claims. In support of their argument, the defendants rely on *Muehler v. Mena.* 544 U.S. 93 (2005). In *Muehler*, the court reviewed a jury's decision that two police officers had violated the plaintiff's Fourth Amendment rights by detaining her in handcuffs during the execution of a search warrant. *Id.* at 97. The court ultimately concluded that the record did not support the jury's finding. *Id.* at 99-100.

The United States Supreme Court has plainly stated that under a Fourth Amendment analysis, "[i]n assessing a claim of excessive force, courts ask 'whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them.'" *Lombardo v. City of St. Louis*, 141 S. Ct. 2239, 2241 (2021) (quoting *Graham* v. *Connor*, 490 U.S. 386, 397 (1989)). "'A court (judge or jury) cannot apply this standard

mechanically.'" *Id.* (quoting *Kingsley* v. *Hendrickson*, 576 U.S. 389, 397 (2015)). "Rather, the inquiry 'requires careful attention to the facts and circumstances of each particular case.'" *Id.* (quoting *Graham*, 490 U.S. at 396). "Those circumstances include 'the relationship between the need for the use of force and the amount of force used; the extent of the plaintiff's injury; any effort made by the officer to temper or to limit the amount of force; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether the plaintiff was actively resisting.'" *Id.* (quoting *Kingsley*, 576 U.S. at 397).

These principles have been applied in cases involving the service of warrants. "To determine whether police used excessive force when executing a search warrant on a civilian, a trier of fact examines 'whether the officers' actions were objectively reasonable in light of the totality of the circumstances.'" *Bishop v. Bosquez*, 782 Fed. Appx. 482, 487 (7th Cir. 2019) (quoting *Flournoy v. City of Chicago*, 829 F.3d 869, 874 (7th Cir. 2016)). "The factfinder assesses reasonableness from the perspective of an officer on the scene, recognizing that officers often must make split-second decisions." *Id.* (quoting *Flournoy*, 829 F.3d at 874). In other words, "the reasonableness of a search or a seizure depends 'not only on *when* it is made, but also on *how* it is carried out.' [E]ven when supported by probable cause, a search or seizure may be invalid if carried out in an *unreasonable* fashion." *Franklin v. Foxworth*, 31 F.3d 873, 875 (9th Cir. 1994) (quoting *Tennessee v. Garner,* 471 U.S. 1, 7-8 (1985) (emphasis in original)).

There is no reason why the Fourth Amendment standard should not apply to state common law causes of action arising from similar allegations of police misconduct. That conclusion only highlights the fundamental shortcoming of the defendants' present motion. The defendants have filed a motion to dismiss with a limited objective record, as noted above. For example, the video provided does not show the residents leaving the house or officers pointing firearms at anyone. If a court is to consider the totality of the circumstances in assessing whether police acted with excessive force, a complete factual record is essential. In

short, to dismiss Wilson's causes of action at this point would be premature.

Conclusion

Based on the foregoing, it is ordered that:

1. The defendants' motion to dismiss counts nine and 10 is granted;
2. Counts nine and 10 are dismissed with prejudice; and
3. The defendants' motion to dismiss counts one, two three, five, six, and seven is denied;
4. The defendants have until September 1, 2021 to answer the complaint.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

AUG 04 2021

Circuit Court 2075