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

Carl Wofford, as special administrator for the estate of Andris Wofford, deceased,	)	
Plaintiff,	)	
v.	)	No. 22 L 527
City of Chicago and Pierre Tyler,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

The Code of Civil Procedure authorizes the dismissal of a complaint if no set of facts can be proven entitling the plaintiff to recovery. Additionally, a public entity asserting immunity bears the burden of pleading and proving that such immunity applies to a particular alleged act or omission. Here, the plaintiff pleaded facts, which, if proven, would entitle him to recovery, and the local governmental entity failed to meet its burden of proof. The defendant's motion to dismiss must, therefore, be denied.

Facts

On December 8, 2021, Chicago police officer Pierre Tyler shot and killed Andris Wofford after she confronted him at her apartment about his involvement with another woman. Tyler has been charged with murder and is currently awaiting trial. Tyler and Andris had been in a romantic relationship, and Tyler was the father of Andris's daughter.

At the time of the argument and shooting, Tyler was on duty and had just come from investigating a criminal matter in the course of his police work. Tyler also met with an informant immediately after the alleged shooting. The shooting occurred in Chicago and was, thus, within the geographic boundaries in which Tyler was authorized to act on the City's behalf.

On January 18, 2022, Carl Wofford, Andris's brother and special administrator for her estate, filed suit against Tyler and the City of Chicago ("City"). Wofford seeks to hold the City vicariously liable for battery, claiming that Tyler acted within the scope of his employment with the City. Wofford also seeks to hold the City directly liable for the negligent hiring, retention, and supervision of Tyler. According to Wofford, the City knew or should have known that Tyler "was

the subject of many complaints of violent and other inappropriate behavior unbecoming of a peace officer[,]" but failed to intervene, thereby creating a foreseeable risk that Tyler would commit an act of violence of the sort alleged in this case.

The City filed a motion to dismiss under section 2-619.1 of the Illinois Code of Civil Procedure. The parties fully briefed the motion.

Analysis

Section 2-619.1 of the Code of Civil Procedure authorizes the filing of one pleading incorporating motions to dismiss under sections 2-615 and 2-619. 735 ILCS 5/2-619.1. A section 2-615 motion tests a complaint's legal sufficiency, while a section 2-619 motion admits a complaint's legal sufficiency, but asserts an affirmative matter to defeat the claim. *Bjork v. O'Meara*, 2013 IL 114044, ¶ 21; *Patrick Eng'g, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. Among such affirmative matters are affirmative defenses. 735 ILCS 5/2-619.1(a)(9); *see also Van Meter v. Darien Park Dist.*, 207 Ill. 2d 359, 367 (2003) (citing *Kedzie & 103rd Currency Exch., Inc. v. Hodge*, 156 Ill. 2d 112, 115 (1993)). A court considering either motion must accept as true all well-pleaded facts and reasonable inferences arising from them, *Doe v. Chicago Bd. of Educ.*, 213 Ill. 2d 19, 23-24, 28 (2004), but not conclusions unsupported by facts, *Pooh-Bah Enterps., Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009). All pleadings and supporting documents must be considered in the light most favorable to the plaintiff. *See Blumenthal v. Brewer*, 2016 IL 118781, ¶ 19; *Porter v. Decatur Mem. Hosp.*, 227 Ill. 2d 343, 352 (2008). A court should dismiss a case under section 2-615 "only where no set of facts can be proved which would entitle the plaintiff to recovery." *Doe-3 v. McLean Cnty. Unit Dist. No. 5 Bd. of Dirs.*, 2012 IL 112479, ¶ 16 (citing *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006)). Here, the City moves to dismiss the battery claim against it pursuant to section 2-615, and the negligence claims pursuant to both sections 2-615 and 2-619.

I. The City's 2-615 Motions to Dismiss

Regarding the battery claim, the doctrine of *respondeat superior* provides that an employer may be vicariously liable for the torts of an employee who is acting within the scope of employment. *Vancura v. Katris*, 238 Ill. 2d 352, 375 (2010). An employer's liability extends to negligent, willful, malicious, and even criminal acts of its employees within the scope of employment. *Adames v. Sheahan*, 233 Ill. 2d 276, 298 (2009). Courts consider conduct to be within the scope of employment if it (1) is the kind the employee is employed to perform, (2) occurs substantially within authorized time and space limits, and (3) is performed, at least in part, by a purpose to serve the employer. *Id.* at 299 (citing Restatement (Second) of Agency, § 228).

The record in its present state is insufficient to determine whether Tyler was acting within the scope of his employment. The record is unclear, for example, as to why Tyler went to Andris's house and whether the visit was in any way work-related. At this point, this case is reminiscent of *Karas v. Snell*, in which an off-duty Chicago police officer walked into a restaurant and shot a patron in the head. 11 Ill. 2d 233, 237 (1957). The Illinois Supreme Court reversed summary judgment for the city, finding a question of fact as to whether the officer had acted within the scope of his employment because the officer had testified he was attempting to arrest the patron for disorderly conduct. *Id.* at 253-54. Similarly here, Tyler could claim that the alleged shooting arose out of a law enforcement purpose, which would place his conduct within the scope of his employment. *See id.*; *see also People v. Brewer*, 2018 IL App (1st) 160155, ¶¶ 1, 42-43 (affirming conviction for first degree murder of off-duty police officer because state proved beyond reasonable doubt that officer was performing official duties by responding to a crime committed against himself).

Further, Wofford's allegations must be taken as true for the purposes of this motion to dismiss. *See Schweihs v. Chase Home Fin., LLC*, 2016 IL 120041, ¶ 27. The current state of facts create a reasonable inference that Tyler went to Andris's house because his job somehow required it. To that end, Tyler: (1) was on duty at the time of the alleged shooting; (2) was within the time and space parameters in which he was authorized to act on the city's behalf; (3) had just come from doing police work before the incident; and (4) immediately continued doing police work after the incident. Construing the allegations in the light most favorable to Wofford, he has pleaded sufficient facts, which, if proven, would entitle him to recovery on the battery claim.

The City also moves pursuant to section 2-615 to dismiss the negligence claims against it, arguing that Wofford failed to describe a duty owed by the City, and otherwise failed to allege negligence adequately. A plaintiff claiming negligent hiring, retention, or supervision is required to show that the defendant owed a duty to the plaintiff, breached that duty, and thereby proximately caused the plaintiff's injury. *Vancura*, 238 Ill. 2d at 373. More specifically, a negligent hiring or retention claim requires the plaintiff to plead: "(1) that the employer knew or should have known that the employee had a particular unfitness for the position so as to create a danger of harm to third persons; (2) that such particular unfitness was known or should have been known at the time of the employee's hiring or retention; and (3) that this particular unfitness proximately caused the plaintiff's injury." *Van Horne v. Muller*, 185 Ill. 2d 299, 311 (1998); *see also Vancura*, 238 Ill. 2d at 372. A negligent supervision claim requires the plaintiff to plead that "(1) the defendant had a duty to supervise the harming party, (2) the defendant negligently supervised the harming party, and (3) such negligence proximately caused the plaintiff's injuries." *Doe v. Coe*, 2019 IL 123521, ¶¶ 52, 61.

While the City correctly notes that Illinois is a fact-pleading jurisdiction, the fact-pleading standard does not require Wofford to set out evidence. *See City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 369 (2004) (declining to dispose of case on procedural grounds, despite reservations as to complaint's adequacy under fact-pleading standard). "[O]nly the ultimate facts to be proved should be alleged, not the evidentiary facts tending to prove such ultimate facts." *Chandler v. Illinois Central R.R. Co.*, 207 Ill. 2d 331, 348 (2003). The pertinent question, again, is whether Wofford has alleged facts, which, if proven, would entitle him to recovery on either negligence claim.

Duty is a question of law to be decided by the court. *Coe*, 2019 IL 123521, ¶ 36 (citing *Doe v. McKay*, 183 Ill. 2d 272, 278 (1998)). In evaluating whether a defendant owed a plaintiff a duty, courts consider four factors: (1) the reasonable foreseeability of injury; (2) the reasonable likelihood of injury; (3) the magnitude of the burden that preventing the injury would place on the defendant; and (4) the consequences of placing that burden on the defendant. *Simpkins v. CSX Transp., Inc.*, 2012 IL 110662, ¶ 18. "[E]very person owes a duty of ordinary care to all others to guard against injuries which naturally flow as a reasonably probable and foreseeable consequence of an act[.]" *Widlowski v. Durkee Foods, Div. of SCM Corp.*, 138 Ill. 2d 369, 373 (1990) (citing *Scott & Feltzer Co. v. Montgomery Ward & Co.*, 112 Ill. 2d 378, 390 (1986)). Accordingly, while a direct relationship between the defendant and an individual may help establish the foreseeability of the individual's injury, such a relationship is unnecessary to establish that the defendant owed the individual a duty. *Simpkins*, 2012 IL 110662, ¶ 19.

Wofford alleges that the City had a duty "to exercise a reasonable degree of care in the hiring, retention, and supervision" of Tyler. The law recognizes that employers have a duty to act reasonably in hiring, retaining, and supervising employees. *Coe*, 2019 IL 123521, ¶ 37 (citations omitted). Importantly, this duty extends "to all foreseeable individuals who might be impacted by the employee or his employment[.]" *Id.* The possibility that a member of the public could be harmed by a failure to act reasonably in hiring, retaining, and supervising police officers—whose job authorizes them to carry a deadly weapon and use deadly force—is certainly foreseeable. Furthermore, a police officer's history of violence is not the sort of open-and-obvious condition that would decrease the likelihood of injury. *Cf. Bucheleres v. Chicago Park Dist.*, 171 Ill. 2d 435, 456 (1996) (observing that Lake Michigan presented an open-and-obvious risk to beach patrons). The magnitude of the burden of requiring the City to act reasonably in hiring, retaining, and supervising police is small in relation to the magnitude of harm to be prevented in this case and similar situations. *See Coe* 2019 IL 123521, ¶ 38. Lastly, the consequences of placing this burden on the City is small, considering that it is the same burden typically imposed upon all employers. *See id.* In sum, the City had a duty to act reasonably in hiring, retaining, and supervising Tyler, and Wofford adequately alleged this duty.

Turning to the specific elements of negligent hiring or retention, Wofford additionally alleges that the City knew or should have known that Tyler "was the subject of many complaints of violent and other inappropriate behavior unbecoming a peace officer," but nevertheless made decisions to hire and retain him. If proven, this allegation would satisfy the notice elements of a negligent hiring or retention claim. Similarly, Wofford's allegations that the City provided "tacit consent" to Tyler's "unsupervised" interactions with the public adequately state the duty and breach elements of a negligent supervision claim.

The only question remaining for each of Wofford's negligence claims concerns whether the City's conduct proximately caused Andris's death. "[P]roximate cause is preeminently an issue of fact to be decided by the jury." *Rivera v. Garcia*, 401 Ill. App. 3d 602, 610 (1st Dist. 2010) (citing *Harrison v. Hardin Cnty. Cmty. Unit Sch. Dist. No. 1*, 197 Ill. 2d 466, 476 (2001)). Proximate cause consists of both cause-in-fact and legal cause. *First Springfield Bank v. Galman*, 188 Ill. 2d 252, 257-58 (1999). When, as here, a plaintiff's injury results most immediately from the independent act of a third person rather than the defendant's negligence, courts ask whether the defendant's conduct was a substantial factor in bringing about the injury. *See Kramer v. Szczepania*, 2018 IL App (1st) 171411, ¶ 27 (citing *Galman*, 188 Ill. 2d at 259). A defendant's conduct is a substantial factor in bringing about an injury if, absent that conduct, the injury would not have occurred. *Id.* at ¶ 28. Courts determining legal cause in such cases look to whether the defendant "reasonably might have anticipated" the independent, third person's act "as a natural and probable result" of the defendant's own negligence. *Id.* at ¶ 37 (quoting *Galman*, 188 Ill. 2d at 257).

Proximate cause should be decided on a motion to dismiss only "if the facts alleged demonstrate that a party would *never* be entitled to recover." *Id.* at ¶ 39 (emphasis in original). Keeping this principle in mind, Wofford sufficiently alleges that the City's negligence proximately caused Andris's death. Wofford alleges that the City's unreasonable hiring, retention, and supervision practices with respect to Tyler's particular unfitness for his position placed Tyler in a position where the City reasonably might have anticipated that he would commit the sort of violence alleged in this case.

II. The City's 2-619 Motions to Dismiss

The City argues that, even if it was negligent, it is immune from liability pursuant to two provisions of the Local Governmental and Governmental Employees Tort Immunity Act. Section 2-201 immunizes a public employee "serving in a position involving the determination of policy or the exercise of discretion . . . for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused." 745 ILCS 10/2-201. Section 2-109 provides, "A local public entity is not liable for an injury

resulting from an act or omission of its employee where the employee is not liable." 745 ILCS 10/2-109. Read together, these Tort Immunity Act sections immunize public entities from liability for the discretionary acts or omissions of their employees serving in positions involving determination of policy. *Monson v. City of Danville*, 2018 IL 122486, ¶ 16 (citing *Smith v. Waukegan Park Dist.*, 231 Ill. 2d 111, 118 (2008)). Accordingly, determining whether to apply section 2-109 immunity in this case first requires a determination of whether the conduct of City employees in hiring, supervising, and retaining Tyler qualifies for section 2-201 immunity.

Discretionary actions are those "unique to a particular public office," as distinguished from ministerial acts, "which a person performs on a given state of facts in a prescribed manner, in obedience to the mandate of legal authority, and without reference to the official's discretion as to the propriety of the act. *Snyder v. Curran Twp.*, 167 Ill. 2d 466, 474 (1995). Because "the distinction between discretionary and ministerial functions resists precise formulation," courts determine whether an act or omission should be classified as discretionary or ministerial on a case-by-case basis. *Id.* at 474. If official decisions are constrained by statutory and regulatory guidelines, courts "should be reluctant to label decisions falling wholly outside the established parameters as 'discretionary.'" *Id.* A policy determination is one that requires a governmental entity "to balance competing interests and to make a judgment call as to what solution will best serve those interests[.]" *Van Meter*, 207 Ill. 2d at 379.

Because the Tort Immunity Act is in derogation of common law, courts strictly construe the act against public entities asserting immunity. *Van Meter*, 207 Ill. 2d at 380 (citing *Zimmerman for Zimmerman v. Village of Skokie*, 183 Ill. 2d 30, 44 (1998)). A defendant claiming immunity under section 2-201 bears the burden of properly raising and proving that the particular decision at issue was both discretionary and a determination of policy. *Harinek v. 161 N. Clark St. Ltd. P'ship.*, 181 Ill. 2d 335, 341 (1998). Moreover, the immunity asserted "must be apparent on the face of the complaint" or otherwise supported by affidavits or other evidentiary materials. *Van Meter*, 207 Ill. 2d at 377.

It is not apparent from the face of the complaint that the City's decisions involved in hiring, supervising, and retaining Tyler were discretionary or policy determinations, and the City has not offered any evidentiary material to the effect. Accordingly, the City has failed to meet its burden in claiming section 2-201 immunity, and its motion with respect to this claim must be denied. *See id.* at 365, 379-81 (reversing dismissal of case involving public park design because complaint did not contain and defendants did not offer evidence that design decisions were discretionary or policy determinations). Because the City's section 2-109 claim is predicated on its section 2-201 claim, the motion with respect to the section 2-109 claim must also be denied.

Conclusion

For the reasons presented above, it is ordered that:

1. The City of Chicago's motion to dismiss is denied; and
2. The City of Chicago has until September 21, 2022, to answer the complaint.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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