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

Mai Martinez, Plaintiff, v. City of Chicago, a municipal corporation; Sgt. Patricia Stribling, individually and as agent of the City of Chicago; Michael Theis, individually and as agent of the City of Chicago; Simon Cotton, individually and as agent of the City of Chicago; James Miller, individually and as agent of the City of Chicago; Jack Kenter, individually and as agent of the City of Chicago; Erica Sangster, individually and as agent of the City of Chicago; and Brady Ruel, individually and as agent of the City of Chicago, Defendants, Nina Moore, Respondent in Discovery.	)	No. 19 L 3785

MEMORANDUM OPINION AND ORDER

Causes of action for malicious prosecution and intentional infliction of emotional distress require stringent pleading of a plaintiff's injury. The plaintiff's second amended complaint fails and can never succeed to plead an injury for malicious prosecution. In contrast, the new complaint presents additional allegations that, if true, could establish intentional infliction of emotional distress. The defendants' motion to dismiss is, therefore, granted in part and denied in part.

Facts

During at least part of 2017, Mai Martinez and Brady Ruel, a City of Chicago police officer, were in an intimate relationship. On June 14, 2017, Ruel became intoxicated at his residence while Martinez was present. Martinez used her cellphone to record a video of the intoxicated Ruel. Ruel grabbed Martinez by the arm and asked her to delete the video. Martinez did not delete the video and, instead, forwarded it to herself via e-mail. When Ruel heard the sound of the e-mail delivery, he physically assaulted Martinez. After the assault, Martinez gathered her possessions and left.

The next day, June 15, 2017, Ruel went to a police station and informed Detectives Patricia Stribling, Michael Theis, and Simon Cotton of the incident. Cotton went to Ruel's home, inspected the scene, and wrote a report stating that Martinez had caused the property damage. On June 21, 2017, Martinez received an e-mail from a person identifying himself as Austin Doyle, allegedly an attorney representing Ruel. Doyle threatened Martinez with criminal charges and a civil lawsuit if she did not pay Ruel $15,000 and return an external hard drive she possessed. The hard drive allegedly contained videos of Ruel and other Chicago police officers using racially charged language, harassing pedestrians, and failing to respond promptly to emergency calls. Martinez later discovered Doyle was, in fact, Jack Kenter, another Chicago police officer.

In early July 2017, Ruel told Cotton about the videos on his external hard drive and that Martinez had taken it. Cotton referred the matter to Stribling. From that point through mid-August 2017, Cotton, Stribling, and Theis provided Cotton's report and photographs to the Cook County State's Attorney's Office intending for the State's Attorney to file charges against Martinez.

During this same period, Ruel petitioned a Cook County court for an order of protection against Martinez. *See* Cook County Case No. 17 DV 75067. Ruel's petition stated that

Martinez had repeatedly sent him text messages after he had asked her to stop, and that Martinez had threatened to have Ruel fired. On August 11, 2017, Judge Caroline K. Moreland issued an emergency order of protection that, among other things, required Martinez to stay away from Ruel, his residence, and police headquarters while he was there. Around the same time, the State's Attorney charged Martinez with misdemeanor harassment by electronic means.

In December 2017, the State's Attorney informed Cotton, Stribling, and Theis that it planned to dismiss the harassment charge against Martinez. The detectives relayed this information to Ruel and encouraged him to seek a re-opening of the investigation into alleged property damage so that further charges against Martinez could be brought. Later in December 2017, the State's Attorney charged Martinez with property damage.

In January 2018, investigators Erica Sangster and James Miller of the Civilian Office of Police Accountability interviewed Martinez. She described to them Ruel's abuse and provided them with copies of e-mails, text messages, photographs, and medical records. Sangster and Miller gave this information to the State's Attorney as well as to Cotton, Stribling, and Theis to encourage the prosecution of criminal charges against Martinez. On April 9, 2018, the State's Attorney sought and the court granted a *nolle prosequi* as to all charges against Martinez in the domestic violence court case – 17 DV 75067.

On September 18, 2018, Martinez filed a complaint in the Federal District Court for the Northern District of Illinois. *See* 18CV6367. Martinez filed an amendment eliminating federal constitutional claims forming the basis of that court's jurisdiction. As a result, the district court granted Martinez's motion to dismiss her case voluntarily and without prejudice to re-file it in the Circuit Court of Cook County.

On April 9, 2019, Martinez filed a complaint against the currently named defendants except Ruel. On June 13, 2019,

Martinez filed an amended complaint adding Ruel as a defendant. The amended complaint raised five counts: (1) malicious prosecution; (2) intentional infliction of emotional distress; (3) civil conspiracy; and (4) battery, directed against Ruel only. The fifth count identified a respondent in discovery.

On December 30, 2019, the City, Stribling, Theis, Cotton, Sangster, and Miller filed a motion to dismiss the amended complaint. The parties briefed the motion. On April 20, 2020, this court issued an order. As to count one – malicious prosecution – this court granted the defendants' motion without prejudice because Martinez had failed to plead sufficiently special damages. As to count two – IIED – this court granted the defendants' motion without prejudice because Martinez had failed to plead sufficiently severe emotional distress. As to count three – civil conspiracy – this court denied the defendant's motion.

Based on this court's rulings, on May 22, 2020, Martinez filed a second amended complaint. As to count one – malicious prosecution – Martinez added an allegation that the order of protection Ruel obtained had restricted her movements and prevented her from accessing locations and witnesses essential to the full and satisfactory performance of her job. Martinez repeated her earlier allegation that the defendants' acts and omissions caused her to suffer mental pain and suffering, emotional distress, and costs associated with her legal defense. As to count two – intentional infliction of emotional distress (IIED) – Martinez added an allegation that the defendants' conduct caused physical symptoms including severe migraines often lasting several days, prolonged insomnia, and weight loss. Martinez added this allegation to one alleging intense anxiety and stress, fear of retaliation and violence by police officers, and fear of imprisonment.

<u>Analysis</u>

The defendants bring their motion pursuant to Code of Civil Procedure section 2-615. 735 ILCS 5/2-615. 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 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). A section 2-615 motion must identify the complaint's defects and specify the relief sought. *See* 735 ILCS 5/2-615(a).

In addressing a section 2-615 motion, a court is to consider only the allegations presented in the pleadings. *See Illinois Graphics*, 159 Ill. 2d at 485. All well-pleaded facts and reasonable inferences arising from them must be accepted as true, *see Doe v. Chicago Bd. of Educ.*, 213 Ill. 2d 19, 28 (2004), but not conclusions unsupported by facts, *see Pooh-Bah Enterps., Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009). The paramount consideration is whether the complaint's allegations construed in a light most favorable to the plaintiff are sufficient to establish a cause of action for which relief may be granted. *See Bonhomme v. St. James*, 2012 IL 112393, ¶ 34. If not, section 2-615 authorizes the dismissal of a cause of action. *See DeHart*, ¶ 18; *Illinois Graphics*, 159 Ill. 2d at 488.

The defendants argue first that Martinez's malicious prosecution claim as pleaded in count one of the second amended complaint is irrevocably insufficient. A claim for malicious prosecution seeks recovery for damages resulting from a prior unsuccessful civil or criminal case that proceeded without probable cause and with malice. *See Beaman v. Freesmeyer*, 2019 IL 122654, ¶ 23 (quoting *Freides v. Sani-Mode Mfg. Co.*, 33 Ill. 2d 291, 295 (1965)). Suits for malicious prosecution are highly disfavored, *see id.* (quoting cases), because "[p]ublic policy favors the exposure of crime, and the cooperation of citizens possessing knowledge thereof is essential to effective implementation of that policy." *Joiner v. Benton Comm. Bk.*, 82 Ill. 2d 40, 44 (1980). To state a cause of action for malicious prosecution, a plaintiff must prove five elements: "(1) the commencement or continuance of an original criminal or civil judicial proceeding by the defendant; (2) the termination of the proceeding in favor of the plaintiff; (3) the

absence of probable cause for such proceeding; (4) the presence of malice; and (5) damages resulting to the plaintiff." *Beaman*, 2019 IL 122654, ¶ 26 (internal quotation marks omitted) (quoting *Swick v. Liautaud*, 169 Ill. 2d 504, 513 (1996) and citing other cases). The absence of any of these elements bars a plaintiff's malicious prosecution claim. *See id.*

The defendants argue specifically that Martinez has failed, once again, to plead the type of damages necessary to establish a malicious prosecution cause of action. It is well settled that in such a disfavored cause of action, "a plaintiff must plead and prove some 'special injury' or special damage beyond the usual expense, time or annoyance in defending a lawsuit." *Cult Awareness Network v. Church of Scientology Int'l*, 177 Ill. 2d 267, 272 (1997) (citing cases). In the context of malicious prosecution, "'special injury' generally means a deprivation of liberty or an interference with property." *Bank of Lyons v. Schultz*, 78 Ill. 2d 235, 240 (1980) (quoting *Alswang v. Clayborn* (1976), 40 Ill. App. 3d 147, 150 (1st Dist. 1976)). *See also Reed v. Doctor's Associates, Inc.*, 355 Ill. App. 3d 865, 874, (5th Dist. 2005) (citing *Cult Awareness*, 177 Ill. 2d at 280); *Smith v. Michigan Buggy Co.*, 175 Ill. 619, 51 N.E. 569 (1898)). When considering whether a plaintiff's injuries are "special," "the court's focus must properly rest upon the peculiar effect of the suit together with the remedy sought and not upon the subjective effect that the suit may have on the plaintiff." *Thomas v. Hileman*, 333 Ill. App. 3d 132, 138 (4th Dist. 2002) (citing *Levin v. King*, 271 Ill. App. 3d 728, 732 (1st Dist. 1995)).

Martinez alleges the defendants' acts and omissions caused two types of injuries. First, she alleges, "mental pain and suffering, emotional distress, and costs expended for her legal defense." Second Amd. Cmplt. ¶ 77. Without any further explanation by Martinez, none of these alleged injuries goes beyond the typical, "anxiety, loss of time, attorney fees, and necessity for defending one's reputation, which are an unfortunate incident of many (if not most) lawsuits." *Doyle v. Shlensky*, 120 Ill. App. 3d 807, 817 (1st Dist. 1983) (quoting *Lyddon v. Shaw* 56

Ill. App. 3d 815, 818 (2d Dist. 1978)). These allegations do not, therefore, constitute the type of special injuries required to plead a malicious prosecution cause of action.

Second, Martinez alleges the protective order, "restrict[ed] her movements and prevent[ed] her from accessing locations and witnesses which were essential to the full and satisfactory performance of her job." Second Amd. Cmplt. ¶ 78. A fundamental problem with Martinez's allegation is it implicitly asks this court to find Judge Moreland's August 11, 2017 emergency order of protection groundless. This court cannot and will not second guess another judge's decision, particularly concerning an exceptional ruling such as granting an emergency order of protection and without an evidentiary record of what transpired at the hearing or the judge's consideration of the evidence. From the standpoint of sufficient pleading, the second amended complaint is devoid of allegations informing the court as to Martinez's occupation or why her job requires access to any particular location or witness. The emergency order of protection barred Martinez only from Ruel's residence and police headquarters while he was there. Martinez does not explain why she needed to go to either location. Additionally, the order of protection barred Martinez from having any contact with Ruel, but no one else, including "witnesses," whoever they might be. Martinez's allegation strangely infers that her job requires her to speak with "witnesses," yet she does not explain how her job requires her to speak with witnesses in a lawsuit unrelated to her occupation. The inexorable conclusion is Martinez has now failed for the third time to identify a deprivation of liberty or property constituting the sort of special injuries necessary to support a malicious prosecution cause of action.

The defendants also argue that Martinez has failed to state an IIED claim. Illinois law is plain that deliberately initiating a false legal proceeding amounting to malicious prosecution may also support a cause of action for intentional infliction of emotional distress. *See Bianchi v. McQueen*, 2016 IL App (2d) 150646, ¶ 84. To establish such a claim, however, a plaintiff must

plead that; (1) the defendant's conduct was extreme and outrageous; (2) the defendant intended to inflict severe emotional distress or knew that there was a high probability the conduct would cause severe emotional distress; and (3) the defendant's conduct actually caused severe emotional distress. *See Feltmeier v. Feltmeier*, 207 Ill. 2d 263 (2003); *McGrath v. Fahey*, 126 Ill. 2d 78 (1988). The standard of proof is so stringent that a plaintiff must establish that a defendant's conduct is outrageous and extreme to the point that it goes beyond all possible bounds of decency and is considered intolerable in a civilized community. *See Public Finance Corp. v. Davis*, 66 Ill. 2d 85 (1976); *Kolegas v. Heftel Broadcasting Corp.* 154 Ill. 2d 1 (1992). *See also* Restatement (Second) of Torts § 46, comment *d* at 73 (1965) ("atrocious, and utterly intolerable in a civilized community"). The standard of pleading an IIED claim is no simple task. "A complaint alleging the infliction of intentional infliction of emotional distress 'must be "specific, and detailed beyond what is normally considered permissible in pleading a tort action."'" *Schroeder v. RGIS, Inc.*, 2013 IL App (1st) 122483, ¶ 27, (quoting *Welsh v. Commonwealth Edison Co.*, 306 Ill. App. 3d 148, 155 (1st Dist. 1999), quoting in turn *McCaskill v. Barr*, 92 Ill. App. 3d 157, 158 (4th Dist. 1980)).

Martinez alleges the defendants' acts and omissions have caused two types of injuries. First, she alleges she suffered, "severe emotional dismiss, including but not limited to intense anxiety and stress, fear of retaliation and violence by police officers, and fear of imprisonment." Second Amd. Cmplt. ¶ 84. Second, she alleges that, as a result of the emotional distress, she experienced, "physical symptoms including severe migraines often lasting several days, prolonged insomnia, and weight loss." Id. at ¶ 85.

The previous allegations coupled with the new ones provide a fuller explanation of Martinez's alleged injuries. First, Martinez now links her emotional distress to physical manifestations. Although such linkage is unnecessary to establish an IIED claim, *Corgan v. Muehling*, 143 Ill. 2d 296, 311-12 (1991), it suggests a

larger constellation of injuries. Second, Martinez now alleges that her emotional and physical reactions incapacitated her to some extent.

This court expresses no opinion as to the substantive merits of Martinez's IIED cause of action. At this point in the proceedings, all this court may do is assume the truth of the allegations as pleaded. It may very well be that discovery fails to establish Martinez's claim. If so, the defendants will certainly file another motion based on the record.

As to the defendants' argument concerning the civil conspiracy cause of action – count three – this court ruled on April 20, 2020, that the cause of action was sufficiently pleaded. There is no reason to alter that ruling.

Conclusion

Based on the foregoing, it is ordered that:

1. The motion to dismiss count one is granted with prejudice;
2. As to count one, pursuant to Illinois Supreme Court Rule 304(a) there is no just reason for delaying either enforcement or appeal or both of this court's decision;
3. The motion to dismiss counts two and three is denied;
4. The defendants are to answer the complaint by October 19, 2020; and
5. The parties are to submit an agreed case management order by October 26, 2020.

Judge John H. Ehrlich

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Circuit Court 2075

John H. Ehrlich, Circuit Court Judge