

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

KANDI EMERY,)
)
 Plaintiff)
 v.) Civ. No. 97-185-B
)
 CITY OF EASTPORT, ET AL.,)
)
 Defendants)

ORDER AND MEMORANDUM OF DECISION

BRODY, District Judge

This action arises out of the October 25, 1996, execution of a Maine District Court Order (“Order”) by Eastport Police Department Officers Donald Rice and Robert Gregory. The Order provided for the removal of a minor child, Taylor Faye Emery (“Taylor”), from the custody of her mother, Plaintiff, Kandi Emery, and the transfer of custody of the child to the Maine Department of Human Services (“DHS”). Plaintiff brings this suit against Officers Rice, Gregory, and their employer, the City of Eastport (the “City”), alleging violations of her constitutional rights under 42 U.S.C. § 1983, common law claims for intentional infliction of emotional distress, negligent infliction of emotional distress, and malicious prosecution, and willful and wanton conduct in support of a punitive damages claim.¹ Before the Court is

¹ Plaintiff originally filed a six-count complaint in Washington County Superior Court (August 26, 1997, Docket No. CV97-045); however, Defendants successfully removed this action to the United States District Court for the District of Maine, in Bangor, pursuant to 28 U.S.C. § 1446 and Rule 81(c) of the Federal Rules of Civil Procedure. Plaintiff alleges that Officers Rice and Gregory unlawfully entered her home without a search warrant and used excessive force against her person (Count I). Plaintiff also alleges intentional and negligent infliction of emotional distress (Counts II and III), malicious prosecution (Count V), and willful and malicious conduct in support of punitive damages (Count VI). In Count IV, Plaintiff does not allege any particular theory of recovery, although Plaintiff alleges physical and emotional damages.

Defendants' Motion for Summary Judgment on all of Plaintiff's claims. For the reasons set forth below, the Court GRANTS Defendants' Motion for Summary Judgment.

SUMMARY JUDGMENT

Summary judgment is appropriate in the absence of a genuine issue of any material fact and when the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). An issue is genuine for summary judgment purposes, if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A material fact is one that has "the potential to affect the outcome of the suit under applicable law." Nereida-Gonzalez v. Tirado-Delgado, 990 F.2d 701, 703 (1st Cir. 1993). Facts may be drawn from "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits." Fed. R. Civ. P. 56(c).

Defendants' Motion for Summary Judgment was filed on or about January 5, 1998, and to date, Plaintiff has failed to respond. Pursuant to Local Rule 7(b), a party "shall be deemed to have waived objection" to a motion unless he or she files a written objection thereto within 10 days after the filing of the motion. While "failure to comply with Local Rule [7(b)] will not result in the automatic granting of a motion for summary judgment," "a party who fails to object to a motion for summary judgment within ten days as required by Local Rule [7(b)] is deemed to have waived the opportunity to controvert factual statements asserted by the moving party." See United States v. Belanger, 598 F. Supp. 598, 601 (D. Me. 1984). Thus, the Court will decide this motion on the basis of Defendants' submissions alone. See id.

BACKGROUND

On October 23, 1996, Mary Dunn of the DHS contacted Defendant Donald Rice, a police

officer with the City of Eastport Police Department. The DHS had secured an Order from a judge of the Maine District Court providing for the removal of a minor child, Taylor, from the custody of her mother, Plaintiff, and the transfer of immediate custody of the child to the DHS. The Order contained an express finding by the District Court that Taylor was in immediate risk of serious harm. Mary Dunn contacted Officer Rice for assistance in serving the Order and securing custody of the child.

Officer Rice, Mary Dunn, and other members of the Eastport Police Department made several unsuccessful attempts to find Plaintiff on October 23rd and 24th. At approximately 5:50 p.m. on October 24th, Plaintiff contacted Officer Rice and scheduled an appointment with him for 10:00 a.m. the next day. On the morning of October 25, 1996, Officer Rice went to the Headstart School in Eastport to secure custody of Taylor, accompanied by Defendant Robert Gregory, also a member of the Eastport Police Department. Upon their arrival, they learned that the child had already been picked up by Martha Townsend. After driving around the greater Eastport area in an effort to locate Plaintiff and Taylor, Officers Rice and Gregory went to Plaintiff's residence at 5 Byrd Street in Eastport. The officers knocked several times at the door, but there was no answer, although the officers heard voices from inside the home. Since the Order indicated that the child was in immediate risk of serious harm and the officers were aware from prior dealings with Plaintiff that she had a history of violence and flight to avoid court orders, the officers entered the home to see if Taylor was inside. The doors were unlocked.

Once inside, the officers confronted Plaintiff who told them that Taylor was not there. When the officers provided Plaintiff with a copy of the Order, she allegedly threw the document on the floor and became physically and verbally abusive toward the officers. Plaintiff's physical

violence and combativeness reached such a level that the officers felt it was necessary to restrain Plaintiff and handcuff her for her protection and their own protection.

As the handcuffing of Plaintiff was being completed, the officers heard a child crying in the upstairs area of the house. Officer Rice went upstairs to investigate, and as he did Plaintiff became more violent and needed to be physically restrained. Officer Rice returned downstairs with Taylor and Martha Townsend, and with the assistance of Martha Townsend, Plaintiff calmed down. The officers removed the handcuffs, removed Taylor from Plaintiff's residence, and transferred custody of Taylor to the DHS pursuant to the Order.

DISCUSSION

A. Federal Claims

1. Officers Rice and Gregory

In Count I, Plaintiff alleges that Officers Rice and Gregory unlawfully entered her home and used excessive and unnecessary force upon her person. Although inartfully plead, Plaintiff appears to be alleging violations of her Fourth Amendment rights pursuant to 42 U.S.C. § 1983. Defendants Rice and Gregory first contend that they are entitled to absolute judicial immunity from Plaintiff's claims in Count I because they were seeking to enforce a facially valid court order.

The doctrine of absolute judicial immunity provides judges with absolute immunity for acts performed in their official judicial capacity. Stump v. Sparkman, 435 U.S. 349, 355-56 (1978). "Judicial immunity extends as well to those who carry out the orders of judges." Slotnick v. Garfinkle, 632 F.2d 163, 166 (1st Cir. 1980) (court clerk, state hospital superintendent, and sheriff acting under official directives of judge entitled to judicial immunity);

see also, Valdez v. City and County of Denver, 878 F.2d 1285, 1290 (10th Cir. 1989) (sheriff's deputies who arrested and incarcerated spectator pursuant to judge's order entitled to absolute immunity); Roland v. E.W. Phillips, 19 F.3d 552, 556-57 (11th Cir. 1994) (county sheriff and deputy sheriffs had absolute quasi-judicial immunity in enforcing facially valid court order). As the Ninth Circuit has reasoned, "[t]he fearless and unhesitating execution of court orders is essential if the court's authority and ability to function are to remain uncompromised." Coverdell v. Dep't of Social and Health Serv., 834 F.2d 758, 765 (9th Cir. 1987).

While law enforcement officers may be protected from claims directed at conduct prescribed in a facially valid court order, it is less clear whether law enforcement officers enjoy absolute immunity from claims challenging the manner in which they execute a court order. The Supreme Court has held that a judge's actions in directing police officers to carry out an order with excessive force, when issued in the judge's judicial capacity, were entitled to absolute judicial immunity. Mireles v. Waco, 502 U.S. 9, 12-13 (1991). The Court emphasized that the relevant inquiry was the "nature" and "function" of the act performed, not the "act itself," stating that "[i]f judicial immunity means anything, it means that a judge 'will not be deprived of immunity because the action he took was in error . . . or was in excess of his authority.'" Id. (quoting Stump, 435 U.S. at 356 (ellipsis in Mireles)). In Martin v. Henderson, 127 F.3d 720, 721-22 (8th Cir. 1997), the Eighth Circuit extended the Supreme Court's reasoning in Mireles to law enforcement officers, holding that a police officer who carried out a judge's order to handcuff and remove a plaintiff from a courtroom was protected by absolute judicial immunity against the plaintiff's subsequent charges of excessive force. Other courts, however, have refrained from extending absolute judicial immunity to law enforcement officials for the manner

in which they carry out otherwise valid court orders. See Martin v. Board of County Comm'rs, 909 F.2d 402, 404-05 (10th Cir. 1990) (per curiam) (pre-Mireles case holding that officers not absolutely immune from claims of excessive force in executing an arrest warrant); Primm v. County of Dupage, No. 92 C 3726, 1993 WL 5931, at *3 (N.D. Ill. Jan 6, 1993) (judge's directive that court building should be weapon-free did not immunize sheriff or his deputies to use excessive force).

The Court need not resolve the issue of whether Officers Rice and Gregory are protected by absolute judicial immunity for their allegedly unlawful entry into Plaintiff's home and alleged use of excessive force against Plaintiff, however, because the Court is persuaded that the two officers are protected by the doctrine of qualified immunity. Qualified immunity protects government officials "from civil damages liability as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated." Hegarty v. Somerset County, 53 F.3d 1367, 1373 (1st Cir. 1995). The qualified immunity inquiry is a two-step process. First, the Court must "examine the law, to determine whether the right allegedly violated was 'clearly established'; if so, the defendant should reasonably have known of the right." Rodriguez v. Comas, 888 F.2d 899, 901 (1st Cir. 1989). Second, the Court must "examine the defendant's conduct, to establish whether objectively it was reasonable for him to believe that his actions did not violate a 'clearly established' right." Id. The qualified immunity analysis allows for the "inevitable reality" that a law enforcement officer may "reasonably but mistakenly" believe that his or her conduct is constitutional. In such a case, the official should not be held personally liable. Hegarty, 53 F.3d at 1373. Indeed, "qualified immunity sweeps so broadly that 'all but the plainly incompetent or those who knowingly violate the law' are

protected from civil rights suits for money damages.” Id. (quoting Hunter v. Bryant, 502 U.S. 224, 229 (1991)).

The Court is satisfied that Officers Rice and Gregory are entitled to qualified immunity for their warrantless entry into Plaintiff’s residence. The Fourth Amendment prohibits a warrantless entry into a private home absent probable cause and exigent circumstances. See Welsh v. Wisconsin, 466 U.S. 740, 749 (1984). This right is “clearly established,” and the Court will assume that the officers had knowledge of it. The Court is persuaded, however, that it was objectively reasonable for the officers to believe that their conduct did not violate this established right. When the officers entered Plaintiff’s home they possessed a facially valid court order which provided for the involuntary transfer of Taylor to the custody of the DHS. The Order further indicated that reasonable efforts had been made to prevent the need for removal of the child. In light of this Order, it was objectively reasonable for Officers Rice and Gregory to believe that they had probable cause to enter Plaintiff’s home. See also Bodine v. Warwick, 72 F.3d 393, 396 (3d Cir. 1995) (interpreting a similar court order as providing officers with authority similar to that provided by an ordinary search or arrest warrant). Exigent circumstances also existed which justified the officers’ entry. See Minnesota v. Olson, 495 U.S. 91, 100 (1990) (exigent circumstances include “[the] imminent destruction of evidence, . . . the need to prevent a suspect’s escape, [and] the risk of danger to the police or to other persons inside or outside the dwelling”) (citations omitted). The Order contained a specific finding that Taylor was in immediate risk of serious harm. Together with the existence of probable cause, these exigent circumstances indicate that it was objectively reasonable for Officers Rice and Gregory to believe that their entry into Plaintiff’s home did not violate Plaintiff’s Fourth Amendment rights.

Likewise, the Court is persuaded that Officers Rice and Gregory are entitled to qualified immunity regarding Plaintiff's allegations of excessive force. It is "clearly established" that the Fourth Amendment protects against the use of excessive force by law enforcement officers. Graham v. Connor, 490 U.S. 386, 394-95 (1989). A plaintiff's claims of excessive force are to be analyzed under a standard of "objective reasonableness," the question being "whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." Id. at 397. "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." Id. at 396.

The record indicates that when Officers Rice and Gregory presented Plaintiff with the Order, Plaintiff became both verbally and physically abusive, and attempted on at least one occasion to strike one of the officers. Given Plaintiff's physical combativeness, the Court finds that an objectively reasonable officer would not have believed that the degree of force used against Plaintiff was excessive. With respect to Officers Rice and Gregory, accordingly, the Court grants Defendants' Motion for Summary Judgment on Count I.

2. City of Eastport

Plaintiff's allegations in Count I do not allege any additional wrongdoing by Defendant City of Eastport beyond the actions of Defendants Rice and Gregory. "[A] municipality cannot be held liable solely because it employs a tortfeasor . . . in other words, a municipality cannot be held liable under § 1983 on a respondeat superior theory." Monell v. New York City Dep't of Social Services, 436 U.S. 658, 691 (1978). Rather, municipalities may be held liable under § 1983 "when their official policies or customs cause the alleged constitutional deprivation."

Comfort v. Town of Pittsfield, 924 F. Supp. 1219, 1233 (D. Me. 1996) (citing Oklahoma City v. Tuttle, 471 U.S. 808, 818 (1985)). Plaintiff has not alleged and the record does indicate the existence of any municipal custom or policy that caused injury. The Court, therefore, grants summary judgment in favor of Defendant City of Eastport on Count I.

B. State Claims

1. Officers Rice and Gregory

In Counts II, III, and V, Plaintiff alleges a variety of state tort law claims, such as intentional infliction of emotional distress, negligent infliction of emotional distress, and malicious prosecution.² Plaintiff's common law tort claims are governed by the terms of the Maine Tort Claims Act ("MTCA"), 14 M.R.S.A. §§ 8101-8118. Defendants Rice and Gregory contend that they are entitled to summary judgment on these claims because of the immunity afforded governmental employees under the MTCA. The Court agrees.

The MTCA provides immunity for employees of governmental entities for "[p]erforming or failing to perform any discretionary function or duty, whether or not the discretion is abused" 14 M.R.S.A. § 8111(1)(C). A law enforcement officer is exercising a discretionary duty if he or she is "required to use [his or her] judgment while acting in furtherance of a departmental policy." Moore v. City of Lewiston, 596 A.2d 612, 616 (Me. 1991). The Court considers an officer's decision to enter a plaintiff's home and execute a court order without a warrant to be a discretionary function. See McPherson v. Auger, 842 F. Supp. 25, 29 (D. Me. 1994) (warrantless

² In Count IV, Plaintiff does not allege any particular theory of recovery; rather, Plaintiff reiterates allegations of emotional and physical harm raised elsewhere in Plaintiff's Complaint and duly considered by the Court. The Court, accordingly, grants Defendants' Motion for Summary Judgment on Count IV.

arrest is a discretionary function); McLain v. Milligan, 847 F. Supp. 970, 977 (D. Me. 1994) (“Defendant’s decision to enter Plaintiff’s home [and] to execute a warrantless arrest . . . all required the exercise of judgment and hence qualify as discretionary functions under the Act.”) Similarly, a law enforcement officer’s use of force is a discretionary act. Roy v. Inhabitants of Lewiston, 42 F.3d 691, 696 (1st Cir. 1994). Law enforcement officers are not entitled to discretionary immunity, however, to the extent their conduct was so egregious that it “clearly exceeded, as a matter of law, the scope of any discretion [they] could have possessed in [their] official capacity as [police officers].” Polley v. Atwell, 581 A.2d 410, 414 (Me. 1990).³

The Court is satisfied that the officers’ conduct did not clearly exceed, as a matter of law, the scope of any discretion they might have possessed. As discussed above, at the time they entered Plaintiff’s home, Officers Rice and Gregory possessed a facially valid court order authorizing them to secure custody of Taylor. The Order also contained a finding that Taylor was in immediate risk of serious harm. The officers’ decision to enter Plaintiff’s home, accordingly, fell within the scope of their discretion. Once inside, the officers also acted within the scope of their discretion in using force against Plaintiff when she became violent. The Court, therefore, grants summary judgment in favor of Defendants Rice and Gregory on Counts II, III, and V.

2. City of Eastport

Plaintiff has failed to allege any separate basis for Defendant City of Eastport’s liability on Plaintiff’s common law tort claims apart from the City’s status as the employer of Officers

³ The scope of discretionary immunity under the MTCA differs from the scope of qualified immunity under 42 U.S.C. § 1983. See Maguire v. Municipality of Old Orchard Beach, 783 F. Supp. 1475, 1487 (D. Me. 1992); McPherson, 842 F. Supp. at 28, 30.

Rice and Gregory. Plaintiff has further failed to respond to Defendants' claim that, under the facts of this case, the City is not vicariously liable for the conduct of Officers Rice and Gregory. In light of Plaintiff's failure to respond to Defendants' Motion for Summary Judgment, the Court grants summary judgment in favor of Defendant City of Eastport on Counts II, III, and V.

C. Punitive Damages

Lastly, Defendants move for summary judgment on Plaintiff's demand for punitive damages. Since no claims remain as to any of the Defendants, the Court grants Defendants' Motion for Summary Judgment on Count VI.

CONCLUSION

For the reasons set forth above, the Court grants Defendants' Motion for Summary Judgment on all counts of Plaintiff's Complaint.

SO ORDERED.

MORTON A. BRODY
United States District Judge

Dated this ____ day of February, 1998.