

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

CARMEN MILLER and)	
LAWRENCE MILLER,)	
)	
Plaintiffs)	
)	
v.)	Docket no. 98-CV-78-B
)	
KNOX COUNTY and)	
BRENT DAVIS,)	
)	
Defendants)	

ORDER AND MEMORANDUM OF DECISION

SINGAL, District Judge

Before the Court are motions for summary judgment challenging Plaintiffs’ state law claims. Based on the reasons discussed below, the Court DENIES Defendants’ motions for summary judgment, and instead orders an entry of partial summary judgment in Defendants’ favor against Plaintiffs’ state tort claims falling under the Maine Tort Claims Act, 14 M.R.S.A. §§ 8101—8116.

I. STANDARD OF REVIEW

The Court grants a motion for summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). The Court must view the facts “in the light most amicable to the party contesting summary judgment, indulging all reasonable inferences in that party’s favor.” Pagano v. Frank, 983 F.2d 343, 347 (1st

Cir. 1993). Following this standard, the Court lays out the relevant facts below.

II. BACKGROUND

During the afternoon of April 13, 1996, the Saturday of Patriot's Day Weekend, Defendant Brent Davis, a Rockport Police Officer, stopped the automobile driven by Plaintiff Carmen Miller because her inspection stickers had expired. Officer Davis ran a license check, which revealed that there was an outstanding warrant for Miller's arrest in Kennebec County. Davis called Rockport's police dispatcher, Jessika Tassinari, to inquire about the arrest warrant. Tassinari did not have a copy of the warrant, so she telephoned Kennebec County's dispatcher. The Kennebec County dispatcher explained that the arrest warrant was for a failure to pay a \$235 fine and that it stated, "THIS WARRANT TO BE EXECUTED BY BRINGING DEFENDANT IMMEDIATELY BEFORE A SITTING JUDGE." The Kennebec dispatcher explained that Miller should be arrested Monday through Friday during the daytime, so that she could be brought immediately before a judge. Davis, however, arrested Miller anyway. Later, Davis spoke with a prosecutor, James Mitchell, who told Davis that he had acted correctly in arresting Miller.

Without handcuffing Miller, Davis had her sit in the back seat of his cruiser and drove her to the Knox County Jail. On the way, Davis stopped at Miller's residence to drop off a child who had been with Miller at the time of the arrest. While at Miller's home, Davis encountered Miller's husband, Lawrence Miller, who tried to explain that they had paid the fine already and that they possessed the cancelled check to prove it. Mr. Miller was speaking the truth; in fact, they had paid the fine a year prior, but the

Kennebec County Superior Court Clerk's Office never withdrew that arrest warrant. Davis, however, ignored Mr. Miller's protests and transported Mrs. Miller to the Knox County Jail. After she was processed, jail employees ordered her to shower and subjected her to a strip search. The strip search entailed instructing Mrs. Miller to remove her clothing, squat and cough. Miller remained in the Knox County prison for approximately forty-eight hours, during which time she was visited by family members no fewer than three times. Each time she was visited, she was subjected to another strip search by jail employees. No one physically touched Miller during these strip searches.

The Millers took no action against the government until they filed suit in 1998 against Davis, Knox County, the Town of Rockport, Kennebec County and several other government employees. In challenging the arrest as illegal and the strip searches as unconstitutional, the Millers have made claims under 42 U.S.C. § 1983 (Counts II and III) and state law claims for negligence (Count I), intentional infliction of emotional distress (Count IV), negligent infliction of emotional distress (Count V), loss of consortium (Count VI) and violation of the Maine Civil Rights Act, 5 M.R.S.A. § 4681 (Count VII). In addition, the Millers have asked for punitive damages.

On August 30, 1999, this Court granted a summary judgment motion in favor of all defendants because they enjoyed qualified immunity against the section 1983 claims. Consequently, the Court declined to extend jurisdiction over the state law claims. On appeal, the First Circuit reversed summary judgment for two of the defendants, Davis and Knox County. See Miller v. Kennebec County, 219 F.3d 8 (1st Cir. 2000). As well, the First Circuit issued a mandate in which it vacated the order declining jurisdiction over the supplemental claims against Davis and Knox County.

The First Circuit remanded the case to this Court, which must now address the section 1983 claims and the state law claims for the two remaining defendants, Brent Davis and Knox County. While the section 1983 claims will proceed to trial, Defendants have made valid arguments for entering summary judgment against some of the state law claims.

III. DISCUSSION

Plaintiffs' state law claims fall into two categories, those within the ambit of the Maine Tort Claims Act (Counts I, IV, V and VI) and those under the Maine Civil Rights Act (Count VII).

A. Maine Tort Claims Act

The Maine Tort Claims Act ("MTCA"), 14 M.R.S.A. §§ 8101—8116, clearly states that as a prerequisite to filing a tort claim against a governmental entity or employee, a plaintiff must file a written notice with the government within 180 days after the claim accrues. See 14 M.R.S.A. § 8107. Plaintiffs, however, failed to file such a written notice within the 180-day period.

Plaintiffs argue that they did not need to file a written notice because that requirement is found in a state statute, preempted by federal law. Indeed, a state statute with a notice-of-claim requirement cannot impede a plaintiff's attempt to file a lawsuit under section 1983 of the Civil Rights Act. See Felder v. Casey 487 U.S. 131, 153 (1988) (state laws imposing notice-of-claim requirements before filing suit against the state do not affect federal civil rights claims); Burnett v. Grattan, 468 U.S. 42, 55 (1984)

(statute of limitations specified in state civil rights statute does not determine the limitations period for federal civil rights claims).

Casey and Burnett, however, stand for the proposition that state law cannot impede section 1983 claims, but these rulings say nothing regarding state law claims. Plaintiffs suggest that because they have brought joint claims under section 1983 as well as state law, those state tort claims fall under the penumbra of the section 1983 claim, and are thereby protected from the notice-of-claim requirement. Plaintiffs, however, are mistaken. See, e.g., Pew v. Scopino, 904 F. Supp. 18, 32-33 (D. Me. 1995) (denying motion for summary judgment for section 1983 claims, but granting summary judgment against state law claims because plaintiff failed to file written notice); Mueller v. Penobscot Valley Hosp., 538 A.2d 294, 296-97 (Me. 1988) (affirming dismissal of common law claims for failure to file written notice pursuant to the MTCA, but reversing dismissal of section 1983 claim because MTCA inapplicable to federal claims). Thus, the notice-of-claim requirement fully applies to Plaintiffs' claims. Counts I, IV, V and VI – negligence, intentional infliction of emotional distress, negligent infliction of emotional distress and loss of consortium – each sound in tort, and therefore, those claims are barred by Plaintiffs' failure to file written notice. Furthermore, because the Court denies Plaintiffs' tort claims, Lawrence Miller has no cause of action against Defendants. See, e.g., Stallworth v. City of Cleveland, 893 F.2d 830, 838 (6th Cir. 1990) (dismissing husband's request for recovery for loss of consortium under section 1983 claim because the wife, rather than her husband, was the one who had suffered a deprivation of her civil rights).

B. Maine Civil Rights Act

In regard to the Maine Civil Rights Act, 5 M.R.S.A. § 4681—85, both Defendants argue that the statute does not apply. The statute creates a cause for action for a person whose civil rights have been interfered with “by physical force or violence against a person ... or by the threat of physical force or violence against a person”. 5 M.R.S.A. § 4682. The Court, however, is not convinced, as a matter of law, that taking a person into physical custody does not involve physical force. Officer Davis may not have handcuffed Miller, but indulging all reasonable inferences in Plaintiffs’ favor, Davis probably touched Miller at some point, such as when he placed her in the back seat of his police cruiser. As well, an arrest entails at least the implicit threat of physical force. If Miller had attempted to evade the situation, Davis would have restrained her and handcuffed her.

Similarly, even though no one touched Miller during the strip searches, drawing all reasonable inferences in Plaintiffs’ favor, ordering an individual to strip, squat and cough most likely involves an implied threat of physical force. If Miller had refused to remove her clothes, she probably would have been forced to do so. The Court cannot rule on whether or not the arrest and strip searches amounted to actual or threatened force or violence, but will leave that determination to the jury. Therefore, Count VII of Plaintiffs’ Complaint survives summary judgment.

C. Punitive Damages

Finally, Plaintiffs have requested punitive damages. It is well-settled that a plaintiff cannot recover punitive damages from a governmental entity under a civil rights

claim. See City of Newport v. Fact Concerts, Inc., 453 U.S. 247, 267 (1981); McLain v. Milligan, 847 F. Supp. 970, 980-81 (D. Me. 1994). Therefore, Plaintiffs cannot recover punitive damages against Defendant Knox County.

To recover punitive damages from Defendant Davis under section 1983, Plaintiffs must show that Davis acted with reckless or callous disregard for Mrs. Miller's rights or that he intentionally violated federal law. See Smith v. Wade, 461 U.S. 30, 49-51 (1983). In addition, for the Court to award Plaintiffs punitive damages based on their Maine Civil Rights Act claim against Davis, Plaintiffs must show that he acted with malice. See Comfort v. Town of Pittsfield, 924 F. Supp. 1219, 1238 (D. Me. 1996); McAlister v. Slosberg, 658 A.2d 658, 660 (Me. 1995).

IV. CONCLUSION

For the reasons discussed above, Defendants' motions for summary judgment are DENIED. Instead, the Court enters partial summary judgment against Counts I, IV, V and VI on behalf of Defendants.

SO ORDERED.

GEORGE Z. SINGAL
United States District Judge

Dated this 5th day of January, 2001.

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