IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

MYRO BUGGS, Plaintiff, v. THE TOWN OF OAKLAND, TENNESSEE, FAYETTE COUNTY, TENNESSEE, HARDEMAN COUNTY, TENNESSEE, J. MAXWELL, Individually and in his Official Capacity as a Detective of Oakland Police Department, PATRICK PERRY, Individually and in his Official Capacity as Officer of Hardeman County Sheriff Department, Defendants.	)	No. 2:18-cv-02841-TLP-tmp JURY DEMAND

MEMORANDUM OPINION AND ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS

Defendants Patrick Perry ("Perry") and Hardeman County move to dismiss Plaintiff's complaint alleging that Plaintiff has not stated a claim under 42 U.S.C. § 1983 or under Tennessee law. (ECF No. 26.) The Court agrees that Plaintiff has failed to state a claim against Hardeman County. The Court also agrees that Plaintiff has failed to state official capacity and Fourteenth Amendment claims against Perry. But the Court finds that Plaintiff's remaining allegations against Perry state a claim for relief. The Court thus GRANTS IN PART and DENIES IN PART Defendants' motion to dismiss.

BACKGROUND

Plaintiff sues in federal court under federal-question and supplemental jurisdiction. Plaintiff alleges that Defendants violated his constitutional rights and caused him emotional distress.

The facts here, as alleged in Plaintiff's complaint, begin when Plaintiff returned home after a day's work to find his "personal items out of his bedroom." (ECF No. 23 at PageID 143.) Unhappy with the situation, Plaintiff "told his wife that he was going to file for a divorce and leave the marriage." (*Id.*) Plaintiff left his home, but he had to return "to retrieve the keys to his vehicle." (*Id.*) When he got back, Plaintiff saw that "Officers from the Oakland Police Department were arriving at his residence." (*Id.*)

Plaintiff claimed that "his wife had contacted the Oakland Police Department and reported that there had been a domestic violence situation." (*Id.*) But the officers "made a determination that there was no evidence of a domestic violence attack occurring" and left Plaintiff's home. (*Id.*) At this point, Plaintiff and his wife parted ways for the day. (*Id.*)

Shortly after the dispute, "Plaintiff's wife was contacted by Defendant Patrick Perry of the Hardeman County Sheriff's Department." (*Id.*) Perry "requested that she come into the office of the Hardeman County Sheriff's Department to discuss the . . . alleged domestic violence situation." (*Id.* at PageID 143–144.) When Plaintiff's wife met with Perry, Perry "provided her with information for the prosecuting of a charge against the Plaintiff." (*Id.* at PageID 144.) This information concerned "copies of incident reports" involving past incidents of domestic violence on the part of Plaintiff. (*Id.*)

Plaintiff's wife then went to the Oakland Police Department and used the information to persuade Defendant J. Maxwell ("Maxwell") "to sign an affidavit of complaint against the Plaintiff." (*Id.*) This affidavit led to issuing an arrest warrant for the Plaintiff. (*Id.*)

At an unknown time—but presumably after the arrest warrant—Perry "had a conversation with a mutual acquaintance" of both Plaintiff and Perry. (*Id.*) During this conversation, "Perry told said mutual acquaintance that [Plaintiff] was having domestic problems with his spouse." (*Id.*)

Although "[t]he mutual acquaintance pointed out to [Perry] that [Plaintiff] had be exonerated [sic] of the previous domestic charges," Perry said to the "mutual acquaintance that he did not care if [Plaintiff] was guilty or not."[1] (*Id.*) "Perry stated that he did not care for [Plaintiff] and that he would see that [he] was to be prosecuted on these new allegations coming out of the Town of Oakland." (*Id.*)

After learning of his arrest warrant, "Plaintiff turned himself into the Fayette County Sheriff's Department." (*Id.* at PageID 145.) "Plaintiff was incarcerated for a period of approximately 24 hours" before being released on bail. (*Id.*)

Plaintiff tried "to file a petition for an order of protection against his wife." (*Id.* at PageID 146.) But "[t]he employees and officers of Defendant Fayette County, Tennessee

[1] In his response to Defendants' motion to dismiss, Plaintiff supports this contention by bringing to the Court's attention an affidavit signed by an alleged friend of Plaintiff's. (ECF No. 37-1.) But "[i]n considering a Rule 12(b)(6) motion, a district court cannot consider matters beyond the complaint." *Trs. of Detroit Carpenters Fringe Benefit Funds v. Patrie Const. Co.*, 618 Fed. Appx. 246, 255 (6th Cir. 2015). "[A] court may consider exhibits attached [to the complaint], public records, items appearing in the record of the case and exhibits attached to defendant's motion to dismiss so long as they are referred to in the complaint and are central to the claims contained therein, without converting the motion to one for summary judgment." *Rondigo, L.L.C. v. Twp. of Richmond*, 641 F.3d 673, 680–81 (6th Cir. 2011). Thus, because Plaintiff did not refer to the affidavit in his complaint, the Court cannot consider it with Defendants' motion to dismiss.

refused to take said petition from Plaintiff." (*Id.*) As a result, "Plaintiff's wife would routinely approach the home of the Plaintiff's father for the purpose of trying to communicate with the Plaintiff." (*Id.*)

Plaintiff's wife's attempts to communicate with Plaintiff "has strained the relationship between the Plaintiff and his father." (*Id.*) And now, "Plaintiff and his father no longer have a relationship and are no longer in communication with each other." (*Id.*)

Based on the alleged facts above, Plaintiff has sued Defendants, alleging constitutional and state law violations. (*Id.* at PageID 149 –159.) Plaintiff claims in particular that Defendants violated his Fourteenth Amendment right to due process and his Fourth Amendment right to be free from unlawful arrest. (*Id.* at PageID 149–158.) Plaintiff also claims that Defendants caused him emotional distress. (*Id.* at PageID 1158-159.)

Defendants Perry and Hardeman County now move to dismiss Plaintiff's claims. (ECF No. 26.) Plaintiff has responded. (ECF No. 37.) And Defendants have replied. (ECF No. 39.)

The issue here is whether Plaintiff states claims under § 1983 and Tennessee law against Defendants. The Court finds that Plaintiff fails to state a claim against Hardeman County. The Court also finds that Plaintiff fails to state official capacity and Fourteenth Amendment claims against Perry. But the Court finds that Plaintiff's remaining allegations are enough to state a claim.

LEGAL STANDARD

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests whether Plaintiff's allegations state a claim for relief. Under Rule 12(b)(6), the Court must "construe the complaint in the light most favorable to the plaintiff, accept its allegations as true, and

draw all reasonable inferences in favor of the plaintiff." *DIRECTV, Inc. v. Treesh*, 487 F.3d 471, 476 (6th Cir. 2007).

That said, a court may reject legal conclusions or unwarranted factual inferences. *Hananiya v. City of Memphis*, 252 F. Supp. 2d 607, 610 (W.D. Tenn. 2003) (citing *Lewis v. ACB Business Servs., Inc.*, 135 F.3d 389, 405 (6th Cir. 1998)). The Sixth Circuit has noted "[a] complaint should only be dismissed if it is clear to the court that 'no relief could be granted under any set of facts that could be proved consistent with the allegations.'" *Id.* (quoting *Trzebuckowski v. City of Cleveland*, 319 F.3d 853, 855 (6th Cir. 2003)).

The Court should also consider the allegations in Plaintiff's complaint under Federal Rule of Civil Procedure 8. Under Rule 8, a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). This standard does not require "detailed factual allegations," but it does require more than "labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 556 U.S. 662, 681 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *see also Reilly v. Vadlamudi*, 680 F.3d 617, 622 (6th Cir. 2012).

To survive a motion to dismiss, Plaintiff must allege facts that are enough "to raise a right to relief above the speculative level" and to "state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. 544, at 555, 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. 662, at 678.

ANALYSIS

I. Perry

A. Plaintiff's Official Capacity Claim Is Superfluous

Besides suing Perry in his individual capacity under § 1983, Plaintiff also sues Perry in his official capacity. (ECF No. 23 at PageID 144.) Defendants argue that, "because a claim against a government official in his official capacity is tantamount to a suit against the government entity, all claims against [Perry] in his official capacity should be dismissed as redundant." (*Id.* at PageID 174.) The Court finds that Defendants are correct.

Plaintiff cannot state a claim against Perry in his official capacity. *See Wolgast v. Tawas Area Sch. Dist. Bd. of Educ.*, No. 16-2240, 2017 WL 3976702, at *2 (6th Cir. 2017) (quoting *Matthews v. Jones*, 35 F.3d 1046, 1049 (6th Cir. 1994)). Official capacity claims are "superfluous" where the municipality is also a party to suit. *Faith Baptist Church v. Waterford Twp.*, 522 F. App'x 322, 327 (6th Cir. 2013); *see also Foster v. Michigan*, 573 F. App'x 377, 390 (6th Cir. 2014). The Court thus DISMISSES the official capacity claim against Perry.

B. Plaintiff Has Not Stated a Fourteenth Amendment Claim

Plaintiff alleges that Perry violated his due process rights under the Fourteenth Amendment. Two bases underpin Plaintiff's allegations.

First, Plaintiff argues that Perry deprived him of his "liberty interest in the protection of his physical well-being," presumably because Perry gave Plaintiff's wife the copies of the incident reports that led to issuing Plaintiff's arrest warrant. (ECF No. 23 at PageID 148.) Second, Plaintiff alleged a violation of his due process rights because he "was denied the right to petition for an Order of Protection against his wife." (*Id.*)

Defendants make two arguments that the Fourteenth Amendment does not apply to this case. First, Defendants argue that "[t]he Due Process Clause . . . does not apply to cases in which there is an amendment which provides an 'explicit textual source of constitutional protection'" like the Fourth Amendment. (ECF No. 26-1 at PageID 175) (citing *Graham v. Connor*, 490 U.S. 386, 395 (1989)). Because "the only allegedly inappropriate conduct pertaining to [Perry] . . . involves Plaintiff's purported wrongful arrest, which is covered by the Fourth Amendment," Plaintiff's claim under the Fourteenth Amendment "fails as a matter of law." (*Id.*)

Second, Defendants rely on substantive due process doctrine to argue that Plaintiff has failed to state a claim. Defendants claim that Plaintiff has not pleaded enough facts to support a finding that Perry's conduct satisfied the "shocks the conscience" standard for substantive due process claims. (*Id.*) (citing *Smith v. Lexington Fayette Urban County Gov't*, 884 F. Supp. 1086, 1094 (E.D. Ky. 1995)).

What is more, Defendants argue that Perry had no role to play in the denial of an order of protection. They argue that "Plaintiff does not provide any facts that would establish that [Perry] actually had any personal involvement with . . . Fayette County's determination to deny Plaintiff's request for an order of protection." (*Id.* at PageID 176.)

The Court finds Defendants' position convincing. For the reasons discussed more fully below, the Court thus finds that Plaintiff has failed to state a claim under the Fourteenth Amendment.

i. Procedural Due Process

"A § 1983 claim must present two elements: (1) that there was the deprivation of a right secured by the Constitution and (2) that the deprivation was caused by a person acting

under color of state law." *Wittstock v. Mark A. Van Sile, Inc.*, 330 F.3d 899, 902 (6th Cir. 2003).

Because the Plaintiff alleges a procedural due process claim, the Sixth Circuit has noted that "[p]rocedural due process protects those [liberty] interests that fall within the Due Process Clause of the Fourteenth Amendment." *Women's Med. Prof'l Corp. v. Baird*, 438 F.3d 595, 611 (6th Cir. 2006). "Liberty interests include 'the right of the individual to contract, to engage in any of the common occupations of life . . . and generally to enjoy those privileges long recognized . . . as essential to the ordinary pursuit of happiness by free men.'" *Id.* (quoting *Board of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972))

"[T]o establish a procedural due process claim, a plaintiff must show that (1) he had a life, liberty, or property interest protected by the Due Process Clause; (2) he was deprived of this protected interest; and (3) the state did not afford him adequate procedural rights prior to depriving him of the property interest." *Id.* (citing *Hahn v. Star Bank*, 190 F.3d 708, 716 (6th Cir. 1999)).

Even if the Court assumes that Perry deprived Plaintiff of his "liberty interest in the protection of his physical being," Plaintiff has not argued that Perry afforded him inadequate procedural rights. Plaintiff limited his claims to his allegedly unconstitutional arrest and the denial of an order of protection. The Court thus finds Plaintiff's complaint fails to state a claim for a violation of his procedural due process rights.

ii. Substantive Due Process

And given that the Plaintiff alleges a substantive due process claim, Supreme Court precedent is decisive on this issue in Perry's favor.[2] The Supreme Court has held that, "if a different constitutional provision 'provides an explicit textual source of constitutional protection, a court must assess a plaintiff's claims under that explicit provision and 'not the more generalized notion of substantive due process.'" *Estate of Romain v. City of Grosse Pointe Farms*, No. 18-1316, 2019 WL 3808877, at *7 (6th Cir. 2019) (citing *Conn v. Gabbert*, 526 U.S. 286, 293 (1999)).

Plaintiff alleges that Defendants violated his Fourth and Fourteenth Amendment rights when the Oakland police arrested him. But the Sixth Circuit has noted that "a plaintiff may no longer bring a cause of action claiming a violation of substantive due process rights . . . when detained without probable cause. Rather, a plaintiff claiming that his constitutional rights were violated when state officials detained him without probable cause must assert a Fourth Amendment claim." *Jackson v. Cty. of Washtenaw*, 310 F. App'x 6, 7 (6th Cir. 2009) (citing *Albright v. Oliver*, 510 U.S. 266 (1994)); *see also Bell v. Johnson*, 308 F.3d 594, 610 (6th Cir. 2002) ("After the Supreme Court's decision in [*Graham v. Connor*, 490 U.S. 386 (1989)], [the Sixth Circuit] held in a number of cases that the 'shocks the conscience' test applied only to claims that could not be traced to an explicit constitutional guarantee."). Therefore, the law requires the Court to analyze Plaintiff's claim of an unconstitutional arrest under the Fourth Amendment, not the Fourteenth Amendment.

[2] Plaintiff claims, in his response to Defendants' motion to dismiss, that "the present case is clearly one that falls under the 'shock the conscience' standard." (ECF No. 37 at PageID 275.) Plaintiff's complaint does not differentiate between procedural due process and substantive due process, choosing instead to claim broadly that Defendants denied Plaintiff's due process rights. (ECF No. 23.)

iii. Denial of Order of Protection

The Court also notes that Plaintiff has alleged no facts that link Perry to the denial of an order of protection. If anything, Plaintiff declared that "[t]he employees and officers of Defendant Fayette County, Tennessee refused to take said petition from Plaintiff." (ECF No. 23 at PageID 146.) Perry is a Hardeman County employee. He is not an employee or officer of Fayette County. So Plaintiff's allegation does not state a claim against Perry.

The Court thus GRANTS Defendants' motion to dismiss Plaintiff's Fourteenth Amendment claim against Perry.

C. Plaintiff Has Stated a Fourth Amendment Claim Against Patrick Perry

Plaintiff alleged that Perry's acts "caused the Plaintiff to be deprived of his right to be free from unlawful arrest." (ECF No. 23 at PageID 156.) In support of this allegation, Plaintiff claimed that, "without any evidence to establish . . . probable cause," Perry contributed to the issuance of an arrest warrant for Plaintiff. (*Id.* at PageID 157.)

Defendants argue that Plaintiff's claim here fails because he did not allege that Perry personally arrested him. (ECF No. 26-1 at PageID 176–177.) Defendants also argue that Perry's actions—that is, his conversation with Plaintiff's wife, the provision of the incident report copies, and the conversation with the mutual acquaintance—did not lead to "Plaintiff's ultimate arrest or his 24-hour incarceration." (*Id.* at PageID 177.) This may be a fair point later in this case, but when the Court must consider the allegations in the light most favorable to Plaintiff, it is unpersuasive.

For the reasons below, the Court thus finds that Plaintiff has stated a claim against Perry under the Fourth Amendment.

i. Deprivation of Fourth Amendment Right

The pertinent language of the Fourth Amendment is short and sweet. "[N]o Warrants shall issue, but upon probable cause." U.S. Const. amend. IV. "An officer possesses probable cause when, at the moment the officer seeks the arrest, 'the facts and circumstances within [the officer's] knowledge and of which [they] had reasonably trustworthy information [are] sufficient to warrant a prudent man in believing that the [plaintiff] had committed or was committing an offense.'" *Wesley v. Campbell*, 779 F.3d 421, 429 (6th Cir. 2015) (quoting *Beck v. State of Ohio*, 379 U.S. 89, 91 (1964)).

Moreover, "[a] probable cause determination is based on the 'totality of the circumstances,' and must take account of 'both the inculpatory *and* exculpatory evidence.'" *Id.* (quoting *Gardenhire v. Schubert*, 205 F.3d 303, 318 (6th Cir.2000)) (emphasis in original). "[P]recedent 'does not mandate that law enforcement operatives should conduct quasi-trials as a necessary predicate to' arrest." *Id.* (quoting *Painter v. Robertson*, 185 F.3d 557, 571 n.21 (6th Cir.1999). But "an officer 'cannot simply turn a blind eye' toward evidence favorable to the accused." *Id.* (quoting *Ahlers v. Schebil*, 188 F.3d 365, 372 (6th Cir. 1999)). In this way, "[s]everal cases both from this and other circuits, caution against incomplete, poorly conducted investigations." *Ahlers*, 188 F.3d 365, at 371.

The parties do not dispute that the Oakland Police Department officers did not have probable cause to arrest Plaintiff when they arrived at his home after he told his wife he wanted a divorce and she called the police. According to the complaint, the officers "made a determination that there was no evidence of a domestic violence attack and if there had been such an attack there was absolutely no evidence of who was the primary aggressor in such

alleged domestic violence." (ECF No. 23 at PageID 143.) And the affidavit of complaint for his later arrest reflects this determination.[3] (ECF No. 37 at PageID 282.)

For the Court to determine whether to dismiss Plaintiff's Fourth Amendment claim against Perry, the Court should follow the thread of allegations from Perry to the Oakland Police Department's decision to issue the arrest warrant. What evidence did Perry have to justify Plaintiff's arrest? And what evidence did Perry, through his alleged conversations with and directions to Plaintiff's wife, provide to the Oakland Police Department?

Additional discovery may reveal that Perry was not, in fact, personally involved in Plaintiff's arrest. It may also uncover facts that reinforce the credibility of the allegations underpinning the affidavit of complaint. But reviewing the complaint in the light most favorable to Plaintiff, and drawing all reasonable inferences in his favor, the Court finds that there is enough of a thread between Perry's conduct and Plaintiff's arrest to find that Plaintiff has stated a claim under the Fourth Amendment.

The complaint alleges that Perry initiated a meeting with Plaintiff's wife where he gave her "copies of incident reports which only show that the Plaintiff's wife had falsely accused the Plaintiff of domestic violence in the past." (ECF No. 23 at PageID 144.) During the meeting, Perry allegedly "provided her with information for the prosecuting of a [baseless] charge against the Plaintiff." (*Id.*) Because Perry is an experienced law enforcement officer,

[3] Plaintiff attached the affidavit of complaint which led to the arrest warrant to his response to Defendants' motion to dismiss. (ECF No. 37-2.). Defendants argue that the Court should not consider it because it is "not properly before this Court." (ECF No. 39 at PageID 292.) The Court disagrees. The affidavit of complaint is "central to the claims" put forth in Plaintiff's complaint, and it is a public record and "appear[s] in the record of the case." *Rondigo, L.L.C.*, 641 F.3d, at 680–81. Thus, the Court can consider the affidavit of complaint in its assessment of Defendants' motion to dismiss. That said, the Court finds Defendants' request to file the affidavit of complaint under seal because it contains sensitive information well-taken. (ECF No. 39 at PageID 292.) The Court will thus seal the affidavit of complaint accordingly.

it is permissible to infer that Perry understood what information another officer would find important. And it is permissible to infer that Perry suggested that Plaintiff's wife repeat allegedly false information to the Oakland Police Department so Maxwell would seek an arrest warrant without probable cause. His alleged statement to the mutual acquaintance "that he did not care if [Plaintiff] was guilty or not" and "would see that [Plaintiff] was to be prosecuted" also supports this inference. (ECF No. 23 at PageID 144.)

Plaintiff further claims that his wife then "used the false information provided by [Perry] to convince Defendant Maxwell to sign an affidavit of complaint against the Plaintiff." (*Id.*) And the content of the affidavit of complaint—read in a light most favorable to Plaintiff—supports this claim. The affidavit of complaint states that, during the meeting between Plaintiff's wife and Maxwell, she "wrote a statement" and "provided information for a domestic violation packet." (ECF No. 37-2 at PageID 282.) But the affidavit of complaint does not provide details about the domestic violation packet. So this omission allows the Court to infer that the domestic violation packet contained the documents that Perry gave to Plaintiff's wife.

At this stage of the case, the Court must accept Plaintiff's allegations that "[t]here was no history of prior domestic violence involving" him, (ECF No. 23 at PageID 145), and that Perry was aware of this fact but still relayed the allegedly false inculpatory evidence to Maxwell through his contact with Plaintiff's wife. As a result, the Court finds that the evidence underlying the affidavit of complaint was not "reasonably trustworthy" for Fourth Amendment purposes. *Wesley*, 779 F.3d 421, at 429. What is more, a finding of probable cause based on the information provided by Perry would also undercut the so far undisputed facts of this case: that the Oakland Police Department found no evidence of wrongdoing on

the day of the incident. *Cf. Ahlers*, 188 F.3d 365, at 372 (admonishing the failure to consider exculpating evidence).

Based on the record before it and emphasizing its duty to view the facts in a light most favorable to Plaintiff, the Court finds that the incident report copies provided by Perry, and relayed to Maxwell by Plaintiff's wife, led to Plaintiff's allegedly unlawful arrest. The Court thus finds that Plaintiff's allegations sufficiently assert a claim that Perry deprived him of the right to freedom from unlawful arrest. But the parties may well benefit from discovery on this issue. If so, the Court may have a chance to revisit Plaintiff's allegations once the parties have developed a more detailed record.

ii. Causation

On causation, the Court finds that the causal chain between Perry's conduct and Plaintiff's arrest is sturdy enough. Without Perry's communication with Plaintiff's wife, according to the complaint, Maxwell would not have arrested Plaintiff. *See Molnar v. Care House*, 574 F. Supp. 2d 772, 786 (E.D. Mich. 2008), aff'd, 359 F. App'x 623 (6th Cir. 2009) ("The causation requirement in § 1983 is not satisfied by mere causation in fact; the plaintiff must also establish proximate causation.") Removing this inference would undercut Plaintiff's allegations, but here we must read the complaint to draw all inferences in a light most favorable to Plaintiff.

Thus, because Plaintiff's complaint states a claim that Maxwell arrested him unlawfully and that Perry is allegedly instrumental in delivering the allegedly false information that led to that arrest, the Court DENIES Defendants' motion to dismiss Plaintiff's Fourth Amendment claim against Perry.

D. Plaintiff Has Stated a Claim for Intentional or Negligent Infliction of Emotional Distress

i. The Court Has Jurisdiction Over Plaintiff's State Law Claims

Plaintiff alleged violations under § 1983 and Tennessee law. (ECF No. 23.) Defendants argue that, "because complete diversity does not exist between Plaintiff and Defendants, and because Plaintiff has offered no other grounds for this Court to exercise jurisdiction over any state law claims, Plaintiff's claims for infliction of emotional distress should be dismissed." (ECF No. 26-1 at PageID 180.) Defendants' argument is unavailing.

The Court has federal-question jurisdiction over this action. *See* 28 U.S.C.A. § 1331. And because it does, the Court can exercise supplemental jurisdiction over Plaintiff's state law claims. *See* 28 U.S.C. § 1367; *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966). That Plaintiff has stated a claim under the Fourth Amendment also supports this finding. *Cf. Wojnicz v. Davis*, 80 Fed. Appx. 382, 384–85 (6th Cir. 2003) ("If the federal claims are dismissed before trial, the state claims generally should be dismissed as well.")

ii. Plaintiff Has Stated a Claim for Intentional Infliction of Emotional Distress

Plaintiff claimed that Perry's alleged violations of his Fourth Amendment right "resulted in the infliction of emotional distress." (ECF No. 23 at PageID 158.) Defendants argue that Plaintiff's allegations of emotional distress against Perry do not state a claim. (ECF No. 26-1 at PageID 182.) Defendants also argue that Plaintiff has failed to link Perry with Plaintiff's alleged emotional distress. (*Id.*) The Court finds that Plaintiff has stated a claim for intentional infliction of emotional distress ("IIED") under Tennessee law.

"To state a claim for intentional infliction of emotional distress, a plaintiff must establish that: (1) the defendant's conduct was intentional or reckless; (2) the defendant's

conduct was so outrageous that it cannot be tolerated by civilized society; and (3) the defendant's conduct resulted in serious mental injury to the plaintiff." *Lourcey v. Estate of Scarlett*, 146 S.W.3d 48, 51 (Tenn. 2004). "A plaintiff must in addition show that the defendant's conduct was 'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency and to be regarded as atrocious, and utterly intolerable in a civilized community.'" *Id.* (quoting *Miller v. Willbanks*, 8 S.W.3d 607, 614 (Tenn. 1999).

As alleged in Plaintiff's complaint, two bases are enough to state a claim for IIED. First, during his conversation with the mutual acquaintance, Perry allegedly said "that he did not care if Plaintiff Buggs was guilty or not. Defendant Perry stated that he did not care for [Plaintiff] and that he would see that [Plaintiff] was to be prosecuted on these new allegations coming out of the Town of Oakland." (ECF No. 23 at PageID 144.)

In a light most favorable to Plaintiff, this conduct could suggest that Perry exercised his status as a law enforcement officer to ensure that other officer arrested Plaintiff, knowing there was no probable cause for that arrest. This fact could also suggest intent on the part of Perry to cause Plaintiff emotional distress. A reasonable fact-finder could also find Perry's conduct to rise to the level of outrageousness.

Second, the circumstances surrounding Plaintiff's arrest have allegedly "strained the relationship between the Plaintiff and his father." (*Id.* at PageID 146.) And because of these circumstances, he alleged that he "and his father no longer have a relationship and are no longer in communication with each other." (*Id.*) Although the Court acknowledges that there is not a direct correlation between the alleged conduct here and these alleged

consequences. But the Court declines to second-guess Plaintiff's allegations at this point under Rule 12(b)(6).

The Court thus finds that Plaintiff has stated a claim for IIED under Tennessee law and DENIES Defendants' motion to dismiss on this issue.

iii. Plaintiff Has Stated a Claim for Negligent Infliction of Emotional Distress

Plaintiff alleged the same factual bases for his negligent infliction of emotional distress ("NIED") claim as for his IIED claim. (ECF No. 23 at PageID 158.) Defendants argue that Perry "has alleged only conclusory statements and has failed to offer any facts alleging a 'serious or severe emotional injury.'" *Seiber v. Anderson Cty.*, No. 3:11-cv-108, 2011 WL 6258446, at *13 (E.D. Tenn. 2011) (dismissing NIED claim).

In Tennessee, a NIED claim "requires that the plaintiff establish the elements of a general negligence claim: (1) duty, (2) breach of duty, (3) injury or loss, (4) causation in fact, and (5) proximate causation." *Lourcey v. Estate of Scarlett*, 146 S.W.3d 48, 52 (Tenn. 2004) (citing *Camper v. Minor*, 915 S.W.2d 437, 446 (Tenn. 1996). "In addition, the plaintiff must establish the existence of a serious or severe emotional injury that is supported by expert medical or scientific evidence." *Id.*

Under Rule 12(b)(6), the factual allegations Plaintiff asserted to establish his IIED claim against Perry also support his NIED claim. The Court thus finds that Plaintiff has stated a claim for NIED under Tennessee law and DENIES Defendants' motion for summary judgment on this issue.

I. Hardeman County

A. Plaintiff Has Not Stated a Municipal Liability Claim

Plaintiff alleged that Defendants deprived him "of a liberty interest in the protection of his physical well-being" because of Hardeman County's "acts and acts of omission." (ECF No 23 at PageID 148.) These "acts and acts of omission" "resulted out of policies, procedures and customs" of Hardeman County. (*Id.* at PageID 149.) They also "resulted out of the failure of [Hardeman County] to properly train and/or supervise its employees." (*Id.*) Plaintiff also claimed that Hardeman County deprived him of due process "because he was denied the right to petition for an Order of Protection against his wife." (*Id.* at PageID 148.)

For all that, Defendants counter that Plaintiff has failed to state a claim under well-established § 1983 doctrine. Defendants make two arguments. First, that "Plaintiff has failed to provide any actual facts to establish that some policy or custom of Hardeman County was the actual moving force behind any alleged constitutional deprivation(s)." (ECF No. 26-1 at PageID 179.) And second, that "Plaintiff has failed to provide any definite facts to establish that a lack of training and/or supervision on the part of Hardeman County was the actual moving force behind any alleged constitutional deprivation(s)."

The Court finds Defendants' arguments convincing. As explained below, the Court thus finds that Plaintiff has failed to state a § 1983 claim against Hardeman County.

For starters, "it is axiomatic that "§ 1983 does not impose vicarious liability on a municipality" for its agent's constitutional torts. *Whitlow v. City of Louisville*, 39 F. App'x 297, 301–02 (6th Cir. 2002) (citing *Stemler v. City of Florence*, 126 F.3d 856, 865 (6th Cir. 1997). "[A] plaintiff must show that his injury was caused by an unconstitutional 'policy' or

'custom' of the municipality." *Id.* at 302; *see Monell v. Dept. of Soc. Servs. of New York*, 436 U.S. 658, 692 (1978).

What is more, "[a] failure to train can form the basis for a municipality's liability under § 1983, 'where the failure to train amounts to deliberate indifference to the rights of the persons with whom the police come into contact.'" *Id.* at 302 (citing *Canton v. Harris*, 489 U.S. 378, 388 (1989)). "Deliberate difference is a 'stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action.'" *Id.* (quoting *Stemler*, 126 F.3d at 865).

Plaintiff alleged that his injuries "resulted out of policies, procedures and customs" of Hardeman County." (ECF No. 23 at PageID 149.) Plaintiff also alleged that Hardeman County "failed to properly train and supervise its officers on the proper manner to assist in an investigation that lay outside of their own jurisdiction." (*Id.* at PageID 153.)

But Plaintiff has failed to support his conclusory allegations with specific facts. His "allegations are conclusory and not entitled to be assumed true." *Iqbal*, 556 U.S. 662, at 681; *Twombly*, 550 U.S. 544, at 555. In this way, Plaintiff's allegations do not rise to the level of specificity commanded by Rule 8(a)(2).

The Court thus GRANTS Defendants' motion to dismiss on this issue.

B. Plaintiff Has Not Stated a Claim for Intentional or Negligent Infliction of Emotional Distress against Hardeman County

Plaintiff argued that "the actions of [Hardeman County] resulted in the infliction of emotion [sic] distress." Defendants respond that the Tennessee Governmental Tort Liability Act ("TGTLA"), which governs Tennessee state law claims against municipalities, renders Hardeman County immune from IIED and NIED claims. *See generally* Tenn. Code Ann. §§ 29–20–101 *et seq.*

Sixth Circuit precedent supports Defendants' argument. The Court thus finds that Plaintiff's IIED and NIED claims against Hardeman County fail as a matter of law.

The TGTLA codified sovereign immunity law in Tennessee Governmental Tort Liability Act ("TGTLA"). *Id.*; *see also Johnson v. City of Memphis*, 617 F.3d 864, 871 (6th Cir. 2010). Under Section 29–20–201(a), "[e]xcept as may be otherwise provided in this chapter, all governmental entities shall be immune from suit for any injury which may result from the activities of such governmental entities wherein such governmental entities are engaged in the exercise and discharge of any of their [governmental] functions." "Tennessee courts will not find a waiver of sovereign immunity 'unless there is a statute clearly and unmistakably disclosing an intent upon the part of the Legislature to permit such litigation.'" *Johnson*, 617 F.3d 864, at 872 (quoting *Davidson v. Lewis Bros. Bakery*, 227 S.W.3d 17, 19 (Tenn. 2007)).

i. IIED

The TGTLA removes sovereign immunity "for injury proximately caused by a negligent act or omission . . . *except if the injury arises out of . . . infliction of mental anguish. . . or civil rights.*" § 29-20-205(2) (emphasis added). Thus, Plaintiff cannot state an IIED claim against Hardeman County. *Cf. Partee v. Callahan*, No. 2:08-cv-2246-STA, 2009 WL 10678983, at *6 (W.D. Tenn. Sept. 22, 2009), aff'd sub nom. *Partee v. City of Memphis*, Tenn., 449 F. App'x 444 (6th Cir. 2011); *Sallee v. Barrett*, 171 S.W.3d 822, 828 (Tenn. 2005).

ii. NIED

The TGTLA removes sovereign immunity for NIED claims. *See Sallee*, 171 S.W.3d 822, at 828 (Tenn. 2005). But the Sixth Circuit has noted that "TGTLA's 'civil rights'

exception has been construed to include claims arising under § 1983 and the United States Constitution." *Johnson*, 617 F.3d 864, at 872 (citing *Hale v. Randolph*, 2004 WL 1854179, *17, (E.D. Tenn. Jan. 30, 2004)). For these reasons, when a plaintiff's negligence claim "arises out of the same circumstances giving rise to her civil rights claim under § 1983," the claim "falls within the exception listed in § 29–20–205, and the [governmental entity] retains its immunity." *Id.*

In his response to Defendants' motion to dismiss, Plaintiff argues that "[t]he Complaint clearly alleges . . . negligent claims in the addition [sic] to the constitutional violations." (ECF No. 37 at PageID 276.) The Court disagrees. Hardeman County's role in this lawsuit is limited to its employment of Perry. And the facts underlying Plaintiff's constitutional and state law claims against Perry are the same. Thus, Hardeman County retains immunity over Plaintiff's NIED claim against Hardeman County. *Cf. Partee*, 449 Fed. App'x. 444, at 448 ("The district court correctly concluded that these claims arise out of exactly the same circumstances as the [plaintiffs'] civil rights claims, thus falling within the exception to the waiver of immunity set forth in the [TGTLA].").

For these reasons, Plaintiff's IIED and NIED claims against Hardeman County cannot survive a Rule 12(b)(6) motion. The Court thus GRANTS Defendants' motion to dismiss on this issue.

CONCLUSION

The Court finds that Plaintiff's complaint lacks "sufficient factual matter" to "state a claim to relief that is plausible on its face" for its official capacity and Fourteenth Amendment claims against Perry. *Iqbal*, 556 U.S. 662, at 678 (quoting *Twombly*, 550 U.S. 544, 570 (2007)); *see also Engler v. Arnold*, 862 F.3d 571, 575 (6th Cir. 2017). The Court

also finds that Plaintiff has noted state a claim against Hardeman County. But the Court finds that Plaintiff has sufficiently pleaded the remaining claims against Perry. This Court thus GRANTS IN PART and DENIES IN PART Defendants' motion to dismiss.

SO ORDERED, this 13th day of September, 2019.

s/Thomas L. Parker
THOMAS L. PARKER
UNITED STATES DISTRICT JUDGE