

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TOSIF NAEEM : CIVIL ACTION  
 :  
 v. :  
 : NO. 04-CV-1958  
BENSALEM TOWNSHIP, et al. :

**SURRICK, J.**

**MARCH 24, 2005**

**MEMORANDUM & ORDER**

Presently before the Court are Defendant Bensalem Township Police Department's Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6) (Doc. No. 12, 04-CV-1958), Defendant Bensalem Township's Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6) (Doc. No. 14, 04-CV-1958), Defendant Police Officers Gohl, Clark, Reilly, Maren, and Domanico's Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6) (Doc. No. 13, 04-CV-1958), and Defendant Paramedic Daniel MacIntosh's Motion to Dismiss (Doc. No. 5, 04-CV-1958). For the following reasons, Defendants' Motions will be granted.

**I. BACKGROUND**

In this action, Plaintiff has sued Defendants Bensalem Township, Bensalem Township Police Department, Officer Jack Gohl, Officer Clark, Officer Reilly, Officer Maren, Officer Domanico, and Paramedic Daniel MacIntosh for an alleged police assault occurring on or about May 5, 2002.<sup>1</sup> (Compl. ¶¶ 3-10.) Plaintiff asserts two § 1983 civil rights claims. Plaintiff's First Cause of Action pursuant to § 1983 is for the alleged assault. (*Id.* ¶¶ 11-23.) The Second Cause

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<sup>1</sup> Defendants Gohl, Clark, Reilly, Maren, and Domanico are police officers with the Bensalem Township Police Department, and MacIntosh is a paramedic with Bensalem Township (Compl. ¶¶ 5-9.) MacIntosh is a paramedic with Bensalem Township. (*Id.* ¶ 10.) All of the municipal police officers and the paramedic ("the individual Defendants") are sued in both their individual and official capacities. (*Id.* ¶¶ 5-10.)

of Action is for a purported “cover up” of the assault. (*Id.* ¶¶ 25-30.) Plaintiff also asserts state law claims of assault and battery, intentional infliction of emotional distress, and conspiracy against all Defendants. (*Id.* ¶¶ 31-38.)

In response, Defendants have filed separate motions to dismiss several of these claims. (Doc. Nos. 5, 12, 13 and 14.) These motions were all filed in June or July, 2004. (*Id.*) Plaintiff has not responded to any of these motions.

## II. DISCUSSION

When considering a Rule 12(b) motion to dismiss, we must “accept as true all of the allegations in the complaint and all reasonable inferences that can be drawn therefrom, and view them in the light most favorable to the non-moving party.” *Rocks v. City of Philadelphia*, 868 F.2d 644, 645 (3d Cir. 1989). The court may dismiss a complaint only if “it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” *H. J., Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 249 (1989) (quoting *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984)); see also *Markowitz v. Northeast Land Co.*, 906 F.2d 100, 103 (3d Cir. 1990) (“Dismissal under Rule 12(b)(6) . . . is limited to those instances where it is certain that no relief could be granted under any set of facts that could be proved.”). When considering a motion to dismiss, we need not credit a party’s “bald assertions” or “legal conclusions.” *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997).

Under Local Rule 7.1(c), “any party opposing [a] motion shall serve a brief in opposition, together with such answer or other response which may be appropriate, within fourteen (14) days

after service of the motion and supporting brief.”<sup>2</sup> E.D. Pa. R. 7.1(c). “In the absence of a timely response, the motion may be granted as uncontested,” except for Rule 56 motions for summary judgment. *Id.*; see also *Kimball v. Countrywide Merch. Servs.*, Civ. A. No. 04-3466, 2005 U.S. Dist. LEXIS 1817, at \*4 (E.D. Pa. Feb. 8, 2005) (“Under Local Rule 7.1(c), a motion, other than a motion for summary judgment, may be granted as unopposed if the opposing party fails to file a timely response.”). The Third Circuit has stated that “[l]ocal court rules play a significant role in the district courts’ efforts to manage themselves and their dockets” and that we have the authority “to impose a harsh result, such as dismissing a motion or an appeal, when a litigant fails to strictly comply with the terms of a local rule.” *United States v. Eleven Vehicles*, 200 F.3d 203, 214 (3d Cir. 2000). In fact, courts in this District frequently grant uncontested Rule 12(b) motions to dismiss due to plaintiff’s failure to file a timely response under Local Rule 7.1(c). See, e.g., *Devern v. Graterford State Corr. Inst.*, Civ. A. No. 03-6950, 2004 U.S. Dist. LEXIS 9377, at \*5 n.4 (E.D. Pa. May 24, 2004); *Longendorfer v. Roth*, Civ. A. No. 04-0228, 2004 U.S. Dist. LEXIS 8709, at \*1 (E.D. Pa. Apr. 30, 2004); *Saxton v. Cent. Pa. Teamsters Pension Fund*, Civ. A. No. 02-0986, 2003 U.S. Dist. LEXIS 23983, at \*84-85 (E.D. Pa. Dec. 9, 2003); *Toth v. Bristol Township*, 215 F. Supp. 2d 595, 598 (E.D. Pa. 2002).

The various motions to dismiss in this case were all filed in June or July, 2004.

Defendant MacIntosh filed his Motion on June 22, 2004 (Doc. Nos. 5, 6), Defendant Bensalem Township Police Department filed its Motion on July 22, 2004 (Doc. No. 12), and Defendants Bensalem Township and the individual police officers (Defendants Gohl, Clark, Reilly, Maren,

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<sup>2</sup> If service of a motion is made by mail, electronic means, or leaving a copy with the Clerk of Court, the party has three (3) additional days to respond pursuant to Federal Rule of Civil Procedure 6(e). Fed. R. Civ. P. 6(e).

and Domanico) all filed their Motions on July 27, 2004. (Doc. Nos. 13, 14.) Each Motion included a Certificate of Service signed by Defendants' counsel stating that a copy had been served on Plaintiff's counsel by regular mail on the date of filing. The docket maintained by the Clerk of Court indicates that no answer or response was filed to any of these Motions within the required fourteen (14) day period. In fact, nearly eight months after the filing of the last Motion, no response to any of the Motions has been received by the Court.

Because Plaintiff has failed to file timely responses, and for the additional reasons discussed below, Defendants' Motions will be granted.

**A. § 1983 Claims**

In his Second Cause of Action under § 1983, Plaintiff alleges that Defendants engaged in a “cover up”<sup>3</sup> of their alleged misconduct because they “suppressed the true facts surrounding the beating and falsely reported that plaintiff sustained his injuries as a result” of a motor vehicle collision. (Compl. ¶ 25.) These claims, however, do not give rise to a separate § 1983 claim independent of the police brutality charge. Section 1983 “is not itself a source of substantive rights, but [rather] a method for vindicating federal rights elsewhere conferred.” *Baker v. McCollan*, 443 U.S. 137, 145 n.3 (1979). “In order to maintain a § 1983 claim, ‘a plaintiff must show that the defendant deprived him of a right or privilege secured by the Constitution or laws of the United States while acting under color of state law.’” *A.M. v. Luzerne County Juvenile Det. Ctr.*, 372 F.3d 572, 579 (3d Cir. 2004) (quoting *Williams v. Borough of West Chester*, 891 F.2d 458, 464 (3d Cir. 1989)). Numerous courts, including the Third Circuit, have recognized

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<sup>3</sup> “[A] cover-up is an intentional attempt by one or more government officials to conceal facts about events to protect themselves from a potential civil lawsuit.” *Gonsalves v. City of New Bedford*, 939 F. Supp. 921, 927 (D. Mass. 1996).

that a conspiracy by government officials to “cover up” wrongful conduct may violate fundamental constitutional rights when the cover up obstructs the victim’s right of access to the courts. *See, e.g., Smith v. Mensinger*, 293 F.3d 641, 654 (3d Cir. 2002); *Delew v. Wagner*, 143 F.3d 1219, 1222 (9th Cir. 1998); *Swekel v. City of River Rouge*, 119 F.3d 1259, 1262 (6th Cir. 1997); *Bell v. Milwaukee*, 746 F.2d 1205, 1261 (7th Cir. 1984); *Ryland v. Shapiro*, 708 F.2d 967, 971-74 (5th Cir. 1983). Here, however, Plaintiff has not asserted that the alleged cover up impeded his right of access to the judicial process, nor has he alleged any facts that could reasonably be interpreted as a constitutional violation other than the underlying police brutality charge. We will therefore dismiss Plaintiff’s § 1983 claim alleging an official “cover up” of the purported attack.

Plaintiff’s § 1983 assault claim against Defendant Bensalem Township Police Department will also be dismissed with prejudice. In § 1983 actions, a local police department cannot be sued alongside its municipality, because the police department is merely an administrative arm of the local municipality and not a separate legal entity. *See, e.g., Bonenberger v. Plymouth Township*, 132 F.3d 20, 25 n.4 (3d Cir. 1997) (“[W]e treat [a] municipality and its police department as a single entity for purposes of section 1983 liability.” (citing *Colburn v. Upper Darby Township*, 838 F.2d 663, 671 n.7 (3d Cir. 1988)); *Bornstad v. Honey Brook Township Police Dep’t*, No. 03-CV-3822, 2004 U.S. Dist. LEXIS 9690, at \*7 (E.D. Pa. May 26, 2004) (dismissing plaintiff’s § 1983 claims against a local police department because its parent municipality also was sued). Plaintiff has sued both Bensalem Township Police Department and its parent municipality, Bensalem Township. Accordingly, Plaintiff may only pursue relief under § 1983 against one municipal entity, Bensalem Township.

Plaintiff claims punitive damages under § 1983 against Defendant Bensalem Township. The United States Supreme Court has repeatedly held that punitive damages may not be recovered in a § 1983 action against a municipal defendant. *Jefferson v. City of Tarrant*, 522 U.S. 75, 79 (1997); *Kentucky v. Graham*, 473 U.S. 159, 167 n.13 (1985); *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271 (1981). Similarly, Plaintiff's claims for punitive damages against Defendants Gohl, Clark, Reilly, Maren, and Domanico, the police officers, and MacIntosh, the paramedic, in their official capacities are improper. Suits against government employees in their official capacities are, in effect, suits against the governmental entity itself. *See, e.g., Brandon v. Holt*, 469 U.S. 464, 472-73 (1985); *Gregory v. Chehi*, 843 F.2d 111, 120 (3d Cir. 1988). Punitive damages are not available against these officers and paramedic in their official capacity.

**B. Assault and Battery and Intentional Infliction of Emotional Distress**

Plaintiff's state law claims of assault and battery and intentional infliction of emotional distress against Defendants Bensalem Township and Bensalem Township Police Department will be dismissed pursuant to the Pennsylvania Political Subdivision Tort Claims Act, 42 Pa. Cons. Stat. Ann. §§ 8541-8564 ("Tort Claims Act"). The Tort Claims Act states that "[e]xcept as otherwise provided in this subchapter, no local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person."<sup>4</sup> Section 8542(a) of the statute also specifically exempts local agencies

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<sup>4</sup> A local agency may be liable if "the conduct of the municipality . . . fits into one of a few narrow categories enumerated in the Tort Claims Act." *Latkins v. York*, 258 F. Supp. 2d 401, 405 (E.D. Pa. 2003). Under the statute, a municipality may be held liable for eight categories of negligent acts: (1) vehicle liability; (2) care, custody, or control of personal property; (3) real property; (4) trees, traffic controls, and street lighting; (5) utility service

from all acts that constitute “crimes, actual fraud, malice or willful misconduct.” 42 Pa. Cons. Stat. Ann. § 8542(a) (West 1998). Because “[i]ntentional torts are ‘willful misconduct’ under § 8452(a),” *Pahle v. Colebrookdale*, 227 F. Supp. 2d 361, 368 (E.D. Pa. 2002), municipalities cannot be liable for claims of assault and battery and intentional infliction of emotional distress, which are both intentional torts. *See, e.g., Latkins v. York*, 258 F. Supp. 2d 401, 405 (E.D. Pa. 2003) (holding that municipalities are immune from claims of intentional infliction of emotional distress); *Canty v. City of Philadelphia*, 99 F. Supp. 2d 576, 582 (E.D. Pa. 2000) (“[A]llegations of assault . . . have been held insufficient to defeat the governmental immunity afforded a municipality by the Tort Claims Act.”).

In addition, Defendants Gohl, Clark, Reilly, Maren, Domanico, and MacIntosh’s motions to dismiss the assault and battery and intentional infliction of emotional distress claims will be granted as unopposed under Local Rule 7.1(c). (Doc. Nos. 5-6, 13.) Thus, Plaintiff’s Third Cause of Action for assault and battery and Plaintiff’s Fourth Cause of Action for intentional infliction of emotional distress will be dismissed against all Defendants with prejudice.

Finally, Defendant MacIntosh’s motion to dismiss for insufficiency of service of process under Federal Rule of Civil Procedure 12(b)(5) will also be granted as unopposed under Local Rule 7.1(c). The Third Circuit has held that a dismissal for insufficient service of process under Rule 12(b)(5) must be granted without prejudice. *Umbenhauer v. Woog*, 969 F.2d 25, 30 n.6 (3d Cir.1992) (citing *Orange Theatre Corp. v. Rayherstz Amusement Corp.*, 139 F.2d 871, 875 (3d Cir. 1944)). Accordingly, Plaintiff’s remaining claims against Defendant MacIntosh will be

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facilities; (6) streets; (7) sidewalks; and (8) care, custody, or control of animals. 42 Pa. Cons. Stat. Ann. § 8542(b) (West 1998). None of these exceptions apply in this case.

dismissed without prejudice.

An appropriate Order follows.

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BENSALEM TOWNSHIP, et al.	:	

**ORDER**

AND NOW, this 24th day of March, 2005, upon consideration of Defendant Bensalem Township Police Department's Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6) (Doc. No. 12, 04-CV-1958), Defendant Bensalem Township's Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6) (Doc. No. 14, 04-CV-1958), Defendant Police Officers Gohl, Clark, Reilly, Maren, and Domanico's Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6) (Doc. No. 13, 04-CV-1958), and Defendant Paramedic Daniel MacIntosh's Motion to Dismiss (Doc. No. 5, 04-CV-1958), it is ORDERED that the Motions are GRANTED as follows:

1. Plaintiff's Second Cause of Action alleging violation of 42 U.S.C. § 1983 is DISMISSED with prejudice as to all Defendants.
2. Plaintiff's First Cause of Action alleging violation of § 1983 is DISMISSED with prejudice as to Defendant Bensalem Township Police Department.
3. Plaintiff's claims for punitive damages under § 1983 are DISMISSED with prejudice as to Defendant Bensalem Township and Defendants Gohl, Clark, Reilly, Maren, Domanico, and MacIntosh in their official capacity.
4. Plaintiff's Third Cause of Action for assault and battery and Plaintiff's Fourth Cause of Action for intentional infliction of emotional distress are DISMISSED

with prejudice as to all Defendants.

5. All remaining claims against Defendant MacIntosh are DISMISSED without prejudice.

IT IS SO ORDERED.

BY THE COURT:

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R. Barclay Surrick, Judge