Davis v New York City Health & Hosps. Corp.
2024 NY Slip Op 35201(U)
February 21, 2024
Supreme Court, Queens County
Docket Number: Index No. 718135/23
Judge: Kevin J. Kerrigan
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE **KEVIN J. KERRIGAN** Part **10**
Justice

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Abeba Davis,

Plaintiff,

- against -

New York City Health and Hospitals Corporation, Susmitha Santhosh, P.A., Akm Quyyum, M.D., Molly Zachariah, R.N., Doe Employees, 1-5, et.al.,

Defendants.

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Index Number: 718135/23

Motion Date: 2/5/24

Motion Seq. No.: 1&2

The following papers numbered E2-E16, E34, E-17-30, E32-33, read on this motion by Defendant, New York City Health and Hospitals Corporation for an order to dismiss and on this motion by Defendants, Akm Quyyum, M.D. and Molly Zachariah, R.N., for an order to dismiss.

	Papers Numbered
Sequence #1	
Notice of Motion-Affirmation-Exhibits.....	E2-14
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Upon the foregoing papers it is ordered that the motion is decided as follows:

Motion by Defendant, New York City Health and Hospitals Corporation (HHC) for an order to dismiss is granted. Motion by

Defendants, Akm Quyyum, M.D. and Molly Zachariah, R.N., for an order to dismiss is granted in part and denied in part. The branch of the motion to dismiss the State law claims as against both Defendants is granted. The branch of the motion to dismiss the Federal law claims as against Nurse Zachariah is granted. The branch of the motion to dismiss the Federal law claims as against Dr. Quyyum is denied.

Plaintiff alleges that she was unlawfully detained and involuntarily confined in the psychiatric unit at Queens Hospital Center on January 8, 2021. The complaint provides that on the aforesaid date, Plaintiff met with her Social Worker, non-party Uzuri Holder, at Queens Hospital Center where she was receiving counseling. She advised Holder that she was having anxiety and requested a prescription. Holder brought Plaintiff to the emergency room to speak with a Psychiatrist, and left the location. Thereafter, five hospital employees brought Plaintiff to a separate room, locked the door, and forced her to strip naked. She was advised that the only way to receive the requested prescription was by involuntary commitment. Plaintiff demanded her release but was refused. Defendant subsequently met with Defendants, P.A. Santhosh, Doctor Akm Quyyum, and Nurse Molly Zachariah. All three Defendants found that Plaintiff was not suicidal or at a risk of harm to herself or others, but denied her request for release. Per Defendants, Plaintiff was released within "a matter of hours" on January 8, 2021.

Plaintiff alleges a single cause of action as against HHC pursuant to United States Code, Section 1983, asserting "Monell" claims (see USC §1983; Monell v. Department of Social Services, 436 U.S. 658 [1978]). Plaintiff alleges several causes of action against the remaining named Defendants for false arrest, false imprisonment, negligence, intentional infliction of emotional distress, federal claims pursuant to USC §1983, and Monell claims. It does not appear that Defendant Santhosh has been served in this action to date.

Plaintiff filed a prior action against the City of New York, HHC, and "Doe Employees 1-5," under Queens County Index Number 708600/2022 involving the same facts and circumstances of the instant action. In that matter, the Honorable Tracy Catapano-Fox denied Plaintiff's motion to file a late notice of claim by order issued March 28, 2023. On the same day, Judge Catapano-Fox issued an order dismissing the complaint for failure to state a claim for failure to file a timely notice of claim. The complaint filed in this action is nearly identical to the previous complaint. The instant action differs, in that it names individual employees of

the hospital and alleges State and Federal claims, including Monell claims, against them. As against HHC, Plaintiff solely alleges a Monell claim.

Movant avers that the claims against all Defendants interposed in this action are barred by the doctrine of res judicata. The doctrine of res judicata "operates to preclude the reconsideration of claims actually litigated and resolved in a prior proceeding, as well as claims for different relief against the same party which arise out of the same factual grouping or transaction, and which should have or could have been resolved in the prior proceeding" (see Jones v. Flushing Bank, 212 A.D.3d 791 [2d Dept. 2023]; James M. v City of New York, 69 A.D.3d 634 [2d Dept. 2010]). In order to invoke the doctrine of res judicata, the prior proceeding must have been decided on its merits (see Wade v. New York City Health & Hosps. Corp., 59 A.D.3d 528 [2d Dept. 2009]).

Motion to Dismiss as against HHC

The motion to dismiss the complaint as against HHC on the grounds that the sole cause of action alleged, the Monell claim, is barred by the doctrine of res judicata, is denied. The complaint in this action involves the same transaction as the facts underlying the prior proceeding. Specifically, the events which occurred at Queens Hospital Center on January 8, 2021. Plaintiff avers that because the Monell claim interposed as against HHC here could have and should have been brought in the prior proceeding, Plaintiff is now barred by the doctrine of res judicata from adjudicating the claim in this subsequent action. However, the first question the Court must address is whether the prior proceeding was disposed of on its merits. It was not. Indeed, Judge Catapano-Fox's order dismissing the prior proceeding provides that dismissal was warranted because Plaintiff failed to serve a timely notice of claim. A dismissal on such grounds is not a dismissal on the merits (see id.; see also Fuentes v. Brookhaven Mem'l Hosp., 10 A.D.3d 384 [2d Dept. 2004]). Therefore, the fact that the instant Monell claim could have and should have been brought in the prior proceeding is not the deciding factor. Nor is the fact that Plaintiff failed to file a timely appeal (see Strange v. Montefiore Hospital & Medical Center, 59 N.Y.2d 737 [1983]; Slater v. American Mineral Spirits Co., 33 N.Y.2d 443 [1974]; Linton v. Perry Knitting Co., 295 N.Y.14 [1945]; see also Morales v. N.Y. City House. Auth., 302 A.D.2d 571 [2d Dept 2003]). Since the prior proceeding was not disposed of on its merits, the instant cause of action is not barred by res judicata.

Notwithstanding the above, the Monell claim against HHC must nonetheless be dismissed because Plaintiff failed to properly plead the claim.

The only vehicle for an individual to seek a civil remedy for violations of constitutional rights committed under color of any statute, ordinance, regulation, custom or usage of any State is a claim brought pursuant to 42 U.S.C. §1983 (see generally Manti v New York City Transit Auth., 165 A.D.2d 373 [1st Dept. 1991]). However, a municipality may only be found liable under 42 U.S.C. §1983 where plaintiff specifically pleads and proves an official policy or custom that causes plaintiff to be subjected to a denial of a constitutional right (see Monell v. Department of Social Services, 436 U.S. 658 [1978]). A municipality cannot be held liable under a theory of respondeat superior for the unconstitutional acts of its employees, but may be found liable under §1983 "only where the municipality itself causes the constitutional violation at issue. In other words, 'it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under §1983" (Johnson v. King County District Attorney's Office, 308 A.D.2d 278, 293 [2d Dept. 2003]).

Here, the complaint provides that HHC failed to properly train and supervise the individually named Defendants, and failed to adequately investigate prior complaints and lawsuits. As a result, HHC permitted a pattern and practice leading the violation of constitutional rights. The constitutional deprivation alleged is the involuntary commitment to a mental hospital without due process. Indeed, "involuntary commitment to a mental hospital is a massive curtailment of liberty" and "requires due process protection" (see Vitek v. Jones, 445 U.S. 480 [2d. Cir. 1980]). The complaint goes on to detail previous cases involving HHC. In a 2015 case, HHC was accused of failing to adequately test the "residential water of patients diagnosed with Legionnaire's disease." Despite complaints, physicians citywide continued the same alleged substandard testing practice. The Court notes that the forgoing instance has nothing to do with an alleged practice of improper involuntary commitment, and thus does not properly support the Monell claim (see Bird v. Cnty. of Westchester, No. 20-CV-10076, 2022 U.S. Dist. LEXIS 111672 [S.D.N.Y. 2022]). The complaint further details that, as early as 1991 and including instances from 1991, 2015 and 2022, HHC was accused of improperly involuntarily committing patients without probable cause and in violation of due process. The Court notes that the Plaintiff offers no information regarding where she ascertained the alleged

data from, or whether there was ever any finding, judicial or otherwise, of constitutional violations by HHC.

To the extent that the complaint alleges a failure to investigate, that cause of action is dismissed. There is no constitutional right to adequate investigation, and therefore that claim is not independently cognizable under Section 1983 (see Buari v. City of New York, 530 F.Supp.3d 356 [S.D.N.Y. 2021]).

A plaintiff may establish a policy or custom by alleging the existence of: 1) a formal policy, 2) actions taken by or made by final policymakers that result in constitutional violations, 3) a practice so persistent and widespread that it constitutes a "custom or usage" and implies constructive knowledge of policymakers, or 4) failure to properly train or supervise municipal employees, to the extent that it amounts in deliberate indifference to the rights of those who come in contact with municipal employees (see Mejia v. N.Y. City Health & Hosps. Corp., 2018 U.S. Dist. LEXIS 119224 [S.D.N.Y. 2018]). Here, Plaintiff appears to allege that a policy was established under "custom or usage" and due to inadequate training.

As to custom or usage, the complaint falls short in establishing that HHC has a practice of improperly involuntarily committing individuals without due process, such that it put policymakers on notice. "To state there is a policy does not make it so" (see Betts v. Sherman, 2013 U.S. Dist. LEXIS 11139 [S.D.N.Y. 2013]). The three instances plead cover a span of over thirty years and are insufficient to establish a policy via "custom or usage" (see generally Jones v. Town of E. Haven, 691 F.3d 72 [2d. Cir. 2012]; Felix v. City of New York, 344 F.Sup.3d 644 [S.D.N.Y. 2018]). In cases where the Courts analyze the sufficiency of similar instances that purportedly establish an unconstitutional custom or practice, something more than a mere anecdotes is required (see Felix, 344 F.Supp.3d at 659; (see Aquino v. City of New York, 2017 U.S. Dist. LEXIS 10436 [S.D.N.Y. 2017]; Delorbe-Bell v. City of New York, 2016 U.S. Dist. LEXIS 49363 [S.D.N.Y. 2016]; Tieman v. City of Newburgh, 2015 U.S. Dist. LEXIS 38703 [S.D.N.Y. 2015]; Edwards v. City of New York, 2015 U.S. Dist. LEXIS 114039 [S.D.N.Y 2015]). Here, there are no citations to supporting sources. The instance from 1991 was purportedly a lawsuit. The instances from 2015 and 2022 are silent with respect to whether a lawsuit was filed. Even if there were supporting sources, there are no facts regarding what procedures were used to admit, treat, and/or discharge these patients that amount to a widespread custom or practice. Nor is there any information regarding what the ultimate results were. Accordingly,

the complaint fails to establish there was a practice so persistent and widespread that it constitutes a "custom or usage" and implies the constructive knowledge of policymakers.

A claim of inadequate training triggers only if the failure to train "amounts to deliberate indifference to the rights of a persons with whom municipal employees come into contact" (Johnson, 308 A.D.2d at 291-94; see also Walker v. New York, 974 F.2d 293 [2d. Cir. 1992]). The forgoing requires that municipal policymakers make a "deliberate choice...not to train its employees" (see id.). A deliberate choice may be inferred where, in light of the duties of employees, the need for more or different training is so obvious, and the lack of training is so likely to result in constitutional violations, that one can reasonably conclude that the policymakers were deliberately indifferent (see id.). The United States Court of Appeals, Second Circuit, employed a test, adopted by the Appellate Division, Second Department, to establish deliberate indifference. A Plaintiff must properly plead the following: 1) a policymaker must know "to a moral certainty" that its employees will "encounter a given situation," 2) the situation presents the employee with the sort of choice which training would make less difficult or where there is a history of employees mishandling the situation, and 3) the wrong choice will "frequently result in the deprivation of...constitutional rights" (see id.).

Here, Plaintiff failed to properly allege that HHC's failure to train constituted a deliberate indifference to the constitutional rights of its patients. Plaintiff failed to squarely address any of the above pleading requirements regarding deliberate indifference. Nor can the Court infer such by a liberal reading of the complaint, and giving Plaintiff every favorable inference.

Accordingly, the motion to dismiss the complaint as against HHC pursuant to CPLR §3211(a)(7) for failure to properly plead the Monell claim is granted.

Motion to Dismiss as against Akm Quyyum, M.D. and Molly Zachariah, R.N.

a. Res Judicata Bars Does Not Bar the Causes of Action Asserted Against Dr. Quyyum and Nurse Zachariah

Movant avers that the doctrine of res judicata bars all of Plaintiff's causes of action plead against Dr. Quyyum and Nurse Zachariah. The doctrine of res judicata bars claims between the

parties in the former litigation and also applies to parties in privity with them (see Noor v. Mahmood, 181 A.D.3d 807 [2d Dept. 2020]). Privity "may be found where a nonparty to a prior litigation has 'a relationship with a party to the prior litigation such that his [or her] own rights or obligations in the subsequent proceeding are condition in one way or another on, or derivative of, the rights of the party to the prior litigation.'" (see New York State Thruway Auth. v. Ketco, Inc., 195 A.D.3d 630 [2d Dept. 2021]). Despite the existence of privity between HHC and Dr. Quyyum and Nurse Zachariah, Plaintiff's claims are not barred by the doctrine of res judicata. As analyzed supra, because Judge Catapano-Fox's dismissal of the prior proceeding was not on the merits, the doctrine of res judicata cannot operate to bar this action.

b. The State Law Claims are Barred by Collateral Estoppel

The State law claims interposed against Dr. Quyyum and Nurse Zachariah must be dismissed pursuant to the doctrine of collateral estoppel. The doctrine of collateral estoppel "bars relitigation of an issue which has been necessarily decided in a prior action and is determinative of the issues disputed in the present action" (see Mahler v. Campagna, 60 A.D.3d 1009 [2d Dept. 2009]). A party seeking to invoke the doctrine must establish that the issue presented subsequently is the identical issue which was previously decided (see id.).

Here, Judge Catapano-Fox dismissed the prior action against HHC for failure to serve a timely notice of claim. Indeed, a condition precedent to commencement of a tort action against HHC is the service of a notice of claim upon it within 90 days after the claim arises (see General Municipal Law §50-e[1][a]; Williams v. Nassau County Med. Ctr., 6 NY 3d 531 [2006]). The notice of claim requirement applies to tort actions against employees where the public corporation is obligated to indemnify the employee (see Broadmeadow lanes, Inc. v Catskill Regional Off-Track Betting Corp, 151 A.D.2d 631 [2d Dept. 1989]). Accordingly, Plaintiff was required to serve a timely notice of claim on Dr. Quyyum and Nurse Zachariah. Since Judge Catapano-Fox denied Plaintiff's motion to serve a late notice of claim upon HHC, Plaintiff is estopped from asserting the same claims as against Dr. Quyyum and Nurse Zachariah in this action. Since service of a timely notice of claim is a condition precedent, an action commenced absent a timely notice of claim is a nullity (see Davis v. City of New York, 250 A.D.2d 368 [1st Dept. 1998]). For this reason, if a timely notice of claim has not been served, an application for leave to serve a late notice of claim must be made, and must be granted, and a notice of claim must be served in order for the

previously commenced action, even if timely commenced, to be viable. It is undisputed that Plaintiff did not serve a notice of claim in this matter. Accordingly, the instant action is a nullity. Moreover, in light of Judge Catapano-Fox's March 28, 2023 order, Plaintiff is estopped from seeking leave to file a late notice of claim upon Dr. Quyyum and Nurse Zachariah. Finally, even assuming arguendo that Plaintiff was permitted to seek leave to file a late notice of claim upon Dr. Quyyum and Nurse Zachariah, an extension of time to serve a late notice of claim "shall not exceed the time limited for the commencement of an action by the claimant against the public corporation" (see General Municipal Law §50-e[5]). Since Plaintiff's cause of action accrued on or about January 8, 2021, the one year and 90-day statute of limitations has long since expired. Accordingly, the State law claims must be dismissed pursuant to CPLR §3211(a)(7) for failure to state a cause of action and pursuant to the doctrine of collateral estoppel(see Reaves v. City of New York, 177 A.D.2d 437 [1st Dept. 1991]).

c. The Federal Law Claims Must be Dismissed as against Nurse Zachariah only, for Failure to State a Cause of Action

The branch of the motion to dismiss the Federal law claims as against Dr. Quyyum and Nurse Zachariah pursuant to CPLR §3211(a)(7) for failure to state a cause of action is granted solely with respect to Nurse Zachariah. The motion is denied as to Dr. Quyyum. The complaint sets forth the following Federal law claims: false arrest, false imprisonment, unlawful search and seizure, failure to intervene, predicated on violation of New York Mental Hygiene Law (MHL) §9.41, and substantive and procedural due process violations

Defendants argue that the complaint fails to allege Dr. Quyyum and Nurse Zachariah's personal involvement. Indeed, the "personal involvement of defendants alleged constitutional deprivations is a prerequisite to an award of damages under 42 U.S.C. §1983" (see Braxton v. Bruen, 2023 U.S. App. LEXIS 30074 [2d. Cir. 2023]). The complaint provides that Plaintiff was first seen by Santhosh, who assessed her and determined she was not a risk of harm to herself or others, but refused to release her. Next, Plaintiff was assessed by Dr. Quyyum where she reiterated her anxiety and desire for a prescription. She denied any suicidal thoughts and requested her release, which Dr. Quyyum allegedly refused. Finally, Plaintiff was assessed by Nurse Zachariah. She indicated her desire to be released and again denied any suicidal thoughts, but was refused release. Based on the forgoing, and in liberally construing the complaint, as this Court must, the

complaint clearly contains sufficient facts alleging the personal involvement of both Dr. Quyyum and Nurse Zachariah (see Williams v. Smith, 781 F.2d 319 [2d. Cir. 1986]).

In order to establish a claim for false arrest and false imprisonment pursuant to Section 1983, a plaintiff must prove " (1) that the defendants intentionally confined plaintiff; (2) that plaintiff was conscious of the confinement and did not consent to it, and (3) that the confinement was not otherwise privileged" (see Jocks v. Tavernier 316 F.3d 128 [2d. Cir. 2003]). There is no dispute here that the Plaintiff was intentionally confined, aware of the confinement, and did not consent to it. The remaining question is whether the individual Defendants had the authority to confine her. Temporary confinement pursuant to the Mental Hygiene Law may be privileged under certain circumstances (see Morgan v. City of New York, 32 A.D.3d 912 [2d Dept. 2006]). In contrast, commitment pursuant to the Mental Hygiene Law without probable cause constitutes a deprivation of an individual's Fourth Amendment rights (see id.).

Plaintiff essentially alleges the confinement was not privileged because the mandates pursuant to §9.41 of the MHL were not fulfilled. However, §9.41 solely applies to peace officers or police officers, and is therefore inapplicable to the facts of this case. Notwithstanding, by affording the Plaintiff liberal construction of the complaint, it appears the allegation is actually made pursuant to MHL §9.39. Under MHL §9.39, involuntary admission by the hospital is permissible if a person is "alleged to have a mental illness for which immediate observation, care, and treatment in a hospital is appropriate and which is likely to result in serious him to himself or other" (see MHL §9.39[a]). The "likelihood to result in serious harm" means that there is a substantial risk of physical harm, manifested by threats or attempts at suicide or serious bodily harm or other conduct demonstrating that he is dangerous to himself, or to others (see id.).

The Federal claims must be dismissed as against Nurse Zachariah. Indeed, the decision to confine an individual pursuant to MHL §9.39 is one that can only be made by a physician (see Matter of Colihan v. State of New York, 211 A.D.3d 1432 [2d. Cir. 2022]; Rodriguez v. City of New York, 72 F.3d 1051 [2d. Cir. 1995]). Accordingly, the complaint fails to state a cause of action in this respect.

As to Dr. Quyyum, the complaint alleges that Plaintiff's confinement was not privileged pursuant to MHL §9.39. Indeed, she

alleges that she explained to Dr. Quyyum that she was not suicidal or a risk to herself or others. The complaint further alleges that Dr. Quyyum agreed that Plaintiff was not suicidal or a risk to herself or others, but refused to release her. Thus, accepting the allegations as true, pursuant to MHL §9.39, Plaintiff's involuntary confinement would be considered privileged.

The argument by Defendant that Plaintiff's confinement was nothing more than a "hold" while she was being assessed, and because she was never formally admitted, is insufficient at this stage to warrant dismissal. The complaint provides that Plaintiff was admitted to the hospital. Accepting the allegations as true, as this Court must, MHL §9.39 is therefore applicable to the facts of this case (see generally Ruhlmann v. Ulster County Dep't of Soc. Servs., 234 F.Supp.2d 140 [W.D.N.Y. 2002]). Indeed, Defendants have not submitted any admissible evidence that utterly refutes the forgoing (see Phillips v. Taco Bell Corp., 152 A.D.3d 806 [2d Dept. 2017]).

The branch of the motion to dismiss the claims for violations of substantive and procedural due process as against Dr. Quyyum is denied.

"Unless an assessment of whether or not an individual was dangerous to herself was made on a reasonably competent basis, doctors cannot be found to have complied with...the requirements of due process" (see Rodriguez v. City of New York, 72 F.3d 1051 [2d. Cir. 1995]). The interpretation of MHL §9.39 is a question of law, however, the question of whether a plaintiff posed a substantial risk of physical harm to herself or others is generally a question of fact for the jury (see Rodriguez, 72 F.3d at 1063; Xiao Qing Liu v. N.Y. State Dep't of Health, 2017 U.S. Dist. LEXIS 124312 [S.D.N.Y. 2017]). On a summary judgment motion or at trial, the Court would obviously consider expert medical testimony to establish the forgoing. However, on a motion to dismiss, the Court must solely view the sufficiency of the complaint. Courts have allowed complaints to survive a motion to dismiss where it is unclear whether the plaintiff actually posed a danger to herself or others (see Xiao Qing Liu, 2017 U.S. Dist. LEXIS 124312 at 15. Here, the complaint clearly properly alleges that Dr. Quyyum refused to release the Plaintiff notwithstanding that she was not a harm to herself or others. Defendants aver that Dr. Quyyum could have concluded that Plaintiff was a harm to herself or others, notwithstanding her statements to the contrary. This may ultimately be true, but it is not a basis to dismiss the complaint at this stage and pursuant to CPLR §3211(a)(7).

Accordingly, the motion by New York City Health and Hospitals Corporation for an order to dismiss is granted. The motion by Defendants, Akm Quyyum, M.D. and Molly Zachariah, R.N., for an order to dismiss is granted in part and denied in part. The branch of the motion to dismiss the State law claims as against both Defendants is granted. The branch of the motion to dismiss the Federal law claims as against Nurse Zachariah is granted. The branch of the motion to dismiss the Federal law claims as against Dr. Quyyum is denied.

Serve a copy of this order with notice of entry upon all parties without undue delay.

Dated: February 21, 2024

KEVIN J. KERRIGAN, J.S.C.