IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

JARVIS PAYNE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	10 L 7442
	)	
CITY OF CHICAGO, a Municipal Corporation,	)	
	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

I. FACTUAL BACKGROUND

On or about June 25, 2010, the Plaintiff re-filed a three-count complaint against the Defendant seeking damages for injuries he sustained when police officers Tasered him with a Taser gun causing him to be propelled out of a window, on November 1, 2004. It is alleged that the Plaintiff was in an altered mental state when his family called for assistance from the Chicago Fire Department to request aid in transporting him to the hospital for medical care. It is further alleged that pursuant to the emergency call, policemen and firemen were dispatched to the home. It is also alleged that while the emergency personnel were attempting to aid the Plaintiff, one of the policemen tasered the Plaintiff with a Taser gun causing him to be propelled from his bedroom window. The original action was filed on June 27, 2005 and was voluntarily dismissed on March 24, 2010. Count I sounds in battery, count II sounds in willful and wanton conduct, and count III sounds in federal civil rights violations under section 1983. However, the section 1983 claim was dismissed on July 27, 2010.

In the motion, the Defendant contends that it owed no duty here, noting that the public duty rule provides that a city owes no duty to provide citizens with police services. Further, the Defendant contends that while a duty may arise under the special duty exception where the city assumes a special relationship to an individual, it does not apply here as the Plaintiff cannot establish the four elements of the special duty exception. Specifically, the Defendant contends that there is no evidence that the police officers had direct and immediate control over the Plaintiff. In addition, the Defendant contends that section 4-102 of the Tort Immunity Act applies to provide the Defendant with immunity here. The Defendant point out that community care taking or safeguarding the public are police functions within the provision of police services under section 4-102. Further, the Defendant contends that as the Plaintiff was an escaping prisoner at the time, it is entitled to the immunity afforded under section 4-106(b) of the Act which provides immunity from liability for injuries sustained as a result of an escaped prisoner. The Defendant maintains that while the Plaintiff was not under arrest, he was in protective custody due to his mental condition as a result of his drug use. Also, the Defendant contends that it is immunized under 20 ILCS 301/25-15(b) as the conduct arose out of the officer's decision to take the Plaintiff into protective custody. Additionally, the Defendant maintains that the evidence does not support the battery claim. It argues that there was no offensive touching as only two prongs from the Taser made contact with the Plaintiff and they were not particularly painful. Further, as it was done for the Plaintiff's safety, the safety of the officers and the public, and pursuant to the officers' rights to take a drug addicted person into custody, the contact was authorized. Finally, the Defendant argues that there is no evidence of proximate cause. It

points out that the evidence shows that the Plaintiff leaped out of the window of his own volition. Further, the Defendant notes that the Taser was ineffective. The Defendant argues that there is no connection between the officers' actions and the Plaintiff jumping out of the window. In any case, the Defendant contends that the Plaintiff's suicide attempt was an intervening act which broke the causal chain.

In response, the Plaintiff contends that the Defendant provides no evidence to support a lack of duty under the public duty rule or to support the application of the cited immunities. The Plaintiff, pointing out that the Defendant's failure to address the other three requirements for the application of the special duty exception is tantamount to conceding that they were met, maintains that there is sufficient evidence to show that the Plaintiff was under the officers' control and, thus, the special duty doctrine applies. The Plaintiff also contends that section 4-102 of the Tort Immunity Act does not apply here. Further, he contends that section 4-106(b) does not apply as he was not injured by an escaped prisoner. Also, he maintains that section 6-107 and 3-1/25-15(a) do not apply either. In addition, the Plaintiff contends that the evidence shows that two probes of the Taser hit him and, even if the pain was not as severe as if all the probes hit him, it still amounted to offensive and unwanted contact. Thus, he argues that the battery claim is supported. Further, he contends that proximate cause is a question of fact. Finally, the Plaintiff contends that the entire motion should be disregarded as the Defendant refers to testimony throughout the motion, but does not attach copies of the deposition testimony thereto.

In the reply, in addition to reiterating the arguments made in the motion, the Defendant points out that as it was not feasible to physically attach the deposition transcripts

to the motion, they are provided to the Court in a separate binder. Further, the Defendant notes that the rules do not require that the transcripts be attached to the motion. The Plaintiff filed a sur-reply stating that while the rules do not require physical attachment of the transcripts to the motion, they do require that the transcripts be provided.

The Court has read the motion, response, reply, and sur-reply, as well as, all of the supporting materials tendered therewith.

II. COURT'S DISCUSSION AND RULING

The Defendant contends that it owed no duty to the Plaintiff under the public duty rule. The public duty rule provides that a municipality is not liable for the failure to supply police protection because a duty to preserve the well being of the community is owed to the public at large and not to individuals. Zimmerman v. Village of Skokie 183 Ill.2d 30, 44 (1998). In essence, the public duty rule was codified in section 4-102 of the Tort Immunity Act. DeSmet v. County of Rock Island, 219 Ill.2d 497, 508 (2006). Section 4-102 provides for immunity from liability to municipalities and their employees for injuries arising out of the failure to provide police protection services. As section 4-102 does not provide any exceptions for willful and wanton conduct, none can be read into it. Ries v. City of Chicago, 242 Ill.2d 205, 228 (2011); DeSmet, at 514-515. It is, therefore, applicable to allegations of both negligence and willful and wanton conduct. In this case, the acts and omissions alleged to have been committed by the Defendant fall within the scope of police protection services under section 4-102, and thus, the immunity afforded under section 4-102 applies.

The Plaintiff does not argue that there is a lack of duty here under the public duty rule, but rather, he argues that the Defendant owes a duty to him under the special duty

doctrine, which developed as an exception to the public duty rule. The Plaintiff also argues that section 4-102 does not apply to immunize the Defendants from liability here. Under this exception, it must be pled and proved that the municipality was uniquely aware of the particular danger or risk to which the plaintiff is exposed, that there were specific acts or omissions on the part of the municipality, that those specific acts were affirmative or willful in nature, and that the injury occurred while the plaintiff was under the direct and immediate control of the municipal employees. Ries, at 225. Here, the Plaintiff has neither pled nor demonstrated by evidence the existence of the four elements of this exception, specifically the one involving the direct and immediate control by the police officers here. Further, even if the exception did apply to the facts and circumstances here to establish a duty, the Defendant would, nevertheless, be immune from liability here under section 4-102 of the Act., as the special duty doctrine cannot override statutory immunities. DeSmet, at 518; Zimmerman, at 46. Accordingly, the Defendant is entitled to summary judgment in its favor.

Given the above ruling, there is no need to address the remaining bases for summary judgment and other arguments raised by the parties. However, the Court will touch on them briefly. Initially, the Court notes that the Plaintiff's argument with regard to the deposition transcripts not being attached is without merit. The Defendant, while not attaching the voluminous transcripts to the motion itself, did provide all of the testimony relied on in the motion within a binder tendered with the motion and the other courtesy copies. Thus, the Court was able to review all of the evidence relevant to and raised by the motion and the other briefs. With regard to the other bases for summary judgment, section 4-106(b) of the Tort Immunity Act does not apply here as the Plaintiff was not injured as a result of an

escaping prisoner. Further, section 6-107(a) of the Act does not apply as the situation here did not involve a determination as to whether to confine or a release a person for mental illness or addition. Similarly, 20 ILCS 301/25-15(b), the enactment relied on by the Defendant for the application of section 6-107(a), is itself inapplicable here, as it refers to persons in need of immediate medical services while in a public place, whereas the Plaintiff here was in his private home. Finally, whether the evidence supports the elements of a battery and whether there is proximate cause are questions of fact. Thus, none of the other bases raised by the Defendant support summary judgment in its favor. Nevertheless, summary judgment in favor of the Defendant is appropriate for the reasons discussed above.

Based on the foregoing, Defendant's Motion for Summary Judgment is granted.

ENTER: ENTER

SEP 17 2012

KATHY M. FLANAGAN #267

Judge Kathy M. Flanagan