

2018 IL App (1st) 173168-U
No. 1-17-3168
December 17, 2018

FIRST DIVISION

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

ISMAAEEL JAMISON,)	Appeal from the Circuit Court
)	Of Cook County.
Plaintiff-Appellant,)	
)	No. 15 L 64006
v.)	
)	The Honorable
STEVEN GOLDMAN,)	Martin S. Agran,
)	Judge Presiding.
Defendant-Appellee.)	

JUSTICE WALKER delivered the judgment of the court.
Justices Pierce and Griffin concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where the plaintiff in a legal malpractice suit presented evidence that the defendant attorney advised him that he had two years to file a civil suit against the City, and the attorney broke a promise to file such a suit, a subsequent attorney's filing of a § 1983 suit against the City does not justify an award of summary judgment in favor of the defendant attorney. The evidence could support a finding that the defendant attorney's negligence caused the plaintiff to lose a cause of action in *respondeat superior* against the City.
- ¶ 2 Ismaaeel Jamison (Ismaaeel) sued Steven Goldman (Goldman) for legal malpractice, claiming that Goldman promised to file a civil lawsuit against the City of Chicago (the City) on Ismaaeel's behalf, and that Goldman failed to file the lawsuit before the expiration of the

time for filing under the applicable statute of limitations. The circuit court held that Ismaaeel suffered no damages due to the alleged malpractice because Ismaaeel's successor counsel had time to file an action against the City under section 1983 of Title 42 of the United States Code. 42 U.S.C. § 1983 (2012). The circuit court granted Goldman's motion for summary judgment. We hold that the evidence could support a finding that Ismaaeel suffered damages due to the loss of his claim against the City under the doctrine of *respondeat superior*. Accordingly, we reverse the order granting summary judgment and remand for further proceedings on the complaint.

¶ 3

BACKGROUND

¶ 4

Thomas Hojnacki (Hojnacki) drove a CTA bus northbound on California Avenue on Thanksgiving Day, November 22, 2012. Ismaaeel boarded the bus around 68th Street, and a second passenger boarded at 65th Street. Ismaaeel fought with the second passenger. Hojnacki pressed a button to alert emergency responders about the problem and stopped at 63rd Street to wait for help. The second passenger got off the bus at 63rd Street, and Hector Hernandez (Hernandez) started to board the bus. Ismaaeel slugged Hernandez. Hernandez got off the bus. As a girl walked past the bus, Ismaaeel grabbed her and tried to pull her onto the bus. Hernandez helped the girl get free. Ismaaeel punched Hernandez again. A fire truck arrived, and then a police car. Officer Glenn Manguerra (Manguerra) got out of the police car. A few minutes later, when more police officers arrived at the scene, Manguerra fired his gun twice, hitting unarmed Ismaaeel in the chest. Ismaaeel fell to the ground. Other officers tased Ismaaeel multiple times in the course of arresting him.

¶ 5 Ismaaeel remained in the hospital for two weeks, incurring bills that exceeded \$200,000 for his medical treatment.

¶ 6 In December 2012, Ismaaeel's mother, Gloria Jamison (Gloria), hired Goldman as defense counsel for the criminal charges filed against Ismaaeel in connection with his acts on November 22, 2012. It is alleged that Goldman also agreed to handle the civil case. In October 2014, Gloria asked Erron Fisher (Fisher) to represent Ismaaeel in a civil lawsuit against the City for the use of excessive force during the arrest on November 22, 2012. Fisher did not take the case. Gloria then contacted Michelle Gonzalez (Gonzalez), who agreed to take the case.

¶ 7 On November 19, 2014, Gonzalez filed in federal court a complaint against the City, alleging the City's acts towards Ismaaeel violated § 1983 (42 U.S.C. § 1983 (2012)). Gonzalez failed to appear for status hearings in the case on January 20 and January 22, 2015. The district court dismissed the case for want of prosecution. Ismaaeel never filed a motion to vacate the dismissal.

¶ 8 In May 2015, Gonzalez, on behalf of Ismaaeel, filed the complaint against Goldman that initiated the lawsuit now before this court. Ismaaeel alleged that he hired Goldman to represent him in both the criminal case and the civil lawsuit against the City, and Goldman failed to file a civil complaint against the City within the limitations period.

¶ 9 Goldman filed a motion for summary judgment. He contended that he never agreed to represent Ismaaeel in a civil lawsuit, and that Ismaaeel could not show any damages from the alleged malpractice because Gonzalez's failure to pursue the § 1983 case operates as a superseding cause of Ismaaeel's loss. Goldman supported his motion with several

depositions, Ismaaeel's federal complaint against the City, and the federal court's order dismissing the complaint for want of prosecution.

¶ 10 Ismaaeel's response to the motion for summary judgment relied on depositions and affidavits from Gloria and Ismaaeel's relatives, who said that Goldman and Kevin McCubbin (McCubbin), an attorney who worked for Goldman, told them repeatedly that Goldman would file a civil complaint against the City on Ismaaeel's behalf. The witnesses said Goldman and McCubbin told them they did not need to worry about the civil lawsuit because they had two years to file before the statute of limitations would bar the action. Ismaaeel's response to the motion for summary judgment does not include a response to the argument that Gonzalez's neglect of the § 1983 case operates as a superseding cause of Ismaaeel's loss.

¶ 11 The circuit court said:

"If the underlying cause remained actionable upon discharge of the former attorney, plaintiff can prove no set of facts which connect defendant's conduct with any damage plaintiff sustained.

*** [A]fter defendant's discharge, plaintiff had a viable Section 1983 action in federal court. That case was dismissed -- subsequently dismissed for want of prosecution. Therefore, it follows that plaintiff can prove no set of facts which connect defendant's conduct with any damage sustained by plaintiff."

¶ 12 The circuit court granted Goldman's motion for summary judgment. Ismaaeel now appeals.

¶ 13

ANALYSIS

¶ 14

Goldman argues that we should strike Ismaaeel's statement of facts and disregard his argument because his brief on appeal does not comply with Supreme Court Rule 341. Ill. S. Ct. R. 341(h)(6), (h)(7) (eff. May 25, 2018). Ismaaeel's statement of facts and his argument include no citations to the record. While he refers to some authorities in the argument, he leaves several crucial assertions of law completely unsupported.

¶ 15

We adopt the following response to a similar failure to comply with briefing rules:

"The Illinois Supreme Court Rules are not suggestions; they have the force of law and must be complied with. [Citation.] Where a brief has failed to comply with Rule 341(h)(6), we may strike the statement of facts or dismiss the appeal should the circumstances warrant. [Citation.] In this case, because plaintiff's violations do not hinder our review, we will neither strike his statement of facts nor dismiss the appeal (citation), but we will disregard the noncompliant portions of plaintiff's statement of facts. We also admonish counsel to follow carefully the requirements of the supreme court rules in future submissions." *Szczesniak v. CJC Auto Parts, Inc.*, 2014 IL App (2d) 130636, ¶ 8.

¶ 16

Next, Goldman maintains that this court must summarily affirm the circuit court's judgment because Gonzalez, in the circuit court, failed to respond to Goldman's argument that Gonzalez's abandonment of the § 1983 action constituted a superseding cause of Ismaaeel's loss. "The rule of waiver, however, serves as a limitation on the parties and not the court." *Golden Rule Insurance Co. v. Schwartz*, 203 Ill. 2d 456, 463 (2003). This court "is not precluded from considering issues not properly preserved by the parties, and indeed has

'the responsibility * * * for a just result and for the maintenance of a sound and uniform body of precedent [that] may sometimes override the considerations of waiver that stem from the adversary character of our system.' " *Jackson Jordan, Inc. v. Leydig, Voit & Mayer*, 158 Ill. 2d 240, 251 (1994), quoting *Hux v. Raben*, 38 Ill. 2d 223, 225 (1967).

¶ 17 We review *de novo* the circuit court's decision to grant Goldman's motion for summary judgment. *Wells v. Colonial Heights Recreation Center, Inc.*, 2013 IL App (1st) 111850, ¶ 23. "[W]e perform the same analysis that a trial judge would perform and give no deference to the judge's conclusions or specific rationale." *Waters v. City of Chicago*, 2012 IL App (1st) 100759, ¶ 8. The circuit court should not grant a motion for summary judgment where (1) the parties dispute a material fact; (2) reasonable triers of fact could draw divergent inferences from the evidence; or (3) reasonable persons could differ as to the application of legal standards. *Wells*, 2013 IL App (1st) 111850, ¶ 24. Despite the waiver, we will affirm the circuit court's judgment only if "the pleadings, depositions, 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." 735 ILCS 5/2-1005(c) (West 2014); see *Jackson Jordan*, 158 Ill. 2d at 249.

¶ 18 A one-year statute of limitations governs tort claims against the City. 745 ILCS 10/8-101 (West 2012); *Valentino v. Hilquist*, 337 Ill. App. 3d 461, 471 (2003). When Gloria hired Goldman to represent Ismaeel, Ismaeel had about 11 months to file a tort claim against the City. He did not file a claim within that time. However, in November 2014, Ismaeel filed in federal court a § 1983 claim against the City. The limitations period for § 1983 claims had

not expired. See *Henderson v. Village of Dixmoor*, 80 F. Supp. 2d 939, 941-42 (N.D. Ill. 2000).

¶ 19 "To establish municipal liability under section 1983 of Title 42 of the United States Code (citation), a plaintiff must allege that he has been deprived of a constitutionally protected right and that deprivation was caused by a municipal policy, custom or practice." *Cooney v. Chicago Public Schools*, 407 Ill. App. 3d 358, 364 (2010). A plaintiff seeking to recover from a municipality under § 1983 must plead and prove that "(1) the [municipality] had an express policy that, when enforced, causes a constitutional deprivation; (2) the [municipality] had a widespread practice that, although not authorized by written law or express municipal policy, is so permanent and well settled as to constitute a custom or usage within the force of law; or (3) plaintiff's constitutional injury was caused by a person with final policymaking authority." *McCormick v. City of Chicago*, 230 F.3d 319, 324 (7th Cir. 2000). "[A] municipality may not be held liable under § 1983 solely because it employs a tortfeasor. *** We have consistently refused to hold municipalities liable under a theory of *respondeat superior*." *Board of the County Commissioners of Bryan County, Oklahoma v. Brown*, 520 U.S. 397, 403 (1997). If Ismaeel had filed his claim within one year of the incident, a state court could have held the City liable for the actions of the officers under the doctrine of *respondeat superior*. See *Brown v. King*, 328 Ill. App. 3d 717, 721 (2001).

¶ 20 The circuit court relied on *Mitchell v. Schain, Fursel & Burney, Ltd.*, 332 Ill. App. 3d 618 (2002), as authority requiring dismissal of Ismaeel's complaint against Goldman. The *Mitchell* court said, "[t]he cause of action was viable at the time of [the first attorney's] discharge. It therefore follows that plaintiff can prove no set of facts which connect

defendant's conduct with any damage sustained by plaintiff." *Mitchell*, 332 Ill. App. 3d at 620-21, quoting *Land v. Greenwood*, 133 Ill. App. 3d 537, 541 (1985). Here, Ismaaeel lost his *respondeat superior* cause of action against the City for the torts committed by the officers, because Goldman did not file the complaint within one year of the incident. He might have recovered damages from the City on a different cause of action, requiring different allegations and evidence than under § 1983. For the § 1983 cause of action, Ismaaeel would need to prove that the City had a policy or practice of encouraging the use of excessive force to make arrests. Ismaaeel had a distinctly separate state court personal injury action than that founded on a § 1983 action grounded in a violation of his federal civil rights. See *Groman v. Township of Manalapan*, 47 F.3d 628, 633-34, 637 (3rd Cir. 1995). The allegation could support a finding that Goldman acted negligently by failing to timely file the *respondeat superior* cause of action against the City. Ismaaeel has presented sufficient evidence to support a finding that he suffered damages when he lost his state court tort action because of the failure to file a state tort complaint within one year of the incident against the City.

¶ 21 Finally, Goldman claims the evidence proves Ismaaeel never hired him to file a complaint against the City. Gloria testified in her deposition that when she first spoke to Goldman's employee, McCubbin, she relayed "Ismaaeel's concerns about being shot and that something should be done about that." McCubbin said, "Don't worry about that because we have plenty of time to file those papers." McCubbin specified, "We have two years to do it." Affidavits from Ismaaeel's brother and sister corroborated Gloria's testimony.

¶ 22 Goldman contends the evidence cannot support a finding that he agreed to file the civil lawsuit, because Goldman testified in his deposition that Gloria called his office in January 2013 and asked him for a referral to an attorney for the civil claim. Gloria testified in her deposition that she did not ask Goldman for a referral to another attorney in January 2013. She called Goldman in September or October 2014 to see what progress he had made with the civil suit, because she recognized that the two-year limitations period McCubbin mentioned would soon end. Goldman then told Gloria he would not handle the civil claim, and he referred Gloria to Fisher. Gloria did not specifically remember calling Goldman's office in January 2013, but she said, "If I called we didn't talk about a referral. I don't know if we would have talked about money or payments [for Goldman's work on the criminal case]. I don't remember."

¶ 23 We find that Gloria's corroborated testimony sufficiently creates a material issue of fact as to whether Goldman ever agreed to file a civil complaint against the City on Ismaaeel's behalf. Moreover, even if a trier of fact finds that Goldman did not agree to file the civil complaint, Goldman could still bear liability for misinforming his client that he had two years to file his civil claim, where tort claims against the City must be filed not later than one year after the date of the injury. Because Goldman has not shown that the evidence in the record compels a finding in his favor on the legal malpractice claim, we reverse the order granting Goldman's motion for summary judgment and remand for further proceedings.

¶ 24 CONCLUSION

¶ 25 Ismaaeel has presented evidence that could support a finding that Goldman advised Ismaaeel that he had two years to file a civil claim against the City, Goldman promised to file

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a civil complaint on Ismaaeel's behalf, and that Goldman's failure to file and his incorrect advice proximately caused Ismaaeel's damages. Therefore, we reverse the order granting Goldman's motion for summary judgment and remand for proceedings in accord with this order.

¶ 26 Reversed and remanded.