

Not To Be Published:

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

TIMOTHY CLAIR SHANNON,

Plaintiff,

vs.

OFFICER MICHAEL KOEHLER, in his individual and official capacities; CITY OF SIOUX CITY, SIOUX CITY POLICE DEPARTMENT; JOSEPH C. FRISBIE, individually and in his official capacity,

Defendants.

No. C 08-4059-MWB

**ORDER REGARDING MOTION TO
DISMISS**

TABLE OF CONTENTS

I. INTRODUCTION..... 2

II. ANALYSIS..... 3

A. General Standards for a 12(b)(6) Motion to Dismiss..... 3

B. The Suability of Iowa Police Departments. 4

C. Police Departments as “Persons” Under 42 U.S.C. § 1983. 8

III. CONCLUSION. 11

I. INTRODUCTION

On August 1, 2008, plaintiff Timothy Shannon filed a complaint with this court concerning an incident that took place on September 13, 2006, naming Officer Michael Koehler, the City of Sioux City, the Sioux City Police Department, and Joseph Frisbie as defendants. Doc. No. 2. Shannon alleges in Count 1 of his complaint that all of the defendants violated his civil rights while acting under color of law, in violation of 42 U.S.C. § 1983 and the Constitution of the United States. *Id.* In Count 2, Shannon alleges that all defendants directly or through respondeat superior liability committed assault and battery. *Id.* On September 10, 2008, defendant Sioux City Police Department (SCPD) filed its Rule 12(b)(6) Motion to Dismiss Sioux City Police Department. Doc. No. 5. On the same day, defendants filed the Answer of Officer Michael Koehler, City of Sioux City, and Joseph C. Frisbie and Jury Demand. Doc. No. 6. On September 29, 2008, Shannon filed his Resistance to Defendant, Sioux City Police Department's Rule 12(b)(6) Motion to Dismiss (Doc. No. 7-1) and Brief in Support of Plaintiff's Resistance to Defendant, Sioux City Police Department's Rule 12(b)(6) Motion to Dismiss. Doc. No. 7-2. Lastly, on October 1, 2008, the SCPD filed its Reply Brief in Support of Motion to Dismiss. Doc. No. 8.

In the SCPD's Rule 12(b)(6) Motion to Dismiss Sioux City Police Department, it argues that a municipal police department is not a "person" within the meaning of 42 U.S.C. § 1983. Doc. No. 5-2. The SCPD also argues that it is not a legal entity under Iowa law capable of suing and being sued. *Id.* Shannon, in his resistance, contests both of the SCPD's claims, but he only provides argument in his brief in relation to whether a municipal police department is a "person" under § 1983, which Shannon claims is an open question in the Eighth Circuit. Doc. No. 7-2. Shannon claims that the reasoning in

Monell v. Department of Social Services of the City of New York, 436 U.S. 658 (1978) should be applied instead of the great weight of authority from other circuits and districts, supporting the defendant’s motion, because the authority was developed in “absence of any reasoning.” Doc. No. 7-2. In the SCPD’s reply brief, it provides authority intended to refute Shannon’s claim that a municipal police department is a “person” under § 1983.

II. ANALYSIS

A. General Standards for a 12(b)(6) Motion to Dismiss

Federal Rule of Civil Procedure 12(b)(6) provides this court authority to dismiss a claim due to a party’s “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). “A motion asserting any of [the 12(b)] defenses must be made before pleading if a responsive pleading is allowed.” Fed. R. Civ. P. 12(b).

The United States Supreme Court has somewhat recently provided new guidance concerning the contours of Rule 12(b)(6) in *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, (2007). Under *Bell Atlantic*, it is now understood that complainants have an obligation to provide the grounds of their entitlement to relief, which “requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atlantic Corp.* at 1964-65. “[T]he factual allegations in the complaint ‘must be enough to raise a right to relief above the speculative level.’” *Killingsworth v. HSBC Back Nevada, N.A.*, 507 F.3d 614, 618 (quoting *Bell Atlantic*, 127 S. Ct. at 1965). Otherwise, the complainant fails to state a claim upon which relief can be granted because they “have not nudged their claims across the line from conceivable to plausible.” *Bell Atlantic*, 127 S. Ct. at 1974. Thus, the complaint must contain “enough facts to state a claim to relief that is plausible on its face,” although it does not have to contain “fact pleading of specifics.” *Id.*; see *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007)

(“Specific facts are not necessary [under Federal Rule of Civil Procedure 8(a)(2).”]; *Airborne Beepers & Video, Inc. v. AT&T Mobility L.L.C.*, 499 F.3d 663, 667 (7th Cir. 2007) (noting *Erickson* made it clear “that [*Bell Atlantic v.] Twombly* did not signal a switch to fact-pleading in the federal courts”). Finally, *Bell Atlantic* maintains the requirement that “when ruling on a motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint.” *Erickson*, 127 S. Ct. at 2200; *see, e.g., Gross v. Weber*, 186 F.3d 1089, 1090 (8th Cir. 1999) (“On a motion to dismiss, we review the district court’s decision de novo, accepting all the factual allegations of the complaint as true and construing them in the light most favorable to [the non-movant].”).

B. The Suability of Iowa Police Departments

In this case, defendant SCPD argues that it is not a suable entity because it “is not a legal entity separate and apart from the City of Sioux City, it is not a proper party to this lawsuit and must be dismissed.” Doc. No. 5-2. Plaintiff Shannon denies this claim in his resistance. Doc. No. 7-1. However, Shannon does not provide argument specifically directed at this issue in his brief but instead concentrates on whether a police department is a “person” under § 1983—the court will address this distinction below.

The capacity to sue or be sued is governed by Federal Rule of Civil Procedure 17(b). The Sioux City Police Department would be, more specifically, governed by Rule 17(b)(3), which states that the police department’s capacity to sue or be sued is determined “by the law of the state where the court is located.” Fed. R. Civ. P. 17(b)(3).

The Iowa Supreme Court long ago recognized that a city board was “merely... created as a legal subdivision of the [city] for governmental purposes, and the law has not clothed [the board] with corporate capacity or given it the right to sue or be sued.” *Des Moines Park Bd. v. City of Des Moines*, 290 N.W. 680, 680 (1940). The Iowa Supreme

Court further explained that the board is “merely an agency or instrumentality of the defendant city and has no independent existence.” *Id.* at 681. In *Des Moines Park Bd.*, the court also notes that:

So far as we have been able to determine wherever it has been the purpose of the legislature to authorize any of the agencies of government to proceed independently of parent municipality, the power to sue or be sued has been expressly given.

Id. This court is not aware of any section in the Iowa Code that provides a police department with the authority to sue or be sued independent of a municipality. Although the Iowa Supreme Court more recently found that a county board of health could “pursue an appeal from an adverse decision in which it was a named defendant,” the board involved was a county board. *Kasperek v. Johnson County Bd. of Health*, 288 N.W.2d 511, 515 (1980). In addition, the court reasoned that “the Board’s affirmative power to enforce its rules and regulations carries with it a concomitant power to defend them and resist their nullification in court.” *Id.* This reasoning does not apply to a police department because the municipality has the ability to enforce its rules, or ordinances, in court and therefore the police department does not need to separately assume this duty. In *Kasperek*, the Iowa Supreme Court in essence found that the county board was not just an appendage of the county, as the city board was in *Des Moines Park Bd.*, but a separate entity due to its separate powers and interests.

The Iowa Code also helps to solidify the proposition that police departments are simply instrumentalities or subdivisions of the city government. In Iowa, municipalities are provided with “home rule power and authority... to determine their local affairs and government....” IA Const. Art. 3, § 38A. More specifically, “[a] city may... exercise any power and perform any function it deems appropriate to protect and preserve the

rights, privileges, and property of the city or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents.” IOWA CODE § 364.1. Clearly, the state of Iowa has delegated to Iowa cities the power and authority to organize a police department. In other words, the state has not created the municipality’s police department as a separate entity apart from the municipality. Instead, the state has allowed the municipality to “protect and preserve the rights, privileges, and property of the city or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents,” and the municipality has decided to create a police department to achieve this end. *Id.*

The court’s interpretation of Iowa law, in finding municipal police departments are not suable as subdivisions of city government, can be squared with Eighth Circuit precedent. The Eighth Circuit Court of Appeals recognized that a police department and paramedic service were “not judicial entities suable as such” in *Ketchum v. City of West Memphis, Ark.*, a case brought under 42 U.S.C. § 1983. *Ketchum v. City of West Memphis, Ark.*, 974 F.2d 81, 82 (8th Cir. 1992). The court explained, they were “simply departments or subdivisions of the City government.” *Id.* More recently, the Eighth Circuit Court of Appeals again recognized that a:

police department was not amenable to suit. *See Ketchum v. City of West Memphis*, 974 F.2d 81, 82 (8th Cir.1992) (police department was simply subdivision of city government and not juridical entity suable as such).

Diggs v. City of Osceola, 270 Fed.Appx. 469, at *1 (8th Cir. 2008). Although the Eighth Circuit Court of Appeals has, on occasion, addressed § 1983 claims against a municipal police department without addressing the issue of whether the department was ever suable (*see Tilson v. Forest City Police Dept.*, 28 F.3d 802, 807 (1994)), this court does not find that such treatment precludes dismissal of a municipal police department from a case when

the issue is properly put before the court. The court in *Diggs* was reviewing an action brought under Title VII, and as previously mentioned, *Ketchum* dealt with 42 U.S.C. § 1983, but the court finds no reason to distinguish these causes of action from assault and battery when considering whether an entity is suable.

The Eighth Circuit Court of Appeals's findings in *Ketchum* and *Diggs*, that police departments are not generally suable, is also consistent with the findings of many other federal circuit and district courts. See *Darby v. Pasadena Police Dep't*, 939 F.2d 311, 313 (5th Cir. 1991); *Hernandez v. Borough of Palisades Park Police Dept.*, 58 Fed.Appx. 909, 912 (3rd Cir. 2003); *East Coast Novelty Co., Inc. v. City of New York*, 781 F.Supp. 999, 1010 (S.D.N.Y. 1992); *Wilson v. City of New York*, 800 F.Supp. 1098, 1101 (E.D.N.Y. 1992); *Regalbuto v. City of Philadelphia*, 937 F.Supp. 374, 377 (E.D.Pa. 1995); *Whayne v. State of Kan.*, 980 F.Supp. 387, 392 (K.Dan. 1997); *Haverstick Enterprises, Inc. v. Financial Federal Credit, Inc.*, 803 F.Supp. 1251, 1256 (E.D.Mich.S.Div. 1992); *Hee v. Everlof*, 812 F.Supp. 1350, 1351 (D.Vt. 1993); *Hinton v. Metropolitan Police Dept., Fifth Dist.*, 726 F.Supp. 875, 875 (D.D.C. 1989); *Bunyon v. Burke County*, 285 F.Supp.2d 1310, 1328 (S.D.GA.Augusta.Div. 2003); *Gray v. City of Chicago*, 159 F.Supp.2d 1086, 1089 (N.D.Ill.E.Div. 2001); *Alexander v. Beale Street Blues Co., Inc.*, 108 F.Supp.2d 934, 947 (W.D.Tenn.W.Div. 1999); *Gillespie v. City of Indianapolis*, 13 F.Supp.2d 811, 816 (S.D.Ind.Indianapolis.Div. 1998); *Meyer v. Lincoln Police Dept.*, 347 F.Supp.2d 706, 707-708 (D.Neb. 2004); *O'Donnell v. Brown*, 335 F.Supp.2d 787, 815 (W.D.Mich. 2004), but see also *Shaw v. State of California Dept. of Alcoholic Beverage Control*, 788 F.2d 600, 605 (9th Cir. 1986) (holding that the California Government Code defines police departments as public entities capable of being sued in federal court).

In summary, Rule 17(b)(3) requires the court to look at Iowa law when deciding whether to dismiss the SCPD from this case. The Iowa Supreme Court has signaled that subdivisions of municipalities are not suable as such. In addition, the Iowa Code supports the proposition that municipal police departments are subdivisions of the home rule municipalities creating them—this rule would apply to Sioux City and the Sioux City Police Department. The Eighth Circuit Court of Appeals’s precedent also supports the finding that a police department, as a subdivision of a city, is not a suable entity.

C. Police Departments as “Persons” Under 42 U.S.C. § 1983

As stated above, the SCPD’s brief also argues that “a municipal police department is not a ‘person’ within the meaning of 42 U.S.C. § 1983.” Doc. No. 5-2. In Shannon’s response, he argues that whether a municipal police department is a “person” under § 1983 is an open question in the Eighth Circuit and that this court should consider the United State Supreme Court’s decision in *Monell* instead of the unreasoned authority supporting the defendant’s motion. Doc. No. 7-2. Again, in the SCPD’s reply brief it disputes whether the issue is an open question in the Eighth Circuit. Doc. No. 8. At times, the parties,¹ and some courts,² fail to clearly distinguish between whether an entity is suable

¹ For example, the defendant SCPD states that “[a] municipal police department... is not a ‘person’ within the meaning of the statute [§ 1983]” and then cites “*Ball v. City of Coral Gables*, 548 F.Supp.2d 1364, 1369 (11th Cir. 2008) (stating that ‘sheriff’s departments and police departments are not usually considered legal entities subject to suit’).” Doc. No. 5-2. In *Ball*, the court explains that “[t]he capacity to sue or be sued is ‘determined by the law of the state in which the district court is held.’” *Coral Gables* at 1369 (quoting Fed. R. Civ. P. 17(b)). The court goes on to explain that, “[u]nder Florida law, “‘where a police department is an integral part of the city government as the vehicle though (sic) which the city government fulfills its policing functions it is not an entity
(continued...)

and whether an entity is a “person” under § 1983. As discussed in the previous section, the Federal Rules of Civil Procedure dictate whether a party is suable, but consideration of whether an entity is a “person” under § 1983 concerns Congressional intent. See *Monell* at 690. In *Monell*, the Court explained that:

¹(...continued)

subject to suit.’” *Id.* (citations omitted). Similarly, Shannon, in discussing whether a city’s police department is a “person” under 42 U.S.C. § 1983 cites *Reese v. Chicago Police Department*, 602 F.Supp. 441, 443 (D.C.Ill. 1984). In *Reese*, the court found that “[t]he Chicago Police Department and the Cook County State’s Attorney’s Office, which do not enjoy separate legal existence independent of the City of Chicago and the County of Cook, respectively, are not suable entities and should therefore be dismissed.” *Reese* at 443.

² For example, in *Wade v. Tompkins*, the Eighth Circuit Court of Appeals cites *Dean v. Barber*, 951 F.2d 1210, 1214 (11th Cir. 1992) for the proposition that “(sheriff’s departments are not usually considered legal entities subject to suit under § 1983).” *Wade v. Tompkins*, 73 Fed.Appx. 890, 893 (8th Cir. 2003). This statement is either inaccurate or, at the least, ambiguous in that it appears to imply that the department is not subject to suit due to a limitation imposed by § 1983. Instead, the court more clearly could have stated that sheriff departments are not usually considered legal entities subject to suit. In *Dean*, the Eleventh Circuit Court of Appeals, more clearly stated “that the Jefferson County Sheriff’s Department is not a legal entity and, therefore, is not subject to suit or liability under section 1983.” *Dean* at 1214. In addition, in the same paragraph, the court made the distinction explicit by stating that:

The question here is not whether the Jefferson County Sheriff’s Department is a “person” for the purposes of liability under *Monell* and section 1983, but whether the Department is a legal entity subject to suit.

Id. The Eighth Circuit Court of Appeals more clearly recognized the distinction in *De La Garza v. Kandiyohi County Jail, Correctional Institution*, 18 Fed.Appx. 436, 437 (8th Cir. 2001).

Our analysis of the legislative history of the Civil Rights Act of 1871 compels the conclusion that Congress *did* intend municipalities and other local government units to be included among those persons to whom § 1983 applies. Local governing bodies, therefore, can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where, as here, the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers.

In this case, a municipality is being sued for the alleged actions of its police department. However, this fact does not impact the status of the municipality as a "person" under § 1983.³

³ There is, however, support for the position that *Monell* only made municipalities "persons" under § 1983. For example, in *Williams v. Baxter*, 536 F.Supp. 13, 16 (D.C.Tenn 1981), the court found that:

Obviously, a city police department is not a municipality. Instead, it is a municipal agency or department and, as such, would not appear to be covered by the limited holding of *Monell*, supra, which deals exclusively with municipalities. Nothing in *Monell*, supra, purports to change the rule that a municipal police department, in contract (sic) to the municipality itself, is not an entity suable under 42 U.S.C. s 1983. See *Canty v. City of Richmond*, D.C.Va. (1974), 383 F.Supp. 1396, 1400(13); *White v. Flemming*, D.C.Wis. (1974), 374 F.Supp. 267, 269(1).

This court finds that the *Williams* court's line of reasoning is in error, at least as applied to Iowa municipalities, because it distinguishes between two entities, a municipality and a municipal police department, which are one and the same entity under Iowa law. The *Williams* court also relies on authority that pre-dates *Monell*.

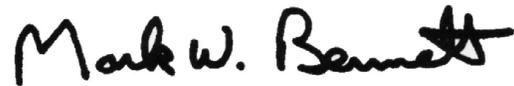
Shannon, when trying to find support from *Monell*, tries to compare school boards with municipal police departments. *Monell*, however, distinguishes the two when it explains that municipalities and school boards are each “an instrumentality of state administration.” *Monell* at 696. A municipal police department, at least in Iowa, is not an instrumentality of state administration but instead part of the municipal government, which created it with its home rule power and authority, as explained above.

III. CONCLUSION

For the above reasons, this court finds that defendant Sioux City Police Department’s Rule 12(b)(6) Motion to Dismiss Sioux City Police Department, Doc. No. 5, is **granted** and that the Sioux City Police Department is dismissed from this case, at least as an entity separate from the City of Sioux City.

IT IS SO ORDERED.

DATED this 13th day of October, 2008.



MARK W. BENNETT
U. S. DISTRICT COURT JUDGE
NORTHERN DISTRICT OF IOWA