

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

KESIENA TANI

v.

ST. MARY’S COUNTY, et al.

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Civil No. CCB-07-1924

**MEMORANDUM**

The various motions pending in this case have been read and considered. My rulings follow.

The motions to bifurcate (docket entry nos. 11 and 14) are Granted. *See Marryshow v. Town of Bladensburg*, 139 F.R.D. 318 (D. Md. 1991). Whether any viable claims have been stated against Calvert County and St. Mary’s County will be decided, if necessary, during the second stage of these proceedings.

The defendants’ motions to dismiss (docket entry nos. 9, 10, and 19) will be Granted in part and Denied in part as follows.

First, as the St. Mary’s County Sheriff’s Department and the Calvert County are not independent governmental entities capable of being sued, all claims against those named defendants will be dismissed. *Boyer v. State*, 594 A.2d 121, 128 n.9 (Md. 1991). Further, as county sheriffs and deputy sheriffs are considered state personnel, *see Rossignol v. Voorhaar*, 321 F. Supp. 2d 642, 650 (D. Md. 2004); *Rucker v. Harford County*, 558 A.2d 399, 402 (Md. 1989), all claims against the individual defendants in their official capacities will be dismissed. *See Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 (1989).

State personnel are immune from liability in tort for actions within the scope of

employment and committed without gross negligence or malice. The State's immunity for those acts may be waived under the Maryland Tort Claims Act, Md. Code Ann. State Gov't § 12-101 *et seq.*, *Gray v. Maryland*, 228 F. Supp. 2d 628, 640 (D. Md. 2002), but the plaintiff Tani has not complied with the Act's requirement of submitting a written claim to the Treasurer within one year. Md. Code Ann. State Gov't § 12-106. To the extent he states a claim that sufficiently alleges malicious or grossly negligent tortious action by an individual defendant, he may seek recovery from that individual but not from the State. *See Pope v. Barbre*, 935 A.2d 699, 710, 714 (Md. 2007).

Among the claims Mr. Tani seeks to bring are claims for defamation, which are time-barred by the one year statute of limitations, and claims for negligent infliction of emotional distress, a tort not recognized in the state of Maryland. Accordingly, those claims will be dismissed.

The core of Mr. Tani's § 1983 claims, which may be viable at the motion to dismiss stage, is that he was injured by the use of excessive force against him on March 10-11, 2006, when he was arrested at his home/office, and that he was subjected to arrest without probable cause; his core state law claims are for malicious prosecution and intentional infliction of emotional distress. He claims to have suffered severe and unprovoked injuries and states that all charges against him were dismissed.<sup>1</sup> Accordingly, Mr. Tani may have claims against some of the individual defendants sufficient to survive a Rule 12(b)(6) motion to dismiss.

It appears, however, that he has not properly served by certified mail Restricted Delivery

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<sup>1</sup>He also claims property damage to his home/office, which would not appear to state a constitutional claim. *Hudson v. Palmer*, 468 U.S. 517, 533 (1984).

any of the individual defendants.<sup>2</sup> See Fed. R. Civ. P. 4(e); Md. R. 2-121(a). The proper remedy is to permit Mr. Tani limited additional time to accomplish such services. *Gant v. Kant*, 314 F. Supp. 2d 532, 534 (D. Md. 2004).

Finally, Mr. Tani's motion to amend or correct his complaint is defective for failure to comply with Local Rule 103(6)(a); more significantly, it would be futile to allow any amendment that seeks to restate the claims subject to dismissal, and it would be prejudicial to add new defendants or claims at this time.<sup>3</sup> Accordingly, that motion is Denied.

In summary, all claims against the counties are bifurcated; all claims against the individual defendants except those under § 1983 for excessive force and false arrest and those under state law for malicious or intentional torts are dismissed without leave to amend or refile. All claims, including those identified above, are dismissed for failure to serve process but with leave to perfect service within 45 days by serving the existing complaint in accordance with the federal and Maryland rules cited above.

So **ORDERED** this 31st day of March, 2008.

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/s/  
Catherine C. Blake  
United States District Judge

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<sup>2</sup>Nor were any personally served, for which Mr. Tani would have to employ a process server or other agent.

<sup>3</sup>Mr. Tani's motion also seeks to delete Trooper First Class Steve Jones as a defendant. (Mot. Amend/Correct Compl. 2.) Given the affidavit submitted by Trooper First Class Andrew Rossignol, in which he states that neither Trooper First Class Steve Jones nor Lt. Brian Cedar were present during the events at Mr. Tani's home, (see Cedar Mot. Dismiss Ex. 3), Trooper First Class Jones will be deleted as a defendant and Lt. Cedar's motion to dismiss will be Granted.

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**ORDER**

In accordance with the foregoing Memorandum, it is hereby **ORDERED** that:

1. The Motions to Dismiss filed by defendants St. Mary's County, Calvert County and Keith Moritz (docket entry nos. 9, 10, and 19) are **GRANTED**, with leave to perfect service within 45 days on the claims as described in the Memorandum;
2. The Motions to Bifurcate filed by defendants St. Mary's County and Calvert County (docket entry nos. 11 and 14) are **GRANTED**;
3. The Motion to Dismiss filed by defendant Lt. Brian Cedar (docket entry no. 24) is **GRANTED**; and
4. Plaintiff Kesiena Tani's Motion to Amend/Correct (docket entry no. 29) is **DENIED**.

March 31, 2008  
Date

/s/  
Catherine C. Blake  
United States District Judge