NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-3294

IVEY MCCRAY,
Appellant

v.

WILLIAM D. JONES; CARLA TENTION, Essex County Child Support Enforcement Division; RASHAD SHABAZZ-BURNS, Director New Jersey State Child Support Enforcement; JOHN DOE 1-50

On Appeal from the United States District Court
for the District of New Jersey
(D.C. No. 2-21-cv-03937)
U.S. District Judge: Hon. Susan D. Wigenton

Submitted Under Third Circuit L.A.R. 34.1(a)
December 6, 2022

Before: SHWARTZ, MATEY, and FUENTES, Circuit Judges.

(Filed: December 7, 2022)

OPINION*

SHWARTZ, Circuit Judge.

* This disposition is not an opinion of the full Court and, pursuant to I.O.P. 5.7, does not constitute binding precedent.

Ivey McCray sued various individuals over the collection of child support she owed. Because her complaint fails to allege any personal involvement by Defendants William D. Jones and Carla Tention, we will affirm the District Court's order dismissing the complaint against them.

I

A

McCray and Jones divorced in 1988. Jones, who resided in New Jersey, had custody over their daughter and obtained child support from McCray. Eventually, the child support order was converted to an arrears order in the amount of $100.00 per month (the "Arrears Order"). The Arrears Order was sent to "Essex County"[1] for enforcement.

Collection efforts on the Arrears Order occurred on several fronts. In May 2012, "Essex County" sent the Arrears Order to Alameda County, California, where McCray resided. Alameda County instituted an administrative offset of $100.00 per month from McCray's Social Security retirement benefits through 2019. In 2018, "Essex County" obtained a tax offset from McCray's federal tax refund. Compl. ¶¶ 22-23 (App. 20). In June 2020, the Internal Revenue Service informed McCray that her federal stimulus payment had been paid to "Essex County." Compl. ¶ 24 (App. 20). Between September 2020 and January 2021, "Essex County" notified McCray about these collection activities. Compl. ¶ 26 (App. 20-21). Beginning in June 2020, McCray sent several

[1] McCray's complaint refers only to "Essex County" and never specifies which county entity carried out any of these actions.

letters to "all Defendants" requesting return of the funds, but she received no response. Compl. ¶¶ 25-28 (App. 20-21).

B

1

McCray sued various defendants, including Jones and Tention, who she identified "as Director of Essex County Child Support Enforcement," App. 16,[2] asserting the following: (1) a due process claim against "Essex County" under 42 U.S.C. § 1983 for seizing her federal tax refunds and Social Security benefits without amending the Arrears Order; (2) a claim under the Uniform Interstate Family Support Act ("UIFSA") against all Defendants for seizing amounts beyond those specified in the Arrears Order; (3) a Fourteenth Amendment claim against "Essex County" for assigning the right of enforcement to California while "Essex County" also enforced the Order; (4) a claim under the Social Security Act ("SSA") against all Defendants for certifying Jones as a Title IV-D beneficiary to pursue past due child support; and (5) a claim under N.J.S.A. § 2A:14-1.2 against all Defendants for registering the support order in California and later seizing her stimulus check. McCray sought return of the money paid to Jones and/or seized by "Essex County," as well as an injunction against continued offsets of federal tax refunds or administrative funds. App. 25.

2

[2] McCray also sued Rashad Shabazz Burns, as "Director of New Jersey State Child Support Enforcement." App. 16. The claims against Burns were voluntarily dismissed.

Jones and Tention filed motions to dismiss under Federal Rule of Civil Procedure 12(b)(6). The District Court granted the motions, concluding, among other things, that each count failed to state a claim against either Jones or Tention. McCray v. Jones, No. 21-CV-03937, 2021 WL 5864066, at *1-2 (D.N.J. Dec. 10, 2021). The Court noted that "[n]oticeably absent" from McCray's complaint were factual allegations against Jones or Tention that would give rise to liability for actions the federal government or California took. Id. at *2. The Court further concluded that McCray failed to provide a legal basis for her to sue under UIFSA, the SSA, or N.J.S.A. § 2A:14-1.2, which is a statute of limitations provision. Id.

McCray appeals.

II[3]

A

When reviewing a district court's order dismissing under Rule 12(b)(6), we must determine whether the complaint, construed "in the light most favorable to the plaintiff,"

[3] The District Court had jurisdiction pursuant to 28 U.S.C. § 1331. We have jurisdiction pursuant to 28 U.S.C. § 1291. We exercise plenary review of a district court's order granting a motion to dismiss. Burtch v. Milberg Factors, Inc., 662 F.3d 212, 220 (3d Cir. 2011).

Judge Matey would vacate the District Court's decision and remand with instructions to dismiss without prejudice because McCray lacks standing to sue Jones or Tention for the acts alleged in her complaint. See Dominguez v. UAL Corp., 666 F.3d 1359, 1365 (D.C. Cir. 2012). Because her alleged injury appears to be "the result of the independent action of some third party not before the court," Judge Matey concludes the causation element of standing "is not satisfied." Mielo v. Steak n' Shake Operations, Inc., 897 F.3d 467, 481 (3d Cir. 2018) (quoting Finkelman v. Nat'l Football League, 810 F.3d 187, 193 (3d Cir. 2016)).

Santomenno ex rel. John Hancock Tr. v. John Hancock Life Ins. Co., 768 F.3d 284, 290 (3d Cir. 2014) (quotation marks omitted), "contain[s] sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face,'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). We disregard, however, "rote recitals of the elements of a cause of action, legal conclusions, and mere conclusory statements." James v. City of Wilkes-Barre, 700 F.3d 675, 679 (3d Cir. 2012). A claim will have "facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged," Thompson v. Real Est. Mortg. Network, 748 F.3d 142, 147 (3d Cir. 2014) (quoting Iqbal, 556 U.S. at 678), or at least puts forth "allegations that raise a reasonable expectation that discovery will reveal evidence of the necessary element," Fowler v. UPMC Shadyside, 578 F.3d 203, 213 (3d Cir. 2009) (quotation marks omitted). We will examine each claim under this standard.

B

McCray's first claim seeks relief under 42 U.S.C. § 1983, which provides a cause of action against state and local officers for "the deprivation of any rights . . . secured by the Constitution and laws" of the United States. Plaintiff asserts that Tention violated her due process rights.

Civil rights actions must allege facts showing the defendants had "personal involvement in the alleged wrongs." Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988); see also Evancho v. Fisher, 423 F.3d 347, 353 (3d Cir. 2005) ("The Third Circuit

has held that a civil rights complaint is adequate where it states the conduct, time, place, and persons responsible."). This is true even where a plaintiff seeks to hold a defendant liable under a theory of supervisory liability. So here, McCray must allege that Tention "participated in violating [her] rights, directed others to violate them, or, as the person in charge, had knowledge of and acquiesced in h[er] subordinates' violations." A.M. ex rel. J.M.K. v. Luzerne Cnty. Juv. Det. Ctr., 372 F.3d 572, 586 (3d Cir. 2004). Allegations of "actual knowledge and acquiescence" must be made with "appropriate particularity." Rode, 845 F.2d at 1207. Supervisory liability may also be available where a supervisor implements or maintains a policy or practice that creates an "unreasonable risk" of a deprivation of a constitutional right by her subordinates and the "supervisor's failure to change the policy or employ corrective practices" results in unconstitutional conduct. Argueta v. U.S. Immigr. & Customs Enf't, 643 F.3d 60, 72 (3d Cir. 2011). "[T]he connection between the supervisor's directions and the constitutional deprivation must be sufficient to demonstrate a plausible nexus or affirmative link between the directions and the specific deprivation of constitutional rights at issue." Santiago v. Warminster Twp., 629 F.3d 121, 130 (3d Cir. 2010) (quotation marks omitted).

McCray claims Tention deprived her of her rights under the Due Process Clause of the Fourteenth Amendment. McCray's complaint, however, fails to identify any actions that Tention or her office took concerning the Arrears Order and offsets to her Social Security benefits, tax refund, or federal stimulus check, or that Tention had knowledge of those events. In fact, Tention is mentioned only in the caption of the complaint and in

one paragraph identifying her as the "alleged director" of the Essex County Child Support Enforcement Division. See Evancho, 423 F.3d at 353-54 (concluding pleadings were insufficient where plaintiff did not allege any facts indicating high-ranking official personally directed activities or had knowledge or acquiesced in those activities but "hypothesize[d] that [the official] may have been somehow involved simply because of his position").[4] As such, McCray has failed to allege personal involvement by Tention.

To the extent McCray made more specific allegations in her responses to the motions to dismiss, we may not consider them because a party may not amend her pleadings by making factual assertions in a brief. Pennsylvania ex rel. Zimmerman v. PepsiCo, Inc., 836 F.2d 173, 181 (3d Cir. 1988). The District Court therefore did not err in dismissing Counts 1 and 3 of the complaint against Tention.[5]

[4] McCray's complaint also contains several legal conclusions against all Defendants, see, e.g., Compl. ¶¶ 31-32 (App. 21) (alleging Defendants "caused the [Order] to be effectively modified without due process of the law" and "deprived her [of] a right to her full benefits in violation of the Social Security Act"), which we may not consider in evaluating her complaint, see James, 700 F.3d at 679.

[5] Count 1 of McCray's complaint asserts a claim under § 1983 and Count 3 alleges a violation of the Due Process Clause. The two claims are based on the same events, allegations, and constitutional provision; as a result, the Due Process count is deemed subsumed under § 1983. Rogin v. Bensalem Twp., 616 F.2d 680, 686-87 (3d Cir. 1980) ("[I]t would be a redundant and wasteful use of judicial resources to permit the adjudication of both direct constitutional and § 1983 claims where the latter wholly subsume the former."). As a result, our ruling applies to both counts.

C

The District Court also correctly dismissed Counts 2 and 4, which assert that Tention and Jones violated UIFSA and the SSA, respectively.[6]

Both statutes contain provisions addressing enforcement of child support orders. New Jersey has codified UIFSA at N.J.S.A. § 2A:4-30.124, et seq., and McCray identifies "UIFSA section 600" as the basis for her relief, Compl. ¶ 30 (App. 21). Article 6 of UIFSA sets forth mechanisms for registration, enforcement, and modification of support orders. See, e.g., N.J.S.A. §§ 2A:4-30.168 to 2A:4-30.183. Title IV-D of the SSA addresses enforcement of support obligations owed by noncustodial parents, 42 U.S.C. § 651, including collection and disbursements, 42 U.S.C. §§ 651-669b. Even assuming McCray may bring a private claim under these provisions, she has failed to allege how Tention or Jones participated in the collections activity about which she complains. Although McCray asserts that "Essex County" sent the Arrears Order to California, which then began the administrative offsets, she does not allege that Tention was employed by "Essex County" at that time or was involved with the offsets. As to Jones, McCray's complaint lacks any specific allegations about him beyond his receipt of payments under the orders. Indeed, she alleges that he took "no steps" regarding the

[6] Jones did not file a brief in this appeal, but we will review the order dismissing the claims against him.

Arrears Order. Compl. ¶ 34 (App. 22). Thus, the District Court properly dismissed the UIFSA and SSA claims against both Defendants.[7]

III

For the foregoing reasons, we will affirm the District Court's judgment.

[7] The District Court also properly dismissed Plaintiff's final claim, which cites to N.J.S.A. § 2A:14-1.2. This provision merely sets forth the limitations period for civil actions commenced by the state. McCray did not act for nor sue New Jersey and neither Tention, an alleged county-level official, nor Jones, a private citizen, is subject to this provision.