IN THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR KENT COUNTY

SHAUNA D. BEYER, :

:

Plaintiff, : C.A. No: K13C-02-008 (RBY)

:

v. :

CITY OF HARRINGTON,
HARRINGTON POLICE
DEPARTMENT, SGT. EARL K.

BRODE, PFC. WILLIAM F. DAVIS, : CPL. JOSEPH PERNA, :

:

Defendants. :

Submitted: December 19, 2013 Decided: January 21, 2014

Upon Consideration of Defendants' Motion for Summary Judgment DENIED

ORDER

Michael I. Silverman, Esquire, Silverman, McDonald & Friedman, Wilmington, Delaware for Plaintiff.

William W. Pepper, Esquire, Schmittinger & Rodriguez, P.A., Dover, Delaware for Defendants.

Young, J.

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SUMMARY

_____The City of Harrington, Harrington Police Department, Sergeant Earl K.

Brode, Patrolman William F. Davis IV(now Patrolman First Class, K-9 Unit), and Patrolman (now Corporal) Joseph Perna (collectively "Defendants" or "City of Harrington") move for an order granting Summary Judgment against Shauna D.

Beyer ("Plaintiff") in an action arising from an alleged civil rights violation committed by Defendants. Defendants seek an order for Summary Judgment based on Plaintiff's failure to produce expert reports by the July 12, 2013 deadline.

However, on November 13, 2013, the Court extended the expert report deadline for 120 days, with expert reports due at the close of discovery, rendering Defendants' motion premature. Therefore, Defendants' Motion for Summary Judgment is **DENIED**.______

FACTS AND PROCEDURAL POSTURE

The instant action arises from a civil rights, excessive force case filed by Plaintiff against the City of Harrington, Delaware and its police officers on February 11, 2013.

The following lengthy description is based upon Plaintiff's allegations. Plaintiff was contacted by Harrington Police Assistant Chief, Keith Shyers ("Officer Shyers"), on February 10, 2011, who stated that he needed Plaintiff to bring her son Benjamin to the Harrington Police Station (the "Station") for questioning about a complaint. Due to Plaintiff's unavailability at the time, Officer Shyers arranged a time during the following morning for Plaintiff to come into the Station. That was scheduled for February 11, 2011, at 8:15 a.m., and was to

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include Sergeant Earl K. "Kenny" Brode ("Officer Brode"). There were no active warrants on file for Plaintiff's son, Benjamin.

According to Plaintiff's allegations, arrival to the Station, Plaintiff was informed by Patrolman William Davis ("Officer Davis") that Officer Brode was absent on a personal emergency. Officer Davis still tried to pressure Plaintiff and Benjamin to come inside the Station, so that he could question Benjamin about another topic. Plaintiff refused to comply with Officer Davis's request, on the basis that she feared being unlawfully imprisoned. According to Plaintiff's Complaint, she had been unlawfully imprisoned several times prior to this incident at the same Station. Plaintiff walked back to her car, then drove away from the Station. Continuing the allegations, Officer Davis followed Plaintiff with his lights activated, while Officer Brode cornered Plaintiff, coming directly towards her in her lane of traffic. After Plaintiff stopped her car to avoid a crash, three officers from the Harrington Police Department approached Plaintiff's vehicle, while two of the officers, Officer Davis and Patrolman Joseph Perna ("Officer Perna") beat her windshield with night sticks. Officer Davis and Officer Perna handcuffed Benjamin and the Plaintiff without a warrant. The officer also did not recite Miranda rights at the time of the arrest.

When Officer Davis handcuffed Plaintiff, Davis injured her shoulder and arm. Officer Davis put Plaintiff in the back of his police car. After arriving at the Station, Officer Davis escorted Plaintiff through two steel doors at the back of the Station, one of which struck her in the head upon opening, leaving a knot on the right side of her forehead. Then, Plaintiff was locked in a jail cell for two hours

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with Benjamin. Neither Plaintiff nor Benjamin was questioned during that time. Before letting Plaintiff and her son leave, an officer at the Station gave Plaintiff her personal belongings along with documents stating five charges against her. Plaintiff was told that Benjamin's charges would be delivered in the mail. Plaintiff was also given an "Unsigned Warrant" for Benjamin before both Plaintiff and Benjamin left the Station.

Soon thereafter, and still based upon Plaintiff's allegations, Plaintiff received treatment from Milford Memorial Hospital, where her right arm was placed in a sling, and she was prescribed pain medication. After a year of appointments, therapy, and medicine, Plaintiff's shoulder continued to get worse. Plaintiff had surgery performed by an orthopedic surgeon on June 13, 2012, but sustained permanent Brachial Plexus nerve damage due to the over rotation of her right arm. When Plaintiff asked for leave from her job as a waitress in order to undergo surgery, she was fired. Plaintiff continues to suffer pain from her arm injury.

Plaintiff filed the Complaint in this action against the City of Harrington *pro se*, on February 11, 2013. Defendant filed an Answer on February 28, 2013. The Court entered a Scheduling Order on April 4, 2013, which established July 12, 2013 as the deadline for Plaintiff's expert discovery. Plaintiff retained Michael I. Silverman, Esquire ("Silverman") and Brian S. Chacker, Esquire ("Chacker") as co-counsel shortly prior to the expiration of Plaintiff's expert report deadline, July 12, 2013. On September 25, 2013, the Court admitted Chacker on a *Pro Hac Vice* basis. At the time, Plaintiff's discovery deadline was set to expire on October 11,

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2013.

On November 4, 2013, Defendants filed a Motion for Summary Judgment based upon Plaintiff's failure to produce an expert report. On November 8, 2013, Plaintiff's Counsel requested a Scheduling Office Conference in order to request an extension of the case deadlines, so that the parties could engage in discovery, giving Plaintiff an opportunity to obtain necessary expert opinions and reports. On November 13, 2013, the Court extended all deadlines, including the expert report deadlines for 120 days, with the expert reports due at the close of discovery. On November 19, 2013, Plaintiff filed a Response in Opposition to Defendant's Motion for Summary Judgment.

STANDARD OF REVIEW

Pursuant to Superior Court Civil Rule 56, summary judgment is appropriate when there is no genuine issue of material fact so that the moving party is entitled to judgment as a matter of law. In ruling on a Motion for Summary Judgment, the Court must consider the facts in the light most favorable to the non-moving party. The moving party bears the burden of showing that no genuine issue of material fact exists. If, in a properly supported Motion for Summary Judgment, the moving party shows that there is no genuine issue of material fact, then the burden shifts to the non-moving party to prove that there is a material issue of fact in dispute. In

¹ Schagrin v. Wilmingn Medical Center, Del. Super., 304 A.2d 61 (1973).

 $^{^{2}\,}$ Moore v. Sizemore, Del. Super., 405 A.2d 679 (1979).

³ *Id.* at 681.

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order to carry its burden, the non-movant must produce specific facts, which would sustain a verdict in its favor.⁴ The non-movant cannot create a genuine issue for trial through bare assertions or conclusory allegations.⁵ In weighing a Motion for Summary Judgment under this rule, the Court must examine the record, including pleadings, depositions, admissions, affidavits, answers to interrogatories, and any other product of discovery.⁶

DISCUSSION

Defendants argue that, since Plaintiff has no medical experts, Plaintiff's claim is not meritorious, because Plaintiff cannot establish the causal connection between Defendants' actions and her alleged injuries. Defendants base this argument on the Scheduling Order entered on April 4, 2013, which established July 12, 2013 as Plaintiff's expert discovery deadline. Admittedly, Plaintiff failed to identify and produce expert reports by the July 12, 2013 deadline.

However, on November 13, 2013, the Court extended all deadlines, including expert report deadlines for 120 days, with expert reports due at the close of discovery. Clearly, the expert report deadlines as extended have not expired, rendering Defendants' motion premature. Furthermore, for at least some aspects of her claim, Plaintiff need prove only that her civil rights were violated pursuant to

⁴ Anderson v. Liberty Lobby Inc., 477 U.S. 242 (1986).

⁵ Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

⁶ G.R. Sponaugle & Sons v. Mcknight Construction Co., Del. Super. Ct., 304 A.2d 339 (1973); Oliver B. Cannon & Sons v. Door Oliver, Inc., Del. Super. Ct., 312 A.2d 322 (1973).

⁷ Rayfield v. Power, 840 A.2d 642, 2003 Del. LEXIS 586 (Del. 2003).

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42 U.S.C. Section 1983, et seq., to prevail.8

CONCLUSION

For the foregoing reasons, Defendants' Motion for Summary Judgment is **DENIED**.

IT IS SO ORDERED.

/s/ Robert B. Young

J.

RBY/lmc

oc: Prothonotary

cc: Counsel

Opinion Distribution

File

⁸ See *Bolden v. Southeastern Pennsylvania Transp. Authority*, 21 F.3d 29 (3d Cir. 1994) (There was no requirement for expert testimony to corroborate claim for emotional distress in civil rights action); *Miller v. City of East Orange*, 509 F. Supp. 2d 452 (D.N.J. 2007).