UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Julius Chad Zimmerman,

Plaintiff,

v.

Dave Bellows, in his individual and official capacities, *et al.*,

Defendants.

Case No. 12-cv-2811 (RHK/SER)

MEMORANDUM IN SUPPORT OF DEFENDANT DAKOTA COUNTY SHERIFF'S MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

Plaintiff Julius Chad Zimmerman (Plaintiff) has asserted various claims against Dakota County Sheriff Dave Bellows and unnamed John Does and Jane Roes (Defendants) stemming from his incarceration in the Dakota County Jail from the time of his arrest on Thursday, November 10, 2011, until his release on Tuesday, November 15, 2011. Plaintiff alleges violation of the Fourth, Eighth and Fourteenth Amendments of the United States Constitution pursuant to 42 U.S.C. § 1983, violation of the automatic stay provisions of 11 U.S.C. §362, and state law claims of negligence, false imprisonment, and violation of Sections 5 and 12 of Article I of the Minnesota Constitution. Defendants bring this motion for summary judgment pursuant to Rule 56(a) of the Federal Rules of Civil Procedure, on the grounds that the Complaint fails to state a claim for which relief can be granted, and on the grounds that Defendants are immune from Plaintiff's claims.

STATEMENT OF FACTS

Plaintiff was arrested by City of Rosemount Police on November 10, 2011, on a warrant for contempt of court. (Ex. 1, Arrest Report; T. Zimmerman p. 23, lines 22-25). His booking into the Dakota County Jail was completed at 1:11 a.m., on November 11, 2011. It is the policy of the Jail that persons arrested on warrants are brought before the court at the earliest time court is in session. (Aff. of Rolloff). Booking is completed before an arrestee is brought before the court because information must be collected on the arrestee, including whether or not there are other outstanding warrants. (Aff. of Rolloff). According to Plaintiff's warrant for arrest, he failed to obey the order/summons of the court on an Order to Show Cause hearing. (Ex. 2, Writ of Attachment). It is undisputed that Plaintiff was arrested pursuant to a valid warrant. (T. Zimmerman, p. 24, lines 23-25).

After booking, Plaintiff was moved to a Jail housing unit for classification. (Aff. of Rolloff). It is the policy of the Jail that arrestees are placed in the classification unit after booking and not moved to the general population until after they have had their first appearance before the court. (Aff. of Rolloff). The reason arrestees are placed in a classification unit is so that they can be observed by Jail staff to determine the arrestee's appropriate housing unit. (Aff. of Rolloff). Plaintiff was not placed in solitary confinement. (T. Zimmerman, p. 35, lines 4-6; Aff. of Rolloff).

Friday, November 11, 2011, was Veteran's Day and a legal holiday for the Dakota County courts. (Aff. of Rolloff). November 12, 2011, and November 13, 2011, were Saturday and Sunday, respectively, and no court was in session. (Aff. of Rolloff). The

earliest Plaintiff could have been brought before the court on his warrant was Monday, November 14, 2011. (Aff. of Rolloff).

As part of the booking process, Plaintiff was issued a free phone card on November 10, 2011. (Aff. of Rolloff, Ex. 3 and T. Zimmerman, p. 33, lines 10-11). Jail records show that Plaintiff made three, free phone calls: November 11, 2011, at 10:15 a.m.; November 13, 2011, at 10:16 a.m.; and November 14, 2011, at 1:02 p.m. (Aff. of Rolloff and Ex. 3). The Jail keeps on file the telephone number for the "on-call" judge and provides this telephone number to attorneys who call the Jail and ask for this information. (Aff. of Rolloff). Jail logs show that a Plaintiff was scheduled to appear in court on November 14, 2010, at 11:00 a.m. This log entry was cancelled, and Plaintiff was rescheduled to appear in court on November 15, 2011, at 11:00 a.m. (Aff. of Rolloff). On November 14, 2011, the district court issued an Order to Quash Bench Warrant, on behalf of Plaintiff. (Ex. 5). The Jail received the Order to Quash from the court at 8:36 a.m. on November 15, 2011. (Aff. of Rolloff). Plaintiff was released from Jail at 9:44 a.m., on November 15, 2011, pursuant to the November 14, 2011, Order. Because Plaintiff was already released, he did not appear before the court for the 11:00 a.m. hearing. (Ex. 4).

STANDARD FOR SUMMARY JUDGMENT

The standard for summary judgment is set forth in *Rule 56 (a)* of the *Federal Rules of Civil Procedure* and provides that summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Fed.R.Civ.P. 56(a).* A fact is material only

when its resolution affects the outcome of the case. *Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202, 211 (1986).* A dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id., 477 U.S. at 248.*

In considering a motion for summary judgment, the court is to view the evidence and inferences in a light most favorable to the nonmoving party. *Id., 477 U.S. at 254.* However, the nonmoving party may not rest upon mere denials or allegations in the pleadings, but must set forth specific facts sufficient to raise a genuine issue for trial. *Celotex Corp. v. Catrett, 477 U.S. 317, 324, 106 S.Ct. 2548, 2553, 91 L.Ed.2d 265, 274 (1986).* Furthermore, if a plaintiff cannot support each essential element of plaintiff's claims, summary judgment must be granted because a complete failure of proof regarding an essential element necessarily renders all other facts immaterial. *Id., 477 U.S. at 322-23.*

ARGUMENT

I. Complaint Fails to State a Claim for Relief Under 42 U.S.C. § 1983.

a. The Complaint Fails to State a *Monell* Claim Against the County.

Title 42 U.S.C. § 1983 imposes civil liability upon any individual "who, under color of any statute, ordinance, regulation, custom, or usage of any State… subjects, or causes to be subjected, any citizen of the United States… to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws…." 42 U.S.C. § 1983.

Plaintiff has brought this lawsuit against Defendant Bellows in his individual capacity and his professional capacity, which is a lawsuit against Dakota County. It has

long been held that liability may not be imposed upon a government or municipality in a 42 U.S.C. § 1983 action on a *respondeat superior* theory. *Monell v. Dept of Social Services*, 436 U.S. 658 (1978). In other words, a government or municipality may not be sued under this section "for an injury inflicted solely by its employees or agents." *Id*. at 694; *See also*, *Szable v. City of Brooklyn Park,* 486 F.3d3835 (8th Cir. 2000). In order to establish a claim against a municipality, the plaintiff must show that the deprivation of his rights was caused by a formal policy or informal custom. *Monell* at 694. Furthermore, the plaintiff must show an "affirmative link" between the occurrence of the alleged misconduct and the county's policy or custom. *Rizzo v. Goode*, 423 U.S. 362, 371 (1976). Such a policy must be "the moving force of the constitutional violation." *Polk Co. v. Dodson*, 454 U.S 312, 326 (1981). Proof of a single incident of unconstitutional activity is not sufficient to impose liability under *Monell*, unless there is an existing, unconstitutional municipal policy, which policy can be attached to a municipal policy maker. *Oklahoma v. Tuttle,* 471 U.S. 8808 (1985).

In the instant case Plaintiff has failed to identify any unconstitutional custom, practice or policy on the part of the County that has resulted in the deprivation of his constitutional rights. The facts show that Plaintiff was arrested and incarcerated in the Dakota County Jail pursuant to a valid warrant. County policy that persons arrested on warrants are brought before the court at the earliest time court is in session is consistent with the language of the warrant. The policy is also consistent with Minn. R. Crim. Pro. 4.01 that a defendant arrested with a warrant must be taken before a judge as directed in the warrant. According to Minn. R. Crim. Pro. 3.02, subd. 2, the warrant must

direct that the defendant be promptly brought before the court that issued the warrant if the court is in session. If the court is not in session, the warrant must direct that the defendant be brought before the court without unnecessary delay, and not later than 36 hours after arrest, exclusive of the day of arrest, or as soon as a judge is available. Thus County policy is consistent with what is required under state law. Even assuming *arguendo* that Plaintiff's allegation is correct that he was wrongfully held in the jail following his arrest, as noted above, one instance of unconstitutional activity is not sufficient to impose liability under *Monell*. Because Plaintiff has failed to identify any unconstitutional customs, practices or polices, the County asks that his § 1983 claim against the County be dismissed.

b. Complaint Fails to State a Claim Against Sheriff Bellows.

The Complaint makes no specific allegations of misconduct on the part of Defendant Bellows. Plaintiff admits that he never had *any* contact with the Sheriff while he was incarcerated and never spoke to him. (T. Zimmerman, p. 53, lines 22-25; p. 54, lines 1-2). Since the civil rights Complaint against Defendant Bellows in his individual capacity fails to allege any facts indicating his personal involvement in Plaintiff's incarceration which allegedly violated Plaintiff's constitutional rights, the suit against Defendant Bellows in his individual capacity must also be dismissed for failure to state a claim.

c. Complaint Fails to State a Claim Under the Fourth, Eighth and Fourteenth Amendments to the U.S. Constitution.

Plaintiff alleges that Defendants violated the Fourth, Eighth and Fourteenth Amendments to the U.S. Constitution pursuant to 42 U.S.C. § 1983, when they incarcerated Plaintiff under the warrant for his arrest. The Complaint fails to state a claim under any of these Amendments.

Prolonged detention does not rise to the level of a Fourteenth Amendment violation unless defendants acted with the requisite state of mind. The inmate must prove that defendant's conduct "shocked the conscience " *Hayes v. Faulkner County,* 388, F.3d 669, 674 (8th Cir. 2004). This standard cannot be met under these facts. Defendants at all times acted in accordance with state law and the valid orders of the state court. Plaintiff was scheduled to appear before the court, but did not do so because of the ensuing order of the court quashing the warrant for his arrest.

The Complaint also fails to state a claim under the Fourth Amendment. The Fourth Amendment governs the period of confinement between arrest without a warrant and the preliminary hearing at which a determination of probable cause is made. *See, e.g., Luckes v. Hennepin County,* 415 F.3d 936 (8th Cir. 2005). Plaintiff was arrested on a warrant, hence his Fourth Amendment claim fails. Although not pled by Plaintiff, a § 1983 claim under the due process clause would also fail, since it requires a showing of abuse of power that shocks the conscience. *Lund v. Hennepin Co.,* 427 F.3d 1123 (2005). The facts as stated above would also not support a due process claim.

Finally, Plaintiff alleges that during his incarceration in the Jail he was placed in solitary confinement in violation of the Eighth Amendment prohibition against cruel and unusual punishment. Again, the facts do not support an Eighth Amendment claim, and there is no showing that Defendants acted with deliberate indifference toward Plaintiff. Instead, as noted above, Plaintiff admits that he was never placed in solitary confinement. Furthermore, it is jail policy that new arrestees are placed in a classification unit, instead of the general jail population, until they return from their first court appearance. This is so arrestees can be observed by staff, and placed in the appropriate housing unit.

Defendants at all times acted in accordance with state and federal law, and the valid orders of the state court in all matters related to Plaintiff's arrest and incarceration. For all the above reasons the Complaint fails to state a claim under the Fourth, Eighth and Fourteenth Amendments to the U.S. Constitution.

d. Defendant Bellows and Dakota County's Employees Are Entitled to Qualified Immunity.

Defendants are also entitled to qualified immunity from Plaintiff's suit. The test for qualified immunity has two parts: (1) "whether there is sufficient evidence the [defendant] violated a constitutional right," and (2) "whether the constitutional right…was so 'clearly established' at the time for the alleged violation that a reasonable [person] would have known that his conduct was unlawful." *Atkinson v. City of Mountain View*, 709 F.3d 1201, 1211 (8th Cir. 2013) (internal quotations omitted). *Id.* To date, there is no clearly established constitutional requirement that these Defendants

were required to take steps to quash a warrant for an arrest of a debtor, such as Plaintiff, or that they violated Plaintiff's rights by not bringing him before a judge when the court was not in session on November 11, 12 and 13, 2011. *See, e.g., In re Atkins*, 175 B.R. 998, 1008 (Bankr. D.Minn. 1994). Because Defendants did not violate a clearly established right of the Plaintiff, Defendant Bellows and the unnamed County employees are entitled to qualified immunity from Plaintiff's §1983 claims.

II. No Violation of Automatic Stay.

At Count V of his Complaint, Plaintiff alleges that Defendants violated the automatic stay provisions of the Bankruptcy Code, 11 U.S.C. §362, *et seq.* He alleges that he repeatedly told "his captors" that "he had filed bankruptcy and that the automatic stay was in place such that his collection activity had to stop." (Complaint ¶44). He alleges that Defendants never checked to verify his claims about the automatic stay, and that as a result Defendants' actions were a willful violation of the automatic stay, entitling him to actual damages, costs, attorney fees and punitive damages. (Complaint ¶46 and 47). However, the burden is on the creditor, not the sheriff, to prevent violations of the automatic stay. *In re Westman*, 300 B.R. 338 (Bankr.D.Minn. 2003).

The situation presented here is similar to that in *Atkins v. Martinez* (*In re Atkins*) 175 B.R. 998, 1003 (Bankr.D. Minn. 1994). In *Atkins*, the debtor failed to appear at the hearing on the contempt motion and an arrest warrant was issued. After issuance of the warrant the debtor filed for bankruptcy but was later arrested on the warrant. The creditor's attorney sought the release of the debtor from custody by notifying the sheriff of the bankruptcy. The sheriff refused to do so without the creditor quashing the order

for the debtor's arrest. *Id.* at 1004. While the debtor in *Atkins* did not name the sheriff as a defendant, the *Westman* court, referencing the *Atkins* case, noted that the finding would have been the same: the creditor "failed to stop a process of debt enforcement that creditor lawfully started before the Debtor filed for bankruptcy." *Westman* at 345. The county that issued the warrant was not responsible for quashing the warrant, nor was the sheriff that executed the warrant; that responsibility was the creditor's. *Id.*

Defendants acted properly in following the order of the court issued for the arrest and detention of Plaintiff. It was not the responsibility of the Sheriff to quash the warrant, rather it was the responsibility of the creditor. The Complaint fails to state a claim for violation of the automatic stay on the part of the County, and Count V of the Complaint should be dismissed.

III. Failure to State a Claim of False Imprisonment.

At Count II of his Complaint Plaintiff alleges that he was falsely imprisoned by Defendants pursuant to state common law tort. False imprisonment is "any imprisonment which is not legally justifiable." *Kleidon v. Glascock*, 10 N.W.2d 394, 397 (1943). In the instant case it is not disputed that Plaintiff was incarcerated in the Dakota County Jail on a valid warrant for his arrest. As set forth elsewhere in this Memorandum, Plaintiff's claims against Defendants all stem from his mistaken belief that it was not the responsibility of the sheriff to quash the warrant for Plaintiff's arrest. The length of Plaintiff's incarceration was the result of the timing of his arrest, which resulted in his incarceration over the Veteran's Day holiday and weekend that immediately followed because court was not in session. However, Plaintiff himself might have obtained his

earlier release had he used his phone privileges earlier to contact his attorney, who might then have contacted the "on-call" judge on Plaintiff's behalf. However, Plaintiff failed to do so.

Based upon the foregoing, Plaintiff's common law claim of false imprisonment should be dismissed for failure to state a claim.

IV. Failure to State a Claim of Negligence.

Plaintiff alleges two Counts of negligence on the part of Dakota County. At Count III he alleges the County was negligent in failing to bring him before a judge in a timely manner (Complaint ¶¶ 32-35), and at County IV he alleges the County was negligent in keeping him on 23 hour per day lockdown during his incarceration. (Complaint ¶¶36-40).

To maintain a claim of negligence, a plaintiff must establish that: (1) the defendant has a legal duty to the plaintiff; (2) the defendant breached that duty; (3 the breach was the proximate cause of harm to the plaintiff; and (4 the plaintiff suffered damage. *Foss v. Kincade,* 766 N.W.2d 317, 320 (Minn. 2009) citing *Hudson v. Snyder Body, Inc*., 326 N.W.2d 149, 155 (Minn. 1982). The defendant is entitled to summary judgment if the record reflects a lack of proof on any of the four elements of a prima facie case. *Lubbers v. Anderson,* 539 N.W2d 398, 401 (Minn. 1995). [citations omitted].

A duty in negligence cases is the legal obligation to conform to a particular standard of conduct toward another. *Rasmussen v. Prudential Ins. Co*., 277 Minn. 266, 268, 152 N.W.2d 359, 362 (1967). The existence of a legal duty in a negligence case is a question of law decided by the court. *Mullins v. Ligons*, 616 N.W.2d 764, 770 (Minn. Ct. App. 2000) *citing Donaldson v. Young Women's Christian Ass'n*, 539 N.W.2d 789, 792

(Minn. 1995). The duty to exercise care is dictated by the exigencies of the occasion, and if the harm is not foreseeable, there can be no negligence. *Kuhl v. Heinen*, 672 N.W. 2d 590, 593 (Minn. Ct. App. 2003) *citing Austin v. Metro Life Ins. Co*., 277 Minn. 214, 217, 152 N.W.2d 136, 138 (1967). The test of foreseeability is whether a defendant was aware of facts suggesting that a plaintiff was being exposed to an unreasonable risk of harm. *Studeman v. Nose*, 713 N.W.2d 79, 84 (Minn. Ct. App. 2006*) citing Spitzak v. Hylands, Ltd*., 500 NW2d 154, 158 (Minn. Ct. App. 1993). "In determining whether a danger is foreseeable, courts look at whether the specific danger was objectively reasonable to expect, not simply whether it was within the realm of any conceivable possibility." *Id*., *quoting Whiteford by Whiteford v. Yamaha Motor Corp., U.S.A*., 582 N.W.2d 916, 918 (Minn. 1998). An act or omission is not negligent unless the actor has knowledge or notice that it involves danger of injury to others. *Kuhl*, 672 N.W.2d at 593 *citing Despatch Oven Co. v. Rauenhorst*, 229 Minn. 436, 447, 40 N.W.2d 73, 81 (1949).

It is the policy of the Dakota County Jail that new arrestees are not placed with the general jail population until they have made their first appearance before a judge. The reason for this policy is, in part, to allow Jail staff to observe an arrestee in order to place him in the appropriate housing unit. (Aff. of Jodi Rolloff). While Plaintiff alleges at County IV of his Complaint that the County is negligent in doing so, his claim is without merit. First, Plaintiff cannot establish that the County has a legal duty to place him in the general jail population prior to his first appearance before a judge. Without a legal duty to do so, Plaintiff's claim of negligence fails. Plaintiff also fails to set forth how he was injured by not being placed in the general jail population.

With regard to Plaintiff's claim that the County was negligent in failing to bring him before a judge in a timely manner, this claim also fails. As Plaintiff's Complaint shows, his allegation of negligence in this regard is that Jail staff should have brought him before the court immediately upon his incarceration because of his bankruptcy and his identity as a civil judgment debtor. However, the facts show that no court was in session on Friday, November 11, 2011, Saturday, November 12, 2011, nor Sunday, November 13, 2011, because of the Veteran's Day holiday, and ensuing weekend. As set forth elsewhere in this Memorandum, the sheriff had no duty to quash the warrant for Plaintiff's arrest, but was required to incarcerate him in accordance with the warrant. In accordance with Jail policy, Plaintiff was allowed to use the Jail telephone after he was booked into the Jail, and Jail records show that he used the telephone on three occasions, including November 11, 2011. Plaintiff himself is responsible for any damages he may have sustained resulting from his own failure to contact his attorney earlier. Plaintiff fails to state a cause of action for negligence, and Defendants ask that Counts III and IV be dismissed with prejudice, or alternatively, that this Court decline to hear Plaintiff's state court claims.

V. Sheriff Bellows is Entitled to Official Immunity From the State Claims.

The doctrine of common law official immunity provides that a public official charged by law with duties which call for the exercise of his judgment or discretion is not personally liable to an individual for damages unless he is guilty of a willful or malicious wrong. *Anderson v. Anoka Hennepin Indep. Sch. Dist*. 11, 678 N.W.2d 651, 655 (Minn. 2004) (quotations omitted). "A public official is not protected by immunity in the

performance of his duties when he fails to perform a ministerial act or when his performance of a discretionary act is willful or malicious" *Thompson v. City of Minneapolis*, 7907 N.W.2d 669, 673 (Minn. 2006); *Anderson*, 678 N.W.2d at 662 ("In this context, malice 'means nothing more than the intentional doing of a wrongful act without legal justification or excuse, or, otherwise stated, the willful violation of a known right'") *quoting Rico v. State*, 472 N.W.2d 100, 107 (Minn. 1991). A discretionary act is "one requiring 'the exercise of individual judgment in carrying out the official's duties.'" *Id., quoting Kri v. City of Maplewood*, 582 N.W.2d 921, 923 (Minn. 1998). Plaintiff asserts that the Dakota County Sheriff should have had a policy in place such that staff would check PACER to determine if an automatic stay were in place for arrestees, and that Plaintiff should have been placed with the general jail population upon his arrest, rather than in the classification unit. Formation of policy is a discretionary act which accords Defendant Bellows official immunity. Therefore Plaintiff states causes of action for negligence and false imprisonment should be dismissed.

VI. Defendants Have Statutory Immunity From State Claims.

Minnesota Statutes Section 466.03, subd. 5, states that every municipality is immune from any claim based upon an act or omission of an office or employee, exercising due care, in the execution of a valid or invalid statute, ordinance, resolution, or rule. In the instant case the harm complained of by Plaintiff, Defendants were following the Minnesota Rules of Criminal Procedure and a valid order of the state court. Therefore Defendants have statutory immunity form Plaintiff's negligence claim and Defendants ask that it be dismissed.

VII. The Unnamed "Doe" and "Roe" Defendants Are Entitled To Dismissal.

The dismissal of "John Doe" defendants is proper when it appears that the true identity of the defendants cannot be learned through discovery or the court's intervention. *Munz v. Parr*, 758 F.2d 1254, 1257 (8th Cir. 1985) (citation omitted). It is improper to dismiss such defendants at an early stage of the litigation where discovery could disclose or any named defendants could be compelled to reveal the identity of such defendants. *Id.* at 1257 (citations omitted).

Here, Plaintiff named as defendants "John Doe 1-5 and Jane Roe 1-5. Discovery has been completed in this case, and Plaintiff has not ascertained the identity of or established any facts regarding these unnamed defendants. Because Plaintiff has failed to identify who the purported "Doe" defendants are, those defendants are entitled to dismissal.

VIII. Complaint Fails to State a Claim for Violation of the Minnesota State Constitution.

At Counts VI and VII of his Complaint, Plaintiff alleges violation of two sections of Article 1 of the Minnesota State Constitution. At Count VI, he alleges violation of Article 1, section 5, of the State Constitution (No excessive bail or unusual punishments) and section 12 of Article 1 of the State Constitution (No imprisonment for debt). Both counts must be dismissed for failure to state a claim.

Minnesota does not allow private actions based on alleged violations of the Minnesota Constitution. *See, Guite v. Wright*, 976 F.Supp. 866, 871 (D. Minn. 1997)("[T]here is no private cause of action for violation of the Minnesota

Constitution"). Minnesota does not have a statutory equivalent to 42 U.S.C. § 1983 (2003), which allows a private suit for damages based on violations of the United States Constitution. *See, Davis v. Hennepin County*, UNPUBLISHED, 2012 W.L. 896409, Court of Appeals, Minnesota, March 19, 2012. (No private cause of action for plaintiff alleging violation of his right to free speech under the Minnesota state constitution).

Based upon the above, both Counts VI and VII of Plaintiff's Complaint should be dismissed for failure to state a claim.

IX. Plaintiff Has Failed to Join an Indispensable Party for a Just Adjudication of this Matter.

The Failure to Join an Indispensable Party, Rule 19 of the Federal Rules of Civil Procedure, requires the joining of an indispensable party if (1) in the party's absence complete relief cannot be accorded among those already parties, or (2) the party claims an interest relating to the subject of the action and is so situated that the disposition of the action in that party's absence may (i) as a practical matter impair or impede the party's ability to protect that interest, or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest." *E.E.O.C. v. Independent School District No. 2174 of Pine River, Minn.* UNPUBLISHED, 2005 WL 1325104, D.Minn.

At the heart of the case now before this court is Plaintiff's belief that he should never have been held in the Dakota County Jail for any length of time. (T. Zimmerman, p. 37, lines 18-23). It was the failure of the Judgment Creditor, Carlson & Associates, to quash the warrant for Plaintiff's arrest that lead to his incarceration, the alleged violation

of the automatic stay, and alleged damages. *See In re Atkins*, 175 B.R. 998, 1008 (The County that issued the warrant for debtor's arrest was not responsible for quashing the warrant, nor was the sheriff that executed the warrant, that responsibility was the creditors). (*See also,* T. Zimmerman, p. 22, lines 10-13). The absence of the Judgment Creditor as a party to this action means complete relief cannot be accorded among those already parties. A judgment rendered in the absence of the Judgment Creditor would be prejudicial to Dakota County. Therefore, Defendants ask that this action be dismissed for Failure to Join an Indispensable Party.

CONCLUSION

For all the above reasons Defendant Dakota County Sheriff Dave Bellows is entitled to summary judgment on the Complaint, and the Complaint should also be dismissed against unknown Does and Roes as well.

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Dated: October 14, 2013.

By: s/Andrea G. White

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