IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Steven Taylor, administrator for the estate of Vanessa Taylor, deceased,	)	
Plaintiffs,	)	
v.	)	No. 16 L 6354
City of Chicago, Cook County, d/b/a John H. Stroger, Jr. Hospital,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

A cause of action under the Domestic Violence Act exists only if the defendant is rendering emergency assistance or is otherwise enforcing the statute on the plaintiff's behalf. In this case, the defendant's police officers responded to a call for emergency assistance related to the plaintiff's boyfriend's dangerous acts and erratic behavior. The plaintiff's presence at the scene and her status as a past victim of domestic violence perpetrated by her boyfriend are insufficient facts to impose a statutory duty on the defendant. The defendant's motion to dismiss count one must, therefore, be granted with prejudice.

Facts

On June 30, 2015, James Thomas murdered his live-in girlfriend, Vanessa Taylor, by strangling her with a USB cable. On June 27, 2016, Steven Taylor, Vanessa's adult son and the administrator of her estate, filed suit against the City of Chicago and Cook County for causing or contributing to Vanessa's death. On October 20, 2016, Steven voluntarily dismissed Cook County from the case without prejudice. The same day, the City filed its motion to

dismiss count one of the complaint. The facts relevant to the City's motion as presented below are taken exclusively from the complaint.

Vanessa and James had been dating for five years and had been living together for the past two or three years at her apartment at 4311 West Flournoy Street in Chicago. At approximately 9:00 p.m. on June 28, 2015, Steven Taylor, Vanessa's adult son, called 9-1-1 seeking emergency assistance. The complaint alleges that Steven called on his mother's behalf, but the complaint provides no facts to support that conclusion. The complaint further alleges that "it was obvious" to the City's 9-1-1 call takers and police officers that Vanessa was a "domestic violence victim" and that James was the "perpetrator of violence against Vanessa. . . ." Again, the complaint fails to provide facts to support those conclusions.

Chicago police officers responded to the scene and were told that James had not slept in three days, had consumed large quantities of alcohol, was burning grease for no apparent reason, was paranoid that unknown persons were planning to kill him, and was otherwise behaving erratically. The police officers learned that James had barricaded himself in the house and heard him say that they would have to "burn him out." Although James had turned out all of the lights in the apartment, the police officers looked through windows and saw him constructing improvised explosives out of grease, glass bottles, and rags. He was also pacing the apartment with a sword and a knife in his hands.

When the responding officers entered the apartment, James "menaced them" with the sword and knife. The complaint alleges that James's conduct was so violent and dangerous that the officers would have been legally justified to kill him.[1] Instead, the police officers deployed Tasers, successfully subdued James, and handcuffed him. A search of the apartment revealed that James had cut a gas

[1] Steven's opinion that the police officers would have been justified in killing James is as irrelevant as it is absurd. The baseless conclusion is a transparent attempt to blame the police officers for Vanessa's death two days later because they failed to kill a future murderer while they had the chance. Conflating police restraint and culpability to murder is outrageous.

line in the kitchen, which required the police to evacuate adjoining apartments.

At the same time as these events, a female Chicago police officer spoke with Vanessa and Steven outside Vanessa's apartment. The complaint alleges that, "[d]uring this conversation, Vanessa had a visible black eye, suffered at the hands of Thomas." The complaint does not allege either that the female police officer saw Vanessa's black eye or knew James had inflicted the injury. Despite those factual omissions, the complaint further alleges that, "Knowing Vanessa was a recent domestic violence victim at the hands of Thomas, the female police officer asked Vanessa, 'Do you feel safe?'" The complaint alleges that Vanessa did not respond to the question. The complaint then reaches the unsupported factual conclusion that, based on Vanessa's lack of response, her "obvious injury," and "given the circumstances," there existed a "clear indication" to the female officer that Vanessa was a "domestic-violence victim in need of protection." Steven also told the female officer that James should be criminally charged and not allowed to return to Vanessa's apartment. Steven alleges that, despite his statement, the police officers failed to take "any steps to ensure this actually occurred."[2]

James fought with the police, who had to drag him from the apartment to a police car. He apparently understood that he was going to be taken for a mental health evaluation because he demanded that Vanessa accompany him. Vanessa agreed, according to the complaint, "[i]n an attempt to appease her tormentor. . . ." The female officer then drove Vanessa to Stroger Hospital, where the other officers had taken James. The complaint alleges that the police officers failed to inform the Stroger Hospital medical staff of James's violent behavior, abuse of Vanessa, or the future danger he posed to Vanessa. Following a mental health evaluation, the Stroger Hospital doctors discharged James.

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[2] Steven's inferential and self-aggrandizing allegations that he possessed superior policing skills are, of course, easy to make in hindsight, especially in the absence of allegations that Steven or Vanessa provided the police officers with any substantive information as to alleged domestic violence.

The complaint contains a series of allegations tracking options available to law enforcement officers under the Domestic Violence Act when addressing a domestic-violence incident. The complaint alleges, for example, that at no time during or after this incident did Chicago police officers: (1) ask Vanessa whether she wanted to sign a criminal complaint; (2) ask her if she wanted to obtain an order of protection; (3) arrest James; (4) give Vanessa the choice of moving out or assisting her in removing her personal effects from the apartment; (5) inform Vanessa of the relief available to her under the Domestic Violence Act; (6) take Vanessa to a place of safety; (7) offer her medical treatment or attempt to preserve evidence of her abuse; (8) offer to take Vanessa before a judge to obtain an emergency order of protection; (9) seek to have James involuntarily committed to a mental institution; or (10) file any criminal charges against James despite the alleged existence of probable cause. Steven further alleges that, had the police arrested James, a judge would have held James in custody "for at least 48 hours, but more probably for months or years."[3] The complaint alleges that the responding police officers did not warn Vanessa that James posed a serious and imminent threat to her safety.

On June 30, 2015, Vanessa's children received Facebook messages from James inferring that he had killed Vanessa because she was part of the "Chicago mob." An unidentified family member allegedly called 9-1-1 and was told that there was nothing that could be done for Vanessa. One of Vanessa's other sons and a Chicago police officer allegedly made a second 9-1-1 call. Police officers responded and found James leaning out of the apartment windows yelling that they would have to kill him, that he was already dead, and that he had taken poison three times. The police entered the apartment and subdued James, once again, by use of a Taser. A search of the apartment led to the discovery of Vanessa on the floor of her bedroom unresponsive. She was removed to a hospital, but was

[3] This court chooses not to address the errors of federal constitutional guarantees and state criminal procedure protections imbedded in this allegation.

pronounced dead on arrival. The cause of death was asphyxia secondary to strangulation.

The complaint's two remaining counts are directed against the City. Count one is based on violations of the Domestic Violence Act. Steven claims that it was "obvious" to the 9-1-1 call takers and responding police officers that Vanessa was a domestic-violence victim and that James was the perpetrator, thereby making her a protected person under the statute to whom the City owed a duty of care. The count continues that the City breached its statutory duty and that such a breach proximately caused Vanessa's murder.

Count two is a common-law cause of action for willful and wanton conduct. This cause of action claims, once again, that it was obvious to the 9-1-1 call takers and the responding police officers that Vanessa needed to be protected from James and that they owed her a duty of care. Based on the same factual allegations, the complaint alleges that the City breached its duty of care through its omissions that proximately caused Vanessa's murder.

The City filed a motion to dismiss count one of the complaint. Steven filed a response brief, and the City filed a reply. This court has reviewed the pleadings.

Analysis

The City brings its motion to dismiss pursuant to Code of Civil Procedure section 2-619. *See* 735 ILCS 5/2-619. A section 2-619 motion authorizes the involuntary dismissal of a claim based on defects or defenses outside the pleadings. *See Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 485 (1994). Such a motion must be directed against an entire claim or demand. *See id.* A court considering a section 2-619 motion must construe the pleadings and supporting documents in a light most favorable to the nonmoving party. *See Czarobski v. Lata*, 227 Ill. 2d 364, 369 (2008). All well-pleaded facts contained in the complaint and all inferences reasonably drawn from them are to be considered true. *See Calloway v. Kinkelaar*, 168 Ill. 2d 312, 324 (1995). A court is not to accept as true those conclusions

unsupported by facts. *See Patrick Eng., Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31.

One of the enumerated grounds for a section 2-619 motion to dismiss is that the claim is barred by "affirmative matter" outside the complaint that avoids the legal effect of or defeats the claim. 735 ILCS 5/2-619(a)(9). Affirmative matter is something in the nature of a defense that negates the cause of action completely or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint. *See Illinois Graphics*, 159 Ill. 2d at 485-86. While the statute requires that affirmative matter be supported by affidavit, some affirmative matter has been considered to be apparent on the face of the pleading. *Id.* Although the City does not identify section 2-619(a)(9) as the specific subparagraph authorizing its motion, this conclusion is apparent given the City's sole argument that the Domestic Violence Act is inapplicable.

The analysis of any claim or defense based on a statute must begin with the statute, itself. The DVA explicitly provides that:

> Any act of omission or commission by any law enforcement officer acting in good faith in rendering emergency assistance or otherwise enforcing this Act shall not impose civil liability upon the law enforcement officer or his or her supervisor or employer, unless the act is a result of willful or wanton misconduct.

750 ILCS 60/305. Not surprisingly, the parties disagree as to the scope of this provision.

According to the City, a cause of action under the DVA arises only if local police officers are providing emergency assistance to or otherwise enforcing the act as to a person protected under the statute. According to the City, its 9-1-1 call takers and police officers were not providing emergency assistance or enforcing the DVA on Vanessa's behalf; consequently, there existed no statutory duty owed by the City to Vanessa. Absent any duty owed, a plaintiff has no statutory cause of action against a defendant.

Steven argues that the DVA favors his position for a variety of reasons. First, the statute makes plain that it is to be liberally construed and applied to promote its purposes including, among other things, "[c]larifying the responsibilities and support the efforts of law enforcement officers to provide immediate, effective assistance and protection for victims of domestic violence. . . ." 750 ILCS 60/102(5). Second, the statute provides that, "[w]henever a law enforcement officer has reason to believe that a person has been abused, neglected, or exploited by a family or household member, the officer shall immediately use all reasonable means to prevent further abuse, neglect, or exploitation. . . ." 750 ILCS 60/304(a). The statute provides a non-exclusive list of ways in which law enforcement officers are to achieve this goal, including arresting the perpetrator of the domestic violence, seizing weapons, referring the victim to social services for assistance, and other options. *See id.* These options are explicitly referenced in Steven's complaint and are the same ones the police officers allegedly failed to provide to Vanessa. Third, the City is not immune from liability based on the complaint's allegations because the DVA grants only limited immunity. *See* 750 ILCS 60/305. Since the responding officers failed to provide Vanessa with assistance as required under the statute, they acted willfully and wantonly and, therefore, are not immune from liability.

Whether Steven has stated or can ever state a cause of action under the DVA requires a determination of whether the responding police officers were "rendering emergency assistance" or "otherwise enforcing" the DVA. This is a fundamental inquiry since "the legislature unambiguously intended to limit the liability of law enforcement personnel to willful and wanton acts or omissions in enforcing the Act." *Calloway*, 168 Ill. 2d at 326. Despite Steven's argument that the statute is to be liberally construed based on its own terms, the Supreme Court later made an important clarification. In *Lacey v. Village of Palatine*, the court found that for a cause of action to exist under the DVA, the assistance provided by law enforcement must be on behalf of the victim of domestic violence. *See* 232 Ill. 2d 349, 361 (2009) (absent a claim that defendants were rendering emergency assistance to Lacey, the only question was

whether they were otherwise enforcing the DVA). In other words, a police response to a call for emergency assistance for something other than domestic violence does not provide a protected person under the DVA with a factual basis for a statutory cause of action.

As in *Lacey*, there is no question here based on the complaint's allegations that the responding police officers were not "rendering emergency assistance" to Vanessa within the meaning of section 305. Indeed, the entire thrust of Steven's complaint is that the City's various employees *should have* provided Vanessa with assistance but failed to do so. Steven's complaint admits that his 9-1-1 call on June 28, 2015 concerned James's bizarre and dangerous acts – acts not alleged by Steven to be ones of domestic violence. Steven argues, nonetheless, that, once on the scene, the police officers should have observed Vanessa's black eye and intuited that James had inflicted the injury and that it had been a recent event. Similarly, he argues that Vanessa's failure to respond to the female officer's question, "Do you feel safe?" should have led inexorably to the officer's conclusion that Vanessa was a reluctant victim. According to Steven, the same conclusion should have been drawn based on Vanessa's willingness to follow James to Stroger Hospital.

The flaw in Steven's argument is his conflation of the DVA's broad purpose with the narrow basis for defendant liability provided by section 305. Steven justifies Vanessa's cause of action based on her status as a protected person under the DVA. This court fully accepts Vanessa's tragic circumstance and protected status for purposes of the City's motion. Her status is, however, unrelated to the reason police officers responded to 4311 West Flournoy Street on June 28, 2015. According to his own allegations, Steven's 9-1-1 call concerned James, who had not slept in three days, had been drinking alcohol heavily, was burning grease for no discernable reason, was paranoid that unknown persons were planning to kill him, and was otherwise acting erratically. The call did not concern James's prior domestic battery of Vanessa that had resulted in her black eye. In short, no conclusion is possible other than that the police officers went to the scene to investigate James's then-current activities, not past domestic violence he may have inflicted on Vanessa.

As to the second triggering phrase of section 305 – "otherwise enforcing" – this court, again, refers to *Lacey*. There, the court notes that the statute does not define the phrase, but concludes that it must mean, "that the police are giving effect to some portion of the Act under circumstances that cannot be considered an emergency." 232 Ill. 2d at 363. Most important, the court recognizes that any duty imposed by the DVA has definite limits. As the court explained:

> [t]he Act does not impose the kind of general, open-ended duty to protect that plaintiff alleges was breached. Implicit within the definition of "otherwise enforcing" is some police involvement or contact with a protected person or someone on his or her behalf. *The Act is not implicated merely because someone is a protected party under the Act.* If this court were to hold to the contrary, we would create a generalized duty by all law enforcement agencies and personnel toward anyone who has been abused by a family or household member regardless of whether the police have reason to know that their services may be required.

Id. at 364-65 (emphasis added).

To accept Steven's argument would be to create the generalized duty that *Lacey* prohibits. Steven cannot now seek to transform the basis of his June 28, 2015 9-1-1 call from one centered on James's conduct at that time to one centered on his domestic battery of Vanessa on a previous occasion. An "emergency response" is just that – a response to an emergent situation. First responders do not go to a scene to address past unlawful conduct or to foretell of potential future unlawful conduct. Such a duty would be boundless and result in limitless liability. It is precisely for this reason that section 305 has its logical limits.

Finally, it should be noted that Steven asks this court to rely on *Fenton v. City of Chicago*, 2013 (1st) 111596, because it is more factually similar than *Lacey*. In *Fenton*, the perpetrator returned to the scene almost immediately after the police had left and murdered

his mother's boyfriend. *See id.* at ¶ 7. In contrast, in *Lacey*, the perpetrator waited more than six weeks after a police interview before he murdered his ex-girlfriend. *See Lacey*, 232 Ill. 2d at 356. Steven's reliance on *Fenton* is unavailing because the City is not presenting a factual argument, but a legal one. The legal issue is whether the conduct alleged is sufficient under section 305 to support Steven's cause of action, not the factual issue of how much time elapsed between police contact with a perpetrator, such as James, and the subsequent crime. That is a legal hurdle no amount of factual re-pleading can remedy.

Conclusion

For the reasons presented above, it is ordered that:

1. the City's motion to dismiss count one is granted with prejudice;
2. pursuant to Illinois Supreme Court Rule 304(a) there exists no just reason for delaying either the enforcement or appeal of this order, or both;
3. the case remains pending against the City as to count two;
4. Steven is given until January 18, 2017 to file an amended complaint as to count two, if he wishes to do so; and
5. this matter will return for case management on February 1, 2017 at 10:00 a.m.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

JAN 11 2017

Circuit Court 2075