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U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

CHANDLER KORB, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**Case No.: 5:18-cv-2133-LCB**
	)	
VICTOR FLORES DE LEON, JR., *et al.*,	)	
	)	
	)	
Defendants.		

ORDER

Chandler Korb ("Korb") filed this putative class action suit to vindicate the violation of hers and others' civil rights. Specific to this Order, Korb maintains Defendants Madison County, Alabama ("County") and Sheriff Kevin Turner ("Turner") violated those rights by failing to adequately protect her (and others) while in custody at the Madison County Detention Center's infirmary. For the reasons that follow, Korb's claims against the County and Turner are **DISMISSED.**

FACTUAL BACKGROUND

On October 9, 2018, Korb was an inmate at the Madison County Detention Center ("MCDC"). (Doc. 68 at 6). That night, she was housed at the Center's infirmary to receive medical treatment for a skin infection. *Id*. Also at the infirmary that night was Defendant De Leon; he was stationed there as an on-duty officer. *Id*. at 7. Some time that evening, De Leon issued Korb a "disciplinary" and placed her

in an isolated segregation cell. *Id*. While Korb was segregated, De Leon came to her cell several times to offer her grooming supplies. *Id.* Korb avers that during each encounter, De Leon wore his duty belt, which held his taser, and that De Leon's taser was visible. *Id*.

Korb was still in segregation at lights-out. *Id*. at 7. Due to her skin condition, Plaintiff chose to sleep in her underwear that night. *Id*. However, Korb was unable to sleep for some time because, she contends, De Leon continuously turned on and off the lights to her cell. *Id.* 7–8. Eventually, Korb fell asleep, but soon thereafter, De Leon entered Korb's cell and asked if she was awake. *Id*. at 8. When Korb didn't respond, De Leon pulled off Korb's blanket and left the cell. *Id*. After De Leon left, Korb covered herself with the blanket and tried to go back to sleep. *Id.*

Korb contends that, eventually, De Leon returned to her cell and removed her blanket again. *Id*. at 8. This time, Korb saw that De Leon had taken off his duty belt. *Id*. After De Leon pulled off Korb's blanket, he forcibly removed her underwear, pulled down his pants, and made Korb to perform oral sex on him. *Id*. After forcing Korb to perform oral sex, De Leon then grabbed Korb from behind and raped her. *Id*. Afterwards, De Leon cleaned his ejaculate with a tissue and left the cell. *Id*.

A nurse visited Korb to provide her medication for her skin condition shortly after De Leon left the cell. *Id*. at 9. When the nurse entered the cell, Korb could see De Leon in the cell's doorway, so Korb called the nurse closer and whispered to her

that she had been raped. *Id*. A rape kit was performed and Korb eventually filed this action. *Id*. at 10

LEGAL STANDARDS

I. Rule 12(b)(1)

Rule 12(b)(1) of the Federal Rules of Civil Procedure permits dismissal of an action for lack of subject-matter jurisdiction. Movants may use this Rule to attack the Court's subject-matter jurisdiction in two ways: facially and factually. *See Murphy v. Sec'y, United States Dep't of the Army*, 769 Fed. Appx. 779, 781 (11th Cir. 2019). In a facial attack, the Court merely looks to the complaint to see whether the plaintiff has sufficiently alleged a basis for subject-matter jurisdiction. *Murphy*, 769 Fed. Appx. at 781 (citing *Menchaca v. Chrysler Credit Corp.*, 613 F.3d 507, 511 (5th Cir. 1980)). When ruling upon a Rule 12(b)(1) motion asserting a "factual attack" on jurisdiction, the Court may consider "matters outside the pleadings, such as testimony and affidavits[.]" *Id.* In such instances, the Court is "not constrained to view [the facts] in the light most favorable" to the plaintiff. *Carmichael v. Kellogg, Brown & Root Servs*., 572 F.3d 1271, 1279 (11th Cir. 2009); *see also Murphy*, 769 Fed. Appx. at 781.

II. Rule 12(b)(6)

Generally, a pleading must include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). To withstand

a motion to dismiss made in accordance with Fed. R. Civ. P. 12(b)(6), "a complaint must plead 'enough facts to state a claim to relief that is plausible on its face.'" *Ray v. Spirit Airlines, Inc.*, 836 F.3d 1340, 1347 – 1348 (11th Cir. 2016) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible when the plaintiff pleads facts which allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

DISCUSSION

Korb alleges that the County and Turner violated her (and the putative class members') constitutional rights and seeks redress in accordance with 42 U.S.C. §§ 1983, 1988. (Doc. 68).

Korb asserts one claim against the County; she offers several theories by which she seeks to hold it liable for failing to protect her. Briefly, they include: (1) the County knew that male guards could segregate female inmates into cells that lacked constant surveillance and keep access to those cells and this amounted to deliberate indifference (Doc. 68 at 2, 6, 9 – 12); and (2) the MCDC, which the County designed and funded, failed to provide Korb and other class members with adequate facilities because the MCDC does not have adequate monitoring of segregated cells and there is only one infirmary on-site. (Doc. 68 at 12, 16 – 17; Doc. 78 at 17, 18). In sum, Korb challenges the adequacy of video monitoring at the

infirmary, the infirmary's guard-inmate supervision policy, and the adequacy of the facility itself. As pled, these claims to relate to the infirmary's design and the MCDC's day-to-day operations. Korb seeks damages and declaratory and injunctive relief in accordance with this claim. (Doc. 68 at 18, 19).

Korb also asserts one claim against Turner. There, she contends that his policy of permitting male guards to segregate and retain access to female inmates at the infirmary failed to protect her from De Leon's attack. (Doc. 68 at 21 – 22). Under this claim, Korb requests only declaratory and injunctive relief and statutory attorneys' fees and costs. *Id*. at 22 – 23.

I. To the extent Korb's claim against the County is premised on a failure to design a facility with cameras in the infirmary's segregation cells, it is dismissed because a design which permits constant surveillance is not required by law.

As noted supra, Korb alleges in several places that the County violated her constitutional rights because the MCDC has inadequate monitoring in segregation cells, and this inadequacy allowed De Leon's attack. (*See e.g.*, Doc. 68 at 17, 18, 23). In her Opposition, Korb clearly articulates this position, contending the County was legally required to "ensure the infirmary cells were continuously monitored by video . . . as required by law" and the County's failure to place cameras in each of these cells "led to, allowed, and caused [Korb] to be isolated and raped by a male prison guard." (Doc. 78 at 17). The Court finds this argument unavailing.

At the outset, the Court notes the County's statutorily-imposed duty regarding county jails is a limited one. "In Alabama, counties possess only those powers expressly delegated to them by the legislature." *Ex parte Sumter County*, 953 So. 2d 1235, 1238 (Ala. 2006) (citing *Tuscaloosa County v. Alabama Great Southern R.R.*, 150 So. 328 (1933)). The Alabama Code's role for counties in the operation of jails is found in Section 11-14-10. It provides that "[t]he county commission shall erect [] jails . . . Each county within the state shall be required to maintain a jail within their county." *Id*. Section 11-14-13 goes on to say that "[t]he county jail must be of sufficient size and strength to contain and keep securely the prisoners which may be confined therein and must contain at least two apartments, properly ventilated so as to secure the health of those confined therein: One for men and one for women." The Alabama Supreme Court has held that "by using the phrase 'maintain a jail' in § 11-14-10, the Legislature intended to require the county commission to keep a jail and all equipment therein in a state of repair and to preserve it from failure or decline." *Ex parte Sumter County*, 953 So. 3d at 1238 (quoting *Keeton v. Fayette County*, 558 So. 2d 884, 886 (Ala. 1989)). Finally, "a county is not responsible for the daily administration . . . of a county jail or for overseeing inmates[;]" that job falls to the county sheriff. *Ex parte Sumter County*, 953 So. 3d at 1238 (citing *Turquitt v. Jefferson Cnty.*, 137 F.3d 1285, 1289 (11th Cir. 1998)).

Korb's citation to the Alabama Code (Doc. 78 at 17 – 18) is unavailing. The plain language of Sections 11-14-10 and 13 do not mandate the County to install particular types of equipment – including cameras. Rather, the County's duties found in those sections require it to ensure the equipment in the jail stays in a state of repair and to provide housing to male and female inmates. As the County observes in its Reply, propositions like the one Korb advances here have been found unavailing by the Eleventh Circuit. *See Grochowski v. Clayton County, Georgia, et al*., 961 F.3d 1311, 1321 (11th Cir. 2020) ("Plaintiffs' position amounts to an argument that the constitution requires continuous observation of double-celled inmates. As described above, our precedent undermines that suggestion."). Accordingly, the Court **dismisses** Korb's claim against the County to the extent that it is based on the absence of cameras in the infirmary's segregation cells.

II. Alternatively, to the extent Korb's claim against the County is premised on the Sheriff's supervision policy, it fails because the County is not responsible for the MCDC's day-to-day operations.

Korb also claims that the County violated her constitutional rights because it allowed male guards to supervise and segregate female inmates at the infirmary. (Doc. 68 at 1, 3, 5, 6, 12, 15, 16).

The County contends it cannot be held liable for the supervision policy at the infirmary because it constitutes one of the day-to-day operations under Turner's exclusive control. (Doc. 74 at 5, 6). In fact, the County contends, the nature of Korb's

claim here and the County's inability to be held liable in accordance with it are clear from the face of Korb's SAC. *Id*. Further, the County maintains, assuming arguendo it could be held liable for such a policy, that same policy could not form the basis of a constitutional claim because "[t]here is no statutory requirement under Alabama law that only male officers supervise male inmates or only female officers supervise female inmates." *Id*. at 9.

In Opposition, Korb appears to attack only the way the County frames her claim against it, and insists the County owed her certain duties regarding the infirmary's supervision and that the County violated those duties. (Doc. 78 at 17 – 18). In reply, the County re-raises the arguments made in its initial brief. (Doc. 83 at 4, 5 n. 2). The Court finds Korb's contentions here unavailing.

To the extent Korb's claim against the County is premised on the inmate supervision policy at the MCDC, i.e., that male guards may supervise female inmates place them in segregation, and supervise them there, dismissal is appropriate. This policy and its enforcement fall under the exclusive purview of the sheriff – Turner. *See Turquitt v. Jefferson County*, 137 F.3d 1285, 1290 (11th Cir. 1998) (noting Alabama law provides that the supervision of inmates falls directly to county sheriffs); *Cole v. Walker Cnty*., 2015 U.S. Dist. LEXIS 49921, at *8 (N.D. Ala. Apr. 16, 2015) (same); *Aaron v. Winston Cnty*., 2017 U.S. Dist. LEXIS 97262, at *5 (N.D. Ala. June 23, 2017) (same). And Korb's allegations intimate, correctly, that this is

the case. (*See* Doc. 68 at 3, 5, 20). Accordingly, to the extent Korb's claims against the County are based upon the male-guard-female-inmate supervision policy at the MCDC infirmary, that claim is **dismissed** as such activities make up the day-to-day operations of the jail which fall under Turner's exclusive purview.

III. Alternatively, Korb's claim against the County fails because the County is not obligated to construct two infirmaries.

Korb alleges in many places that the County's current design of the MCDC infirmary violates Alabama law and led to the violation of her constitutional rights because only one infirmary exists at the MCDC, and this design allows male guards and female inmates to comingle. (*See* Doc. 68 at 2, 5, 16, 17). And Korb makes it clear that this is the nature of her claim – at least in part – in her Opposition. (Doc. 78 at 17 – 18). However, the Court can find no authority, and Korb provides none, which stands for the proposition that Section 11-14-13 of the Alabama Code *requires* the County to construct two infirmaries which allows for the total segregation of male inmates into the custody of male guards and female inmates into the custody of female guards. Nor can the Court locate any authority which shows that the County's current design would give rise to a § 1983 claim. Instead, the Court agrees with the County's understanding that the plain meaning of "apartment" in that section relates only to the general population areas of the jail – where the inmates reside on a daily basis. Accordingly, Korb's claim against the County on this theory is also **dismissed**.

IV. Korb's claim against the County also fails because it falls short of the *Franklin/Smith* pleading standard.

Finally, the parties present a contentious back-and-forth over whether Korb's allegations demonstrate a constitutional violation because of the knowledge the County had over its purported design flaws. Specifically, Korb maintains that because the County *knew* the infirmary's segregation cells lacked cameras (because the County designed the MCDC infirmary) and knew of the Sheriff's supervision policy at the infirmary and other instances of guard-on-inmate sexual misconduct, its failure to remedy the infirmary's purported design deficiencies amounted to deliberate indifference. (Doc. 68 at 3, 6, 9 – 11, 16).

In support of its Motion, the County contends that, assuming arguendo it could be held liable for Korb's § 1983 claim, Korb has failed to allege facts which plausibly show the County acted with deliberate indifference. (Doc. 74 at 10). Rather, the County contends, when measured against the pleading benchmark plaintiffs like Korb must reach, found in the Eleventh Circuit's decision *Franklin v. Curry*, 738 F.3d 1246 (11th Cir. 2013), and adopted in the context of municipal liability in *Smith v. City of Sumiton*, 578 Fed. Appx. 933 (11th Cir. 2014) Korb has only offered legal conclusions to support her claim. (Doc. 74 at 10 – 14).

In Opposition, Korb contends her allegations are concerning the infirmary's design and how that design permitted the segregation policy at-issue are adequate. (Doc. 78 at 17 – 18). Moreover, she contends, the flaw in the prison's infirmary is

what contributed to the attack she suffered from De Leon. *Id*. at 19. On these premises, Korb directs the Court to two cases, *Newsome v. Lee Cnty.*, 432 F. Supp. 2d 1189 (M.D. Ala. 2006) and *Bonner v. Chambers*, 2006 U.S. Dist. LEXIS 42390, at *11 (M.D. Ala. June 19, 2006) to support her position on the adequacy of her allegations. *Id*. Korb also suggests that *Franklin* holds no precedential value for the proposition upon which the County relies. In fact, Korb contends, *Franklin* did not concern municipal liability at all and that another case, *Marsh v. Butler County, Ala.*, 268 F.3d 1014 (11th Cir. 2001) provides the standard Korb had to satisfy to proceed on her claim against the County. *Id*. at 20 – 22.

In reply, the County reasserts its contentions regarding the applicability of *Franklin* and *Smith.* (Doc. 83 at 6 – 8). The County also contends that *Newsome* and *Bonner* are inapplicable to the instant matter because they were decided years before the applicable pleading standard employed in *Franklin* and *Smith* was adopted by the Supreme Court in the *Iqbal/Twombly* cases. *Id*.at 7.

"To survive a motion to dismiss on a Fourteenth Amendment failure to protect claim, a plaintiff must plausibly allege '(1) a substantial risk of serious harm; (2) the defendants' deliberate indifference to that risk; and (3) a causal connection between the defendants' conduct and the [constitutional] violation.'" *Martin v. Sheriff of Walker Cnty.*, 2020 U.S. Dist. LEXIS 84118, at *12-13 (N.D. Ala. May 13, 2020) (quoting *Brooks v. Warden*, 800 F.3d 1295, 1301 (11th Cir. 2015)). To adequately

allege deliberate indifference, "a plaintiff must show: (1) subjective knowledge of a risk of serious harm; (2) disregard of that risk; (3) by conduct that is more than gross negligence." *Smith*, 578 Fed. Appx at 935 (quoting *Franklin*, 738 F.3d at 1250). Moreover, there is two-prong approach to determine whether such allegations survive a motion to dismiss. *Id*. at 936 (quoting *Iqbal*, 556 U.S. at 679). "First, [the Court] separate out the complaint's conclusory legal allegations, and then [ ] determine whether the remaining well-pleaded factual allegations, accepted as true, plausibly give rise to an entitlement of relief." *Id*. (quotations omitted) (quoting *Franklin*, 738 F.3d at 1251).

Assuming arguendo Korb could pursue such a claim against the County, her claim fails because she did not adequately allege that the County had subjective knowledge of a risk of serious harm posed to her. First, contrary to Korb's assertions, the *Franklin* standard as adopted in *Smith* sets the pleading standard she must satisfy to sufficiently allege deliberate indifference against the County. *See Smith*, 587 Fed. Appx. at 935, 937. In her SAC, Korb merely concludes the County was deliberately indifferent to the conditions described. On the element of knowledge, Korb alleges the following:

> 56. Defendant Turner (in his official capacity) and Defendant Madison County *knew or should have known* of the potential for this unlawful conduct, and through their deliberate indifference, authorized and/or ratified the unlawful conduct

> 80. Under the applicable standard for liability set out in *Franklin v. Curry*, 738 F. 3d 1246 (11th Cir. 2013), Madison County had the requisite actual knowledge of the danger posed to Plaintiff.

(Doc. 68 at 11 – 12, 16) (emphasis added).[1] For the factual predicate of this knowledge, Korb concludes:

> 39. Due to numerous problems with male guards having sex with female inmates prior to this, both Defendant Turner and Defendant Madison County had actual knowledge of the conditions regarding the ability of male guards to segregate Chandler Korb and that same would place her in danger.

(Doc. 68 at 9). The Eleventh Circuit has found substantially similar allegations wanting. *See Smith*, 578 Fed. Appx. at 936. Specifically, the *Smith* court found that absent non-conclusory allegations that the defendants had *actual* knowledge that the named deputy-defendant had engaged in previous sexual misconduct, the appellant's allegations of deliberate indifference were insufficient. Here, unlike *Smith*, Korb doesn't even allege that De Leon previously sexually assaulted or raped other inmates.[2] Nor does she allege that the previous sexual misconduct between guards

[1] Korb only relies upon paragraph 39 in her Opposition to show that she sufficiently alleged that the County had knowledge "that [it] . . . allow[ed] co-ed facilities to exist without adequate surveillance, in violation of Alabama law, created a risk of danger to the Plaintiff and other female prisoners, . . . that the County knew of its obligations to maintain separate facilities and security for males and females under Alabama law, and that female prisoners had been assaulted in the past." (Doc. 78 at 20).

[2] Korb only alleges that other inmates were sexually assaulted at the MCDC infirmary based "upon information and belief." (Doc 68 at 11). The Court is not required to accept such allegations as true on a motion to dismiss. *See Smith*, 578 Fed. Appx. at 934 n.4 (citing *Mann v. Palmer*, 713 F.3d 1306, 1315 (11th Cir. 2013)).

and inmates of which the County was allegedly aware involved De Leon. Because Korb's allegations of the County's knowledge are entirely conclusory, **dismissal** is appropriate.

V. Korb lacks standing to pursue the injunctive relief she seeks against the County and her claim against Turner.

As noted supra, Korb's claims against the County and Turner involve requests for equitable relief. The County proffers two reasons for dismissing Korb's request for injunctive relief: (1) she lacks standing to pursue it, whether as an individual or as the named plaintiff in her putative class; and (2) her failure to allege facts which plausibly demonstrate that she is entitled to legal relief foreclose any request for the injunction she seeks. (Doc. 74 at 20 – 21).[3] Turner's arguments mirror those raised by the County.

In opposition, Korb contends she has standing to pursue the equitable relief requested because she alleged, at the time she filed this action, that she was or is a pre-trial detainee. (Doc. 78 at 24). However, Korb also acknowledges the affidavit of Chief Corrections Officer Chad Brooks (Doc. 72–1) submitted by the County which shows Korb was *not* a pre-trial detainee at the time she filed this lawsuit. *Id*. In answer to this affidavit, Korb contends that the County and Turner's challenge to her standing is insufficient because Officer Brooks failed to address the likelihood

[3] The County incorporated these arguments by reference to Turner's Brief in Support of his Motion to Dismiss. (Doc. 74 at 20 – 21).

of her re-arrest, which Plaintiff's counsel contends is "likely, considering the criminal charges that remain pending against her." *Id*. at 25. Finally, Korb maintains that even if the Court finds she lacked standing at the time she filed this action, this matter is still capable of repetition, and therefore, it should not be dismissed. *Id*. at 26.

In reply,[4] Defendants reaffirm their position that Korb lacked standing to pursue any equitable relief when she filed this action. (Doc. 82 at 7 – 10; Doc. 83 at 9). Defendants further contend that the imminence of any subsequent injury has been insufficiently alleged and that Korb's argument concerning the likelihood of repetition concerns mootness, not standing.

Korb lacks standing to pursue the equitable relief she seeks because she was not incarcerated at the time she filed suit and allegations concerning the imminence of her re-arrest and re-admittance to the MCDC infirmary are entirely absent from her SAC. The standing inquiry focuses on whether, at the outset of litigation, the plaintiff can show: (1) an actual (or imminent), concrete, and particularized injury in fact; (2) that is fairly traceable to the defendant's challenged action; and (3) that is likely redressable by a favorable decision. *See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 180–81 (2000). When relying upon an imminent

[4] As the County did in its Brief in Support of its Motion to Dismiss, the County incorporates the standing arguments provided in Turner's Reply. (Doc. 83 at 9).

injury for standing, plaintiffs must show that the "threat of injury [is] 'real and immediate,' not 'conjectural' or 'hypothetical.'" *Kerr v. West Palm Beach*, 875 F.2d 1546, 1554 (11th Cir. 1989) (quoting *L.A. v. Lyons*, 461 U.S. 95, 101 – 102 (1983).

First, Korb cannot rely upon her status as a pre-trial detainee *at the time this action was filed*, to establish standing because she was not a pre-trial detainee when she filed this lawsuit. In fact, it appears from counsels' arguments that neither disputes that Korb was released on a pre-trial bond and has remained on that bond since filing this lawsuit.

As to the imminence of any future injury, Korb provides no allegations of such in her SAC. Rather, she merely argues in her Opposition that she could be re-arrested due to her pending criminal charges. This failure to allege the imminence of a future injury while free from the conditions which caused her previous injury is fatal to her claim of standing. Imminence of injury is demanded for standing. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 564 (1992); *Elend v. Basham*, 471 F.3d 1199, 1208 (11th Cir. 2006) ("Where we have found a sufficient imminence of future harm based on a past injury, the plaintiff has alleged with particularity that a future injury would likely occur in substantially the same manner as the previous injury.").

As to Korb's contention that the Court should find she has standing because the matter she alleges is one capable of repetition yet evading review, such a focus drives at the heart of mootness, not standing. *See Friends of the Earth, Inc.*, 528 U.S.

at 191 (citing *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 109 (1998): "[I]f a plaintiff lacks standing at the time the action commences, the fact that the dispute is capable of repetition yet evading review will not entitle the complainant to a federal judicial forum."). For these reasons, the Court finds Korb lacks standing to pursue her requested injunctive relief against the County. Similarly, she lacks standing to pursue her claim against Turner. Accordingly, Korb's request for declaratory and injunctive relief against the County and her claim against Turner are **dismissed.**

CONCLUSION

For the foregoing reasons, Defendants' Motions to Dismiss (Docs. 70 & 71) is **GRANTED** and Counts I and II of Korb's Second Amended Complaint are **DISMISSED**.

DONE and **ORDERED** March 29, 2021.

LILES C. BURKE
UNITED STATES DISTRICT JUDGE