FILED
AUG 25 1994
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 3-576 / 91-1257

ROSE ANN MANGUNO,

Appellant,

vs.

STATE OF IOWA, COUNTY OF BUCHANAN, BUCHANAN COUNTY SHERIFF'S DEPARTMENT, JACK STRAW, and LEONARD DAVIS, Sheriff,

Appellees.

Appeal from the Iowa District Court for Buchanan County, Alan L. Pearson and Robert Mahan, Judges.

The plaintiff appeals the district court's judgment for the defendants in her action against the defendants raising 42 U.S.C. § 1983 claims and common-law claims regarding false arrest and false imprisonment. **AFFIRMED.**

Rose Ann Manguno, Oelwein, pro se.

Raymond R. Stefani and Thomas F. Ochs of Gray, Stefani & Mitvalsky, Cedar Rapids, and Alan Vanderhardt, County Attorney, for appellees.

Considered by Hayden, P.J., and Sackett and Cady, JJ.

PER CURIAM

In May 1985 the plaintiff, Rose Manguno, was arrested and incarcerated in the county jail by Sheriff Leonard Davis and Deputy Sheriff Jack Straw for disorderly conduct. Manguno claims she was improperly arrested on the charge and during her nineteen-hour incarceration she was improperly denied her medication. Although she denies entering a guilty plea, the trial court docket indicates she was convicted of disorderly conduct pursuant to a plea of guilty. She was sentenced to eighteen hours in jail with credit for the amount of time already served. The conviction was not appealed to the trial court.

In May 1987 Manguno filed a petition seeking damages for the allegedly improper arrest and incarceration. After the trial court dismissed the State as a defendant and directed the plaintiff to replead, Manguno filed an amended petition raising a 42 U.S.C. § 1983 claim. She alleged the arrest and incarceration deprived her of her constitutional rights. She also made common-law claims for false arrest and false imprisonment. On August 24, 1987, the defendants' previous counsel obtained a trial court order granting the defendants until September 9, 1987, to respond to the amended petition. On September 23, 1987, Manguno filed a motion for a default judgment since the defendants had not filed an answer. On September 24, 1987, the defendants' new counsel served their answer to the amended petition. On the same day the clerk for the trial court

entered a default against the defendants. Manguno filed a motion to strike the answer. On November 4, 1987, the trial court affirmed the entry of the default.

On November 18, 1987, the defendants filed a motion to set aside the default under Iowa Rule of Civil Procedure 236 along with a supporting affidavit indicating counsel did not receive the order requiring a response by September 9. Manguno resisted the motion. Manguno claimed in supporting affidavits she would be prejudiced by the setting aside of the default because two witnesses to the incident were no longer available to testify.

On March 28, 1988, the trial court entered an order setting aside the default. The trial court noted the defendants had intended to raise a defense. The trial court concluded Manguno was not substantially prejudiced because she was aware the defendants were actively challenging her lawsuit and should have been aware of the likelihood the default would have been set aside.

After numerous delays, this case came to trial on July 15, 1991. During the trial, Manguno presented evidence supporting her claim. At the conclusion of the plaintiff's case, the defendants filed a motion for directed verdict which was granted by the trial court on July 18, 1991.

On July 26, 1991, Manguno filed a motion for new trial asserting she did not receive a fair trial in various particulars. On August 6, 1991, Chief Judge Peterson

entered a ruling denying Manguno's request to have the motion for new trial determined by a judge other than the one presiding at trial. On September 10, 1991, Manguno's motion for new trial was denied.

Manguno filed notices of appeal on August 9, 1991, on August 14, 1991, and on September 20, 1991. This case has been substantially delayed on appeal by Manguno's attempt to prosecute the appeal pro se and her unsuccessful attempt to obtain a transcript at court expense. Manguno had difficulty putting together an appendix which resulted in a supplemental appendix being required. However, the supplemental appendix resulted in the defendants filing a notice of noncompliance indicating the supplemental index did not include all the items in their designation. The notice and Manguno's response have been submitted with the appeal.

Upon reviewing Manguno's brief and supplemental index, we agree she has failed to follow the rules of appellate procedure. When parties elect to represent themselves in matters before the courts, they are expected to act with equal competence with those who are trained in the law. Burgs v. Sissel, 745 F.2d 526, 528 (8th Cir. 1984). If laypersons choose to proceed pro se, they do so at their own risk. Simmons v. Brenton Nat'l Bank of Perry, 390 N.W.2d 143, 145 (Iowa App. 1986). Consequently, appellate courts will review the issues without regard as to whether the party did or did not employ legal representation.

Metropolitan Jacobson Dev. Venture v. Board of Review of Des Moines, 476 N.W.2d 726, 729 (Iowa App. 1991). We have been able to laboriously review the record as it exists. We do not impose sanctions against Manguno for these failures. In view of our decision here, it is unnecessary to consider Manguno's response to the notice of noncompliance.

There are two substantive issues on appeal. The first issue is whether the trial court abused its discretion in setting aside the default judgment entered against the defendants. The second issue is whether the trial court erred in directing a verdict against the plaintiff. We will discuss each issue in turn.

A court may set aside a default judgment for "good cause shown" based on "mistake, inadvertence, surprise, excusable neglect, or unavoidable casualty." Iowa R. Civ. P. 236. Good cause requires "a sound, effective, truthful reason, something more than an excuse, a plea, apology, extenuation, or some justification for the resulting effect." Dealers Warehouse Co. v. Wahl & Assocs., 216 N.W.2d 391, 394 (Iowa 1974). Additionally, the movant must present "at least a prima facie showing of a meritorious defense as a condition to setting aside a default." Hallett Constr. Co. v. Iowa State Highway Comm'n, 139 N.W.2d 421, 428 (1966) (citations omitted), appeal after remand, 154 N.W.2d 71 (Iowa 1967).

Trial courts have broad discretion in ruling on motions to set aside a default judgment. Whitehorn v. Lovik, 398 N.W.2d 851, 853 (Iowa 1987) (citing Paige v. City of Chariton, 252 N.W.2d 433, 437 (Iowa 1977)). We will set aside such rulings only upon a showing of abuse of discretion. Id.

This is not a case where the defendants simply failed to act in response to the filing of plaintiff's claim. In the transfer of the defense of this action from one attorney to another, the new attorney did not receive a copy of the order which required defendants to move or plead by September 9, 1987. We determine the defendants' failure to move or plead by September 9 resulted from "inadvertence and excusable neglect." Further, there is evidence the defendants possessed a "meritorious defense" to the plaintiff's claims. Thus, the trial court did not abuse its discretion when it granted the defendants' motion for directed verdict.

The second issue is whether the trial court erred in granting the defendants' motion for directed verdict. A directed verdict is appropriate in cases where each element of the claim is not supported by substantial evidence. Oberreuter v. Orion Indus., Inc., 398 N.W.2d 206, 209 (Iowa App. 1986) (citation omitted). A court ruling on a motion for directed verdict must view the evidence in the light most favorable to the nonmoving party. Beitz v. Horak, 271 N.W.2d 755, 757 (Iowa 1978) (citation omitted); Iowa R.

App. P. 14(f)(2). The movant is considered to have admitted the truth of all evidence offered by the nonmovant and every favorable inference may be deduced from it. B & B Asphalt Co. v. T. S. McShane Co., 242 N.W.2d 279, 284 (Iowa 1976). To overrule the motion, the court must find substantial evidence in support of each element of the nonmovant's claim. Beitz, 271 N.W.2d at 757 (citation omitted). The trial court is vested with considerable discretion in determining whether evidence is sufficient. Hoover's Hatchery, Inc. v. Utgaard, 447 N.W.2d 684, 687 (Iowa App. 1989). Our scope of review is on assigned error. Iowa R. App. P. 4.

Manguno filed two claims: a § 1983 claim and a claim of false arrest and false imprisonment. The trial court did not err in granting the defendants' motion for directed verdict with regard to either claim.

The first claim is a § 1983 action. See 42 U.S.C.A. § 1983 (1991). In order to prevail, a plaintiff in a § 1983 case must establish (1) the defendant deprived the plaintiff of a right secured by the constitution and laws of the United States, (2) the defendant acted under color of state law, (3) the conduct was a proximate case of the plaintiff's damage(s), and (4) the amount of damages. Leydens v. City of Des Moines, 484 N.W.2d 594, 596 (Iowa 1992) (citing Christenson v. Ramaeker, 366 N.W.2d 905, 907 (Iowa 1985)). Thus, the first inquiry in any § 1983 action is a determination of whether the plaintiff has been

deprived of a right secured by the Constitution and laws of the United States.

A plaintiff may not recover for a violation of her or his civil rights arising out of an arrest if probable cause to arrest is established. Pfannstiel v. City of Marion, 918 F.2d 1178, 1183 (5th Cir. 1990) (citation omitted). This is so because the law "does not impose on police officers the burden to arrest only guilty persons." Rhiner v. City of Clive, 373 N.W.2d 466, 473 (Iowa 1985) (citing Baker v. McCollan, 443 U.S. 137, 145 (1979)). "[P]robable cause does not depend on the guilt or innocence of the accused party. Rather it depends upon the honest and reasonable belief of the party causing the prosecution." Sundholm v. City of Bettendorf, 389 N.W.2d 849, 852 (Iowa 1986) (citing Gordon v. Noel, 356 N.W.2d 559, 562 (Iowa 1984)). Manguno presented no argument or evidence addressing the probable cause issue.

The plaintiff's claim she was denied necessary medication during incarceration is governed by different standards. The United States Supreme Court held "deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain' proscribed by the Eighth Amendment." Estelle v. Gamble, 429 U.S. 97, 104 (1976) (quoting Gregg v. Georgia, 428 U.S. 153, 173 (1976)). Thus, in order to state a § 1983 claim for inadequate medical care, a plaintiff "must allege acts or omissions sufficiently

harmful to evidence deliberate indifference to serious medical needs." Ellis v. Butler, 890 F.2d 1001, 1003 (8th Cir. 1989) (quoting Estelle, 429 U.S. at 106)).

Manguno presented no argument or evidence addressing the contention the defendants acted with "deliberate indifference" to Manguno's serious medical needs. Simply put, there was no evidence presented from which a jury could reasonably conclude the arrest and imprisonment were unlawful. The trial court did not err in holding Manguno failed to produce sufficient evidence to support the essential elements of a § 1983 action.

The same result is compelled with regards to Manguno's false arrest and false imprisonment claims. The claim of false arrest is indistinguishable from false imprisonment. Kraft v. City of Bettendorf, 359 N.W.2d 466, 469 (Iowa 1984) (citation omitted). The essential elements of a claim of false arrest or false imprisonment are (1) detention or restraint against one's will, and (2) the unlawfulness of such detention or restraint. State v. Snider, 479 N.W.2d 622, 623 (Iowa App. 1991) (citing Valadez v. City of Des Moines, 324 N.W.2d 475, 477 (Iowa 1982)). Again, the record is devoid of any evidence from which a jury could reasonably conclude the arrest and imprisonment were unlawful.

The trial court did not abuse its discretion when it set aside the default judgment against the defendants. Further, the trial court did not err when it sustained

defendants' motion for directed verdict. Judgment of the trial court is affirmed.

AFFIRMED.