

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JOSEPH T. LAFRANCE

CIVIL ACTION

VERSUS

NO. 16-14439

CITY OF NEW ORLEANS, ET AL.

SECTION "R" (2)

ORDER AND REASONS

On March 14, 2017, the Court ordered the parties to show cause why the Court should not dismiss several claims and consolidate this case with *Cain v. City of New Orleans*, 15-4479 (E.D. La., filed Sep. 17, 2015). Plaintiff Joseph LaFrance opposes dismissal of some of his claims against the Orleans Parish Criminal District Court, Judicial Administrator Robert Kazik, and Sheriff Marlin Gusman in his official capacity. The Judicial Defendants oppose consolidating this case with *Cain*. For the following reasons, the Court orders this case consolidated with *Cain* and dismisses the following claims:

- (1) Count One, against the City of New Orleans, the Orleans Parish Criminal District Court, Robert Kazik, and Sheriff Gusman in his official capacity;
- (2) Count Two, against Sheriff Gusman in his official and individual capacities;
- (3) Count Three, against the Orleans Parish Criminal District Court and Robert Kazik;

- (4) Count Four, against the Orleans Parish Criminal District Court and Robert Kazik; and
- (5) Count Five, against the Orleans Parish Criminal District Court and Robert Kazik.

I. BACKGROUND

Plaintiff Joseph LaFrance alleges that he was arrested on an invalid warrant for unpaid fines and fees and held for three weeks in Orleans Parish Prison without being brought before a judge.¹ LaFrance further alleges that no bond was ever set in his case.² While incarcerated, LaFrance allegedly suffered several seizures and lost his job.³ LaFrance names the City of New Orleans, the Orleans Parish Criminal District Court (OPCDC), Judicial Administrator Robert Kazik, and Orleans Parish Sheriff Marlin Gusman as defendants.⁴

LaFrance challenges his arrest and incarceration on several grounds. Specifically, LaFrance alleges that:

1. LaFrance had, in fact, paid all fines and fees due to the court, and his warrant was therefore issued in error.⁵

¹ R. Doc. 1 at 8.

² *Id.*

³ *Id.* at 9.

⁴ *Id.* at 6-7.

⁵ *Id.* at 32.

2. Defendants have a policy of issuing and enforcing such nonpayment warrants without inquiry into the subject's ability to pay, and this practice violates the Fourth and Fourteenth Amendments to the U.S. Constitution.⁶
3. LaFrance was "indefinitely" jailed in violation of the Due Process Clause of the Fourteenth Amendment, and LaFrance's incarceration constitutes wrongful arrest and imprisonment under Louisiana law.⁷
4. LaFrance was deprived of his right to a neutral tribunal because the prosecutor and judicial officer that seek and approve nonpayment warrants, and conduct subsequent hearings, are financially interested in the outcome of such cases.⁸
5. Defendants imposed unduly restrictive methods of collection on LaFrance in violation of the Equal Protection Clause of the Fourteenth Amendment.⁹

⁶ *Id.* at 33.

⁷ *Id.* at 33, 35.

⁸ *Id.* at 33-34.

⁹ *Id.* at 34-35.

II. DISCUSSION

As noted, LaFrance opposes dismissal of several claims and the Judicial Defendants oppose consolidation. The parties' arguments are considered in turn.

A. Claims Against the Orleans Parish Criminal District Court

On May 11, 2016, the Court dismissed claims against OPCDC in the *Cain* case. *Cain v. City of New Orleans*, No. 15-4479, 2016 WL 2742374, at *2 (E.D. La. May 11, 2016). In doing so, the Court found that, as a state court, OPCDC is immune from suit under the Eleventh Amendment. *Id.* at *1; *see also Jefferson v. La. State Supreme Court*, 46 Fed. Appx. 732, *1 (5th Cir. 2002) (“The Eleventh Amendment clearly bars [plaintiff’s] § 1983 claims against the Louisiana Supreme Court, which is a branch of Louisiana’s state government.”); *Bourgeois v. Par. of Jefferson*, 20 F.3d 465, *1 (5th Cir. 1994) (holding that the Orleans Parish Civil District Court is “an agency of the state” entitled to Eleventh Amendment immunity). The Court later rejected the *Cain* plaintiffs’ attempt to replead their claims against OPCDC on the same grounds. *Cain v. City of New Orleans (Cain, Order re. Leave to Amend)*, No. 15-4479, 2017 WL 467685, at *7 (E.D. La. Feb. 3, 2017).

LaFrance does not argue that he has alleged any new facts on this issue. Rather, LaFrance simply asks the Court to apply the Fifth Circuit’s six-factor

test for Eleventh Amendment immunity first articulated in *Clark v. Tarrant County, Texas*. 798 F.2d 736, 744-45 (5th Cir. 1986). The six *Clark* factors are: (1) whether state statutes and case law view the agency as an arm of the state; (2) the source of the entity's funding; (3) the entity's degree of local autonomy; (4) whether the entity is concerned primarily with local, as opposed to statewide, problems; (5) whether the entity has the authority to sue and be sued in its own name; and (6) whether the entity has the right to hold and use property. *Hudson v. City of New Orleans*, 174 F.3d 677, 679 (5th Cir. 1999) (citing *Clark*, 798 F.2d at 744-45). Consideration of the *Clark* factors confirms that OPCDC is an arm of the Louisiana state protected by the Eleventh Amendment.

First, state statutes and case law view OPCDC as an arm of the state. OPCDC was created by state statute. La. Stat. Ann. § 13:1335. As a Louisiana District Court, the state constitution vests OPCDC with "original jurisdiction of all civil and criminal matters," including "exclusive original jurisdiction of felony cases." La. Const. art. V, § 16; *see also Mullins v. State*, 387 So.2d 1151, 1152 (La. 1980) ("If the office is created by the legislature, or is established in the first instance by the constitution, it is a state office.").

Second, OPCDC points out that the state legislature provides significant funds to finance the state judiciary, and under Louisiana Revised

Statutes § 13:5108.1, the state is obligated to indemnify employees of “judicial district courts of the state [and] the offices of the judicial administrators thereof.” LaFrance cites no case or statute providing that a judgment against OPCDC must be satisfied from local funds. That there is no evidence of the state being liable for a judgment against OPCDC is not dispositive because the caselaw uniformly has held state courts immune. *See, e.g., Jefferson v. La. State Supreme Court*, 46 F. App’x 732, *1 (5th Cir. 2002) (“The Eleventh Amendment clearly bars [plaintiff’s] § 1983 claims against the Louisiana Supreme Court, which is a branch of Louisiana’s state government.”); *Bourgeois v. Par. of Jefferson*, 20 F.3d 465, *1 (5th Cir. 1994) (holding that the Orleans Parish Civil District Court is “an agency of the state” entitled to Eleventh Amendment immunity); *Summers v. Louisiana*, No. 13-4573, 2013 WL 3818560, at *4 (E.D. La. July 22, 2013) (holding that an official capacity claim against a state court judge “would in reality be a claim against the state itself, and . . . would be barred by the Eleventh Amendment”); *Wilkerson v. 17th Judicial Dist. Court*, No. 08-1196, 2009 WL 249737, at *4 (E.D. La. Jan. 30, 2009) (“It is clear that the Eleventh Amendment bars § 1983 claims against a state court.”); *Rackley v. Louisiana*, No. 07-504, 2007 WL 1792524, at *3 (E.D. La. June 21, 2007) (“[T]he Eleventh Amendment likewise bars § 1983 claims against a state

court.”); *see generally Mumford v. Basinski*, 105 F.3d 264, 267 (6th Cir. 1997) (noting that state courts are not “persons” under section 1983 and are otherwise immune from suit as an arm of the state government); *Harris v. Champion*, 51 F.3d 901, 905-06 (10th Cir. 1995) (holding that Oklahoma Court of Criminal Appeals is immune from suit under Eleventh Amendment as “a governmental entity that is an arm of the state”); *Landers Seed Co., Inc. v. Champaign Nat’l Bank*, 15 F.3d 729, 731-32 (7th Cir. 1994) (“The Eleventh Amendment, however, bars federal suits against state courts and other branches of state government[.]”); *Clark v. Clark*, 984 F.2d 272, 273 (8th Cir. 1993) (“Courts are not persons within the meaning of 42 U.S.C. § 1983, and, if they were, the action would be barred by the Eleventh Amendment anyway.”). Accordingly, the second factor supports a finding of immunity.

Third, OPCDC has limited local autonomy. OPCDC chiefly applies state criminal laws passed by the Louisiana legislature. Additionally, state statutes govern such minute issues as how much vacation time judges receive, La. Stat. Ann. § 13:1342, how judges are reimbursed for office supplies, La. Stat. Ann. § 13:1341.2, and how cases are allotted among judges. La. Stat. Ann. § 13:1343.

Fourth, OPCDC is primarily concerned with statewide problems. The Court is part of a statewide system of district courts empowered to enforce

state criminal statutes. The administrative choice to divide the state into several judicial districts, and place a district court in each, does not alter this conclusion. *See Clark*, 798 F.2d 736, 745 (holding that, despite operating in only one county, the Tarrant County Adult Probation Department was primarily concerned with statewide problems because “[d]ividing the responsibilities into judicial districts is merely an administrative tool for handling a statewide, state program.”).

As to the fifth and sixth *Clark* factors, LaFrance presents argument suggesting that OPCDC has the authority both to own property and to sue and be sued. These two factors, however, carry less weight than the other four. *Hudson v. City of New Orleans*, 174 F.3d 677, 682 (5th Cir. 1999) (“[W]e typically deal with the last two factors in a fairly brief fashion.”). Accordingly, even accepting LaFrance’s arguments at face value, the fifth and sixth factors alone cannot upend the Court’s conclusion that OPCDC enjoys Eleventh Amendment immunity. The Court therefore finds that LaFrance’s claims against OPCDC are properly dismissed.

B. Official Capacity Claims Against Judicial Administrator Kazik

In *Cain*, the plaintiffs argued that Kazik is not entitled to quasi-judicial absolute immunity because he *seeks* rather than *issues* warrants. *Cain, Order re. Leave to Amend*, 2017 WL 467685, at *6-7. The Court rejected this

argument, and found that Kazik's alleged role in causing the *Cain* plaintiffs' injury was functionally judicial, and that quasi-judicial absolute immunity therefore applied. *Id.* LaFrance offers nothing new on this point, opting instead to simply repackage the *Cain* plaintiffs' failed arguments. The Court therefore finds that LaFrance's claims against Kazik are properly dismissed for the reasons stated in the Court's earlier order. *Id.*

C. Official Capacity Claims Against Sheriff Gusman

LaFrance also opposes dismissal of Counts One and Two against Sheriff Gusman in his official capacity. In Count One, LaFrance alleges that Gusman detained LaFrance pursuant to a warrant that Gusman knew or should have known was invalid. In Count Two, LaFrance alleges that he was indefinitely detained by Gusman without due process of law. The Court dismissed analogous claims in *Cain*, and finds that both counts are properly dismissed.

i. Count One

As to Count One, the Court found in *Cain* that the plaintiffs' complaint described a facially lawful policy of executing facially valid arrest warrants. *Cain, Order re. Leave to Amend*, 2017 WL 467685, at *12-13. Therefore, under *Monell v. Dept. of Soc. Servs.*, 436 U.S. 658 (1978), the *Cain* plaintiffs could not survive a motion to dismiss absent alleged facts giving rise to a

plausible inference that Gusman acted with deliberate indifference. *Id.* Because the *Cain* plaintiffs did not plausibly allege that Gusman *knowingly* held plaintiffs pursuant to invalid warrants, plaintiffs failed to state a claim under *Monell*. *Id.*

LaFrance points to two sets of allegations that purportedly distinguish his case from *Cain* and save his claim under Count One: (1) LaFrance alleges that he was detained by Gusman until September 21, 2015, four days after the *Cain* plaintiffs filed suit; and (2) LaFrance filed certain grievances with the Sheriff's office while he was held, and his girlfriend repeatedly called the Orleans Parish Prison. Neither set of allegations saves LaFrance's claim.

LaFrance argues that the *Cain* suit put Gusman on notice that the *capias* warrants routinely executed by his office were constitutionally defective and issued without an individualized finding of probable cause. LaFrance specifically points to a hearing transcript attached to the *Cain* complaint, in which an OPCDC Collections Agent describes her offices' practices. Even assuming that the *Cain* complaint could provide sufficient notice such that Gusman's continued enforcement would constitute deliberate indifference—and that Gusman had an *immediate* duty to stop executing facially valid warrants after he became aware of the suit—LaFrance's argument still fails. As made clear by the relevant return of

service, the *Cain* plaintiffs did not serve Gusman until September 22, 2015, the day after LaFrance was released.¹⁰ *Cain v. City of New Orleans*, 15-4479 (E.D. La. Oct. 16, 2015) (proof of service of Marlin Gusman). LaFrance pleads no facts to support a finding that Gusman became aware of the suit before he was actually served. Accordingly, the filing of the *Cain* suit cannot render Gusman's conduct deliberately indifferent under *Monell*.

As to LaFrance's second argument, complaints made by LaFrance and his girlfriend are irrelevant to Count One. LaFrance alleges that he complained he was "lost in the system" and that he needed to know what his warrant was about and why he had not been to court.¹¹ LaFrance also alleges that his girlfriend called the Orleans Parish Prison repeatedly to try to set a hearing before a judge.¹² But these complaints plainly do nothing to inform Gusman or his staff that LaFrance was arrested pursuant to warrant issued absent probable cause. Accordingly, the Court finds that LaFrance's claim under Count One against Sheriff Gusman in his official capacity is properly dismissed.

¹⁰ R. Doc. 1 at 33 (alleging that "Mr. LaFrance was illegally incarcerated from September 3, 2015 until September 21, 2015").

¹¹ *Id.* at 9.

¹² *Id.* at 9-10.

ii. Count Two

LaFrance alleges in Count Two that he was indefinitely detained by Gusman without due process of law. LaFrance concedes that the Court dismissed an analogous claim in *Cain*, but argues that his claim “differs importantly from its counterpart in *Cain* because [LaFrance] alleges that his detention violated a state law right to a timely hearing.”¹³ The state law in question, Louisiana Code of Criminal Procedure article 230.1, requires that state arrestees be brought before judge for the purpose of appointing counsel within 72 hours of arrest. Arrestees who are not brought before a judge within the period established by the statute “shall be released forthwith.” La. Code Crim. P. art. 230.1. LaFrance argues that this statute gives rise to constitutionally protected liberty interest, and that Gusman’s alleged failure to comply therefore takes on a constitutional dimension.

The Fifth Circuit has repeatedly rejected constitutional claims grounded in analogous statutes, and the Court is bound by this clear precedent. *See Perry v. Jones*, 506 F.2d 778, 781 (5th Cir. 1975) (“[E]ven though the failure to take Perry before a magistrate violates Texas law, it does not rise to the status of a denial of due process”); *Scarborough v. Dutton*, 393 F.2d 6 (5th Cir. 1968) (seven month detention in violation of Georgia statute

¹³ R. Doc. 25 at 14.

requiring a preliminary hearing be held within 72 hours of arrest did not give rise to constitutional violation); *see also Stephenson v. Gaskins*, 539 F.2d 1066, 1067 (5th Cir. 1976) (thirty-eight day detention in Georgia jail without a preliminary hearing did not give rise to a constitutional claim); *Anderson v. Nosser*, 438 F.2d 183, 196 (5th Cir. 1971) (“[T]he right under the federal rules to be promptly taken before a magistrate has not been given constitutional status.”) (quoting *Kulyk v. United States*, 414 F.2d 139, 141 (5th Cir. 1969)).

To resist this conclusion, LaFrance cites *Griffin v. City of Lafayette*, in which the Fifth Circuit “presume[d] without deciding” for purpose of the appeal that article 230.1 creates a liberty interest actionable under 42 U.S.C. § 1983. 166 F.3d. 340 (5th Cir. 1998). Even accepting the doubtful premise that *Griffin* could be read to contradict *Perry* and *Scarborough*, the Court remains bound by the earlier decisions. *See H&D Tire & Auto.-Hardware, Inc. v. Pitney Bowes Inc.*, 227 F.3d 326, 330 (5th Cir. 2000) (“When panel opinions appear to conflict, we are bound to follow the earlier opinion.”). Accordingly, LaFrance’s official capacity claims against Sheriff Gusman under Count Two must be dismissed.

D. Consolidation

Federal Rule of Civil Procedure 42(a) provides for consolidation of actions involving “a common question of law or fact.” Fed R. Civ. P. 42(a)(2). The rule gives district courts “broad discretion . . . to consolidate cases pending in the same district.” *In re Dearborn Marine Serv., Inc.*, 499 F.2d 263, 270-71 (5th Cir. 1974); *see also Luera v. M/V Alberta*, 635 F.3d 181, 194 (5th Cir. 2011) (“Rule 42(a) provides district courts with broad authority to consolidate actions that “involve a common question of law or fact.”).

The Judicial Defendants oppose consolidation of this case with *Cain*. In support, the Judicial Defendants argue (1) that the legal issues are not similar in the two cases, and (2) that the parties in the two cases are different. The Court finds neither assertion compelling. As to the Judicial Defendants first argument, the Court finds that the two cases clearly share several common questions of fact and law, as demonstrated by the nearly identical complaints. Second, the Court finds that there is near-perfect overlap between the defendants in the two cases, especially following the dismissals provided for in this order. Finally, that this case is brought by a different plaintiff does not preclude consolidation. *See Bolbol v. City of Daly City*, 754 F. Supp. 2d 1095, 1118-1119 (N.D. Cal. 2010) (consolidating cases brought by different plaintiffs but raising substantially same claims against same

defendants). Accordingly, the Court orders this case consolidated with *Cain* pursuant to Rule 42(a).

III. CONCLUSION

For the foregoing reasons, the following claims are DISMISSED:

- (1) Count One, against the City of New Orleans, the Orleans Parish Criminal District Court, Robert Kazik, and Sheriff Gusman in his official capacity;
- (2) Count Two, against Sheriff Gusman in his official and individual capacities;
- (3) Count Three, against the Orleans Parish Criminal District Court and Robert Kazik;
- (4) Count Four, against the Orleans Parish Criminal District Court and Robert Kazik;
- (5) Count Five, against the Orleans Parish Criminal District Court and Robert Kazik.

It is further ORDERED that this case be consolidated with *Cain v. City of New Orleans*, 15-4479 (E.D. La., filed Sep. 17, 2015). Pursuant to the Court's directive, all pleadings hereafter filed in this consolidated proceeding shall bear the caption of the lead consolidated case together with the docket number of all cases within the consolidation to which the document applies or the notation "ALL CASES" if it applies to all cases.

The clerk of court is directed to establish a master file and a master docket sheet for the consolidated group of cases.

All entries shall be made on the master docket sheet only, with a notation listing the cases to which the document applies, except that orders and documents terminating a party or disposing of a case will also be entered on the individual docket sheet. All documents shall be filed in the master file only, except that orders and documents terminating a party or disposing of a case will also be filed in the record of the individual case.

In the event that a case is separated from the consolidated group it shall be the responsibility of counsel to jointly designate the documents in the master record necessary to the continued litigation of the separated case and to file such designation with the clerk within seven days of the de-consolidation order.

New Orleans, Louisiana, this 19th day of June, 2017.



SARAH S. VANCE
UNITED STATES DISTRICT JUDGE