



Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

OCTOBER TERM, 2026

Kip Scanlon* v. State of Vermont	}	APPEALED FROM:
	}	Superior Court, Washington Unit,
	}	Civil Division
	}	CASE NO. 24-CV-02084
		Trial Judge: Daniel P. Richardson

In the above-entitled cause, the Clerk will enter:

Plaintiff Kip Scanlon, self-represented, appeals from a civil division order dismissing his complaint for failure to state a claim on which relief could be granted. We affirm.

In his complaint, plaintiff sought monetary damages for a deprivation of liberty allegedly flowing from the events of a June 2022 hearing at which he was arraigned on several criminal charges. Plaintiff alleged that the criminal division judge and the public defender representing him at this hearing acted improperly, primarily by failing to adhere to Vermont Rule of Criminal Procedure 5, which sets forth certain requirements for a criminal defendant's initial appearance before a judicial officer.

The records of this case and the underlying criminal proceeding reflect the following.¹ On May 31, 2022, plaintiff was arrested on charges of aggravated assault, interference with access to emergency services, and criminal threatening. The criminal division found probable cause based on the State's information and supporting affidavit. The State moved for plaintiff to be held without bail under 13 V.S.A. § 7553a, and the criminal division granted this request pending further proceedings. See *id.* § 7553a(a) (providing that person charged with "a felony, an element of which involves an act of violence against another person," may be held without bail where evidence of guilt is great and court finds that release poses substantial threat of

¹ Like the trial court, we take judicial notice of the record in the relevant criminal case, *State v. Scanlon*, No. 22-CR-04641. See *Doe v. Camacho*, 2024 VT 72, ¶ 2 n.1, 220 Vt. 226 ("A court may take judicial notice of the docket entries in a separate, related case."); V.R.E. 201(b) (providing that judicial notice may be taken of fact "not subject to reasonable dispute in that it is . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonable be questioned").

physical violence to any person which cannot be reasonably prevented by conditions of release). Plaintiff was transferred to a correctional facility.

On June 1, 2022, the criminal division held an initial hearing in the case. Plaintiff appeared by video from the correctional facility and, for purposes of the hearing, was represented by public defender Attorney Stacie Johnson. Attorney Johnson indicated that plaintiff consented to conducting the hearing remotely, was in receipt of the State's three-count information and supporting affidavit, and waived the reading of the charges, recitation of rights, and "twenty-four-hour rule" under Criminal Rule 5. See V.R.Cr.P. 5(d) (requiring that judicial officer inform defendant of charges and minimum and maximum punishments, provide copy of information and affidavit, and advise defendant of specified rights "before taking any further action under this rule"); V.R.Cr.P. 5(g) (providing that arraignment shall be conducted within twenty-four hours of probable-cause determination but "[t]he judicial officer may, if the defendant so requests, conduct the arraignment forthwith as part of the proceedings under this rule"). She then entered not-guilty pleas to all three charges on defendant's behalf. The court accepted the waivers and pleas and arraigned defendant. Attorney Johnson did not contest the State's motion to continue holding plaintiff without bail, indicating that plaintiff's appointed public defender, Attorney Kathy Strahm, would take up the issue.

Approximately nineteen days later, Attorney Strahm negotiated an agreement with the State. Consistent with this agreement, on June 21, 2022, the criminal division lifted the order holding plaintiff without bail and imposed certain conditions of release. As relevant here, one of these conditions called for plaintiff to be released into the custody of a responsible adult. Plaintiff was not released at the time because he lacked an identified responsible adult, but the court indicated that a hearing would be set once plaintiff had such an individual ready for the court's review.

On July 26, 2022, Attorney Strahm offered a responsible adult. The court held a hearing two days later. The State objected to plaintiff's proffered responsible adult; the court agreed that this individual could not serve in that role and denied the request. Plaintiff therefore remained incarcerated for want of a responsible adult. Plaintiff later moved for the court to reconsider his proffered responsible adult. The court denied the motion but modified plaintiff's conditions of release to include a bail amount of \$1500 and directed the Department of Corrections to determine if the responsible adult's residence would be suitable for electronic monitoring. Plaintiff appealed to this Court and we affirmed. State v. Scanlon, No. 22-AP-344, 2022 WL 18014643 (Vt. Dec. 30, 2022) (unpub. mem.), <https://www.vtcourts.gov/sites/default/files/documents/eo22-344.pdf>.

Plaintiff also moved to dismiss the charges against him based on the alleged defects at the June 2022 hearing giving rise to this civil suit. The criminal division held an evidentiary hearing and, in February 2023, issued a decision concluding that there was no error in the arraignment procedure and no prejudice to plaintiff. It denied the motion to dismiss on this basis. Plaintiff—then representing himself with standby counsel—continued to file materials with the court challenging his arraignment and pretrial incarceration. The criminal division continued to find no basis for relief, reiterating the conclusions set forth in its denial of the motion to dismiss.

On December 14, 2023, the State dismissed the three pending charges and plaintiff was released.

In May 2024, plaintiff brought the instant civil suit against the State. He filed an amended complaint—which he designated as a "Supplement and Amendment to Initial

Complaint”—in July 2024, before the State filed a responsive pleading. See V.R.C.P. 15(a) (“A party may amend the party’s pleading once as a matter of course at any time before a responsive pleading is served.”). Because plaintiff designated the latter complaint as a “supplement” to his initial complaint, we presume that it was not intended to supersede it and construe the two documents together as a single pleading. Cf. In re Lewis, 2021 VT 24, ¶ 26, 214 Vt. 451 (explaining that “an amended pleading generally supersedes the pleading it modifies” and reasoning that trial court appropriately so concluded where nothing in amended pleading indicated intent to incorporate or maintain content of initial pleading).

Plaintiff alleged the following facts in his complaint. Plaintiff was provided with no information regarding the basis for his May 31, 2022 arrest. He was then detained and, the following day, brought to an audio-video monitor within the correctional facility where the judge appeared on screen. The judge asked if plaintiff could hear her, but plaintiff—unable to hear—responded only, “huh?” The hearing nonetheless proceeded, with the judge telling Attorney Johnson, “you can go ahead with the Rule 5 and the arraignment and do indicate whether Mr. Scanlon consents to the remote proceeding.”² At the time, plaintiff had never interacted with Attorney Johnson and had not authorized her to act on his behalf or waive any of his rights. In fact, Attorney Johnson had a conflict of interest which precluded her from representing plaintiff. She nonetheless entered the consent, waivers, and pleas described above. At the conclusion of the arraignment, plaintiff was still without knowledge of the accusations against him and had no understanding of what had happened at the hearing.

The claims raised in the civil complaint are somewhat difficult to discern. Generally, plaintiff alleged that the criminal division was without jurisdiction because of its failure to adhere to the applicable procedural rules. He also asserted that, as a result of the events at the June 2022 hearing, he was deprived of his liberty for a 554-day period and entitled to monetary damages for this injury. As grounds for relief, he cited the Vermont Tort Claims Act (VTCA), 12 V.S.A. § 5601, and the Vermont and U.S. Constitutions.

The State moved to dismiss under Vermont Rule of Civil Procedure 12(b)(6), arguing that plaintiff failed to state a claim upon which relief could be granted. Plaintiff did not timely file an opposition, and the civil division granted the State’s motion to dismiss on that basis. Plaintiff appealed to this Court where, based on the parties’ agreement, we remanded to allow plaintiff to oppose—through a motion for reconsideration—the dismissal of his complaint. The

² Plaintiff has filed a motion to correct the record on appeal, contending that the June 1, 2022 transcript he filed with his complaint did not accurately capture a portion of the criminal court’s statements. Specifically, he contends that while the transcript he appended to his complaint reflects that the judge said, “Ms. Johnson, you can go ahead with the [skipping – 2:32.6] arraignment and do indicate whether Mr. Scanlon consents to the remote proceeding,” his review of the audio recording reflected that the omitted words were “Rule Five and the.” Because this matter is before us on appeal from the grant of the State’s motion to dismiss, we must take the allegations in the complaint in the light most favorable to plaintiff and draw all reasonable inferences in his favor. See Bittner v. Centurion of Vt., LLC, 2021 VT 73, ¶ 13, 215 Vt. 475 (setting forth standard of review on appeal from grant of motion to dismiss); Kaplan v. Morgan Stanley & Co., 2009 VT 78, ¶ 10 n.4, 186 Vt. 605 (mem.) (explaining that documents filed with complaint merge into pleadings and are properly considered in ruling on motion to dismiss). We accept plaintiff’s assertion as to the substance of the criminal division’s statement for purposes of our review under this standard and therefore deny his motion to correct the record as moot.

parties filed additional memoranda of law below, and the civil division subsequently issued an order reconsidering its earlier decision.

In that order, the court granted the State’s motion to dismiss on three independent grounds. First, the court concluded that plaintiff failed to plead a cause of action on which his requested relief—monetary damages—could be granted. Second, it reasoned that plaintiff had not alleged facts linking his extended incarceration to the events of the June 2022 hearing, noting that he exercised his right to challenge that process throughout the criminal proceeding and that, by July 2022, plaintiff was detained for lack of a responsible adult, an issue unrelated to the events of his initial appearance and arraignment. Finally, the court held that the criminal division judge was shielded by absolute immunity and Attorney Johnson was entitled to qualified immunity. This appeal followed.

We review the civil division’s disposition of a Civil Rule 12(b)(6) motion without deference, applying the same standard used below. Bittner, 2021 VT 73, ¶ 13. For purposes of this analysis, we take the factual allegations in the complaint as true and draw all reasonable inferences in the plaintiff’s favor.³ Id. While “[m]otions to dismiss for failure to state a claim are disfavored and should be rarely granted,” dismissal is nonetheless proper “when it is beyond doubt that there exist no facts or circumstances, consistent with the complaint[,] that would entitle the plaintiff to relief.” Bock v. Gold, 2008 VT 81, ¶ 4, 184 Vt. 575 (mem.).

We conclude that plaintiff has failed to identify any error in the civil division’s conclusion that he did not identify any statutory or constitutional basis to award the requested relief and affirm on that basis.

We begin with the federal constitutional claims. Although plaintiff did not expressly invoke 42 U.S.C. § 1983 in his pleadings, the trial court correctly considered whether plaintiff raised a colorable claim under that statute because he asserted that state actors violated his federal constitutional rights. See Brown v. State, 2018 VT 1, ¶ 14, 206 Vt. 394 (noting that plaintiff’s “complaint did not expressly reference 42 U.S.C. § 1983, but it is the vehicle for persons claiming to have been deprived of federal constitutional rights, as [plaintiff] does,” and therefore analyzing claim under that statute). While plaintiff’s pleadings referenced individual state officers and actors, he named only the State as a defendant.⁴ Section 1983 provides a

³ Plaintiff also asks that we take judicial notice of certain “regulatory and administrative records” of the State. Because these materials were not incorporated into the complaint, Kaplan, 2009 VT 78, ¶ 10 n.4, and plaintiff does not explain why they are otherwise appropriately considered as part of our analysis, we decline to do so.

⁴ Plaintiff suggests that, under Johnson v. City of Shelby, 574 U.S. 10 (2014) (per curiam), the court should have looked beyond the named defendant in assessing his claim. In Johnson, the U.S. Supreme Court held that it was error to dismiss a complaint seeking damages for alleged violations of rights secured by the U.S. Constitution on the ground that it failed to expressly invoke § 1983. Id. at 11-12. As set forth above—and consistent with Johnson—the civil division here considered the complaint in connection with § 1983 notwithstanding the lack of any direct reference to the statute. It nonetheless concluded that plaintiff failed to state a claim under § 1983 because the State was the only named defendant. It was not error to dismiss on this basis, and Johnson did not require any other result. Brown, 2018 VT 1, ¶ 15; see Johnson, 574 U.S. at 11 (explaining that federal pleading rules do not “require[] plaintiffs seeking damages for violations of constitutional rights to invoke § 1983 expressly in order to state a claim” (emphasis added)). To the extent plaintiff seeks to raise a broader argument under

remedy for individuals who allege that they have been deprived of a federal right by a “person” acting under color of state law. 42 U.S.C. § 1983; see Brown, 2018 VT 1, ¶ 13. Where, as here, a plaintiff seeks monetary damages, § 1983 may not be used to assert a claim for deprivation of federal rights against a state, because “a state is not a ‘person’ for purposes of the statute.” Brown, 2018 VT 1, ¶ 15 (citing Will v. Mich. Dep’t of State Police, 491 U.S. 58, 64, 71 (1983)) (dismissing, on this basis, complaint for monetary relief “brought solely against the State”). Because plaintiff sought monetary damages and filed his complaint solely against the State, which is not a “person” under § 1983, the court correctly concluded that plaintiff failed to state a claim for the deprivation of any federal constitutional rights.

We also affirm the court’s conclusion that plaintiff failed to state a claim for the violation of any rights under the Vermont Constitution.

As noted above, plaintiff cited the VTCA in his complaint. That statute “waives the State’s immunity with respect to suits for injury to persons caused by the negligent acts of employees of the State acting within the scope of their employment,” but only “ ‘under the same circumstances, in the same manner, and to the same extent as a private person would be liable to the claimant.’ ” Sutton v. Vt. Reg’l Ctr., 2019 VT 71A, ¶ 35, 212 Vt. 612 (quoting 12 V.S.A. § 5601(a)) (recognizing that “[s]overeign immunity protects the State and its components from suit unless it is expressly waived by statute”). It “is merely a procedural remedy and does not create any substantive cause of action against the state.” Denis Bail Bonds, Inc. v. State, 159 Vt. 481, 485 (1993). Rather, it operates only to waive the State’s immunity “from recognized causes of action,” primarily “the ordinary common-law torts.” Id. at 485-86 (quotations omitted). As a result, the VTCA applies “only where there is a private analogue—in other words, where the cause of action is comparable to one available against a private citizen.” Zullo v. State, 2019 VT 1, ¶ 18, 209 Vt. 298. Here, the civil division correctly concluded that there is no “private analogue” to a claim of loss of liberty arising from an alleged failure to adhere to the requirements of Criminal Rule 5. Because plaintiff did not allege a common-law tort, the VTCA had no application here. See id.; Denis Bail Bonds, 159 Vt. at 485.

It is true, as plaintiff points out, that sovereign immunity is not an absolute jurisdictional bar to torts based on an alleged violation of the Vermont Constitution. Zullo, 2019 VT 1, ¶¶ 28-30. Such a claim may be raised, however, only if the constitutional provision at issue: (1) “is self-executing in the sense that it is specific enough to support an action against the state or state officials absent implementing legislation”; and (2) “monetary damages are available as a remedy for a violation because of the absence of any viable alternative remedy.” Id. ¶ 33 (quotation omitted). Here, however, plaintiff did not reference any provision of the Vermont Constitution in his complaint; he instead referenced the VTCA. As explained above, these are different species of claims. See Zullo, 2019 VT 1, ¶¶ 19, 20 (explaining that VTCA “does not explicitly address constitutional torts” and recognizing that its private-analogue waiver is instead “primarily directed at the ordinary common-law torts” (quotation omitted)). Although the notice-pleading standard created by Vermont Rule of Civil Procedure 8(a) is an “exceedingly low” threshold, it does require that the allegations in the complaint “suffice to place defendants

Johnson, we are unable to discern it. See V.R.A.P. 28(a)(4) (requiring that appellant’s brief include “the issues presented, how they were preserved, and appellant’s contentions and the reasons for them—with citations to the authorities, statutes, and parts of the record on which the appellant relies”); Pcolar v. Casella Waste Sys. Inc., 2012 VT 58, ¶ 19, 192 Vt. 343 (explaining that self-represented litigants must satisfy minimum briefing standards of Rule 28(a)(4) and declining to address inadequately briefed argument).

on notice” of the plaintiff’s “general claim.” Bock, 2008 VT 81, ¶¶ 4, 8 (quotation omitted); see Reporter’s Notes, V.R.C.P. 8 (explaining that while complaint need not include “a specific and detailed statement of the facts which constitute a cause of action,” the rules do require “a statement clear enough to give the defendant fair notice of what plaintiff’s claim is and the grounds on which it rests” (quotation omitted)). The trial court did not err in concluding that plaintiff’s complaint did not satisfy this standard because it did not give fair notice that he raised a claim under any specific provision of the Vermont Constitution. See In re Verizon Wireless Barton Permit, 2010 VT 62, ¶ 22, 188 Vt. 262 (explaining that while trial court must exercise caution to ensure self-represented parties are not “taken advantage of by strict application of rules of procedure,” it “does not abuse its discretion where it enforces the rules of civil procedure equitably, even against a pro se litigant” (quotations omitted)).

We have addressed all arguments discernible in plaintiff’s briefs and conclude that he has not identified grounds to disturb the trial court’s conclusion that he failed to invoke any claim against the State on which the relief he sought—monetary damages—could be granted. Because this conclusion, standing alone, is sufficient to support dismissal, we do not reach plaintiff’s challenges to the alternative bases for the trial court’s decision.

Affirmed.

BY THE COURT:

Harold E. Eaton, Jr., Associate Justice

Nancy J. Waples, Associate Justice

Christina E. Nolan, Associate Justice