COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss. SUPERIOR COURT
C.A. NO. 2285CV00971-A

JOAO DEPINA,

Plaintiff,

v.

WORCESTER COUNTY DISTRICT ATTORNEY'S OFFICE, JOSEPH D. EARLY, JR., ANTHONY MELIA, BOSTON POLICE DEPARTMENT, DANTE WILLIAMS, and RACHAEL ROLLINS,

Defendants.

DEFENDANTS WORCESTER COUNTY DISTRICT ATTORNEY'S OFFICE, JOSEPH D. EARLY, JR., ANTHONY MELIA, AND RACHAEL ROLLINS' REPLY TO PLAINTIFF'S OPPOSITION TO THEIR MOTION TO DISMISS

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Plaintiff Joao DePina concedes in his Opposition that most of his claims against the Worcester County District Attorney's Office, Joseph D. Early, Jr., Anthony Melia, and Rachael Rollins (collectively, the "Commonwealth Defendants") are barred by sovereign immunity and the Massachusetts Tort Claims Act (MTCA). Opp. at 15-16, 18.[1] In an attempt to save his remaining claims against Defendants Early, Melia, and Rollins in their personal capacities, DePina ignores or misunderstands the controlling case law, particularly the Supreme Judicial Court's absolute immunity decision in *Chicopee Lions Club*. DePina's claims must all be dismissed because they are barred by absolute and qualified immunity, barred by the MTCA to the extent they sound in negligence, and unsupported by sufficient factual allegations.

ARGUMENT

After DePina's concessions in the Opposition, only the following claims against the Commonwealth Defendants in their personal capacities remain contested: the Massachusetts Civil Rights Claims Act ("MCRA") claims against Early, Melia, and Rollins; the Intentional or Reckless Infliction of Emotional Distress ("IIED") claims against Early, Melia, and Rollins; and a Negligent Infliction of Emotional Distress ("NIED") claim against Rollins.

I. DePina's Claims Against the Commonwealth Defendants Are Barred by Absolute Prosecutorial Immunity.

All of DePina's claims against the Commonwealth Defendants are barred by absolute immunity, and the Court need not reach any other arguments. Indeed, the Opposition entirely fails to distinguish the controlling case on this point: *Chicopee Lions Club v. Dist. Atty. for Hampden*

[1] In his Opposition, DePina concedes that "this court is bound by precedent" to dismiss his claims against the Worcester County District Attorney's Office and his official capacity claims against Defendants Early, Melia, and Rollins. Opp. at 15-16. DePina also "recognizes that G.L. c. 258, § 4, presently bars his claims for Negligent Infliction of Emotional Distress (NIED) against the D.A.'s office and the official capacity defendants," and recognizes that his NIED claims against Early and Melia in their personal capacities are also barred by statute. Opp. at 18.

Dist., 396 Mass. 244 (1985). In *Chicopee Lions Club*, the district attorney allegedly "maliciously" threatened the plaintiffs with arrest, despite "knowledge that the plaintiff's activities were lawful and properly licensed." *Id*. at 246. The Supreme Judicial Court held that even under these circumstances, absolute immunity protected prosecutors when "directing the efforts of the police in regard" to a "specific suspect" who might be prosecuted, evaluating information to determine whether the law was being violated, or threatening prosecution. *Id*. at 250-253. Here, as in *Chicopee Lions Club*, Rollins is alleged to have exercised her prosecutorial power to target, or to direct the police to target, DePina for prosecution. Compl. ¶¶ 17-21. DePina has not distinguished and cannot distinguish *Chicopee Lions Club* from the facts at issue here.

Moreover, DePina's efforts to cast Rollins as a "complaining witness" who is not entitled to absolute immunity are unavailing. Opp. at 7-8. Even if the Supreme Court's decision in *Kalina v. Fletcher*, 522 U.S. 118, 129 (1997) controlled here—which it does not[2]—DePina still fundamentally misunderstands the case. In *Kalina*, the Supreme Court held that while a prosecutor's filing of a motion for an arrest warrant and preparation of a supporting affidavit were protected by absolute immunity, the prosecutor's swearing to the facts of that affidavit "under penalty of perjury" was not. *Id.* at 129-31. In swearing to the affidavit, the prosecutor ceased performing a prosecutorial function and instead acted solely as a "complaining witness." *Id.*; *see C.M. v. Comm'r of Dep't of Child. & Fams*., 487 Mass. 639, 650-52 (2021) (discussing *Kalina*).

[2] Although his claims sound exclusively under state law, DePina ignores the controlling state law decision in *Chicopee Lions Club* and relies near-exclusively on federal absolute immunity cases. Opp. at 7-11. *Chicopee Lions Club* establishes that state law absolute prosecutorial immunity *is broader* than federal immunity for tort claims and *may be broader* than federal immunity for MCRA claims. 396 Mass. at 247-52. Regardless of the applicable test under the MCRA, DePina's claims are barred.

Here, Rollins did not act as a "complaining witness" in the prosecution against DePina.[3] DePina concedes in the Opposition that Rollins was not listed as the complaining witness in the application for the criminal complaint. Opp. at 7. Indeed, Rollins did not swear or attest to any facts in the application for the criminal complaint. Opp. Ex. 1. Rollins' alleged actions here—"direct[ing] police officers to target DePina for prosecution, and caus[ing] the prosecution to be initiated," Opp. at 7—were all related to an "apparent decision to initiate a prosecution," a "focused . . . investigation on a specific suspect," and "the judicial phase of the criminal process" and are therefore protected. *Chicopee Lions Club*, 396 Mass. at 250-53; *see C.M.*, 487 Mass. at 650-52, citing *Kalina*, 522 U.S. at 129.

Absolute immunity also squarely bars the claims against Early and Melia. Early had no personal involvement with the case, and the Opposition argues only that he "accepted" the case for prosecution. Compl. ¶ 4; Opp. at 11. Melia was the assistant district attorney who prosecuted the case. Compl. ¶¶ 36-47. These are essential prosecutorial functions that are immune from suit. *Chicopee Lions Club*, 396 Mass. at 250-53; *Dinsdale v. Commonwealth*, 424 Mass. 176, 181 (1997). Early's alleged "acceptance" of the case for prosecution, after the complaint and summons had already issued, is plainly protected under *Chicopee Lions Club*. 396 Mass. at 250 (District Attorney was protected by absolute immunity for "evaluat[ing] the information presented to him" to "reach[] the conclusion that [the plaintiff's actions] would be in contravention of the law"). Although DePina makes many accusations about Early and Melia's purported breaches of ethical duties,[4] Opp. at 10-

[3] Indeed, the Supreme Judicial Court, in the context of a federal civil rights case, recently rejected a plaintiff's similar effort to misuse *Kalina's* "complaining witness" concept. *C.M.*, 487 Mass. at 650-52 (prosecutorial official who takes actions "essential to [the] initiation" of a prosecution, or who acts in a dual role as prosecutor and witness, is entitled to absolute immunity and is not a "complaining witness").

[4] The Commonwealth Defendants strongly reject DePina's accusations and rhetoric in this regard but—for purposes of this motion to dismiss—DePina's statements are irrelevant.

11, it is well established that absolute immunity applies regardless of allegations of maliciousness or bad faith. *See Dinsdale*, 424 Mass. at 182-83; *Chicopee Lions Club*, 396 Mass. at 252 (allegations "that the district attorney may have erred or even acted maliciously in this case [are] irrelevant"). Early and Melia are thus entitled to absolute immunity.

III. DePina's Claims Against the Individuals in Their Individual Capacities Are Non-Actionable and Barred by Qualified Immunity.

A. DePina's MCRA Claims Are Barred By Qualified Immunity.

DePina's MCRA claims must also be dismissed because he has not alleged the Commonwealth Defendants violated his constitutional rights through "threats, intimidation, or coercion." G. L. c. 12, §§ 11H, 11I. DePina attempts to salvage the MCRA claims by arguing that "arranging for the arrest" of a person without probable cause is sufficient to satisfy this requirement,[5] Opp. at 13, notwithstanding DePina's failure to allege he was ever arrested. *See* Compl. 17-32. Nevertheless, the case he cites for this proposition granted partial summary judgment for the defendants on the grounds that "[t]he fact that [plaintiff] might have been subject to a malicious prosecution does not rise to the level of a civil rights violation under the MCRA." *Grant v. John Hancock Mut. Life Ins. Co*., 183 F. Supp. 2d 344, 373 (D. Mass. 2002). Just the same here, DePina's allegations regarding his criminal prosecution also cannot sustain a MCRA claim.

DePina has also not met his burden to identify clearly established case law sufficient to overcome qualified immunity. *See Maxwell v. AIG Domestic Claims, Inc*., 460 Mass. 91, 104 (2011). The Opposition identifies no prior MCRA "case in which the [challenged conduct] was deemed unlawful under circumstances reasonably similar to those present in the case at hand."

[5] This argument on DePina's part is directed to Rollins. DePina does not even attempt to make a case law-based argument for how Early or Melia could be said to have engaged in "threats, intimidation, or coercion." Opp. at 13-15.

Escalera-Salgado v. United States, 911 F.3d 38, 41 (1st Cir. 2018). DePina's claims are therefore barred by qualified immunity.

B. DePina Alleges No Plausible Claim of Intentional or Reckless Infliction of Emotional Distress.

Aside from being barred by absolute immunity, DePina has failed to allege extreme and outrageous conduct that would support his IIED claims. DePina's allegations amount to (1) that DePina was prosecuted based on false allegations, and (2) that the prosecution was therefore extreme and outrageous, notwithstanding a Clerk-Magistrate's independent and autonomous finding of probable cause. Opp. at 13, 15. A defendant's alleged false allegations and use of the litigation process are insufficient to sustain an IIED claim. *Padmanabhan v. City of Cambridge*, 99 Mass. App. Ct. 332, 342-343 (2021). The prosecution of a defendant who was later acquitted is also not sufficient to sustain an IIED claim. *Sena v. Commonwealth*, 417 Mass. 250, 264 (1994).

C. The Massachusetts Tort Claims Act Immunizes Rollins from Negligence Claims.

After conceding that the MTCA bars his NIED claims against the other Commonwealth Defendants, DePina attempts to salvage his claim against Rollins by arguing that she was acting outside of the scope of her employment as a "complaining witness." Opp. at 18. As discussed *supra*, Rollins was not a "complaining witness" here. The complaint expressly directs the NIED claim to Rollins' decision to "pursue charges" against DePina. Compl. ¶ 86. Under controlling law, Rollins' actions in pursuing charges and directing the police towards DePina for prosecution were clearly within the scope of her employment as District Attorney. *Chicopee Lions Club*, 396 Mass. at 250. Accordingly, the NIED claim against Rollins is, in addition to being barred by absolute immunity, also barred by G. L. c. 258, § 2.

Defendants,

WORCESTER COUNTY DISTRICT ATTORNEY'S OFFICE, JOSEPH D. EARLY, JR., ANTHONY MELIA, and RACHAEL ROLLINS

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Date: January 13, 2023

CERTIFICATE OF SERVICE

I hereby certify that, on January 13, 2023, I served a copy of the foregoing on counsel of record by email to:

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