STATE OF MICHIGAN

COURT OF CLAIMS

SALENA LAWRENCE #227800,

Plaintiff,

v

Case No. 25-000063-MP

HEIDI E. WASHINGTON, JEREMY HOWARD, MDOC STATE ADMINISTRATIVE BOARD, and CORRECTIONS OFFICER J. MACK,

Hon. James Robert Redford

Defendants.
_____/

OPINION AND ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY DISPOSITION AND ORDERING PLAINTIFF TO FILE A VERIFIED AMENDED COMPLAINT

Plaintiff, Salena Lawrence, an inmate with the Michigan Department of Corrections (MDOC), files this lawsuit against defendants—the MDOC's State Administrative Board (SAB), MDOC Director Heidi E. Washington, Warden Jeremy Howard, and Corrections Officer J. Mack—pursuant to § 5501 of the Prison Litigation Reform Act (PLRA), MCL 600.5501 *et seq.* Defendants move for summary disposition of plaintiff's complaint under MCR 2.116(C)(7) and (8), arguing that plaintiff failed to exhaust her administrative remedies,[1] failed to plead in avoidance of governmental immunity, did not submit a verified complaint as required under the Court of Claims Act (COCA), MCL 600.6401 *et seq.*, failed to plead proximate causation, and was

[1] As discussed later, defendants' motion for summary disposition on failure-to-exhaust grounds is better characterized as a motion filed under MCR 2.116(C)(4).

already compensated for her alleged damages. For the reasons discussed in this opinion and order, the Court DENIES defendants' motion for summary disposition and ORDERS that plaintiff shall file a verified amended complaint within 28 days of this opinion and order.

I. BACKGROUND

This lawsuit filed under the PLRA involves a claim that defendants failed to reimburse plaintiff for personal property that she asserts was disposed of intentionally and in violation of the MDOC's policy directives. Plaintiff alleges that on May 28, 2022, she reported to a healthcare facility to be screened for COVID-19. She asserts that as she was packing up her belongings to attend the screening, including her clothing, shoes, and undergarments, Officer Mack instructed her to leave her unit immediately to report to the facility as part of a quarantine protocol. Plaintiff complied and left her belongings behind.

Upon returning to her housing unit less than two hours later, plaintiff noticed that she was missing numerous personal items, including her shoes,[2] her undergarments, and her tank tops. Plaintiff asked Officer Mack where the missing property was, and Officer Mack responded by stating "that what she could not pack was abandoned property[,] and she threw it in the trash." Plaintiff asserts that the disposal of her personal property violated MDOC Policy Directive 04.07.112, relating to the handling of a prisoner's personal property. She asserts that she should have been given a reasonable opportunity to exchange the items that did not fit in her "pack-up" and that the MDOC was required to hold her personal property for 30 days before disposal.

[2] Plaintiff asserts she had a special accommodation to purchase men's shoes and requires clothing in specialty sizes, making the lost clothing difficult to replace.

In June 2022, plaintiff submitted a Step I grievance under MDOC Policy Directive 03.02.130 (involving policy violations by MDOC officials),[3] which she supported with handwritten witness statements of other prisoners. Two witnesses stated that they saw Officer Mack throw out plaintiff's property, and other prisoners retrieved some of the items from the trash. Some items were later sold. Another witness stated that she saw Officer Mack cutting up plaintiff's clothing and throwing it away. Two other witnesses stated that Officer Mack had a pattern of cutting up and throwing away the personal clothing of other inmates.

After an investigation, the MDOC resolved the grievance by concluding that "[e]very effort will be made to ensure that Staff are aware of any applicable polices [sic] through-out the course of their duties, however a conclusion of this investigation cannot be substantiated at this level, therefore any actions deemed necessary will be addressed administratively." The MDOC considered plaintiff's grievance resolved at Step I. However, because plaintiff submitted receipts for the missing items and witness statements, the MDOC recommended that plaintiff's grievance be treated as a request to the SAB to reimburse her for the items on her receipts and noted that any amount over $1,000.00 would be resolved by the Prisoner Benefit Fund, if applicable.

Plaintiff filed a prisoner claim with the SAB for personal property losses of less than $1,000.00. Plaintiff attached receipts for the clothing she purchased, totaling $458.39. The dated receipts showed that the property was purchased between 2017 and 2021, although some receipts

[3] This policy directive was last updated in 2024, which is approximately two years after plaintiff filed her Step I grievance. The prior version of the policy directives have not been provided to this Court and are not publicly available on the MDOC's website. However, there is no suggestion in the briefing that the versions of the policy directives in effect when plaintiff filed her Step I grievance differed in any material respect from the current versions.

were undated. Several years went by without a resolution of the claim. In January 2024, plaintiff spoke with Warden Jeremy Howard, who stated he was not aware of the situation and instructed plaintiff to send him new copies of the relevant documentation. Plaintiff alleges she sent copies of the documents to Warden Howard. However, her SAB claim continued to go unaddressed for several more months.

In October 2024, plaintiff filed a complaint relating to her missing property in 15th District Court Case No. 24-06247-GC. The case was dismissed for lack of subject-matter jurisdiction. Plaintiff asserts that within that timeframe, she received notice that there was an error in the MDOC's system such that documentation from the SAB did not make it to plaintiff earlier. But plaintiff was notified that her claim was submitted to the SAB in early January 2025. In March 2025, the SAB approved reimbursement of plaintiff's claim in the amount of $288.26, which was less than the total amount plaintiff requested because the SAB accounted for depreciation of her personal items. Plaintiff acknowledges she received a check from the MDOC but maintains she did not receive it until May 2025, a month after she filed this lawsuit.

Plaintiff submitted a notice of intent to file a claim (NOI) in this Court on March 10, 2025, which was signed and notarized. Plaintiff asserted in the NOI that she would seek compensatory damages of $616.51 and punitive damages of $2,642.84. In April 2025, plaintiff filed this lawsuit, raising a claim for $954.56 in compensatory damages and $3,000 in "punitive damages" for physical and mental pain and suffering.

Defendants move for summary disposition at the outset of the case under MCR 2.116(C)(7) and (8). Defendants acknowledge that plaintiff filed a Step I grievance against Officer Mack in accordance with MDOC policy. But they argue that plaintiff failed to exhaust her administrative

remedies as it relates to Director Washington and Warden Howard, as required under MCL 600.5503(1), because she failed to include either defendant in her grievance and did not pursue the grievance through the Step II and Step III procedures outlined in Policy Directive 03.02.130. Defendants further argue that plaintiff failed to comply with the COCA, MCL 600.6434(2), because her complaint was not verified. Defendants additionally contend that plaintiff failed to plead her case in avoidance of governmental immunity. Defendants also argue that plaintiff cannot establish proximate causation because at least one witness to the incident suggested that other prisoners took plaintiff's property, and neither Warden Howard nor Director Washington was involved in packing up plaintiff's property. Defendants also argue that the SAB already compensated plaintiff for her loss.

Plaintiff responds that she exhausted her administrative remedies by filing a Step I grievance in May 2022, and then submitting her claim to the SAB as the MDOC directed. Plaintiff argues that under Policy Directive 03.02.130, there was no need to file a Step II or Step III grievance. Plaintiff confirms that she received a $288.26 payment from the SAB after filing this lawsuit, which was not the full amount of her requested damages. She contends she complied with all requirements for filing a complaint in this Court. She further maintains that she pleaded gross negligence in avoidance of governmental immunity. Plaintiff reduces the request for damages to $736.30, which she acknowledges must be reduced by $288.26, for a total of $448.04 in compensatory damages. She continues to request $3,000 in noneconomic damages. No reply brief has been filed. The Court dispenses with oral argument under LCR 2.119(E)(3).

II. LEGAL STANDARDS

A motion for summary disposition is properly granted under MCR 2.116(C)(7) when the plaintiff's claims are barred by immunity. *Milot v Dep't of Transp*, 318 Mich App 272, 275; 897

NW2d 248 (2016). The Court will "accept as true all of the plaintiff's well-pleaded factual allegations and construe them in favor of the plaintiff unless disputed by documentary evidence submitted by the moving party." *Norman v Dep't of Transp*, 338 Mich App 141, 146; 979 NW2d 390 (2021). "The court must consider any affidavits, depositions, admissions, or other documentary evidence submitted, and the court must determine whether there are any genuine issues of material fact." *Id.* And when there are no facts in dispute, or reasonable minds could not disagree about the legal effect of the facts, then the question becomes one of law. *Id.* at 146-147.

Defendants argue plaintiff failed to exhaust her administrative remedies. Although defendants cast their motion as falling under either MCR 2.116(C)(7) or (8), the appropriate standard of review for a motion challenging whether the plaintiff exhausted his or her administrative remedies is under MCR 2.116(C)(4). *True Care Physical Therapy, PLLC v Auto Club Group Ins Co*, 347 Mich App 168, 176; 14 NW3d 456 (2023). A motion under MCR 2.116(C)(4) examines whether the trial court has subject-matter jurisdiction, and the court will examine "whether the affidavits, together with the pleadings, depositions, admissions, and documentary evidence, demonstrate a lack of subject matter jurisdiction." *Id.* (quotation marks and citation omitted).

Defendants raise several arguments about the validity of plaintiff's claims, which they raise under MCR 2.116(C)(8). A motion filed under MCR 2.116(C)(8) examines the legal sufficiency of the claims on the basis of the factual allegations raised in the complaint. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). This Court must accept the factual allegations in the complaint as true and will decide the motion on the pleadings alone. *Id.* at 160. The motion is granted if the claim is so clearly unenforceable as a matter of law that no factual development would justify recovery. *Id.* Plaintiff attached several documents to her complaint,

which this Court may properly consider in deciding a motion under MCR 2.116(C)(8) because they are part of the pleadings, but this Court may only accept the statements within the exhibits as true if plaintiff adopted the statements as true in the complaint. *Id.* at 163.

III. ANALYSIS

A. COCA VERIFICATION REQUIREMENT

Plaintiff complied with the notice requirements of the COCA when she submitted a timely NOI that was properly verified. All claims filed in this Court that are not exempted expressly must comply with the notice and verification requirements in MCL 600.6431; otherwise, they are subject to dismissal. *Elia Cos, LLC v Univ of Mich Regents*, 511 Mich 66, 71; 993 NW2d 392 (2023). MCL 600.6431(1) requires that a written claim or an NOI must be filed within one year after the claim has accrued, and MCL 600.6431(4) shortens this period to six months if the claim involves property damage or personal injury. MCL 600.6431(2)(d) requires that the claim or NOI contain "[a] signature and verification by the claimant before an officer authorized to administer oaths." Plaintiff filed an NOI with this Court before filing her complaint. Defendants do not dispute that the NOI, which alleges property damage, was filed timely under the six-month limitations period for claims for personal injury or property damage.

Additionally, the NOI was signed by plaintiff and notarized before a notary public, which satisfied the verification requirement in the COCA. See *Chisholm v Mich State Police*, 347 Mich App 646, 655-658; 16 NW3d 563 (2023) (explaining that the notarized signature contained in the NOI at issue in that case satisfied the verification requirement because it contained "an oath or affirmation of the party or of someone having knowledge of the facts stated") (quotation marks and citation omitted). Here, plaintiff signed a sworn oath before a notary public that the statements

in the NOI were true to the best of her knowledge, information, and belief. Thus, the NOI satisfied the requirements of MCL 600.6431.

As for the unverified complaint, MCL 600.6434(2) states, in relevant part, "The complaint shall be verified." As the Michigan Supreme Court has explained, MCL 600.6431 and MCL 600.6434 function slightly differently, but there is no difference between the verification requirements outlined in each. *Progress Mich v Attorney General*, 506 Mich 74, 93; 954 NW2d 475 (2020). MCL 600.6434 does not provide a timeframe in which the plaintiff must provide a verified complaint. As the Michigan Court of Appeals has explained, "Under MCL 600.6434, plaintiff's complaint was required to be verified; however, plaintiff was *not* required to file *both* his verified notice of intent and his verified complaint within the time period specified in MCL 600.6431." *Chisholm*, 347 Mich App at 660. In other words, because plaintiff filed a valid and timely NOI, she may file an amended complaint with the proper verification. Therefore, the Court ORDERS that plaintiff shall file a verified complaint within 28 days to comply with the verification requirement in MCL 600.6434(2). See MCR 2.118(A)(2).

B. EXHAUSTION OF ADMINISTRATIVE REMEDIES

The PLRA permits a prisoner to file a civil action concerning prison conditions. MCL 600.5501. A "civil action concerning prison conditions" is defined to mean "any civil proceeding seeking damages or equitable relief arising with respect to any conditions of confinement or the effects of an act or omission of government officials, employees, or agents in the performance of their duties." MCL 600.5531(a). Regarding exhaustion of administrative remedies, MCL 600.5503(1) provides, "A prisoner shall not file an action concerning prison conditions until the prisoner has exhausted all available administrative remedies."

Defendants maintain that plaintiff failed to comply with the three-step grievance procedure outlined in Policy Directive 03.02.130, thus failing to exhaust her administrative remedies. Although plaintiff filed a Step I grievance under Policy Directive 03.02.130, she did not complete the process by filing a Step II or Step III grievance and did not name either Director Washington or Warden Howard in her grievance. However, the record provided to the Court establishes that the MDOC deemed the grievance to be a request for reimbursement for damaged property, subject to Policy Directive 03.02.131, and indicated that plaintiff should submit a separate claim with the SAB in compliance with that Policy Directive.

MDOC Policy Directive 03.02.130 relates to "an effective method of seeking redress for alleged violations of policy and procedure or unsatisfactory conditions of confinement" and provides, in relevant part, that "[c]omplaints filed by prisoners/parolees regarding grievable issues as defined in this policy serve to exhaust their administrative remedies only when filed as a grievance through all three steps of the grievance process in compliance with this policy." Policy Directive 03.02.130 ¶ C. The policy directive further specifies, "Grievances may be submitted regarding alleged violations of policy or procedure or unsatisfactory conditions of confinement that personally affect the grievant, including alleged violations of this policy and related procedures." Policy Directive 03.02.130 ¶ L.

Regarding reimbursement for the loss of personal property, as is the case here, the Policy Directive provides:

> If a prisoner chooses to file a claim for reimbursement of personal property allegedly lost or damaged while in the Department's sole possession, they shall request a Prisoner Claim Against the State of Michigan (DTMB-1104-P) form from the Grievance Coordinator in accordance with PD 03.02.131 'Prisoner State Administrative Board Property Claims.' " [Policy Directive 03.20.130 ¶ M.]

As it relates to the appeal process, the policy directive explains:

> A grievant whose grievance is rejected may appeal the rejection to the next step as set forth in this policy. A new grievance shall not be filed regarding the rejection. Grievances categorized as non-grievable must be appealed pursuant to this policy through all three steps of this grievance process in order to exhaust administrative remedies since the non-grievable designation may be overturned at Step II or Step III. [Policy Directive 03.02.130 ¶ O.]

The Policy Directive also directs the MDOC to reject the grievance if it is one seeking reimbursement for property loss or damages that must be submitted under Policy Directive 03.02.131. Policy Directive 03.02.130 ¶ P(14).

Plaintiff filed a Step I grievance in accordance with Policy Directive 03.02.130. The MDOC deemed that grievance a claim for reimbursement of personal property and directed plaintiff to submit her claim with the SAB, which she did. Under Policy Directive 03.02.130 ¶ P(14), the MDOC was required to reject the grievance because it deemed the grievance a claim for property damage under MDOC Policy Directive 03.02.131. MDOC Policy Directive 03.02.131 provides, in relevant part, that a prisoner who believes they have a valid claim for personal property loss or damage must file a claim as outlined in the policy directive. Policy Directive 03.02.131 ¶ F. There is no dispute for purposes of this motion that plaintiff filed a claim with the SAB in accordance with Policy Directive 03.02.131 ¶ F. The SAB determined that plaintiff was entitled to partial payment of her claim, in accordance with Policy Directive 03.02.131 ¶ L. The policy directive also outlines a standard depreciation schedule for claims on the basis of year of ownership of the property and includes an average cost schedule for different personal items, including the items plaintiff alleges were taken. Policy Directive 03.02.131 ¶ M; Attachment A to Policy Directive. Importantly, Policy Directive 03.02.131 does *not* contain the same three-step grievance

process as Policy Directive 03.02.130 and does not specify how an individual may exhaust his or her administrative remedies.

Because Policy Directive 03.02.131 does not contain any directions on further administrative appeals, plaintiff exhausted her administrative remedies. Nor can plaintiff be faulted with failing to file a Step II or Step III grievance under Policy Directive 03.02.130 when the MDOC stated the grievance was resolved at Step I and recommended that the grievance be treated as a request for the SAB to reimburse her property claim. Under these circumstances, because the MDOC deemed the grievance as a request for property reimbursement under Policy Directive 03.02.131, any further appeals through Step II or Step III would have been futile.

Defendants fault plaintiff for not naming Warden Howard or Director Washington in her grievance or filing a separate grievance against these defendants through all three steps in the process. Policy Directive 03.02.130 ¶ Y requires that the grievance include, in relevant part, the "names of all those involved in the issue being grieved." In *Jones v Bock*, 549 US 199, 217-219; 127 S Ct 910; 166 L Ed 2d 798 (2007), a case that also involved the MDOC and Policy Directive 03.02.130, the United States Supreme Court held that the federal Prison Litigation Reform Act, 42 USC 1997e *et seq.*, did *not* require the prisoners to name all defendants in their initial grievances. However, the Court explained that at the time the grievances were filed, Policy Directive 03.02.130 did not contain any provisions specifying who must be named in the grievance, suggesting that the Court's holding may have been different had the policy directive required the grievant to name all grieved individuals, as the policy now requires. *Id.* at 218.

Nevertheless, under the circumstances in this case, plaintiff was not required to include Warden Howard or Director Washington in her grievance. Again, plaintiff filed a Step I grievance

against Officer Mack in 2022. The grievance was not simply deemed nongrievable but was deemed to fall under a different policy directive altogether. Plaintiff then filed a claim with the SAB at the MDOC's direction. While that claim was pending, in 2024, plaintiff had a conversation with Warden Howard, in which he allegedly stated he was aware of the situation and instructed plaintiff to send him new copies of the documentations. Then, plaintiff filed this lawsuit in 2025 before her SAB claim was resolved and after years of waiting for a decision. There is no indication in the record before the Court that plaintiff had any reason to name Warden Howard in her grievance back in 2022. And again, once that grievance was decided, plaintiff was told her claim was not subject to the grievance procedures in Policy Directive 03.02.130, and that she should file a claim with the SAB. At that point, filing any subsequent grievances submitted under the same factual circumstances would have been futile. For these reasons, the Step I grievance complied with the naming requirements at the time it was submitted, and plaintiff exhausted her administrative remedies for filing this lawsuit.

C. GOVERNMENTAL IMMUNITY

Defendants further argue, under MCR 2.116(C)(7), that plaintiff did not plead in avoidance of governmental immunity, which subjects her claims to dismissal. MCL 600.5503(2), a provision of the PLRA, provides, "The court shall on its own motion or on the motion of a party dismiss an action concerning prison conditions brought by a prisoner as to 1 or more defendants if the court is satisfied that the action is frivolous or seeks monetary relief from a defendant who is immune from the requested relief." MCL 600.5505(2)(c) provides that the court shall dismiss the case if the court finds that "[t]he action or appeal seeks monetary relief against a defendant who is immune from the requested relief."

A party must plead a claim against a unit of government in avoidance of governmental immunity. *Kendricks v Rehfield*, 270 Mich App 679, 681; 716 NW2d 623 (2006). "To be effective, such pleading must state a claim that fits within a statutory exception to immunity or include facts that indicate the action at issue was outside the exercise of a governmental function." *Id.* Under the governmental tort liability act (GTLA), MCL 691.1401 *et seq.*, unless an exception outlined in the statute applies, "a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function." MCL 691.1407(1). Generally, an officer or employee of a governmental agency is immune from tort liability for injury to persons or property caused by the officer or employee while in the course of employment, provided that:

> (a) The officer, employee, member, or volunteer is acting or reasonably believes he or she is acting within the scope of his or her authority.
>
> (b) The governmental agency is engaged in the exercise or discharge of a governmental function.
>
> (c) The officer's, employee's, member's, or volunteer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage. [MCL 691.1407(2).]

Gross negligence is defined to mean "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(8)(a). Additionally, the GTLA does not modify the law of intentional torts, and governmental employees enjoy only qualified immunity for intentional torts committed in the course of employment. MCL 691.1407(3); *Odom v Wayne Co*, 482 Mich 459, 461, 470, 473; 760 NW2d 217 (2008).

Plaintiff contends that the facts as alleged in her complaint raise a claim for "intentional gross negligence"[4] against Officer Mack. There is no dispute for purposes of this motion that Officer Mack was an employee acting within the scope of her authority or that the MDOC was engaged in the exercise or discharge of a governmental function. Thus, the question is whether Officer Mack's conduct amounted to gross negligence that proximately caused plaintiff's injuries. On this issue, plaintiff asserts that Officer Mack told her that she considered plaintiff's property abandoned shortly after plaintiff left for the healthcare facility and "threw it in the trash" without waiting the 30-day period required under MDOC's policy directives. Plaintiff also included as attachments to her complaint witness statements to support that Officer Mack's conduct was part of a broader pattern of behavior and that Officer Mack not only took plaintiff's property but cut some of it up into pieces. These facts are sufficient to plead a claim that Officer Mack engaged in conduct so reckless as to demonstrate a substantial lack of concern for whether an injury to plaintiff's property would result from her actions. However, while plaintiff suggests Officer Mack's conduct was intentional, plaintiff does not specify what intentional tort(s) Officer Mack committed in addition to her allegation that Officer Mack was grossly negligent.

Plaintiff also does not plead her claims in avoidance of governmental immunity as it relates to Warden Howard, Director Washington, or the SAB. See MCR 2.111(B)(1) (explaining that a complaint must contain "[a] statement of the facts, without repetition, on which the pleader relies in stating the cause of action, with the specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend"). It is unclear

[4] Capitalization omitted.

from the face of plaintiff's complaint what exceptions to governmental immunity she asserts would apply to her tort claim against these defendants.

However, the Court recognizes plaintiff's status as a pro se litigant, the fact that this case is in the early stages of litigation, and the fact that leave to amend the complaint should be freely given when justice requires and when there is not a particularized reason to deny leave, such as futility. MCR 2.118(A)(2); *Miller v Chapman Contracting*, 477 Mich 102, 105; 730 NW2d 462 (2007). In this case, amendment of the complaint to allow plaintiff the opportunity to plead facts in avoidance of governmental immunity may not be futile. Accordingly, the Court grants plaintiff leave to amend her complaint within 28 days of this opinion and order to (1) identify what intentional tort claim(s) she may be alleging against Officer Mack; (2) identify whether she is pleading in avoidance of governmental immunity as to Warden Howard, Director Washington, and the SAB; and (3) if so, identify the factual and legal bases for why governmental immunity would not protect Warden Howard, Director Washington, or the SAB.

D. PROXIMATE CAUSATION

Next, defendants argue, under MCR 2.116(C)(8), that plaintiff cannot establish proximate causation because at least one witness statement that plaintiff used to support her Step I grievance indicated that other prisoners took plaintiff's property. Defendants' argument is not well-developed, but defendants appear to argue that the other prisoners were an intervening, superseding cause of plaintiff's injuries. Summary disposition is premature because plaintiff has not had the opportunity to develop the record on the issue, and there is a reasonable likelihood that discovery would uncover factual support for plaintiff's position considering the allegations in plaintiff's complaint and the various witness statements. See *Peterson Novelties, Inc v Berkley*, 259 Mich App 1, 25; 672 NW2d 351 (2003).

The key issue for determining whether an intervening cause is a superseding cause that breaks the chain of causation is whether the intervening cause is reasonably foreseeable. *Auto-Owners Ins Co v Seils*, 310 Mich App 132, 158; 871 NW2d 530 (2015). At this stage in the proceedings, plaintiff has a valid argument that the conduct on the part of the other prisoners was reasonably foreseeable once her items were thrown away. Defendants are not entitled to summary disposition on the basis of proximate causation at this stage in the proceedings. However, denial is without prejudice to defendants being able to move for dismissal at a later point to the extent additional facts are developed during discovery which would support such a motion.

E. DAMAGES AND REIMBURSEMENT

Finally, defendants present an argument, under MCR 2.116(C)(8), that plaintiff cannot establish damages because the SAB already reimbursed her for her lost items. While there is no dispute that plaintiff received some compensation from the SAB, it is unclear at this juncture whether the amount the SAB paid plaintiff was the full amount she was owed for her lost items. Plaintiff argues she cannot replace some specialty items that were taken because of a change in MDOC policy regarding specialty clothing, which raises additional factual questions on whether the amount SAB credited was sufficient to compensate plaintiff for her injuries. So summary disposition on the subject of damages is premature.

Additionally, plaintiff alleges noneconomic damages. MCL 600.5511(1) specifies:

> A person shall not bring an action against this state or a subdivision of this state, or an official, employee, or agent of this state or a subdivision of this state, for mental or emotional injury suffered while in custody *without a showing of physical injury* arising out of the incident giving rise to the mental or emotional injury. [Emphasis added.]

Plaintiff alleges that she experienced physical pain and suffering from having to wear ill-fitting clothing. She has attached as Exhibit K to her complaint an MDOC medical detail special accommodations form, in which she was granted a special accommodation for prescription shoes. While plaintiff alleges she suffered from physical pain from having to wear the wrong footwear, plaintiff does not specify what physical injury she suffered, which is a necessary element of her claim for noneconomic damages. Therefore, in her amended complaint, plaintiff must specify the physical injury she suffered arising out of the incident that gave rise to her mental or emotional damages. See MCR 2.118(A)(2). In all other respects, the motion for summary disposition is DENIED without prejudice.

IT IS ORDERED:

1. Defendants' motion for summary disposition is DENIED.

2. Plaintiff shall file a verified amended complaint in compliance with MCL 600.6434(2) within 28 days of the date of this opinion and order.

3. This order does not resolve the last pending claim or close the case.

Date: March 23rd, 2026

James Robert Redford
Judge, Court of Claims