

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANDREA REINSMITH, and : CIVIL ACTION  
RALPH PALM, JR., :  
 :  
 Plaintiffs, :  
 :  
 v. :  
 :  
 BOROUGH OF BERNVILLE, et al., :  
 Defendants. : NO. 03-1513

MEMORANDUM OPINION

Presently before the Court is the Motion of Defendants Borough of Bernville, Charles Gorman, Richard Hicks, Borough of Bernville Council, Gene Dinger, Robert Pfromm, Roy Bubbenmoyer, Lawrence Ramberger and Charles Gordon (“Borough of Bernville, Charles Gorman, Richard Hicks, Borough of Bernville Council, Gene Dinger, Robert Pfromm, Roy Bubbenmoyer, Lawrence Ramberger and Charles Gordon” collectively, identified as the “Borough Defendants”) to Dismiss Plaintiffs’ Complaint Pursuant to Federal Rules of Civil Procedure 12(b)(6), and, in the alternative, Motion For a More Definite Statement. (Dkt. No. 3).<sup>1</sup> For the reasons that follow, the Borough Defendants’ motion to dismiss pursuant to 12(b)(6) is GRANTED in part, and DENIED in part.

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<sup>1</sup> On August 28, 2003, Defendant Linnea Gordon filed a motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1),(2) and (6), and in the alternative, a motion for a more definite statement pursuant to Federal Rule of Civil Procedure Rule 12(e). (Dkt. No. 11). Defendant Linnea Gordon sought to dismiss all claims asserted against her. To date, Plaintiffs have not responded to Mrs. Gordon’s motion. Indeed, at oral argument, counsel for Plaintiffs informed the Court that Plaintiffs have agreed to dismiss all claims against Mrs. Gordon. (12/8/03 Transcript of Oral Argument Hearing, at 2, (the “12/8/03 Transcript”). Counsel further informed the Court that he would be filing a stipulation documenting that the parties agreed to dismiss all claims against Mrs. Gordon. (Id.) Therefore, the Court will not address the claims asserted against Mrs. Gordon; instead, the Court will grant Defendant Linnea Gordon’s Motion to Dismiss.

## I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On March 10, 2003, Plaintiff, Andrea Reinsmith (“Plaintiff Reinsmith”) and Plaintiff, Ralph Palm (“Plaintiff Palm”) (“Reinsmith” and “Palm” collectively identified as the “Plaintiffs”) filed the instant action against the Borough of Bernville, Charles Gorman, the Borough of Bernville Chief of Police Richard A. Hicks (“Hicks”), Borough of Bernville Council Members Gene R. Dinger, Robert Pfromm, Roy Bubbenmoyer and Lawrence Ramberger (Gene R. Dinger, Robert Pfromm, Roy Bubbenmoyer and Lawrence Ramberger collectively identified as the “Council Member Defendants”) and Charles Gordon (“Mr. Gordon”) and Linnea Gordon (“Mrs. Gordon”) (“Mr. Gordon” and “Mrs. Gordon” collectively identified as the “Gordon Defendants” or the “Gordons”) asserting various federal claims pursuant to 42 U.S.C. § 1983 as well as several state law claims. All Defendants, with the exception of Mrs. Gordon, are sued in their official and individual capacities. The Complaint contains the following twelve Counts: (1) Count I asserts a malicious prosecution claim pursuant to 42 U.S.C. § 1983; (2) Count II asserts a state law claim for malicious prosecution; (3) Count III asserts an abuse of process claim pursuant to 42 U.S.C. § 1983; (4) Count IV asserts a state law claim for abuse of process against all Defendants; (5) Count V asserts an equal protection claim pursuant to 42 U.S.C. § 1983; (6) Count VI asserts a claim for a violation of Plaintiff Reinsmith’s First Amendment right to run for public office without improper interference from the government; (7) Count VII asserts a claim for violation of Plaintiffs’ Substantive Due Process Rights pursuant to 42 U.S.C. § 1983; (8) Count VIII asserts a claims for violation of Plaintiffs’ Procedural Due Process rights pursuant to 42 U.S.C. § 1983; (9) Count IX asserts a state law claim for civil conspiracy; (10) Count X asserts a civil conspiracy claim pursuant to 42 U.S.C. § 1983; (11) Count XI asserts a claim for

violation of Plaintiffs' First Amendment right to complain against perceived unfair and/or unprofessional conduct by police and municipal government employees without retaliation; and (12) Count XII asserts a state law claim against the Gordons for negligence.

In support of their claims, Plaintiffs' Complaint contains the following factual allegations. In February 1999, Plaintiffs purchased and moved into a home located at 611 North Main Street in the Borough of Bernville, Pennsylvania, which was next door to the Gordons' home. (Compl. ¶¶ 12, 13). Shortly after Plaintiffs moved into their new home, Mr. Gordon was appointed to the Borough Council of Bernville. (Compl. ¶ 14).

At all relevant times, Plaintiffs owned two seventy pound dogs which were housed in a chain linked fence kennel (six feet high and ten feet long and ten feet wide) in Plaintiffs' backyard. (Compl. ¶ 16). Plaintiffs allege while that many other residents of Bernville also own dogs, Plaintiffs have been subjected to harassment by the Gordons and disparate treatment by members of the Borough Council of Bernville and the Bernville Police Department. (Compl. ¶¶ 17-67).

Plaintiffs allege that, while living in the Borough, Mr. Gordon fired paint balls at Plaintiffs' dogs. (Compl. ¶ 18). Additionally, Plaintiffs allege that on five occasions between May and July 1999, Mr. Gordon told them to "do something" about their dogs or face fines (Compl. ¶ 21).

In August 1999, in a separate but related incident, Plaintiffs allege that while Plaintiffs were entertaining guests in their home, Defendant Hicks came to Plaintiffs door requesting to see paperwork relating Plaintiff Palm's vehicle, which was parked in the street in front of the Gordons' home. (Compl. ¶¶ 22,23). Plaintiffs allege that Plaintiff Palm stated to Defendant

Hicks that he would retrieve the requested paperwork and give it to Hicks after his guests departed, but that Hicks cursed at Palm and insisted that he retrieve the paperwork immediately. (Compl. ¶¶ 23, 24). Plaintiff Palm complied with Hicks' request. (Compl. ¶ 26). On August 9, 1999, in response to this incident, Plaintiff Palm then wrote a letter to Borough of Bernville Mayor, Roger Mogel complaining about Hicks' conduct related to his request for the vehicle's paperwork. (Compl. ¶ 26). Plaintiff Palm also filed a formal complaint regarding Defendant Hicks' behavior. (Compl. ¶ 27). On or about September 7, 1999, Plaintiff Palm received written confirmation that Defendant Hicks had received a verbal reprimand for his use of language against Plaintiff Palm. (Compl. ¶ 29)

Plaintiffs allege that, in or about April 2000, Harry Brown of the Berks County Animal Control Office came to their door and told them that they would be fined for the care and treatment of their dogs. (Compl. ¶ 30). Plaintiffs further allege that Brown disclosed that Borough of Bernville Councilman Charles Gordon initiated the complaint, therefore he had no discretion regarding the fine. (Compl. ¶31). On or about April 28, 2000, Plaintiffs allege that they received eight citations relating to the care of their dogs, totaling over \$2000. (Compl. ¶ 32). At hearing related to the eight citations, District Court Justice Carol Stoudt dismissed six of the eight citations, finding Plaintiffs guilty of only two violations: (i) an expired dog license, and (ii) allowing a dog to run at large.

On or about October 3, 2000, the Borough of Bernville enacted Ordinance 279, which provided that a fine could be issued to any dog owner who permitted a dog to bark continually for fifteen minutes. (Compl. ¶ 35). Plaintiffs claim that Ordinance 279 was enacted principally by Mr. Gordon, with the assistance of the Township Solicitor, and was specifically targeted at

Plaintiffs. (Compl. ¶¶ 36, 37). On October 7, 2000, Defendant Hicks came to Plaintiffs' door with a copy of Ordinance 279 and stated "if you don't stop this, you will have a cross burning in your yard." (Compl. ¶ 39). On October 18, 2000, Plaintiff received twelve signed statements from their neighbors stating that their dogs were not a problem. (Compl. ¶ 41).

On October 20, 2000, however, Plaintiffs received three more citations related to the violations of Ordinance 279. Plaintiffs allege that the citations were based on information provided by the Gordons. (Compl. ¶ 42). On November 16, 2000, Defendant Hicks told Plaintiffs that all the Gordons wanted was for the Plaintiffs to bring their dogs in the house at night. (Compl. ¶ 43). Plaintiffs allege that, consequently, they began to house their dogs inside their home at night. (Compl. ¶ 44).

On November 18, 2000, Plaintiffs received two more citations in violation of Ordinance 279 for afternoon barking. (Compl. ¶ 45).

On January 13, 2001, Plaintiff Reinsmith complained to the Borough of Bernville Police Department that Mr. Gordon was tormenting and mistreating her dogs by firing paint balls at them. (Compl. ¶ 48). On or about February 2, 2001, Plaintiff Palm again complained to the police that Mr. Gordon was firing paint balls at the dogs. (Compl. ¶ 49). In response to these complaints, Defendant Hicks ordered Mr. Gordon to remove his paint ball target from his backyard. (Compl. ¶ 50).

In or about January or February 2001, Plaintiff Reinsmith decided to run for Mayor of Bernville. (Compl. ¶ 52).

On March 9, 2001, Defendant Hicks suggested that Plaintiff Reinsmith talk to the Gordons directly in an attempt to end the feuding between the neighbors. (Compl. ¶ 53). At

Defendant Hick's suggestion, Plaintiff Reinsmith went to the Gordons' residence as a conciliatory gesture; several minutes after she arrived, however, Defendant Hicks appeared and arrested Reinsmith for trespass, harassment, public drunkenness, simple assault and disorderly conduct. (Compl. ¶ 54). Plaintiffs allege that these charges were false and ultimately terminated in Plaintiff Reinsmith's favor. (Compl. ¶ 56). Plaintiff Reinsmith's arrest, however, led to newspaper, television and radio reports concerning the arrest. (Compl. ¶ 57).

Plaintiffs allege that the Gordons placed copies of the newspaper coverage concerning Plaintiff Reinsmith's arrest over her campaign posters; it is also asserted that Defendant Hicks removed some of Reinsmith's election posters. (Compl. ¶¶ 58, 59). Plaintiffs allege that the publicity surrounding Plaintiff Reinsmith's arrest caused her to lose the primary election for Mayor. (Compl. ¶ 60). Plaintiffs further allege that Plaintiff Reinsmith's opponent in the primary, Ronald Hartington, called her and stated that he was so embarrassed about the manner in which he had won the election, that he would not accept the nomination and would ask that Plaintiff Reinsmith be substituted in his place. (Compl. ¶ 61). Plaintiff Reinsmith, however, was not permitted to be substituted in Mr. Hartington's place because of the charges pending against her as a result of the March 9, 2001 arrest. (Compl. ¶ 62).

In April and May 2001, Plaintiffs received additional citations relating to their dogs. (Compl. ¶ 63).

On May 21, 2001, Plaintiffs allege that Plaintiff Palm was walking one of his dogs on the sidewalk past the Gordon's house when Mr. Gordon told him that he would shoot both Plaintiff Palm and his dog if he did not get off the sidewalk. (Compl. ¶ 65).

Plaintiffs allege that as a result of the foregoing harassment, they moved from their home

in Bernville. (Compl. ¶ 66).

On May 23, 2003, the Borough Defendants filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), or in the alternative, a motion for a more definite statement pursuant to Federal Rule of Civil Procedure Rule 12(e). (Dkt. No. 3). The Borough Defendants seek to dismiss Counts III, IV, V, VII, VIII, IX, and X in their entirety, and seek to dismiss Counts I and II to the extent that they assert claims based on the citations issued to Plaintiffs relating to the care of their dogs. On June 25, 2003, Plaintiffs filed a memorandum of law in opposition to the Borough Defendants' motion. (Dkt. No. 6).

On December 8, 2003, the Court heard oral argument concerning these motions.

## II. STANDARD OF REVIEW

### A. Standard for Dismissal under 12(b)(6)

When considering a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), a court must accept all well-pleaded allegations in the complaint as true and view them in the light most favorable to the plaintiff. See *Maio v. Aetna, Inc.*, 221 F.3d 472, 481-82 (3d Cir. 2000). Dismissal under Rule 12(b)(6) is limited to those instances where it is certain that no relief could be granted under any set of facts that could be proved consistent with the allegations. See *Markowitz v. Northeast Land Co.*, 848 F.2d 100, 103 (3d Cir. 1990).

## III. DISCUSSION

### A. Statute of Limitations

Claims brought pursuant to § 1983 are subject to the state statute of limitations governing

personal injury actions. See Wilson v. Garcia, 471 U.S. 261, 276 (1985).<sup>2</sup> In Pennsylvania, the statute of limitations for personal injuries is two years. See 42 Pa. Cons. Stat. Ann. § 5524(7); see also Sameric Corp. of Delaware, Inc. v. City of Philadelphia, 142 F.3d 582, 599 (3d Cir. 1998) (noting that Pennsylvania’s statute of limitations for personal injury actions is two years). As noted above, the Complaint was filed on March 9, 2003. Thus, any claims asserting violations of § 1983 occurring before March 9, 2001 are time-barred by the applicable statute of limitations. Accordingly, Defendants contend that the only claims that are not barred the statute of limitations are those that arise from the March 9, 2001 arrest of Reinsmith, the allegations pertaining to the defacement and removal of her campaign posters, and the citations issued to Plaintiffs in April and May of 2001. In response, Plaintiffs contend that the continuing violations doctrine renders all of their claims timely.

Plaintiffs’ argue that the Complaint contains no cause of action which is time-barred because the continuing violation doctrine is applicable to their case.<sup>3</sup> (See Plaintiffs’

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<sup>2</sup> 42 U.S.C. § 1983 does not contain a limitations period. When Congress has not established a time limitation for a federal cause of action, a court must look to the most “appropriate” or “analogous” state statute of limitations. See Wilson, 471 U.S. at 268. In Wilson v. Garcia, the Supreme Court determined that the most appropriate statute of limitations in a § 1983 action is the state personal injury statute. Id., 471 U.S. at 276.

<sup>3</sup> Although Plaintiffs label their theory on tolling the statute of limitations as the “discovery rule,” it is clear to the Court from their brief and arguments presented at oral argument, that Plaintiffs are in fact relying on the continuing violation theory to support their claim for tolling the statute of limitations. (See Plaintiffs’ Memorandum of Law in Opposition to Defendants’ Motion to Dismiss Portion of Plaintiffs’ Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6) at 6-8; see also 12/8/03 Transcript at 8). To be sure, however, we also find that the discovery rule does not toll the statute of limitations either.

Under the discovery rule, a federal cause of action such as one brought pursuant to § 1983 accrues “as soon as a potential claimant either is aware, or should be aware, of the existence of

Memorandum of Law in Opposition to Defendants’ Motion to Dismiss Portion of Plaintiffs’ Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6) at 6-8). Specifically, Plaintiffs argue that each of their causes of actions are the product of a sequence of events, and “several of Plaintiffs’ claims require a showing of an atmosphere of animosity directed towards the Plaintiffs which need to be shown through a pattern of Defendants’ actions expressing ill-will towards Plaintiffs.” (Id. at 7). Thus, the Plaintiffs argue, none of the individual events reasonably foreshadow the alleged injury of being arrested and driven from their home, therefore Plaintiffs did not know and could not have reasonably discovered the alleged injury resulting from Defendants’ course of conduct until Plaintiff Reinsmith’s March 9, 2001 arrest and the subsequent sale of their home. (Id.)

As a general rule, “the statute of limitations begins to run when the plaintiff’s cause of action accrues.” Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F. d 1380, 1385 (3d Cir. 1994). The continuing violations doctrine provides that ““when a defendant’s conduct is part of

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and source of an injury.” Oshiver, 38 F.3d at 1386; see also Sameric, 142 F.3d at 599; Melley v. Pioneer Bank, N.A., 2003 WL 22398846 (Pa. Super. Oct. 21, 2003) (“The limitations period begins to run when the injured party possesses sufficient critical facts to put him on notice that a wrong has been committed and that he need investigate to determine whether he is entitled to redress.”). Accordingly, the “‘polestar’ of the discovery rule is not the plaintiff’s actual knowledge of injury, but rather whether the injury was known, or through the exercise of reasonable diligence, knowable to the plaintiff.” Oshiver, 38 F.3d at 1386. “[A] claim accrues in a federal cause of action upon awareness of actual injury, not upon awareness that this injury constitutes a legal wrong.” Oshiver, 38 F. 3d at 1386.

Here there can be no doubt that Plaintiffs had knowledge of their injury, or that such knowledge was “through the exercise of reasonable diligence, knowable to [them,]” on or about April 28, 2000 when they sent a letter to Defendant Gorman, President of the Bernville Council, complaining about the unfair treatment relating to the citations issued for the care of their dogs. (Compl. ¶ 34).

a continuing practice, an action is timely so long as the last act evidencing the continuing practice falls within the limitations period.” 287 Corp. Ctr. Assocs. v. Township of Bridgewater, 101 F.3d 320, 324 (3d Cir. 1996) (quoting Brenner v. Local 514, United Bhd. of Carpenters and Joiners of Am., 927 F.2d 1283, 1295 (3d Cir. 1991)). In West v. Philadelphia Elec. Co., the Third Circuit adopted a two-part test to determine whether a plaintiff could benefit from the continuing violations doctrine. Id., 45 F.3d 744, 754-55 (3d Cir. 1995). To benefit from the doctrine, a plaintiff must establish that (1) at least one act of the defendant occurred during the statutory period; and (2) the defendant’s conduct must be “more than the occurrence of isolated or sporadic acts of intentional discrimination.” Id. To distinguish between “isolated intermittent acts of discrimination and a persistent, on-going pattern,” id., the Third Circuit has instructed courts to consider the three factors identified in Berry v. Bd. of Supervisors of Louisiana State Univ., 715 F.2d 971, 981 (5th Cir. 1983):

- (1) subject matter-whether the violations constitute the same type of discrimination;
- (2) frequency – whether the acts are recurring or more in the nature of isolated incidents; and
- (3) degree of permanence – whether the act had a degree of permanence which should trigger the plaintiff’s awareness of and duty to assert his/her rights and whether the consequences of the act would continue even in the absence of a continuing intent to discriminate.

Cowell, 263 F.3d at 292 (citing West, 45 F.3d at 755 n. 9). "The consideration of 'degree of permanence' is the most important of the factors.” Cowell, 263 F.3d at 292 (citing Berry, 715 F.2d at 981). In determining whether the acts had a "degree of permanence" which should trigger the plaintiff's awareness of and duty to assert her rights--we must consider the policy rationale

behind the statute of limitations. That is, the continuing violations doctrine should not provide a means for relieving plaintiffs from their duty to exercise reasonable diligence in pursuing their claims. See Cowell, 263 F.3d at 295 (citations omitted). On the contrary, “if prior events should have alerted a reasonable person to act at that time, the continuing violation theory will not overcome the relevant statute of limitation.” King v. Township of E. Lambert, 17 F. Supp. 2d 394, 416 (E.D. Pa. 1998).

Assuming, without deciding, that the first two *Berry* factors weigh in Plaintiffs favor, we find that consideration of the third *Berry* factor, as well as policy considerations behind the statute of limitation, militate against tolling the statute of limitation based on the continuing violations theory in the instant action. Here, it is clear that Plaintiffs were aware of the alleged wrongfulness of the citations on or about April 28, 2000 when they sent a letter to Defendant Gorman, President of the Bernville Council, complaining the unfair treatment relating to the citations issued for the care of their dogs. (Compl. ¶ 34). Thus, we find that the citations issued until this point carried a “degree of permanence,” as evidenced by their letter, which should have triggered the Plaintiffs’ awareness of and duty to assert their rights. Accordingly, Plaintiffs should have acted with reasonable diligence and filed a § 1983 with respect to these citations within the applicable limitations periods. To allow the Plaintiffs to proceed with their § 1983 claim based on those citations now would be unfair to Defendants and contrary to the policy rationale of the statute of limitations.

#### B. Malicious Prosecution

To prevail under § 1983, a plaintiff must establish (1) that the defendants were state actors, and (2) that they deprived plaintiff of a right protected by the Constitution. Groman v.

Township of Manalapan, 47 F.3d 628, 633 (3d Cir. 1995). In order to state a claim for malicious prosecution pursuant to § 1983, a plaintiff must establish that: (i) the defendant initiated a criminal proceeding; (ii) that ended in the plaintiff's favor; (iii) which was initiated without probable cause; and (iv) that the defendant acted maliciously or for a purpose other than bringing the plaintiff to justice. See Rose v. Bartle, 871 F.2d 331, 349 (3d Cir. 1989). "A plaintiff asserting a [federal] malicious prosecution claim must show some deprivation of liberty consistent with the concept of seizure." Bristow v. Clevenger, 80 F. Supp. 2d 421, 429 (M.D. Pa. 2000). A "seizure" occurs where there is a show of authority that restrains the liberty of a citizen. Gallo v. City of Philadelphia, 161 F.3d 217, 223 (3d Cir. 1998). A seizure "triggering the Fourth Amendment protections, will occur when government actors have, by means of physical force or show of authority, in some way restrained the liberty of a person." Smith v. Marasco, 227 F. Supp. 2d 322, 339 (E.D. Pa 2002).

To the extent that Plaintiffs based their malicious prosecution claims on the citations issued after March 9, 2001 relating to the care of their dogs, the Court find that Plaintiffs fail to state a claim upon which relief can be granted because they have failed show any deprivation of liberty consistent with the concept of "seizure" within the meaning of the Fourth Amendment, which is essential in establishing a malicious prosecution claim pursuant to § 1983. Although not alleged in the Complaint, the Court will assume, for purposes of this motion, that Plaintiffs were required to attend a hearing related to these citations.<sup>4</sup> Indeed, the fact that Plaintiffs were given a date to appear in court to address the merits of these citations is insufficient to establish a

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<sup>4</sup> The Court further assumes that, at this hearing, the citations were terminated in Plaintiffs' favor.

“seizure” within the meaning of the Fourth Amendment. See Colbert v. Angstadt, 169 F. Supp. 2d 352, 356 (E.D. Pa. 2001) (police questioning plaintiff about an incident and eventually receiving a summons in the mail to appear at a hearing did not constitute a “seizure” within the meaning of the Fourth Amendment); see also Bristow, 80 F.Supp. 2d at 429 (stating that Fourth Amendment violation does not occur every time any judicial proceeding endures). Accordingly, Defendants’ motion to dismiss Counts I and II of the Complaint is granted to the extent that these Counts assert claims are based on citations issued to Plaintiffs relating to the care of their dogs.<sup>5</sup> Thus, only a state law claim for malicious prosecution and a malicious prosecution claim pursuant to § 1983 remain against the Borough and Defendants Hicks and Gordon based on the March 9, 2001 arrest of Plaintiff Reinsmith.

C. Abuse of Process

A violation of abuse of process differs from a malicious prosecution in that “a section 1983 claim for malicious abuse of process lies where prosecution is initiated legitimately and thereafter is used for a purpose other than intended by law.” Rose, 871 F.2d at 350 (citing Jennings v. Shuman, 567 F.2d 1213, 1217 (3d Cir. 1997)). Stated differently, an abuse of process claim is concerned with the perversion of a process after it is issued. McGee v. Feege, 535 A.2d 1020, 1023 (Pa. 1987). Thus, a claim for abuse of process lies where process is used “to effectuate an extortion demand, or to cause the surrender of a legal right, or is used in any other way not so intended by proper use of the process.” Brown v. Johnston, 675 F. Supp. 287,

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<sup>5</sup> To the extent Plaintiffs assert a claim for malicious prosecution under the Fourteenth Amendment, such a claim must be dismissed. See Bristow, 80 F. Supp. 2d at 429 (a plaintiff is not permitted to assert a malicious prosecution claim under the Fourteenth Amendment because the claim arises under an “explicit textual source of constitutional protection,” the Fourth Amendment).

290 (W.D. Pa. 1987).

In order to state a claim for abuse of process under Pennsylvania law, a plaintiff must establish (1) an abuse or perversion of process already initiated, (2) with some unlawful or ulterior purpose, and (3) harm to the plaintiff as a result. See Kendra v. Nazareth Hosp., 868 F. Supp. 773, 738 (E.D. Pa. 1994) (citing Shaffer v. Stewart, 473 A.2d 1017, 1019 (Pa. Super. 1984)). This requires that the plaintiff offer some proof of a “definite act or threat not authorized by the process, or aimed at an objective not legitimate in the use of the process.” William v. Fender, 69 F. Supp. 2d 649, 673 (M.D. Pa. 1999); see also Jennings v. Shuman, 567 F.2d 1213, 1219 (3d Cir. 1977).

Plaintiffs argue that their abuse of process claim encompasses two theories. (See Plaintiffs’ Memorandum of Law in Opposition to Defendants’ Motion to Dismiss Portions of Plaintiffs’ Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6), at 8-9). The first theory encompasses Defendants’ “onslaught of citations, including targeting Plaintiffs’ with municipal ordinance.” (Id.) The second theory is based on Plaintiff Reinsmith’s March 9, 2001 arrest. (Id.)

Accepting all well-pleaded facts in the Complaint as true and viewing them in the light most favorable to Plaintiffs, the Court find that Plaintiffs can prove no set of facts under which they would be entitled to relief for a state law claim of abuse of process or an abuse of process claim pursuant to § 1983. With respect to Plaintiffs’ first theory, Plaintiffs’ claim is barred by the statute of limitations to the extent that the theory relies on citations issued before March 9, 2001. To the extent that this theory relies solely upon the citations issued in April and May of 2001, Plaintiffs have failed to allege facts sufficient to support an abuse of process claim– the

only allegations in the Complaint related to these citations is that they were in fact issued. (Compl. ¶ 63). Therefore, Plaintiffs' abuse of process claim is dismissed to the extent that it is based on any of the citations issued concerning the care of their dogs. With respect to Plaintiffs' second theory, that claim is dismissed for failure to state a claim upon which relief can be granted. The Court finds that, based facts alleged in the Complaint, Plaintiff Reinsmith can prove no set of facts to support the claim that her March 9, 2001 arrest constituted an abuse or perversion of process that had been legitimately initiated. Indeed, it is clear from the Complaint that Plaintiffs' allege that Plaintiff Reinsmith's March 9, 2001 arrest was wrong from its inception. Thus, as a matter of law, the arrest cannot serve as the basis for an abuse of process claim. Accordingly, Plaintiffs' state law claim for abuse of process and abuse of process claim pursuant to § 1983 is dismissed and Defendants' motion to dismiss Counts III and IV of the Complaint is granted.

#### D. Equal Protection

In Count V of the Complaint, Plaintiffs assert an equal protection claim pursuant to § 1983. Plaintiffs claim that Defendants have "prosecuted Plaintiffs in an unequal manner in an attempt to force Plaintiffs to leave the Borough of Bernville," and "enacted an ordinance and treated similar person(s) differently regarding enforcement of this ordinance." (Compl. ¶¶ 90,91). Specifically, Plaintiffs allege: (1) on October 3, 2000, the Borough of Bernville enacted Ordinance 279, targeted at Plaintiffs; (2) on October 7, 2000 Defendant Hicks came to Plaintiffs' residence with a copy of Ordinance 279 and stated "if you don't stop this, you will have a cross burning in your yard; (3) on October 18, 2000, Plaintiffs obtained twelve signed statements from their neighbors stating that their dogs were not a problem; (4) on October 20, 2000, Plaintiffs

received three citations pursuant to Ordinance 279 based on information provided by the Gordons; (5) on November 16, 2000, Defendant Hicks told Plaintiffs that, with respect to the care of their dogs, all the Gordons wanted was for them to house their dogs in their home during the night; (6) that, at Defendant Hicks' suggestion, Plaintiffs began housing their dogs in their home at night; (7) on November 18, 2000, Plaintiffs received two more citations pursuant to Ordinance 279 for their dogs barking in the afternoon; and (8) in April and May of 2001, Plaintiffs received additional citations relating to the care of their dogs.

A "successful equal protection claim can be brought by a 'class of one,' where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000) (citing Sioux City Bridge Co. v. Dakota County, 260 U.S. 441 (1923)). The Supreme Court has explained that "[t]he purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statute or by improper execution through duly constituted agents." Sioux City Bridge Co., *supra* at 445 (quoting Sunday Lake Iron Co. v. Township of Wakefield, 247 U.S. 350, 352 (1918)).

Assuming, without deciding, that Plaintiffs assert a viable equal protection claim, such a claim is time-barred because it based on events that occurred well before March 9, 2001. The fact that the claim is based, in part, on citations issued in April and May of 2001, does not bring the claim within either the discovery rule or the continuing violation exceptions to the tolling the statute of limitations from the time of the injury because Plaintiffs have expressly pleaded "prior events" their Complaint which certainly should have alerted Plaintiffs to act, at the very latest, in

April 2000. Again, we find that in the instant action the “continuing violation theory will not overcome the relevant statute of limitation.” King v. Township of E. Lambert, 17 F. Supp. 2d at 416. Furthermore, Plaintiffs’ allegation that they received citations issued in April and May 2001 is insufficient to show that they have been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment, which is necessary to state a successful equal protection claim. Therefore, Defendants’ motion to dismiss Count V of the Complaint is granted.

E. Substantive Due Process

“As a general matter, the Court has always been reluctant to expand the concept of substantive due process, preferring, instead, to limit substantive due process protections to matters relating to marriage, family, procreation, and the right to bodily integrity.” Albright v. Oliver, 510 U.S. 266, 271-72 (1994). “[W]here a particular amendment provides an explicit textual source of constitutional protection against a particular sort of government behavior, that Amendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims.” Id. at 272-73; see also Stewart v. Trask, 2003 WL 21500018, at \* 3 (E.D. Pa. June 27, 2003) (holding that plaintiff’s claim that officer used excessive force in brandishing a handgun at a traffic stop were properly analyzed under the Fourth Amendment’s “objective reasonableness” standard, rather than the generalized notions of substantive due process).

Here, Plaintiffs allege that their First and Fourth Amendment rights were violated by (1) the issuance of citations; (2) alleged attempt to sabotage Ms. Reinsmith’s campaign; and (3) the arrest of Ms. Reinsmith. Because these claims arise from an explicit textual source of

constitutional protection, Plaintiffs cannot seek relief under Section 1983 for violation of their substantive due process rights; the text of First and Fourth Amendments must guide our analysis. Therefore, Defendants' motion to dismiss Count VII of the Complaint is granted.

F. Procedural Due Process

A violation of procedural due process occurs only when a state fails to provide an adequate means to remedy legal errors or irregularities. See Zinermon v. Burch, 494 U.S. 113, 125-26 (1990); Bello v. Walker, 840 F.2d 1124, 1128 (3d Cir. 1988), *cert. denied*, 48 U.S. 868 (1988). "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." Miller v. City of Philadelphia, 174 F.3d 368 (3d Cir. 1999).

In the instant action, Plaintiffs' Complaint does not aver specific facts to support the claim of a procedural due process violation with respect to either the issuance of citations or Plaintiff Reinsmith's March 9, 2001 arrest. Indeed, Plaintiffs' admit that they attended a hearing concerning the initial eight citations, wherein a Judge dismissed six of the citations.<sup>6</sup> Furthermore, Plaintiffs allege that all the charges arising from her March 9, 2001 arrest ended in her favor. Although Plaintiffs argue that Plaintiff Reinsmith was denied due process as a result of the timing of her March 2001 arrest because she was not able to defend against the charges until after she lost the election, such argument is without merit because we find it does not establish that she was not given the opportunity to be heard at a meaningful time and in a meaningful manner. Because Plaintiffs have not alleged sufficient facts to support a cause of

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<sup>6</sup> Plaintiffs also fail to allege sufficient facts to support a procedural due process claim based on the citations issued in April and May 2001.

action premised on the deprivation of procedural due process, we grant Defendants' motion to dismiss Count VII of the Complaint.

G. Civil Conspiracy

To establish civil conspiracy under § 1983, a plaintiff must establish (1) the existence of a conspiracy and (2) a deprivation of civil rights in furtherance of the conspiracy by a party to the conspiracy. See Adickes v. S.H. Kress & Co., 398 U.S. 144, 158 (1970). A plaintiff may use circumstantial evidence in order to prove the conspiracy. Maslow v. Evans, 2003 WL 22594577, at \* 24 (E.D.Pa. Nov. 7, 2003) (citing Hampton v. Hanrahan, 600 F.2d 600, 621 (7th Cir.1979)). An express agreement among all conspirators is not a necessary element of civil conspiracy as long as the participants in the conspiracy share a general objective or the same motives for desiring the intended conspiratorial result. Id. "To demonstrate the existence of a conspiratorial agreement, it simply must be shown that there was a 'single plan, the essential nature and general scope of which [was] known to each person who is to be held responsible for its consequences.'" Maslow, 2003 WL 22594577, at \* 24 (citations omitted).

Plaintiffs allege that the Mayor and City Council Members "engaged in a conspiracy when they acted in concert with Defendant Gordon in the creation of Ordinance 279, which targeted to deprive Plaintiff of equal privileges and immunities under the law, that these acts stemmed out of a pattern of malice and ongoing animosity, and that, through this process, Plaintiffs were therein injured by excessive citations, fines, and the deprivation of their residence in the borough." (Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Dismiss Portion of Plaintiffs' Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6), at 25). Accepting all well-pleaded facts in the Complaint as true and viewing them in the light most

favorable to Plaintiffs, the Court finds that Plaintiffs fail to state a claim for civil conspiracy against the Mayor and the City Council Members because neither the Complaint nor the Plaintiffs' brief alleges facts from which we could infer that an agreement existed between Mayor and the City Council members to deprive Plaintiffs of any constitutional right.

On the contrary, we cannot find that there are no set of facts under which Plaintiffs could prove either state law claim for civil conspiracy or a claim for civil conspiracy pursuant to § 1983 against Defendant Gordon and Defendant Hicks. Accepting all well-pleaded facts in the Complaint as true and viewing them in the light most favorable to Plaintiffs, Plaintiffs may be able to prove Defendant Gordon and Defendant Hicks conspired to have Plaintiff Reinsmith arrested, without probable cause, on March 9, 2001, and that the arrest was orchestrated in order to influence the upcoming mayoral election. (12/8/03 Transcript at 34-35). Therefore, we grant in part, and deny in part, Defendants' motion to dismiss Counts IX and X of the Complaint. Thus, only a state law claim for civil conspiracy and a civil conspiracy claim pursuant to § 1983 remain against the Borough and Defendants Hicks and Gordon with respect to the March 9, 2001 arrest of Plaintiff Reinsmith.

#### H. Negligence

In Count XII of the Complaint, Plaintiffs assert a negligence claim against Mr. Gordon. We find that the Complaint clearly alleges that Mr. Gordon engaged in intentional, not negligent, conduct. Therefore, accepting all well-pleaded facts in the Complaint as true and viewing them in the light most favorable to Plaintiffs, we find that there are no set of facts under which Plaintiffs could prove their negligence claim against Mr. Gordon. See Rothman v. Specialty Care Network, Inc., 2000 WL 1470221, at \* 3 n.2 (E.D. Pa. Oct. 3, 2000) (dismissing a negligent

misrepresentation claim because the complaint failed to plead the requisite elements of a negligent claim and inconsistently characterized the defendant's actions as intentional).

Accordingly, Count XII of the Complaint is dismissed.

I. Claims against Mayor Gorman, Borough Council Members, Gene Dinger, Robert Pfromm, Roy Bubbenmoyer, and Lawrence Ramberger

Plaintiffs appear to sue Mayor Gorman, Borough Council Members, Gene Dinger, Robert Pfromm, Roy Bubbenmoyer, and Lawrence Ramberger in their official and individual capacities. (See generally Compl. ¶¶ 1-112). To the extent that these individuals are sued in their official capacity, they are dismissed as redundant parties because the Borough of Bernville would ultimately be liable for any judgment entered against them. See Satterfield v. Borough of Schuylkill Haven, 12 F. Supp. 2d 423, 431-32 (E.D. Pa. 1998) (dismissing action against borough city council and council members as redundant). We believe that the official capacity suits against Defendants Gorman, Gene Dinger, Robert Pfromm, Roy Bubbenmoyer, and Lawrence Ramberger are unnecessary, “because they are essentially suits against the [Borough], which is already a named Defendant.” Id. at 432 (quoting Williams v. Lower Merion Township, No. 94-CV-6863, 1995 WL 461246, at \* 3 (E.D. Pa. Aug. 2, 1995)). In doing so, we wish to make it clear that this dismissal in no way prejudices the right of Plaintiffs to pursue claims based upon the misconduct of the Borough Council or its Members. However, because the Borough itself will be directly liable for any misconduct on the part of the Borough Council and any Members acting in their official capacity, the inclusion of both entities and the Councils Members as Defendants is unnecessary.

To the extent that these individual are sued in their in their individual capacity, such

claims are likewise dismissed. “A state official cannot be held liable under § 1983 unless he participated in, had personal knowledge of, or acquiesced in the wrongdoing.” Drexel v. Horn, 1997 WL 356484, at \* 3 (E.D. Pa. June 20, 1997) (dismissing claim against state employee where the complaint contained no factual allegations pertaining to that employee). “Personal involvement can be shown through allegations of personal direction or of actual knowledge and acquiescence. Allegations of participation or actual knowledge, however, must be made with appropriate particularity.” Drexel v. Vaughn, No. 96-3918, 1998 WL 151798, at \*5 (E.D. Pa. April 2, 1998) (quoting Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988)).

Accepting all well-pleaded facts in the Complaint as true and viewing them in the light most favorable to Plaintiffs, we find that there are no set of facts under which Plaintiffs could establish liability against any of the above-mentioned Defendants under § 1983. Indeed, the Complaint is utterly bereft of any factual allegations pertaining to these individuals. (See generally Compl. ¶¶ 1-112). Therefore, all claims asserted against these individuals are dismissed.

#### IV. CONCLUSION

For the foregoing reasons, the Borough Defendants’ motion to dismiss pursuant to 12(b)(6) (Dkt. No. 3) is GRANTED in part, and DENIED in part. Defendant Linnea Gordon’s motion to dismiss (Dkt. No. 11) is GRANTED. An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>ANDREA REINSMITH, and</b>	:	<b>CIVIL ACTION</b>
<b>RALPH PALM, JR.,</b>	:	
	:	
<b>Plaintiffs,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>BOROUGH OF BERNVILLE, et al.,</b>	:	
<b>Defendants.</b>	:	<b>NO. 03-1513</b>

AND NOW, this            day of December, 2003, it is hereby ORDERED as follows:

Defendant Linnea Gordon’s Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(1),(2) and (6), and 12(f) (Dkt. No. 11) is GRANTED; all claims asserted against Linnea Gordon are DISMISSED.

The Motion of Defendants Borough of Bernville, Charles Gorman, Richard Hicks, Borough of Bernville Council, Gene Dinger, Robert Pfromm, Roy Bubbenmoyer, Lawrence Ramberger and Charles Gordon to Dismiss Plaintiffs’ Complaint Pursuant to the Federal Rules of Civil Procedure 12(b)(6) And 12(f), And In the Alternative, Motion For a More Definite Statement (Dkt. No. 3) is GRANTED in part, and DENIED in part. More specifically:

1. The Motion is GRANTED in its entirety as to all Defendants with respect to Counts III, IV, V, VII, VIII, and XII. Counts III, IV, V, VII, VIII, and XII are

DISMISSED in their entirety;

2. All claims asserted against Mayor Gorman, Gene Dinger, Robert Pfromm, Roy Bubbenmoyer, and Lawrence Ramberger in their official and individual capacities are DISMISSED;
3. All claims based on factual allegations occurring before March 9, 2001 are DISMISSED because they are time-barred by the statute of limitations;
4. The Motion is GRANTED, in part, and DENIED, in part, with respect to Counts I and II. Counts I and II remain to the extent that they assert claims of malicious prosecution against the Borough, Richard Hicks and Charles Gordon based on Ms. Reinsmith's March 9, 2001 arrest; Counts I and II are DISMISSED in all other respects;
5. The Motion is GRANTED, in part, and DENIED, in part, with respect to Counts IX and X. Counts IX and X remain to the extent that they assert civil conspiracy claims against the Borough, Richard Hicks and Charles Gordon with respect to Ms. Reinsmith's March 9, 2001 arrest; Counts IX and X are DISMISSED in all other respects; and
6. Defendants have not sought dismissal of Counts VI and XI; Accordingly, Counts VI and XI remain viable to the extent that they are based on factual allegations occurring on or after March 9, 2001.

BY THE COURT:

Legrome D. Davis, Judge