

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

<b>PATRICIA A. FIELDS</b>	:	
<b>Plaintiff,</b>	:	<b>CIVIL ACTION</b>
	:	
<b>vs.</b>	:	
	:	
	:	<b>NO. 03-2150</b>
<b>BERNARD SCHAFFER and</b>	:	
<b>HORSHAM TOWNSHIP POLICE</b>	:	
<b>DEPARTMENT</b>	:	
<b>Defendants.</b>	:	

**ORDER AND MEMORANDUM**

**ORDER**

**AND NOW**, this 12<sup>th</sup> day of January, 2005, upon consideration of Motion of Defendants, Horsham Township Police Department and Sgt. Bernard Schaffer to Dismiss Plaintiff's Complaint Pursuant to Federal Rule of Civil Procedure 12(c) (Doc. No. 60, filed December 12, 2004), *pro se* plaintiff's Motion to Oppose Horsham Township Police Dept., Sgt. Bernard Schaffer's Motion to Dismiss, and the related submission of the parties, **IT IS ORDERED** that Motion of Defendants, Horsham Township Police Department and Sgt. Bernard Schaffer to Dismiss Plaintiff's Complaint Pursuant to Federal Rule of Civil Procedure 12(c) is **DENIED**.

**MEMORANDUM**

**I. BACKGROUND**

A complete statement of the factual and procedural history of this case can be found in the Court's Order and Memorandum dated December 20, 2004.<sup>1</sup>

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<sup>1</sup>Fields v. Blake, 2004 U.S. Dist. LEXIS 25745 (E.D. Pa. Dec. 20, 2004 )

This action arises out of events that took place on April 17, 2001, when plaintiff, Patricia A. Fields, and her daughter were lodged at the Bachelor's Enlisted Quarters ("BEQ") at the Naval Air Station Joint Reserve Base Willow Grove, Pennsylvania ("NAS Willow Grove"). On that day, the Horsham Township Police Department executed an outstanding arrest warrant for plaintiff at NAS Willow Grove. During the search and arrest, plaintiff alleges that she was physically and verbally assaulted by Sergeant Bernard Schaffer ("Sgt. Schaffer") head of Criminal Investigations Division of the Horsham Township Police Department. Fields also contends that her civil rights were violated when she was escorted off NAS Willow Grove with a "forged warrant," and allegedly drugged, convicted, and falsely imprisoned.

## **II. STANDARD OF REVIEW – RULE 12(c)**

A motion for judgment on the pleadings, made pursuant to Federal Rule of Civil Procedure 12(c), is treated under the same standard as a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). See Shelly v. Johns-Manville Corp., 798 F.2d 93, 97 n.4 (3d Cir. 1986); Regalbuto v. City of Philadelphia, 937 F. Supp. 374, 376 (E.D. Pa. 1995). A motion for judgment on the pleadings will only be granted where the moving party has established that no material issue of fact remains to be resolved, and that the movant is entitled to judgment as a matter of law. See Institute for Scientific Info., Inc. v. Gordon and Breach, Science Publishers, Inc., 931 F.2d 1002, 1005 (3d Cir. 1991). In determining whether a material issue of fact exists, the court must view the facts and inferences to be drawn from the pleadings in the light most favorable to the non-moving party. See Janney Montgomery Scott, Inc. v. Shepard Niles, Inc., 11 F.3d 399, 406 (3d Cir. 1993).

## **III. DISCUSSION**

Defendants' move to dismiss plaintiff's action on the ground that the statute of limitations for assault and battery, false imprisonment, and intentional infliction of emotional distress has run.

Civil rights claims brought under § 1983 have a statute of limitations analogous to the state law cause of action. See Wilson v. Garcia, 471 U.S. 261, 275 (1985). Under Pennsylvania law, assault and battery, false imprisonment, and intentional infliction of emotional distress have a two year statute of limitations. 42 Pa. Cons. Stat. § 5524. Defendants contend that the two year limitations period has expired because Fields' cause of action accrued on April 17, 2001, and plaintiff did not file her motion to join defendants until September 9, 2003.

Fields filed her initial motion to proceed *in forma pauperis* and submitted her original Complaint on April 3, 2003, within the two-year period of limitations. The statute of limitations is tolled while the court considers an *in forma pauperis* motion, but the limitations period restarts if the court denies the motion. Richardson v. Diagnostic Rehab. Center, 836 F. Supp. 252 (E.D. Pa. 1993). In addition, the limitations period may be equitably tolled if the plaintiff complies with a court order regarding refiling of an *in forma pauperis* motion. Richardson, 836 F. Supp. at 255.

In this case, the Order dated April 11, 2003 gave plaintiff the right to refile her amended *in forma pauperis* motion on or before May 2, 2003. Plaintiff filed an amended *in forma pauperis* motion on May 1, 2003. Under these circumstances, the Court will equitably toll the statute of limitations as of April 3, 2003. See id.; Fields v. Blake, 2004 U.S. Dist. LEXIS 25745 (E.D. Pa. 2004)(Dubios, J.).

However, plaintiff's claims against Sgt. Schaffer and the Horsham Township Police Department are timely only if plaintiff's Second Amended Complaint and Amended Second Amended Complaint (hereinafter collectively, "Second Amended Complaints") adding Sgt. Schaffer and the Horsham Township Police Department to the case as defendants relate back to the date the original Complaint is deemed to have been filed pursuant to Fed. R. Civ. P. 15(c). Rule 15(c) of the Federal Rules of Civil Procedure permits amendments to a pleading adding new

parties to relate back to the date of the original pleading. It provides in pertinent part:

. . . (2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, or (3) the amendment changes the party or the naming of the party against whom a claim is asserted if the foregoing provision (2) is satisfied and, within [120 days following the filing of the original complaint], the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party. Fed. Rule Civ. P. 15(c).

The Court's Order and Memorandum dated December 20, 2004, addressed this exact issue with respect to Petty Officer Clark, who was dismissed as a defendant to this action on other grounds. For this reason, the Court will only briefly state its conclusions.

As to the first requirement of Rule 15(c), there is no question that the claims asserted against Sgt. Schaffer and the Horsham Township Police Department arose out of the same transaction or occurrence as those alleged in the original Complaint. The substance of the allegations at issue are based upon the events that took place at NAS Willow Grove on April 17, 2001.

The Court also finds that the second requirement under Rule 15(c)(3)(A) is satisfied. Because Fields' Second Amended Complaints allege injuries arising from the same incident described in the original Complaint, the evidence relevant to a defense for the claims against Sgt. Schaffer and the Horsham Township Police Department is essentially the same as the evidence relevant to a defense against the original claims. See Nelson v. County of Allegheny, 60 F.3d 1010, 1015 (3d Cir. 1995). Therefore, the Court concludes that Sgt. Schaffer and the Horsham Township Police Department will not be prejudiced in defending this action.

With respect to the notice requirement of Rule 15(c), there is no question that Sgt. Schaffer and the Horsham Township Police Department were aware of the action within the 120 day period.

Sgt. Schaffer provided a declaration on August 7, 2003, for use in defending the suit against Captain Blake which demonstrates his early awareness of this action. See Singletary v. Pa. Dep't of Corr., 266 F.3d at 195; see also, Lundy v. Adamar of New Jersey Inc. v. Carlino, 34 F.3d 1173, 1189 (3d Cir. 1994); Lockwood v. City of Philadelphia, 205 F.R.D. 448, 451 (E.D. Pa. 2002) (“Rule 15(c) does not require actual service of process on the newly named defendant to satisfy the notice requirement”); Berndt v. Tennessee, 796 F.2d 879, 884 (6th Cir. 1986) (notice need not be formal); Eakins v. Reed, 710 F.2d 184, 187-88 (4th Cir. 1983) (same); Kirk v. Cronvich, 629 F.2d 404, 407-08 (5th Cir. 1980) (same); Swartz v. Gold Dust Casino, Inc., 91 F.R.D. 543, 547 (D. Nev. 1981) (same).

Finally, the last requirement of Rule 15(c) is satisfied – the newly named defendants knew or should have known within 120 days after the filing of plaintiff's complaint that, but for a mistake concerning the identity of the proper party, the action would have been brought against them. Plaintiff's failure to add Sgt. Schaffer and the Horsham Township Police Department as defendants in her *pro se* complaint would probably not have occurred if she had the assistance of a lawyer. See Taliferro v. Costello 467 F. Supp. 33 (E.D. Pa. 1979) (amended complaint related back to original complaint where the failure to name the defendant as party was probably due to plaintiff acting *pro se*). Thus, the Court cannot conclude that plaintiff made a deliberate or tactical decision not to sue Sgt. Schaffer and the Horsham Township Police Department. See Lundy v. Adamar of New Jersey, Inc., 34 F.3d 1173, 1183 (3d Cir. 1994); compare Great Northeastern Lumber & Millwork Corp. v. Pepsi-Cola Metropolitan Bottling Co., Inc., 785 F. Supp. 514, 516 (E.D. Pa. 1992) (manufacturer of component part in product liability action “may have believed plaintiff made a deliberate choice rather than a 'mistake' in deciding not to join [it]”). Moreover, defendants should have known that but for an error in legal judgment, they would have been named

in the Complaint, particularly in view of the fact that the original Complaint made specific allegations against the Horsham Township police. See Advanced Power, 801 F. Supp at 1457. Finally, the declaration provided by Sgt. Schaffer on August 7, 2003, describing his personal involvement in the event about which Fields complained, “shows his recognition that the suit should have been brought against him.” Eakins v. Reed, 710 F.2d 184, 188 (4th Cir. 1983).

The Court concludes that all the requirements of Rule 15(c) are met. Therefore, plaintiff’s Second Amended Complaints joining Sgt. Schaffer and the Horsham Township Police Department as defendants relate back, for purposes of the statute of limitations, to the date on which the original Complaint is deemed to have been filed, April 3, 2003.

#### **IV. CONCLUSION**

For the foregoing reasons, the Court concludes plaintiff’s Second Amended Complaints against Sgt. Schaffer and the Horsham Township Police Department were timely filed. Accordingly, defendants Motion for Judgment on the Pleadings is denied.

**BY THE COURT:**

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**JAN E. DUBOIS, J.**