

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

DIANA MCCRACKEN,	:	CIVIL ACTION
Plaintiff,	:	NO. 06-4958
	:	
v.	:	
	:	
LANCASTER CITY BUREAU	:	
OF POLICE, et. al.,	:	
Defendants.	:	

MEMORANDUM AND ORDER

Stengel, J.

February 15, 2007

On November 8, 2006, Diana McCracken brought this action against the Lancaster City Bureau of Police and various police officers for a search of her home on November 8, 2004. Defendants have jointly moved to dismiss the complaint in its entirety under Rule 12(b)(6) or alternatively ask for a more definitive statement under Rule 12(e). McCracken has not responded in opposition. I will grant defendants' uncontested motion under Local Rule of Procedure 7.1(c)¹ and dismiss this case.

¹ Under Local Rule 7.1(c), "any party opposing [a] motion shall serve a brief in opposition, together with such answer or other response which may be appropriate, within fourteen (14) days after service of the motion and supporting brief. In the absence of a timely response, the motion may be granted as uncontested," except for Rule 56 motions for summary judgment." E.D. Pa. R. 7.1(c). The Third Circuit has affirmed using this rule to dismiss cases and has "held that it is not an abuse of discretion for a district court to impose a harsh result, such as dismissing a motion or an appeal, when a litigant fails to strictly comply with the terms of a local rule." United States v. Eleven Vehicles, 200 F.3d 203, 214 (3d Cir. 2000). District court have granted uncontested Rule 12(b) motions to dismiss due to a plaintiff's failure to file a timely response under Local Rule 7.1(c). Naeem v. Bensalem Twp., No. 04-1958, 2005 U.S. Dist. LEXIS 4713, at *4-5 (E.D. Pa. Mar. 24, 2005); Devern v. Graterford State Corr. Inst., No. 03-6950, 2004 U.S. Dist. LEXIS 9377, at *5 n.4 (E.D. Pa. May 24, 2004); Longendorfer v. Roth, No. 04-0228, 2004 U.S. Dist. LEXIS 8709, at *1 (E.D. Pa. Apr. 30, 2004); Saxton v. Cent. Pa. Teamsters Pension Fund, No. 02-0986, 2003 U.S. Dist. LEXIS 23983, at *84-85 (E.D. Pa. Dec. 9, 2003); Toth v. Bristol Township, 215 F. Supp. 2d 595, 598 (E.D. Pa. 2002).

I. BACKGROUND²

On November 8, 2004, plaintiff Diana McCracken resided at 1018 Williamsburg Road in Lancaster, Pennsylvania. On that date, defendants searched her home for two and a half hours without a warrant and took many of McCracken's possessions, which have never been returned. Compl. ¶ 25. At 6:03 a.m., defendants obtained a search warrant, which listed some of the items discovered during the search. Id. ¶ 26.

The officers conducting the search assaulted McCracken. Id. ¶23. Defendant MacFarland assaulted McCracken with a weapon. Id. Another unnamed defendant held McCracken's left hand behind her back and bent her over the couch. Id. Defendants threatened McCracken that she could be arrested and her three children could be taken away from her if she did not answer their questions about a fight her husband had been in several days earlier. Id. ¶ 27. McCracken's husband had been arrested earlier that night. Id.

On November 8, 2006, McCracken filed a complaint against the following defendants: Lancaster City Bureau of Police, Chief of Police William M. Heim, Lieutenant Peter Anders, Officer James Fatta, Officer George Bonilla, Special Emergency Response Team ("SERT"), Lieutenant James Zahm, Officer MacFarland, Detective Breault, Manor Township Police, Officer Smith, Officer Roache, and Sergeant McCrady. Plaintiff brought two federal constitutional claims under 42 U.S.C. § 1983 for Fourteenth

² The facts are taken from the complaint and are accepted as true for the purposes of this motion.

Amendment equal protection and substantive due process violations and pendant state law claims for conspiracy; false imprisonment; common law trespass. Defendants moved to dismiss on January 16, 2007.³ McCracken has not responded in opposition.

II. STANDARD FOR A MOTION TO DISMISS OR A MORE DEFINITE STATEMENT

A. Motion to Dismiss

The purpose of a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure is to test the legal sufficiency of a complaint. Sturm v. Clark, 835 F.2d 1009, 1011 (3d Cir. 1987). In ruling on a motion to dismiss on the basis of the statute of limitations, a court must determine whether the statement of the claim shows that the cause of action has been brought within the statute of limitations time period. Jordan v. Crandley, No. 99-915, 1999 U.S. Dist. LEXIS 13918 at *2 (E.D. Pa. Sept. 7, 1999). The court may grant a motion to dismiss only where "it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." Carino v. Stefan, 376 F.3d 156, 159 (3d Cir. 2004) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). The court must construe the complaint liberally, accept all factual allegations in the complaint as true, and draw all reasonable inferences in favor of the plaintiff. Id. See also D.P. Enters. v. Bucks County Cmty. Coll., 725 F.2d 943, 944

³ On January 16, 2007, Lancaster City Bureau of Police, Chief of Police William M. Heim, Lieutenant Peter Anders, Officer James Fatta, Officer George Bonilla, Lieutenant James Zahm, Officer MacFarland, Detective Breault, Officer Roache, and Sergeant McCrady filed an initial motion to dismiss. On January 23, 2007, SERT and Manor Township Police Department joined the motion. Officer Smith has not joined the motion, which the court assumes is an unintentional omission because of the large number of defendants.

(3d Cir. 1984).

B. Motion for a More Definitive Statement

Under a Rule 12(e) Motion For More Definite Statement, “[i]f a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. A motion must be denied “[a]s long as the defendant is able to respond, even if only with a simple denial, in good faith, without prejudice, the complaint is deemed sufficient for purposes of Rule 12(e).” Sun Co. v. Badger Design & Constructors, 939 F. Supp. 365, 374 (E.D. Pa. 1996).

III. DISCUSSION

A. Equal Protection Claim

The Equal Protection Clause of the Fourteenth Amendment requires that similarly situated people should be treated alike. City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 439 (1985). The Supreme Court has recognized that equal protection claims can be brought by a “class of one” if “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). To state a claim under the “class of one” theory, “a plaintiff must allege that (1) the defendant treated him differently from others similarly situated, (2) the defendant did so intentionally, and (3) there was no rational basis for the difference in treatment.” Hill v.

Borough of Kutztown, 455 F.3d 225, 239 (3d Cir. 2006). The Third Circuit affirmed a district court's dismissal of a plaintiff's equal protection claim under Rule 12(b)(6) when the plaintiff did not allege the existence of similarly situated individuals who defendants treated differently. Id. McCracken's complaint does not allege that defendants treated individuals who were similarly situated to her differently and therefore, her equal protection claim fails as a matter of law.

B. Substantive Due Process Claim

The Supreme Court has been reluctant to expand the Fourteenth Amendment's substantive due process guarantee beyond "matters relating to marriage, family, procreation, and the right to bodily integrity." Albright v. Oliver, 510 U.S. 266, 271-72 (1994). In Albright, the Court expressly held that a petitioner could not challenge his criminal prosecution by claiming a liberty interest under the due process clause to be free from criminal prosecution because the Framers of the Constitution drafted the Fourth Amendment to address pretrial deprivations of liberty. Id. at 274. Instead, "[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 273 (quoting Graham v. Connor, 490 U.S. 386, 395(1989)). Therefore, the petitioner's claim failed because he did not bring it under the Fourth Amendment and the Fourteenth Amendment's due process guarantee could not be expanded to include his

claim.

Albright forecloses McCracken's substantive due process claim. The Fourth Amendment provides "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." This amendment clearly encompasses the violations McCracken complains about: the search of her home and the defendants' use of excessive force. See Graham, 490 U.S. at 395 (holding that "all claims that law enforcement officers have used excessive force -- deadly or not -- in the course of an arrest, investigatory stop, or other seizure of a free citizen should be analyzed under the Fourth Amendment and its reasonableness standard, rather than under a substantive due process approach."). McCracken cannot assert a liberty interest under the Fourteenth Amendment; her claim is only cognizable under the Fourth Amendment's guarantee against unreasonable searches and seizures.

C. State Law Claims

McCracken also asserts three state law claims. Since McCracken's federal constitutional claims fail, the court no longer has federal subject matter jurisdiction. Therefore, I decline to exercise supplemental jurisdiction over the state law claims, which is permitted under 28 U.S.C. § 1367.

IV. CONCLUSION

I will grant defendants' motion to dismiss. McCracken has insufficiently alleged violations of her federal rights. While I considered granting McCracken additional time to amend her complaint, I determined this was not necessary. The facts in the complaint do not support a finding of excessive force. McCracken concedes that defendants had a search warrant and some of the items seized were listed in the warrant. The complaint does not afford a basis for determining individual liability; in fact, McCracken only makes a single allegation of personal involvement against defendant MacFarland. McCracken failed to oppose defendants' motion to dismiss or move the court to grant her leave to amend her complaint. This evinces an intent to abandon her lawsuit. For these reasons, I will grant defendants' motion as uncontested pursuant to Local Rule of Procedure 7.1(c).

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:
:

ORDER

AND NOW, this 15th day of February, 2007, upon consideration of defendants' motions to dismiss (Document Nos. 3 and 5), it is hereby **ORDERED** that the motions are **GRANTED**.

The Clerk of the Court is directed to mark this case closed for statistical purposes.

BY THE COURT:

/s/ Lawrence F. Stengel _____
LAWRENCE F. STENGEL, J.