

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

MICHAEL SORRENTINO :
 :
 v. : CIVIL ACTION
 :
 : 96-6604
 CITY OF PHILADELPHIA and :
 PHILADELPHIA :
 POLICE DEPARTMENT :

M E M O R A N D U M

Broderick, J.

September 16, 1997

Plaintiff filed this Complaint against the City of Philadelphia and the Philadelphia Police Department ("Defendants"), asserting claims under 42 U.S.C. § 1983 and 42 U.S.C. § 1985(3). Defendants have moved to dismiss Plaintiff's Complaint pursuant to Fed.R.Civ.P. 12(b)(6), on the grounds that Plaintiff has failed to state a claim upon which relief can be granted. For the reasons which follow, the Court will grant Defendants' Motion.

Plaintiff's Complaint alleges the following:

On or about June 7, 1994, Plaintiff, a prisoner completing his sentence, was transferred to a half-way house, located in a residential South Philadelphia neighborhood. Generally, a half-way house is intended to give prisoners an opportunity to live in a residential community prior to being released from prison. While residing at the half-way house, the prisoner is closely supervised and his movements are significantly restricted. However, the prisoner is usually permitted some freedom to leave

the half-way house without supervision.

Plaintiff alleges that, on or about September 30, 1994-- almost four months after he took up residence at the half-way house, police officers from the Fourth District in Philadelphia contacted Plaintiff's parole officer and reported that neighbors were "greatly disturbed" upon discovering that Plaintiff had been residing in their neighborhood. The police officers further reported that Plaintiff had been associating with another man in the neighborhood who had been previously charged with committing sex offenses.

Plaintiff alleges that, in the days following September 30, 1994, "mug shot" photographs were obtained of Plaintiff from the Philadelphia Police Department and were "prominently displayed throughout the neighborhood." Plaintiff alleges that printed posters which displayed Plaintiff's "mug shot" photo were placed in conspicuous places throughout the neighborhood, and flyers which displayed the "mug shot" were distributed to neighborhood residents. According to Plaintiff's allegations, these posters and flyers "contained statements about Plaintiff which were false and misleading."

Although he does not allege that members of the Philadelphia Police Department were responsible for the printing or dissemination of the posters or flyers, Plaintiff does allege that two Philadelphia Police Captains, Captain Gary Carre and Captain John Collins, "knew or should have known" that the posters and flyers contained untrue information. Plaintiff

further alleges that Captains Carre and Collins engaged in "communication and a sharing of information" with area residents, and that during this communication, Captain Collins allegedly stated that sex offenders should not be permitted to live in the half-way house because the house was located within one block of an elementary school and a day nursery. According to Plaintiff's allegations, "one of the objectives of the communication and sharing of information with area residents was to 'get some publicity to get the Megan's Law.'" "

Plaintiff alleges that he was "pressured by residents in the neighborhood under the direction of the Philadelphia Police Department" to leave the half-way house, and that, as a result of this pressure, Plaintiff was involuntarily transferred from the half-way house to another facility on or about October 5, 1994. Plaintiff claims that he "suffered substantial loss of enjoyment of life, great hardships, emotional distress and incurred considerable costs" as a result of this involuntary transfer.

In his Complaint, Plaintiff names only the Philadelphia Police Department and the City of Philadelphia as Defendants. Plaintiff's Complaint consists of Three Counts: Count One and Count Two appear to allege claims under 42 U.S.C. § 1983 and Count Three alleges a claim under 42 U.S.C. § 1985(3).

Although Plaintiff has titled Count One of his Complaint a claim for "Invasion of Right to Privacy," and has titled Count Two of his Complaint a claim for "Failure to Train," Plaintiff sets forth identical allegations in both Count One and Count Two.

Both counts appear to allege violations of 42 U.S.C. § 1983. Plaintiff alleges in Count One and Count Two that Captains Collins and Carre "acting under color of the statutes, customs, ordinances, official policies and usage of their employer Defendant City of Philadelphia... violated the Plaintiff's rights by committing malicious and reckless acts and/or omissions." Plaintiff further alleges that Captains Carre and Collins, by virtue of their "communication, information sharing and contact" with neighborhood residents, "encouraged, acquiesced and/or approved" the residents' actions "to defame the character of Plaintiff and to invade the privacy of Plaintiff when effecting his eviction." Plaintiff further alleges in Count One and Count Two that Defendant Philadelphia Police Department and Defendant City of Philadelphia "failed to adequately train and supervise Captains Collins and Carre... in the use of police records, mug [shot] photographs, and information when investigating complaints by residents of the Fourth District," and that Defendant City of Philadelphia "by its actions and omissions, established a policy of the Philadelphia Police Department that encouraged, acquiesced and/or approved of the improper use of police records, mug [shot] photographs and information." Plaintiff alleges that this policy "resulted in Plaintiff being one of the victims of Defendant's said improper use causing defamation and invasion of privacy," and that Plaintiff was "wrongfully evicted, defamed, and his privacy breached... as a direct result of the willful, malicious and reckless acts and/or omissions of the Defendant[s]."

Count Three of Plaintiff's Complaint, which Plaintiff has titled a claim for "Conspiracy and Civil Rights," alleges a violation of 42 U.S.C. § 1985(3). Plaintiff alleges in Count Three of his Complaint that Police Captains Carre and Collins "authorized the release and use of any information and photographs by their officers and Fourth District residents necessary to pressure Plaintiff from the Fourth District," and "communicated with and entered into agreements with residents of the Fourth District to make the release of information and photographs appear justified." Plaintiff alleges that this conduct "deprived Plaintiff of his rights and privileges as a citizen of the United States in violation of 42 U.S.C. § 1985(3)."

Before the Court addresses Defendants' Motion to Dismiss Plaintiff's Complaint, the Court feels compelled to recognize the Third Circuit's opinion in E.B. v. Verniero, 119 F.3d 1101 (3d Cir. 1997), which was filed on August 20, 1997. In E.B. v. Verniero, the Third Circuit upheld the constitutionality of New Jersey's "Megan's Law," as it applied to persons who had committed one of the sex crimes designated by the law before it was enacted. The term "Megan's Law," as referred to by the Third Circuit in E.B. v. Verniero, refers collectively to a ten-bill package enacted by New Jersey which requires registration by those who have committed certain designated crimes involving sexual assault and provides for the dissemination of information

about those required to register.

Although Plaintiff in the instant case alleges that Defendants were acting against him in order to "get some publicity to get the Megan's Law," the instant case differs in significant ways from the case considered by the Third Circuit in E.B. v. Verniero. In the instant case, Plaintiff does not allege that Defendants were acting pursuant to a form of "Megan's Law" legislation. Although Pennsylvania has enacted a form of registration and notification legislation which applies to certain designated sex offenders, such legislation did not take effect until April 21, 1996-- approximately eighteen months after the events alleged in Plaintiff's Complaint. See 42 Pa. C.S.A. §§ 9791 - 9799.6. Moreover, unlike an individual subject to the registration and notification provisions of a "Megan's Law" statute, Plaintiff in the instant case, by his own allegations, was a prisoner "still serving time" when the alleged events occurred.

In considering a Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b)(6), the court accepts as true all factual allegations contained in the plaintiff's complaint, as well as all reasonable inferences which could be drawn therefrom, and views them in the light most favorable to the plaintiff. See H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989); Zlotnick v. TIE Communications, 836 F.2d 818, 819 (3d Cir. 1988). The court will not dismiss a complaint for failure to state a claim

"unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

As a preliminary matter, the Court will dismiss Plaintiff's Complaint as against the Philadelphia Police Department. Pennsylvania law clearly provides that a city department such as the Philadelphia Police Department does not exist as a separate entity which can be sued in a civil action. 53 P.S. § 16257; See Regalbuto v. City of Philadelphia, 937 F.Supp 374, 377 (E.D. Pa. 1995); Agrestas v. City of Philadelphia, 694 F.Supp 117, 119 (E.D. Pa. 1988). Accordingly, the Court will dismiss the Philadelphia Police Department as a Defendant and will consider Plaintiff's claims only as against Defendant City of Philadelphia.

Plaintiff Claims Under 42 U.S.C. § 1983

As previously noted, Count One and Count Two of Plaintiff's Complaint apparently allege violations of 42 U.S.C. § 1983.

Section 1983 imposes civil liability upon one:

who under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws...
42 U.S.C. § 1983.

A municipality will be held liable under § 1983 only if the

municipality has itself caused a constitutional violation; municipal liability can not be based on respondeat superior. Monell v. New York Dept. of Social Services, 436 U.S. 658, 694-695 (1978). Accordingly, a plaintiff alleging a § 1983 claim against a municipality must allege that a constitutional violation occurred as a result of an approved municipal policy or governmental custom. Monell, 436 U.S. at 690-691.

In City of Canton v. Harris, the Supreme Court stated that a city may be held liable under § 1983 for the failure to train an employee who has caused a constitutional injury if that failure to train amounts to a policy of "deliberate indifference." 489 U.S. 378, 387-388 (1989). A city's failure to train will be grounds for municipal liability only if "the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of a constitutional right, that the policy makers of the city can reasonably be said to have been deliberately indifferent to the need." Id. at 390.

Although Plaintiff alleges in his Complaint that Defendant, "by its actions and omissions, established a policy" which led to his injuries, Plaintiff has failed to identify the particular policy or governmental custom which allegedly caused his injuries. Moreover, though Plaintiff alleges that Defendant "failed to adequately train and supervise" Police Captains Carre and Collins, Plaintiff does not allege that this failure represented a policy of "deliberate indifference."

The Court notes that it has considered Plaintiff's

allegations in light of the Supreme Court's opinion in Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 507 U.S. 163 (1993). In Leatherman, the Supreme Court rejected the idea of a heightened pleading standard for complaints alleging municipal liability under § 1983. The Supreme Court noted that the Federal Rules of Civil Procedure set forth a system of notice pleading, and require only that a complaint provide "a short and plain statement of the claim showing that the pleader is entitled to relief." Leatherman, 507 U.S. at 168 (quoting Fed.R.Civ.P. 8(a)(2)). The Supreme Court further noted that, although the Federal Rules address "the question of the need for greater particularity in pleading certain actions, ...[they] do not include among the enumerated actions any reference to complaints alleging municipal liability under § 1983." Id. The Supreme Court thus concluded that a heightened pleading standard for municipal liability claims under § 1983 was contrary to the Federal Rules of Civil Procedure. Id.

In the instant case, however, the Court seriously questions whether Plaintiff's allegations that Defendant "by its actions and omissions, established a policy," and "failed to adequately train and supervise Captains Collins and Carre" are sufficient to allege municipal liability, even in light of the Supreme Court's opinion in Leatherman. The Court, however, need not determine the adequacy of Plaintiff's allegations of municipal liability. The Court will dismiss Counts One and Two of Plaintiff's Complaint on the grounds that these counts fail to allege a

deprivation of a protected right or interest, and therefore do not state a claim under § 1983.

The Supreme Court has directed that “[t]he first inquiry in any § 1983 suit... is whether the plaintiff has been deprived of a right secured by the Constitution and laws.” Baker v. McCollan, 443 U.S. 137, 140 (1979). Section 1983 was not intended to create a federal cause of action for any and all torts committed by state officials. Paul v. Davis, 424 U.S. 693, 670 (1976). Section 1983 was intended only to provide a civil remedy for “those acts which deprived a person of some right secured by the Constitution or laws of the United States.” Id. at 700.

In the instant case, Plaintiff alleges that, as a direct result of Defendant’s actions, Plaintiff was “wrongfully evicted, defamed and his privacy breached,” all in violation of § 1983. The Court has considered each of Plaintiff’s allegations in turn and has determined that they do not state a claim for a deprivation of a protected right or interest, as required by § 1983:

Involuntary Transfer

Plaintiff alleges in Counts One and Two of his Complaint that he was deprived of a constitutional right in violation of § 1983 when he was involuntarily transferred or “evicted” from the half-way house to another facility. It is well-settled, however, that a Plaintiff does not have a constitutional right in avoiding

transfer from one correctional facility to another. Meachum v. Fano, 427 U.S. 215; Montayne v. Haymes, 427 U.S. 236 (1976). As the Supreme Court has stated, the fact "[t]hat life in one prison is much more disagreeable than in another does not in itself signify that a Fourteenth Amendment liberty interest is implicated" by a prison transfer. Meachum, 427 U.S. at 228. This logic applies with the same force when a prisoner is transferred from a half-way house to another facility. Accordingly, Plaintiff's allegation that he was "wrongfully evicted" from the half-way house in South Philadelphia to a less desirable facility does not amount to an allegation that he was deprived of a constitutionally protected right or interest and does not allege a cognizable claim under § 1983.

In his Memorandum in Opposition to Defendants' Motion to Dismiss, Plaintiff claims that his involuntary transfer from the half-way house violated his First Amendment right of free association because Plaintiff was transferred after he "was seen in the presence of a former resident of the neighborhood who was a known child molester." Plaintiff's claim, however, ignores the fact that Plaintiff, as a prisoner serving time, did not have a right to freely associate with any and all persons. As the Supreme Court has stated, "[l]awful incarceration brings about the necessary withdrawal or limitation of many privileges and rights... including those derived from the First Amendment." Jones v. N.C. Prisoners' Labor Union, Inc., 433 U.S. 125, 125-126 (1977). Indeed, the right of free association is "[p]erhaps the

most obvious of the First Amendment rights" curtailed by such confinement, as "[t]he concept of incarceration itself entails a restriction on the freedom of inmates to associate with those outside of the penal institution." Id. at 126.

Defamation

Plaintiff also alleges in Count One and Count Two of his Complaint that he was deprived of his constitutional rights in violation of § 1983 by the publication and dissemination of posters and flyers which contained Plaintiff's mug shot photo and contained "false and misleading" statements. Plaintiff does not disclose the substance of these allegedly false and misleading statements, nor does he disclose the identity of the person or persons who allegedly made the statements. Plaintiff alleges only that Captains Collins and Carre "knew or should have known that the statements contained on the posters and flyers... were not true," and that Captains Collins and Carre "encouraged, acquiesced and/or approved of the acts of the residents of the Fourth District to defame the character of Plaintiff." These allegations of defamation are not sufficient to state a claim under § 1983.

A claim of defamation does not amount to a claim under § 1983. The Supreme Court has held that an individual can not claim a constitutionally protected interest in his or her reputation. Siegert v. Gilley, 500 U.S. 226, 233 (1981); Paul v. Davis, 424 U.S. 693, -- (1976). In its recent opinion Kelly v.

Borough of Sayreville, New Jersey, 107 F.3d 1073 (3d Cir. 1997), the Third Circuit affirmed a District Court's dismissal of a § 1983 claim based on allegations of defamation. "In reaching our result," the Third Circuit noted, "we point out that in Siegert v. Gilley, the Supreme Court relied on Paul v. Davis to hold that there is no constitutional liberty interest in one's reputation and that a claim that is essentially a state law defamation claim can not constitute a claim for violation of one's federal constitutional rights." Kelly, 107 F.3d at 1078 (citation omitted). "Thus," the Third Circuit cautioned, "we must be careful not to equate a state defamation claim with a cause of action under section 1983 predicated on the Fourteenth Amendment." Id.

In the instant case, Plaintiff has merely alleged a state law defamation claim. Accordingly, his allegations of defamation do not state a cause of action under § 1983 claim.

Breach of Privacy

Plaintiff additionally alleges in Counts One and Two of his Complaint that he was deprived of his constitutional right to privacy in violation of § 1983. Although Plaintiff does not specifically allege how Defendant violated his right to privacy, Plaintiff's privacy claim is presumably based on his allegations that police officers allowed Plaintiff's mug shot photo to be obtained, and allowed disclosure of certain information from Plaintiff's police record.

Although the constitutional right to privacy extends to protect the individual interest in avoiding the disclosure of personal matters, it serves only to protect information of a confidential and personal nature. See Whalen v. Roe, 429 U.S. 589, 599 (1977); See also Scheetz v. The Morning Call, Inc., 946 F.2d 202, 206 (3d Cir. 1991); United States v. Westinghouse Elec. Corp., 638 F.2d 570 (3d Cir. 1980).

Information relating to an individual's criminal convictions or criminal charges-- information which is "by... definition public"-- is not confidential information subject to constitutional protection. Trade Waste Mgmt. Ass'n v. Hughey, 780 F.2d 221, 234 (3d Cir. 1985). Similarly, an individual's mug shot photo is a matter of public record not subject to constitutional protection. Paul v. Davis, 424 U.S. 693, 712-714 (1976). Moreover, information contained in a police report is not confidential information subject to constitutional protection. Scheetz v. Morning Call, Inc., 946 F.2d at 207.

In the instant case, Plaintiff has not alleged a violation of his constitutional right to privacy. Plaintiff's Complaint contains no allegations relating to the publication of confidential or personal information. Plaintiff's Complaint alleges only that Defendant allowed Plaintiff's mug shot photo to be published and that Defendant was responsible for the misuse of information contained in Plaintiff's police records. The Constitution does not protect this kind of information. Indeed, the publication of such information has long been considered a

fundamental aspect of our legal system. As the Third Circuit recently noted, "our law has always insisted on public indictment, public trial and public imposition of sentence, all of which necessarily entail public dissemination of information about the alleged activities of the accused..." E.B. v. Verniero, 119 F.3d at 1101.

In E.B. v. Verniero, the Third Circuit recognized that "[i]n order to provide members of the public with an opportunity to take steps to protect themselves, the government has traditionally published appropriate warnings about a range of public hazards." Id. These warnings will often include information about a particular individual who may pose a risk to the community:

Posters warning that a pictured individual is abroad in the community and to be regarded as armed and dangerous come most readily to mind. But there are others as well. The state has traditionally, for example, posted quarantine notices when public health is endangered by individuals with infectious diseases... Significantly, these warnings communicate not only facts about past events but also the fact that a public agency has found a significant future risk based on those events. Whenever these state notices are directed to a risk posed by individuals in the community, those individuals can expect to experience embarrassment and isolation. Nevertheless, it is generally recognized that the state has a right to issue such warnings...

Id.

In sum, Plaintiff's allegations regarding the publication of information from police records and the publication of his mug shot photo do not implicate his constitutional right to privacy and therefore do not state a cause of action under § 1983.

Accordingly, the Court will dismiss Counts One and Two of Plaintiff's Complaint. Plaintiff's allegations of involuntary transfer, defamation and breach or privacy do not state a constitutional claim cognizable under § 1983.

Plaintiff's Claim Under 42 U.S.C. § 1985(3)

_____Count Three of Plaintiff's Complaint alleges that Defendants conspired to deprive him of equal protection of the laws in violation of 42 U.S.C. § 1985(3).

42 U.S.C. § 1985(3) provides:

If two or more persons in any State or Territory conspire... for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws... the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation against any one or more of the conspirators.

In its recent opinion, Lake v. Arnold, 112 F.3d 682 (3d Cir. 1997), the Third Circuit set forth the requisite elements of a claim under § 1985(3). A plaintiff alleging a claim under § 1985(3) must allege: (1) a conspiracy; (2) motivated by a racial or class based discriminatory animus, and designed to deprive a person or class of persons to equal protection of the laws; (3) an act in furtherance of the conspiracy; and (4) an injury to person or property or a deprivation of a right or privilege accorded to a United States citizen. Id. at 685.

Section 1985(3) is intended to protect "those discrete and insular minorities who have traditionally borne the brunt of

prejudice in our society." Id. at 687. Accordingly, the Supreme Court has strictly construed the requirement of a racial or class based discriminatory animus, rejecting, for example, the idea of a commercial or economic prejudice as a class based animus for purposes of § 1985(3). United Brotherhood of Carpenters and Joiners of America, Local 610 v. Scott, 463 U.S. 825 (1983).

In the instant case, Plaintiff's Complaint fails to allege the requisite elements of a claim under § 1985(3). Plaintiff's Complaint does not allege that Defendants' conspiracy was motivated by a racial or class based animus. Indeed, the Complaint does not allege that Plaintiff belongs to a racial or class based minority group which could claim the protections of § 1985(3). Accordingly, the Court will dismiss Count Three of Plaintiff's Complaint.

Conclusion

For the reasons stated above, the Court will grant Defendants' Motion to Dismiss and will therefore dismiss Plaintiff's Complaint.

An appropriate Order follows.