

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

CHARMAINE P.C. MCCOULLUM	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION
	:	
v.	:	NO. 97-5942
	:	
CITY OF PHILADELPHIA DISTRICT	:	
ATTORNEY'S OFFICE, DOMESTIC	:	
UNIT, INCLUDING INVESTIGATING	:	
OFFICER, P.O. GORMELY	:	
	:	
Defendants.	:	

MEMORANDUM -ORDER

I. Procedural History

After this court's grant of plaintiff's pro se motion to proceed in forma pauperis, the plaintiff initiated a pro se civil rights action, pursuant to 42 U.S.C. § 1983. On September 24, 1997, the plaintiff moved this court to have the case transferred to a different Judge. In the same motion, plaintiff also requested appointment of counsel. This Court denied the motion to transfer, due to plaintiff's failure to set forth proper grounds upon which the motion could be granted. Furthermore, this Court denied the motion requesting appointment of counsel, because there is no provision for the court-ordered appointment of counsel in non-prisoner, pro se, civil rights cases in the Eastern District of Pennsylvania.

Subsequently, plaintiff moved to file an amended complaint naming additional defendants. On December 16, 1997, the motion to amend was denied without prejudice. In

denying the motion, this Court granted the plaintiff leave to file an amended complaint, clearly and coherently alleging claims against any parties sought to be joined in this action, pursuant to Fed. R. Civ. P. 15(a). Plaintiff then filed a complaint alleging Slander, Harassment, Mental Abuse, Loss of Employment, Defamation, “Denial of Equal Protection of Laws,” “False Accusation or Arrest,” and “Denial of Life, Liberty, and the Pursuit of Happiness.” In response, Defendant Gormely filed a motion pursuant to Fed. R. Civ. P. 12(e), seeking a More Definite Statement. On April 16, 1998, this court granted defendant’s unopposed 12(e) Motion and ordered plaintiff to file a concise and definite statement of the complaint within ten days of the Order. Plaintiff then moved the Court for an extension of time to file a more definite statement and this court granted the request, giving plaintiff an additional ten days to respond. Plaintiff filed a timely amended complaint on May 06, 1998.

On July 20, 1998, defendant Police Officer Gormely moved this Court to dismiss plaintiff’s claim, pursuant to Fed. R. Civ. P. 12(b)(6), for failure to state a claim upon which relief can be granted. While defendant’s motion to dismiss was pending, plaintiff filed a motion requesting to delay this case because of her imprisonment. She also moved to amend the complaint at that time. Due to plaintiff’s incarceration and resultant inability to proceed with this case, the Court ordered this case stayed and placed in civil suspense. At that time, the court took the defendant’s motion to dismiss under advisement and ordered it continued until the case was removed from civil suspense.

On September 3, 1998 plaintiff filed another motion to amend her complaint and moved this Court to deny defendant’s motion to dismiss the complaint. Recognizing that plaintiff had been released from incarceration and was actively pursuing the case, this Court removed the case

from civil suspense on September 30, 1998. At that time, both parties were granted leave to file citation to additional authority with respect to the pending motion to dismiss. In addition, the plaintiff's motion to deny defendant's motion to dismiss was construed as plaintiff's response to the motion to dismiss. The Court also dismissed the plaintiff's motion to amend for failure to set forth the amendment.

Presently before the court is defendant Police Officer Gormely's Motion to Dismiss, pursuant to Fed. R.Civ. Proc. 12(b)(6). Upon consideration of defendant's motion and plaintiff's pro se response thereto, and for the reasons stated below, the motion will be granted in part and denied in part.

II. Factual Background

In 1994, Vernon Pitts was arrested in connection with a domestic dispute involving the plaintiff. After Mr. Pitts' arrest, Police Officer Gormely was assigned to investigate the domestic matter for the Philadelphia District Attorney's Office. Officer Gormely conducted the investigation and then submitted his findings to the District Attorney's Office.

In the amended complaint, the plaintiff alleges that the Philadelphia District Attorney's Office and Police Officer Gormely violated her constitutional rights. Specifically, plaintiff alleges that Officer Gormely obstructed justice by making contact with plaintiff's employers and friends for the purpose of forcing plaintiff to drop charges against Mr. Vernon Pitts. The amended complaint further alleges that defendant Gormely obstructed justice by delivering false, altered, and bias[ed] document[s] to the Court, in an effort to destroy the plaintiff's reputation. Based on plaintiff's assertions, we construe plaintiff's claim to be brought under 42 U.S.C. § 1983.

III. Legal Standard

A court may dismiss a complaint for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) only if it is clear that no set of facts could be proven that would entitle the plaintiff to relief. Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1409 (3d. Cir 1991). In the context of a 12(b)(6) motion, the defendant carries the burden of establishing that no claim has been presented. Id. When evaluating a 12(b) (6) motion, the Court must accept all allegations in the complaint as true, construing all reasonable inferences that can be drawn from those allegations in favor of the plaintiff. Rocks v. City of Philadelphia, 868 F.2d 644, 645 (3d Cir. 1989). Furthermore, because plaintiff proceeds pro se, the complaint should be liberally construed and held to “less stringent standards than formal pleadings drafted by attorneys.” Haines v. Kerner, 404 U.S. 519, 521, 92 S.Ct. 594, 596 (1972). These well established principles guide our analysis of the present motion.

IV. Discussion

Section 1983 is not a source of substantive rights, but provides a remedy against state officials for violations of constitutional rights.¹ Morse v. Lower Merion School District, 132 F.3d 902, 906 (3d Cir. 1997). When determining the merits of a section 1983 claim, the Court must decide (1) whether the conduct complained of was committed by a person acting under color of state law; and (2) whether the conduct deprived the complainant of rights secured under the

¹ Section 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the untied States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. 42 U.S.C. § 1983 (1994).

Constitution or other federal laws. Sameric Corp. of Delaware, Inc. v. City of Philadelphia, 142 F.3d 582, 590 (3d Cir. 1998), citing, West v. Atkins, 487 U.S. 42, 48, 108 S.Ct. 2250, 2254-55 (1988).

In his motion to dismiss, defendant Gormely argues that the plaintiff's claims against him do not deprive her of any rights and privileges under the Constitution or laws of the United States. Therefore, plaintiff's claims do not rise to the level of a section 1983 violation. In the complaint, the plaintiff alleges that Officer Gormely obstructed justice by making contact with her employers and friends for the purpose of forcing her to drop charges against Mr. Vernon Pitts. Construing the complaint liberally in favor of the pro se plaintiff, this Court finds that police investigation, including interviews with employers and friends of a complainant in a domestic violence matter, does not, by itself, deprive the complainant of rights protected by the constitution. Thus, as to Police Officer Gormely's investigations involving plaintiff's employers and friends, plaintiff has failed to set forth a claim upon which relief can be granted.

Alternatively, this Court cannot dispose of plaintiff's allegation that defendant Gormely delivered false, altered, and bias[ed] document[s] to the Court, in the same manner. Although the complaint is not a model of clarity, this Court acknowledges the fact that delivery of false, altered documents to a Court may indeed violate a constitutionally protected right. Therefore, final disposition of this portion of plaintiff's complaint should occur at summary judgment or trial.

For the reasons stated above, defendant's motion to dismiss, as it relates to his investigation of plaintiff's employers, friends, and associates is granted. The motion to dismiss, with regard to plaintiff's allegation that defendant Gormely obstructed justice by delivering false, altered, and bias[ed] document[s] to the Court, is denied. An appropriate Order follows.

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UNIT, INCLUDING INVESTIGATING	:	
OFFICER, P.O. GORMELY	:	
	:	
Defendants.	:	

ORDER

AND NOW on this 2nd day of November, 1998, upon consideration of Defendant Police Officer Gormely's Motion to Dismiss, pursuant to Fed. R. Civ. P. 12(b)(6), and Plaintiff's response thereto, it is HEREBY ORDERED that:

1. The Motion to Dismiss, with regard to plaintiff's allegation that defendant Gormely obstructed justice by delivering false, altered, and bias[ed] document[s] to the Court, is DENIED.
2. The Motion to Dismiss, as it relates to the plaintiff's allegations that Officer Gormely obstructed justice by making contact with plaintiff's employers and friends for the purpose of forcing plaintiff to drop charges against Mr. Vernon Pitts, is GRANTED.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.