

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

ERNESTINE TAYLOR,
Plaintiff,

v.

COUNTY OF BERKS, et al.,
Defendants.

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CIVIL ACTION

No. 03-0002

MEMORANDUM AND ORDER

Schiller, J.

September 2, 2003

Plaintiff Ernestine Taylor brings suit under 42 U.S.C. § 1983 alleging constitutional violations in connection with the warrantless entry into her home of several law enforcement officers. Presently before the Court are Defendant County of Berks District Attorney's Narcotics Enforcement Team's and Defendant Pennsylvania Bureau of Narcotics Investigation's motions to dismiss.

I. BACKGROUND

Plaintiff's original Complaint asserted claims against various governmental units and police agencies, as well as unnamed individual state, county, and local law enforcement agents. After significant procedural wrangling among the parties, the Court issued an Order on July 10, 2003, permitting Plaintiff to file an amended complaint but prohibiting her from amending the Complaint to insert names for the unnamed individual defendants. The Order also noted that Plaintiff's only remaining viable claims appeared to be *Monell* claims against the relevant city and county governments.

In her Amended Complaint, Plaintiff named as defendants, inter alia, the Pennsylvania

Bureau of Narcotics Investigation (“BNI”), unnamed BNI agents (“BNI John Does”), the County of Berks, the County of Berks District Attorney’s Narcotics Enforcement Team (“DANET”), and unnamed DANET agents (“DANET John Does”).¹ With the exception of Berks County, all of the above-named defendants have filed motions to dismiss the claims against them. As discussed below, the Court now grants each of these motions and dismisses Plaintiff’s claims against BNI, the BNI John Does, DANET, and the DANET John Does.

II. DISCUSSION

A. BNI

BNI has moved to dismiss the claims against it on the grounds that the Eleventh Amendment bars § 1983 claims against state agencies. It is clear that suits brought under § 1983 against such agencies are barred by the Eleventh Amendment. *Will v. Mich. Dep’t of State Police*, 491 U.S. 58 (1989) (upholding dismissal of § 1983 suit against state law enforcement agency and individual agents); *Blanciak v. Allegheny Ludlum Corp.*, 77 F.3d 690, 697 (3d Cir. 1996) (upholding dismissal of § 1983 suit against state employment agency). Plaintiff argues, however, that BNI has waived its sovereign immunity defense by failing to raise the defense until this stage in the proceedings. Plaintiff’s argument is frivolous, for “a defendant may raise the defense of sovereign immunity at any time in the absence of an explicit waiver.” *In re Hechinger Inv. Co. of Del.*, 335 F.3d 243, 251 (3d Cir. 2003); *see also Edelman v. Jordan*, 415 U.S. 651, 677-78 (1974) (holding that Eleventh Amendment immunity defense “sufficiently partakes of the nature of a jurisdictional bar” such that

¹ Other Defendants include the City of Reading, the Reading Chief of Police, and individual unnamed Reading police officers.

defense is not waived by defendant's failure to raise it at trial). Thus, given that the State has not explicitly waived its sovereign immunity, the Eleventh Amendment compels dismissal of Plaintiff's claims against BNI.²

B. BNI John Does

BNI argues that the BNI John Does must be dismissed from the case under this Court's Order of July 10, 2003. That Order prohibited Plaintiff from amending her complaint to insert names for the unnamed individual defendants on the grounds that such individuals had not been, and could not be, served with timely process. In effect, the Order terminated the case against the BNI John Does, none of whom were properly served. Therefore, pursuant to this Court's Order of July 10, 2003, Defendant's motion to dismiss the case against the BNI John Does is granted.

C. DANET and DANET John Does

Similarly, the County of Berks has moved to dismiss all claims against DANET and the DANET John Does pursuant to this Court's Order of July 10, 2003. Defendant correctly argues that this Order required Plaintiff to proceed against the County alone, rather than against DANET and the DANET John Does.³ Even Plaintiff agrees that, under the Order, "all claims against DANET

² Defendant also notes that this Court is not required to address Defendant's sovereign immunity defense prior to deciding the case on the merits. While this is a correct statement of law, *see Hechinger*, 335 F.3d at 251, the Court finds the sovereign immunity issue to be outcome-determinative with regard to BNI and therefore addresses the issue at the present time.

³ The July 10, 2003 Order noted that Plaintiff did not need to change the caption on her amended complaint because that caption named as a defendant "COUNTY OF BERKS, a political subdivision of the COMMONWEALTH OF PENNSYLVANIA (DISTRICT ATTORNEY'S NARCOTICS ENFORCEMENT TEAM/DANET)." The Court believes that

and/or the individual detectives are [*Monell*] claims against the County of Berks.” (Pl.’s Answer to Def.’s Mot. to Dismiss Pl.’s Am. Compl. at 2.) Thus, there is no real dispute among the parties regarding DANET and its agents—they are no longer defendants in this lawsuit. Accordingly, Defendant’s Motion to dismiss the case against DANET and the DANET John Does is granted.

III. CONCLUSION

For the foregoing reasons, the Court grants Defendants’ motions to dismiss as to BNI, the BNI John Does, DANET, and the DANET John Does. An appropriate Order follows.

this caption clearly named the County, rather than DANET, as a defendant. Nonetheless, DANET appears to believe that the caption refers to DANET itself, thus giving rise to the instant motion to dismiss.

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ORDER

AND NOW, this day of **September, 2003**, upon consideration of the Motions to Dismiss Plaintiff’s Amended Complaint by Defendants County of Berks and the District Attorney’s Narcotics Enforcement Team and by Defendant Commonwealth of Pennsylvania Office of Attorney General’s Bureau of Narcotics Investigation, and the responses thereto, it is hereby **ORDERED** that:

1. Defendant County of Berks’s Motion to Dismiss Defendants DANET and Individual Detectives and “John Does” of DANET (Document No. 37) is **GRANTED**.

2. Defendant BNI’s Motion to Dismiss Defendant BNI and individual “John Does” of BNI (Document No. 38) is **GRANTED**.

BY THE COURT:

Berle M. Schiller, J.