

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

KATHLEEN JOINES, Plenary : CIVIL ACTION  
Guardian of the Person and :  
the Estate of Sean Joines :  
v. :  
: :  
TOWNSHIP OF RIDLEY, et al. : NO. 04-03430-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

September , 2004

Plaintiff is the guardian for a mentally handicapped adult who was arrested and jailed for public intoxication, and allegedly suffered severe injuries when he attempted to commit suicide by hanging, while in police custody. Plaintiff is attempting to sue the police officers involved in the incident, Ridley Township and various of its officials, and Delaware County and various of its officials. All defendants have filed motions to dismiss plaintiff's complaint, under Rule 12(b)(6).

Many of defendants' arguments might well have merit if they had filed a motion for summary judgment, supported by evidence. But by invoking Rule 12(b)(6), they challenge only the sufficiency of plaintiff's pleading as a pleading, and it obviously contains all requisite allegations.

On the other hand, many of the allegations of the complaint, allegedly predicated upon "information and belief," strain credulity, and might well raise eyebrows under Fed. R.

Civ. P. 11. For example, the assertion that the "Office of the County Solicitor" is a suable entity, and that a township "public safety committee" is a suable entity, seem absurd; and plaintiff may encounter some difficulty in trying to prove that Delaware County is responsible for the alleged failure of township police officers to prevent attempted suicides by persons in their custody. In short, it seems likely that plaintiff's counsel, faced with the imminent expiration of the limitations period for filing suit, cast too wide a net, as a precautionary measure.

In these circumstances, while it is necessary to deny the pending motions to dismiss, plaintiff will be afforded a reasonable opportunity for discovery, following which plaintiff will be required to file an amended complaint which passes muster under Rule 11.

An Order follows.

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          v.                                   :  
  :  
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ORDER

AND NOW, this            day of September, 2004, upon  
consideration of the two motions to dismiss, filed by the  
defendants, and plaintiff's responses, IT IS ORDERED:

1. The defendants' motions to dismiss are DENIED.
2. Plaintiff shall, within 90 days, file an amended  
complaint which provides no basis for the invocation of Fed. R.  
Civ. P. 11.

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John P. Fullam, Sr. J.