

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

MARY PATRICIA ROTH

v.

FRANCES O'BRIEN, et al.

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CIVIL ACTION
NO. 04-2787

O'Neill, J.

November , 2004

MEMORANDUM

Pro se plaintiff Mary Patricia Roth seeks a declaratory judgment and “demands judgment declaring its [sic] rights under the guardianship laws of the State of Pennsylvania.” She has filed what appears to be a 42 U.S.C. Section 1983 civil rights complaint¹ against defendants Ms. Frances O'Brien, John A. Roth, Rev. Francis Menna, Phila. Archdiocese, Atty. Wm. Kelly, Atty. Dominic Jerome, Atty. Dennis Woody, Atty. S. Pritchard, Atty. J. Meyers, Atty. R. Ashby, Atty. G. Freedman, Atty. Wm. Haburcack, M. Markey and James R. Flick. Now before me are the motions to dismiss of S. Pritchard, Gary Freedman, Dominic Jerome, Francis Menna, Phila. Archdiocese, Wm. Kelly, Frances O'Brien, Dennis Woody and James R. Flick. For the reasons stated below, I will grant defendants' motions.

Plaintiff's suit appears to arise out of a dispute surrounding the guardianship of her uncle, Reverend John J. Morley. Plaintiff alleges that she executed an agreement for guardianship of Morley on January 17, 1997. Defendants allege that, in fact, Domenic D. Jerome was appointed guardian of Morley's estate by stipulation approved by the Honorable A. Leo Sereni, President

¹Although plaintiff's civil cover sheet/designation form identifies the instant matter as a civil rights matter it might also be interpreted as a claim of legal malpractice under tort or contract law as to several of the defendants.

Judge of the Court of Common Pleas for Delaware County and dated September 19, 1997. Plaintiff challenges the actions of defendants O'Brien, Roth, Menna, Kelly and the Philadelphia Archdiocese surrounding Morley's financial accounts and medical care. Her claims against defendants Pritchard, Meyers, Jerome, Woody, Haburcack, Markey and Flick appear to relate to their alleged involvement in either the execution of Morley's guardianship or to plaintiff's subsequent attempts to challenge the guardianship arrangement.

In an action under 42 U.S.C. Section 1983, the applicable period of limitations is borrowed from the statute of limitations for personal injury actions in the state where the alleged violations occurred. See, e.g., Wilson v. Garcia, 471 U.S. 261, 275 (1985). In Pennsylvania, personal injury actions are subject to a two-year limitations period. 42 Pa. C.S. § 5524. See also Bougher v. Univ. of Pittsburgh, 882 F.2d 74, 78 (3d Cir. 1989). Plaintiff's civil rights claims are therefore subject to a two year statute of limitations. A Section 1983 cause of action accrues on the date when a plaintiff knew or should have known his or her rights had been violated. See Genty v. Resolution Trust Corp., 937 F.2d 899, 919 (3d Cir. 1991). As it appears from plaintiff's complaint and amended complaint that the majority of the events she complains of took place in 1997,² her claims against defendants O'Brien, Menna, Phila. Archdiocese, Kelly, Woody, Pritchard, Meyers, Ashby, Freedman, Markey and Flick are clearly outside of the limitations

²Plaintiff's only allegations that appear to apply to conduct after 1997 are that : (1) defendant Roth "did not attend the Funeral [of Morley], September 2003;" (2) defendant Jerome "refused to meet with Judge Battle and Plaintiff on [sic] June 2000," and that he "CASHED Security Bons [sic], of Fr. Morley, In January 2000"; and (3) defendant Haburcak "did not complete the job he accepted on October 16, 2003, and has threatened Plaintiff with Court Action." (See Pl's. Am. Compl. ¶¶ 2, 6-a, 6-d, 11, 11-a).

period and must be dismissed.³

Further, Federal Rule of Civil Procedure 8(a)(2) provides that a pleading setting forth a claim for relief must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” A civil rights complaint, like any other civil action, must be pled with sufficient specificity to give “the defendant fair notice of what claim is being pressed against him so that he can make an adequate response.” Loftus v. Southeastern Pa. Transp. Auth., 843 F. Supp. 981, 986 (E.D. Pa. 1994) (citing Conley v. Gibson, 355 U.S. 41, 47 (1957)).

In order to bring suit under 42 U.S.C. Section 1983, plaintiff must allege that a person acting under color of state law deprived her of her constitutional rights. West v. Atkins, 487 U.S. 42, (1988). Plaintiff’s general allegations of civil rights violations are deficient in that they fail to adequately describe the alleged constitutional violations and the involvement of the defendants therein. The defendants are without fair notice to respond to plaintiff’s claims. See Fed. R. Civ. P. 8(a). Plaintiff’s complaint and amended complaint also fail to allege facts or a legal theory upon which I can determine this court’s jurisdiction. Therefore I will dismiss plaintiff’s complaint for failure to state a claim upon which relief may be granted.

An appropriate order follows.

³Plaintiff’s claims against these defendants would also be time barred if I were to interpret them as tort or contract claims. Under Pennsylvania law, a two-year statute of limitations applies to “any . . . action or proceeding to recover damages to injury to person or property which is founded on negligent . . . or otherwise tortious conduct.” 42 Pa. Cons. Stat. § 5524(7). “An action upon an express contract not founded upon an instrument in writing, . . . [a]n action upon a contract implied in law . . . , [and a]n action upon a contract, obligation or liability founded in writing” are governed by a four year statute of limitations under Pennsylvania law. 42 Pa. Cons. Stat. §§ 5525(3), 5525(4), 5525(8).

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ORDER

AND NOW, this day of November 2004, after considering the motions to dismiss of S. Pritchard, Dominic Jerome, Francis Menna, Phila. Archdiocese, Wm. Kelly, Frances O'Brien, Dennis Woody and James R. Flick and all responses thereto, it is hereby ORDERED that:

1. the motion to dismiss of defendant S. Pritchard is GRANTED;
2. the motion to dismiss of defendants Dominic Jerome, Francis Menna, Phila. Archdiocese, Wm. Kelly and Frances O'Brien is GRANTED;
3. the motion to dismiss of defendant Gary Freedman is GRANTED;
4. the motion to dismiss of defendant Dennis Woody is GRANTED;
5. the motion to dismiss of defendant James R. Flick is GRANTED;
6. plaintiff's complaint is DISMISSED with leave to file an amended complaint within thirty days from the date of this order as to any claims against defendants Roth, Jerome, and Haburcak that fall within the limitations period; and
7. defendant William Haburcak's petition for removal to the Court of Common Pleas

of Delaware County is DENIED.¹

THOMAS N. O'NEILL, JR., J.

¹Defendant's petition for removal is denied because plaintiff's complaint was originally filed in this court.