

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

JOHN WILLIAM RITZEL
Plaintiff,

v.

**PENNSYLVANIA SOCIETY FOR THE
PREVENTION OF CRUELTY TO
ANIMALS (SPCA), ET AL.**
Defendants.

CIVIL ACTION NO. 04-2757

MEMORANDUM AND ORDER

Tucker, J.

February ____ , 2005

Presently before this Court is Defendants Pennsylvania Society for the Prevention of Cruelty to Animals (“PSPCA”) and Elizabeth Pennel Hopkins’ (collectively, “Defendants”) Motion to Dismiss (Doc. 4). For the reasons set forth below, upon consideration of Defendants’ Motion, Plaintiff’s Response (Doc. 5) and Defendants’ Reply (Doc. 7), this Court will grant in part and deny in part the Defendants’ Motion to Dismiss.

BACKGROUND

From the evidence of record, taken in light most favorable to the Plaintiff, the pertinent facts are as follows. Plaintiff John Ritzel cared for a variety of animals, many of which were abandoned or abused by others. Specifically, Ritzel possessed a llama, four goats, two sheep, a donkey, a small male pony, a bay thoroughbred mare named “Lilly,” a black standardbred gelding horse, a Shetland bay gelding pony, a large gray mare named “Sundance,” and a white Shetland male pony with some brown color.¹ Pl’s Resp. at 2.

¹Based on inconsistencies in the Complaint and Plaintiff’s Response to the Defendants’ Motion to Dismiss, it is slightly unclear whether the above is an exhaustive list of the animals in Plaintiff’s possession. The Court will assume, for purposes of deciding the instant motion, that

Upon a visit to his rental property in Chester County where the animals were housed, Plaintiff discovered that the sheep he maintained had been shot with “paintballs.” Subsequently, Plaintiff contacted the PSPCA to seek assistance. Defendant Hopkins responded to his call. At all relevant times, Hopkins was acting as an agent of the PSPCA.

Defendant Hopkins visited the location where the animals were housed. During her visit, Hopkins recommended the services of a particular farrier.² Plaintiff declined the use of Hopkins’ recommended farrier because he was already using the services of another farrier to treat the hooves of various animals under his care. Plaintiff alleges that Hopkins, who had previously lauded Plaintiff’s efforts to care for his animals, became accusatory and initiated certain criminal actions against him. Specifically, Plaintiff claims that the Defendants conspired to falsely accuse and criminally prosecute him because he declined to use the services of the recommended farrier, with whom Plaintiff suggests Hopkins was engaged in a “personal relationship.” Compl. ¶8.

On March 7, 2002, Hopkins returned to the property without having received a court order, and took possession of the Plaintiff’s bay thoroughbred mare, “Lilly,” asserting that the horse was in grave danger and in need of immediate medical attention. A search warrant was issued upon the averments of an affidavit prepared by Hopkins on March 11, 2002. Thereafter, on March 13, 2002, Hopkins seized and took possession of all of the animals belonging to Plaintiff, as well as personal property, including halters, blankets and muzzles.³ Compl. ¶13. On

the above-listed animals were in Plaintiff’s possession.

²A farrier is defined as “one who shoes horses.” THE AMERICAN HERITAGE DICTIONARY (4th ed. 2000).

³Plaintiff states that his personal property was never returned.

that same date, Hopkins requested that Plaintiff's black standardbred gelding horse be surrendered to the PSPCA with full restitution for its keeping, pursuant to 18 P.S. §5511(m).

On March 28, 2002, Defendants charged Plaintiff with five violations of 18 P.S. §5511(c) of the Pennsylvania Statutes (the Pennsylvania Anti-Cruelty Law). Subsection (c) is entitled "cruelty to animals." Defendants charged Plaintiff with the following:

(1) deprivation of necessary veterinary care by reason of extreme neglect of equine dental care with respect to the black standardbred gelding horse;

(2) deprivation of necessary veterinary care, including farrier care, by reason of extreme neglect of hooves and a chronic medical condition of laminitis with reference to a bay Shetland type mare, with a demand for surrender of the animal included in the complaint;

(3) deprivation of necessary veterinary care, including farrier care by reason of extreme neglect of farrier care with respect to a black llama;

(4) deprivation of necessary veterinary care, by reason of extreme neglect of farrier care with respect to a bay Shetland type gelding pony . A request for surrender of the animal and full restitution for its safekeeping was included with the charge, pursuant to 18 P.S. §5511(m); and

(5) deprivation of necessary veterinary care, including farrier care by reason of extreme neglect of hooves and a chronic medical condition of laminitis with respect to a white Shetland type male pony with some brown.⁴

During the criminal proceedings, Plaintiff sought the assistance of legal counsel and the assistance of medical professionals to treat him for anxiety and depression. Plaintiff was also

⁴The citation numbers for the violations were P2305248, assigned docket number NT 171 02; P2305464-0, assigned docket number NT 172101; P2305467-3, assigned docket number NT 17302; P2305465-1, assigned docket number NT 17402; and P2305463-6, assigned docket number NT 170-02, respectively.

admitted to the hospital complaining of severe chest pains, allegedly due to threats made by Hopkins on March 7, 2002.

After Plaintiff was charged, Defendant Hopkins agreed to return the animals that presented no evidence of mis-treatment to the Plaintiff, but demanded \$500 to release the identity of the location at which they were being held. Upon payment of the money, Plaintiff was given information about where the gray mare, donkey, llama, goats and sheep were located. Plaintiff retrieved the gray mare, "Sundance," from the location given to him, but the other animals had been moved to another location, allegedly by Hopkins, who refused to release them. Thereafter, Hopkins again seized the gray mare. The day of the seizure, Plaintiff returned to the hospital complaining of chest pains and an inability to breathe.

Plaintiff avers that the animals were offered for sale during the time that they were in the Defendants' possession allowing the Defendants to procure funds for their own use and benefit. However, upon the Plaintiff's demand, Defendants recovered "a few" of the animals. Compl. ¶ 50. Nevertheless, one of the horses has not been returned to Plaintiff.⁵ In addition to the horse that has not been returned and the medical problems described above, Plaintiff claims lost wages and emotional distress caused by the requests of individuals who purchased his animals from the PSPCA to repurchase the animals. Plaintiff seeks damages, including punitive damages, for these alleged injuries.

In November 2002, Plaintiff was found not guilty of all criminal charges filed against him.

⁵The horse that was not returned is referred to as "Lilly," a bay thoroughbred mare.

LEGAL STANDARD

In considering a motion to dismiss under Rule 12(b)(6), the court “must take all the well pleaded allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the pleadings, the plaintiff may be entitled to relief.” Colburn v. Upper Darby Township, 838 F.2d 663, 665-66 (3d Cir. 1988) (citations omitted), cert. denied, 489 U.S. 1065, 109 S. Ct. 1338, 103 L. Ed. 2d 808 (1989); see Rocks v. City of Philadelphia, 868 F.2d 644, 645 (3d Cir. 1989). The court must decide whether “relief could be granted on any set of facts which could be proved.” Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988). A motion to dismiss may be granted only “if 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, 78 S. Ct. 99, 102, 2 L. Ed. 2d 80 (1957).

DISCUSSION

Plaintiff brings the following claims pursuant to 42 U.S.C. §§ 1981, 1983, 1985, 1988, and the First, Fourth, Fifth, Eighth and Fourteenth Amendments of the United States Constitution. Defendants claim that Count I, in part, Count II and Count III should be dismissed. Specifically, Defendants claim that Plaintiff’s § 1983 claims based on alleged violations of the First, Fifth, and Eighth amendments, §§ 1981 and 1985 claims, Plaintiff’s claim under the Dragonetti Act, and the independent claim for punitive damages should be dismissed because the Plaintiff’s Complaint fails to state a claim upon which relief can be granted.

The Court will review each claim in turn.

A. Count I

Defendants first challenge Plaintiff’s claims that the Defendants’ conduct deprived him of his First, Fifth and Eighth Amendment rights in violation of 42 U.S.C. §1983. Section 1983

“imposes civil liability upon any person who, acting under the color of state law, deprives another of the rights, privileges and immunities secured by the Constitution or federal laws.” Serena H. v. Kovarie, 209 F. Supp. 2d 453, 456 (E.D. Pa. 2002). “This statutory provision ‘does not create any new substantive rights, but it provides a remedy for the violation of a federal constitutional or statutory right conferred elsewhere.’” Id. (quoting Doe v. Delie, 257 F. 3d 309, 314 (3d Cir. 2001)).

1. Plaintiff’s First Amendment Claim

Defendants assert that Plaintiff’s First Amendment claim must be dismissed because Plaintiff failed to allege a violation of any of the three generally recognized First Amendment Protections. Defs.’ Mot. at 6. However, Plaintiff states that he asserted his right to free speech when he informed Defendant Hopkins that he did not want to use her farrier. Pl’s Resp. at 5. Plaintiff avers that Hopkins retaliated against him for exercising his right to free speech. Further, Plaintiff alleges that the PSPCA aided Defendant Hopkins in her “vendetta against the Plaintiff who had not abided by her desire to utilize Defendant Hopkins’ choice of farriers.” Compl. ¶11.

To prevail on a First Amendment retaliation claim, the Plaintiff must prove that: (1) he engaged in a constitutionally protected activity, (2) the government responded with retaliation, and (3) the protected activity was the cause of the government’s retaliation. Grimm v. Borough of Norristown, 226 F. Supp. 2d 606, 636 (E.D. Pa. 2002). “With respect to the first element, whether an activity is protected by the First Amendment is a question of law.” Id. In order for speech to qualify as a protected activity under the First Amendment, a plaintiff must show that the speech is a matter of public concern. Id. Speech addresses a matter of public concern when it can be “fairly considered as relating to any matter of political, social or other concern to the

community.” Halstead v. Motorcycle Safety Foundation, Inc., 71 F. Supp. 2d 464, 473 (E.D. Pa. 1999) (quoting Pro v. Donatucci, 81 F. 3d 1283, 1288 (3d Cir. 1996)). Plaintiff has offered no evidence showing that his refusal to use Defendant Hopkins’ recommended farrier was a matter of public concern. At most, what transpired was a purely private dispute between Plaintiff and Hopkins, and therefore, does not qualify as protected activity under the First Amendment. Since Plaintiff has failed to establish the first prong of this analysis, it is unnecessary to discuss the last two. Consequently, this Court will grant Defendants’ Motion to Dismiss Plaintiff’s First Amendment retaliation claim.

2. Plaintiff’s Fifth Amendment Claim

Plaintiff’s Complaint does not specify under which clause of the Fifth Amendment he is seeking relief, although he asserts in his Response to Defendants’ Motion to Dismiss that he is claiming a violation of the Takings Clause. Pl’s Resp. at 4. The Complaint alleges that Hopkins “improperly and illegally” seized Plaintiff’s animals. Compl. ¶36.

A taking within the meaning of the Fifth Amendment occurs when the rightful property, contract or regulatory powers of the government are employed to control rights or property which have not been purchased. Watson v. Abington Township Police Dep’t., 2002 WL 32351171, at *5 (E.D. Pa. Aug. 15, 2002). The Takings Clause itself reads, “[N]or shall private property be taken for public use, without just compensation.” U.S. Const. Amend. V. This Clause applies to the States as well as the Federal Government. Tahoe-Sierra Pres. Council v. Tahoe Reg’l Planning Agency, 535 U.S. 302, 307 (2002).

First, Plaintiff alleges that during the period in which Defendants had possession of his animals, Defendants offered the animals for sale and procured funds from such sales which have been held by Defendants for their own use and benefit. Compl. ¶49. Defendants respond that all

of the animals have been returned and that there is no “taking” because Plaintiff was only temporarily deprived of his property. Defs.’ Reply Br. at 4. Plaintiff’s argument that the Defendants illegally seized his animals without probable cause and profited from that seizure is not properly brought under the Fifth Amendment. Plaintiff does not have a claim under the Takings Clause for property that was seized pursuant to a valid search warrant, held for the duration of a criminal investigation, and later returned. Seay v. United States, 61 Fed. Cl. 32, 35 (Fed. Cl. 2004) (holding there is no taking associated with the retention of property that is ultimately returned); Watson, 2002 WL 32351171 at *4-5.

Conversely, Plaintiff does have a cognizable Fifth Amendment claim regarding his allegedly unreturned mare, “Lilly.” In response to Plaintiff’s allegation that “Lilly” has not been returned, Defendants assert that the mare was not seized pursuant to the search warrant, but surrendered by Plaintiff. Defs.’ Reply Br. at 4 n.1. Given the dispute regarding the circumstances under which “Lilly” came to be in the possession of the Defendants and recognizing that Plaintiff has stated a claim upon which relief could be granted, this Court will allow Plaintiff’s Fifth Amendment takings claim with respect to the unreturned mare to stand.

3. Plaintiff’s Eighth Amendment Claim

Plaintiff claims that Defendants violated his Eighth Amendment right to be free from cruel and unusual punishment in violation of § 1983. Defendants move to dismiss Plaintiff’s Eighth Amendment claim, asserting that no cause of action can be sustained by Plaintiff under the Eighth Amendment because he was never convicted of the offenses charged.

The Eighth Amendment’s prohibition of cruel and unusual punishment applies only to *prisoners* who have been *convicted* of a crime. Ingraham v. Wright, 430 U.S. 651, 671-72 n. 40, 97 S.Ct. 1401, 1412-13 n. 40, 51 L.Ed.2d 711 (1977); Romeo v. Youngberg, 644 F.2d 147, 156

(3d Cir. 1980). The fact that Plaintiff was never convicted of a crime or incarcerated is undisputed. As such, there is absolutely no evidence from which one could find a violation of Plaintiff's Eighth Amendment rights by these Defendants.

Plaintiff alleges that the cruel and unusual punishment in this case was the intentional and malicious seizure of his animals. Pl's Resp. at 7. Plaintiff contends that the law "does not require an actual incarceration to impose a penal sanction which might be considered both cruel and unusual," yet cites nothing persuasive in support this contention. Pl's Resp. at 6. Therefore, Defendants' Motion to Dismiss Plaintiff's Eighth Amendment claim under § 1983 is granted.

4. Plaintiff's 42 U.S.C. §1981 and §1985 claims

Plaintiff has joined the Defendants' Motion to Dismiss his 42 U.S.C. §1981 and §1985 claims. This Court will grant the Defendants' Motion to Dismiss these claims without further discussion.

B. Count II – Dragonetti Act

Defendants move to dismiss Count II of the Complaint: Plaintiff's Dragonetti Act claim. Pennsylvania has codified the tort of malicious use of process at 42 Pa.C.S.A. §§ 8351-8354, commonly referred to as the "Dragonetti Act." The Dragonetti Act is designed to place liability on an individual for the wrongful use of civil proceedings. The relevant language of the statute reads as follows:

A person who takes part in the procurement, initiation or continuation of civil proceedings against another is subject to liability to the other for wrongful use of civil proceedings:

(1) He acts in a grossly negligent manner or without probable cause and primarily for a purpose other than that of securing the proper discovery, joinder of parties or adjudication of the claim in which the proceedings are based; and

(2) The proceedings have terminated in favor of the person against whom they are brought.

42 PA. CONS. STAT. ANN. §8351(a) (2004).

The language of the Dragonetti Act makes clear that it contemplates a cause of action solely for the wrongful use of civil proceedings. The proceedings brought against Plaintiff were all criminal in nature. Plaintiff's attempt to make the probable cause upon which the warrant was issued "evaporate" because Plaintiff was acquitted of the charges filed against him is creative but without merit. Plaintiff's acquittal does not transform criminal proceedings into proceedings which are civil in nature.

Furthermore, Plaintiff's argument that the proceedings were of a "hybrid" nature also fails. Plaintiff avers that the seizure of the animals was not a "part" of the criminal charges. Pl's Resp. at 10-11. However, Plaintiff concedes that a search warrant was issued to search for "[h]orses, ponies, donkey, sheep, goats, illama (sic), bovines and any other animals." Compl. ¶21. Furthermore, Plaintiff concedes that Hopkins took possession of the animals pursuant to the search warrant. Compl. ¶23. Resultantly, Plaintiff himself illustrates that the seizures were not civil in nature. For these reasons, this Court will grant Defendants' Motion to Dismiss Plaintiff's claim under the Dragonetti Act.

C. Count III – Punitive Damages

Lastly, Defendants move to dismiss Plaintiff's claim for punitive damages stating that Pennsylvania law does not recognize an independent cause of action for punitive damages. Plaintiff's claim for punitive damages clearly incorporates by reference paragraphs 1-65 of the Complaint. Compl. ¶66. Therefore, Plaintiff's claim for punitive damages will stand, and Defendants' Motion to Dismiss Count III is hereby denied.

CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss is granted in part and denied in part. The following claims are dismissed for failure to state a claim in accordance with Rule 12(b)(6): (1) Plaintiff's claims under Count I brought pursuant to 42 U.S.C. § 1983 for violations of his First and Eighth Amendment rights; (2) Plaintiff's claims under Count I brought pursuant to 42 U.S.C. §1981 and §1985; and (3) Plaintiff's claims under Count II brought pursuant to 42 Pa. C.S.A. §8351 (Dragonetti Act). The following claims will remain: (1) Plaintiff's § 1983 claim for violations of his Fifth Amendment rights with respect to the unreturned mare; (2) Plaintiff's claims brought pursuant 42 U.S.C. §1988; (3) Plaintiff's claims under the Fourth or Fourteenth Amendments; and (4) Plaintiff's claims under Count III for punitive damages.

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Defendants. |

ORDER

AND NOW, this ____ day of February, 2005, upon consideration of Defendants' Motion to Dismiss (Doc. 4), Plaintiff's Response (Doc. 5) and Defendants' Reply (Doc. 7), **IT IS HEREBY ORDERED AND DECREED** Defendants' Motion to Dismiss is **GRANTED IN PART AND DENIED IN PART**.

IT IS FURTHER ORDERED that:

1. The following claims are **DISMISSED** for failure to state a claim in accordance with Rule 12(b)(6): (1) Plaintiff's claims under Count I brought pursuant to 42 U.S.C. § 1983 for violations of his First and Eighth Amendment rights; (2) Plaintiff's claims under Count I brought pursuant to 42 U.S.C. §1981 and §1985; and (3) Plaintiff's claims under Count II brought pursuant to 42 Pa. C.S.A. §8351 (Dragonetti Act); and
2. The following claims will remain: (1) Plaintiff's § 1983 claim for violations of his Fifth Amendment rights with respect to the unreturned mare; (2) Plaintiff's claims brought pursuant 42 U.S.C. §1988; (3) Plaintiff's claims under the Fourth or Fourteenth Amendments; and (4) Plaintiff's claims under Count III for punitive damages.

IT IS FURTHER ORDERED that Defendants shall file shall file an Answer to the Complaint within twenty (20) days of the date of this Order

BY THE COURT:

Hon. Petrese B. Tucker, U.S.D.J.