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

ROBERT C. ROBINSON and CAROL T. ROBINSON,	:	CIVIL ACTION
Plaintiffs,	:	No. 04-3758
v.	:	
LIMERICK TOWNSHIP, et al.,	:	
Defendants.	:	

MEMORANDUM

ROBERT F. KELLY, S.J. **MARCH 18, 2005**

Presently before this Court is Defendants' Motion to Dismiss the Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). For the reasons that follow, the Motion will be granted.

As the parties appear comfortable with the Court's previous articulation of the background and legal standards applicable to this case, they will not be repeated here but are incorporated by reference.[1] However, a brief procedural history may be helpful in the context of the present motion.

The Robinsons filed the present action on August 6, 2004, alleging constitutional violations and jurisdiction pursuant to 42 U.S.C. § 1983. The two count complaint named causes of action for violations of procedural due process, equal protection, and substantive due process by property deprivation in count one, and a violation of an unspecified liberty interest in count

[1] For a full discussion of the original complaint, see Robinson v. Limerick Township, No. 04-3758, 2005 WL 15469, 2005 U.S. Dist. LEXIS 17 (E.D. Pa. Jan. 4, 2005).

two. Defendants filed their first motion to dismiss the complaint on October 7, 2004. In a Memorandum and Order of January 4, 2005, I concluded that the original complaint failed to state a claim upon which relief could be granted and, therefore, granted the first motion to dismiss. However, as I had concerns that the Robinsons intended to state a claim for First Amendment retaliation and that such a claim may have been substantiated, I granted leave to file an amended complaint.

The Robinsons filed their amended complaint on January 25, 2005. The now four count complaint names the above causes of action, separating the property deprivation claims into separate counts (Counts I, II, and III), and continuing with their deprivation of liberty interest claim, which now names their freedom of speech as an impinged liberty interest (Count IV). In terms of factual allegations, the amended complaint has few significant differences from the original complaint. The Robinsons argue that while the "central story" remains the same, they have included enough extra material required to state substantiated claims within the bounds of notice pleading.

I review the amended complaint under the same standard as the original. Dismissal is appropriate where it clearly appears that the plaintiff has alleged no set of facts that, if proven, would entitle the plaintiff to relief. Conley v. Gibson, 355 U.S. 41, 45-46; Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990). All well pleaded facts in the complaint are accepted as true and are viewed in the light most favorable to the plaintiff. See Holder v. City of Allentown, 987 F.2d 188, 194 (3d Cir. 1993). "[C]onclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss. While facts must be accepted as alleged, this does not automatically extend to bald assertions,

subjective characterizations, or legal conclusions." Gen. Motors Corp. v. New A.C. Chevrolet, Inc., 263 F.3d 296, 333 (3d Cir. 2001).

To substantiate their claim for violations of procedural due process, the Robinsons argue that the state judicial remedies offered separately for each of the Township's alleged attacks upon them are insufficient to address their injury. The Robinsons argue that they are, in fact, the victims of a "shotgun" litigation strategy pursued by the Township in denying their appeal of the cease and desist order and in challenging the preferential tax assessment their property receives. Furthermore, the Robinsons urge that their procedural due process rights have been violated by the Township's abuse of its broadly delegated powers without providing them with additional process to guard against an unlawful deprivation.

Neither argument is persuasive. It remains undisputed that for each and every action taken by the Township a right of appeal exists to the Court of Common Pleas. As a result, there is a full judicial remedy provided for the alleged violations. Furthermore, the Robinsons' reliance on Zinermon v. Burch, 494 U.S. 113 (1990), is misplaced.[2] That case involved a question in which the petitioner would have been left with only common law tort remedies against the alleged violations. There could be no other review of his voluntary commitment. However, in this case, the Robinsons have a direct right of appeal of the administrative decisions and judicial review. Though it may be piecemeal, sufficient process has been provided in this case. See Bello v. Walker, 840 F.2d 1124, 1128 (3d Cir. 1988).

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[2] In Zinermon, the United States Supreme Court held that a mental health professional who accepts the consent of a patient to voluntary commitment, when he knows that the patient is incompetent to give it, violates the patient's due process rights when he does not rely instead upon the involuntary commitment process. Zinermon, 494 U.S. 134-35.

In further support of their claims for a violation of substantive due process, the Robinsons argue that the Township's actions are extreme, egregious, and undertaken with malice. The Robinsons also allege that the supervisors' actions have been taken to perpetuate their terms in office by making decisions intended to garner votes in upcoming municipal elections. The allegations of the amended complaint fail to meet the requirements of the shocks the conscience test as required by United Artists Theatre Circuit, Inc. v. Township of Warrington, 316 F.3d 392 (3d Cir. 2003). They are at best allegations of improper motive, which do not meet the high standard of egregiousness required by this test. A plaintiff must demonstrate much more than an improper motive to shock the conscience. See Dev. Group, LLC v. Franklin Township Bd. of Supervisors, 2004 U.S. Dist. LEXIS 24681, at *46-66 (E.D. Pa. Dec. 7, 2004). It has been suggested that only allegations of outright corruption and bribery by municipal officials are sufficient to meet this standard. Id. at *48-49 (citing Eichenlaub v. Township of Indiana, 385 F.3d 274 (3d Cir. 2004)). It is highly doubtful that allegations of decision making based upon its political expediency shocks the conscience.

The Robinsons' equal protection claim also remains deficient. Although they have alleged the existence of similarly situated parties, an identical farm and the Westmount Soccer Team, the Robinsons have failed to allege facts establishing that there was no rational basis for the differences in treatment. See Highway Materials, Inc. v. Whitemarsh Township, No. 02-3212, 2004 WL 2220974, at *21 (E.D. Pa. Oct. 4, 2004). The Township has reached the conclusion that the Robinsons' property is not a farm. (Am. Compl. ¶ 62). As a result, its decisions to enforce its ordinances against the property, and its decision to challenge the preferential tax assessment the property receives are related to legitimate governmental interests.

Whether the conclusion that the property is not a farm is in error is not a matter for this Court to decide. It lies in the purview of the state courts handling the appeals of the enforcement and assessment matters.

The Robinsons' deprivation of liberty claim must also fail. Although the amended complaint now names the freedom of speech as its deprivation of a protected liberty interest, the amended complaint fails to substantiate the claim. In order to prevail on a First Amendment retaliation claim, a 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). The amended complaint is devoid of allegations establishing that the Township's actions are caused by the Robinsons' political activities. Although full of general allegations of a partisan animus of the supervisor defendants, including vague allegations of spying, the amended complaint fails to show any type of causal relationship. The Robinsons have been active in local politics since 1989 without any type of adverse municipal actions taken against them. The mere fact that the Robinsons are politically active in their community does not, in and of itself, establish that actions taken by the Township are in retaliation for their activities. The claim is, therefore, unsubstantiated.

As a result of the above, I conclude that the amended complaint fails to state a claim upon which relief can be granted. It will, therefore, be dismissed.

An appropriate Order follows.

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ORDER

AND NOW this 18th day of March, 2005, upon consideration of the Defendants' Motion to Dismiss the Amended Complaint (Doc. No. 10), the Response in opposition and the Reply thereto, it is hereby **ORDERED** that the Motion is **GRANTED** and the Amended Complaint is hereby **DISMISSED**.

BY THE COURT:

/s/ Robert F. Kelly
ROBERT F. KELLY Sr. J.