

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

TRACEY FLUELLEN : CIVIL ACTION
 :
 v. :
 :
 OFFICER MICHAEL TIRADO, et al. : NO. 05-2314

MEMORANDUM

Bartle, C.J.

May 4, 2006

Plaintiff Tracey Fluellen filed this action on May 15, 2005 against Michael Tirado, Allison Mankoski, Robert Schwartz, and John/Jane Doe, police officers employed by the Delaware River Port Authority of Pennsylvania and New Jersey ("Port Authority"). She alleges that, as a result of an altercation on June 30, 2003 at the Broadway Station on the Port Authority Transit Corporation ("PATCO") Speedline, the police officers violated her right under the Fourth Amendment to be free from unlawful seizures, namely excessive force and false imprisonment. U.S. CONST. AMEND. IV. She seeks relief pursuant to 42 U.S.C. § 1983. She also asserts state law causes of action for assault and battery, negligence, and gross negligence. On February 22, 2006, plaintiff filed her pending motion to amend her complaint to include additional causes of action against the police officers and to add as a defendant the Port Authority for failure to train and supervise these individual defendants.

The police officer defendants answered the complaint on July 18, 2005. Once a responsive pleading has been served, Rule

15 of the Federal Rules of Civil Procedure allows a plaintiff to amend her complaint "only by leave of court." Fed. R. Civ. P. 15(a). Leave "shall be freely given when justice so requires." Id. Plaintiff's motion to amend, however, was filed after the two-year limitations period applicable to her claims expired. 42 PA. CONS. STAT. ANN. § 5524; N.J. STAT. ANN. § 2A:14-2; Sameric Corp. of Delaware v. City of Philadelphia, 142 F.3d 582, 599 (3d Cir. 1998). Thus, the amendments advanced by plaintiff are barred unless they can be deemed timely under the "relation back" provision of Rule 15(c). Rule 15(c) provides, "An amendment of a pleading relates back to the date of the original pleading when ... the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth ... in the original pleading." Fed. R. Civ. P. 15(c)(2).

In the amended complaint she seeks to file, plaintiff presents the following additional claims¹: (1) in Count II, a cause of action against the police officers for assault and battery, negligence, and gross negligence, pursuant to § 1983; (2) in Count III, a claim against the Port Authority for failure to train and supervise the police officers, pursuant to § 1983; (3) in Count VI, a state law claim against the police officers for intentional infliction of emotional distress; (4) in Count VII, a state law claim against the police officers for false

1. Counts I, IV, and V of the amended complaint have already been alleged in the original complaint as Counts I and II and need not be discussed here.

imprisonment; (5) in Count VIII, a state law cause of action against the police officers for false arrest; and (6) in Count IX, a state law cause of action against the police officers for malicious prosecution. Each of these new claims arises out of plaintiff's confrontation with the police officers on June 30, 2003. Plaintiff may amend her complaint to include Counts VI through IX against the original defendants.

Count II is brought pursuant to § 1983 but alleges violations of state law rights. Section 1983 "is not a source of substantive rights but a vehicle for vindicating rights conferred by the U.S. Constitution or by federal statute." DiBella v. Borough of Beachwood, 401 F.3d 599, 601 (3d Cir. 2005). Actions under § 1983 may not be brought to enforce violations of state law rights. See Kalina v. Fletcher, 522 U.S. 118, 123 (1997); see also DiBella, 401 F.3d at 601. Plaintiff has failed to state a claim upon which relief may be granted in Count II and to allow this amendment would be futile. Foman v. Davis, 371 U.S. 178, 182 (1962).

The final question is whether plaintiff may amend her complaint to include Count III with a claim under § 1983 against the Port Authority for failure to train and supervise the individual defendants. As noted above, it is undisputed the two-year limitations period had expired by the time the pending motion was filed. Under such circumstances plaintiff may only name the Port Authority, as a new party, if three prerequisites are satisfied: (1) the claim in the amended pleading must have

arisen out of the "conduct, transaction, or occurrence" set forth in the original pleading; (2) within 120 days of institution of the action, the party to be brought in by amendment must have received "such notice of the ... action that the party will not be prejudiced in maintaining a defense on the merits"; and (3) within 120 days of institution of the action, the party to be brought in by amendment must have known or should have known that, "but for a mistake concerning the identity of the proper party," the action would have been brought against that party. Fed. R. Civ. P. 15(c)(3). Our Court of Appeals has held that mistake concerning the identity of the party includes not only a misidentification or misnomer but an omission due to lack of knowledge at the time the complaint was filed. Arthur v. Maersk, 434 F.3d 196, 207 n.13, 208-09 (3d Cir. 2006).

We have already determined that the claim in Count III arises out of the same occurrence set forth in the original complaint. Further, the Port Authority does not dispute that it received notice of this action within the requisite time period and would not be prejudiced if required to defend against the claim sought to be asserted.

We are not dealing here with a misnomer. The decision on joinder of the Port Authority turns on whether it should have known that it would have been named a defendant but for the plaintiff's lack of knowledge concerning its identity. Plaintiff cannot satisfy this requirement.

First, plaintiff knew about the identity of the Port Authority from the outset. She admits that at the time she filed her complaint she had no reason to believe that the Port Authority violated any of her rights. It was not until she received subsequent disclosure statements by the defendants during discovery that she allegedly became aware of standard operating procedures and training practices relating to the officer defendants' conduct.

Furthermore, it cannot be said that the Port Authority should have known it would have been sued. While it employed the defendant officers who were involved in the incident with plaintiff, respondeat superior liability has no applicability under § 1983. Monell v. Dep't of Soc. Serv. of City of New York, 436 U.S. 658, 694-95 (1978). The proposed claim for relief against the Port Authority is different in kind from the claims against these individual defendants, who were originally sued. We are not concerned with substituting one party for another or with agency principles. In Arthur, it was common to substitute the United States as the defendant where it was the only proper party in the type of action involved there. While plaintiffs in civil rights cases at times include as a defendant, along with individual police officers, the agency responsible for their training and supervision, the record is barren as to how often this occurs. In any event, unlike the original defendants in Arthur who were the wrong parties, the individual defendants here are the proper parties for plaintiff's § 1983 claims and her

pendant state law claims. We cannot conclude that the Port Authority should have known that it would have been joined in the original complaint absent plaintiff's mistake, that is, her lack of knowledge of the identity of the proper party. Id. at 209. Accordingly, plaintiff may not belatedly amend her complaint after the expiration of the statute of limitations to add the Port Authority as a defendant.

For the reasons set forth, the motion of plaintiff to amend the complaint will be granted in part and denied in part.

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ORDER

AND NOW, this 4th day of May, 2006, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that:

(1) the motion of plaintiff for leave to file an amended complaint to include Counts VI through IX against defendants Michael Tirado, Allison Mankoski, Robert Schwartz, and Officer John/Jane Doe is GRANTED;

(2) the motion is otherwise DENIED; and

(3) plaintiff shall file and serve her amended complaint on or before May 18, 2006.

BY THE COURT:

/s/ Harvey Bartle III

C.J.