

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

RITA WISSERT	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	No. 06-3256
v.	:	
	:	
CORP. JOHN J. QUIGG, et al.	:	
	:	
Defendants.	:	

MEMORANDUM

Presently pending is Defendants’ Upper Merion Township, Upper Merion Police Department, Sgt. Charles Zdroga, Police Officer Toby Fisher and Police Officer Michael Ballman’s (hereinafter “Defendants”) Partial Motion to Dismiss, and Plaintiff’s response thereto. For the reasons stated below, Defendants’ Partial Motion to Dismiss will be granted in part and denied in part.

Factual and Procedural Background

Plaintiff is an adult individual who resides in Norristown, Pennsylvania. Defendant Corp. John J. Quigg is a Pennsylvania State Trooper being sued in his individual capacity. Defendant Upper Merion Township is a municipality located within the Commonwealth of Pennsylvania. Defendant Upper Merion Township Police Department employs police officers and is owned and managed by Upper Merion Township. Defendants Sgt. Charles Zdroga, Michael Ballman and Toby Fisher are police officers for Upper Merion Township.

Plaintiff alleges the following facts in her Amended Complaint. On September 5, 2004 at 1:00am, Plaintiff was a passenger in a truck being driven by Morris Southwick. While the truck was traveling on the Blue Route, Defendant Quigg began following the truck. Instead of pulling

over, Southwick increased the speed of the truck to flee from Defendant Quigg. When Southwick arrived at his King of Prussia apartment, Plaintiff exited the vehicle, sat on a near by hill and began to cry. While Plaintiff cried, Defendants' Ballman and Fisher arrived and demanded identification from the Plaintiff. Plaintiff informed the Officers that her wallet was in the truck. While Plaintiff was in the process of retrieving her wallet from the truck, Defendants Ballman, Fisher, and Police Officer Matt Hansen grabbed, handcuffed and frisked Plaintiff. Plaintiff was then arrested and placed in an Upper Merion Police Department cell until 9:00 am the next morning. According to Plaintiff's Amended Complaint, Plaintiff was charged with public drunkenness and found "not guilty" on December 7, 2004.

Plaintiff's Amended Complaint alleges the following: (1) violation of Plaintiff's Civil Rights pursuant to 42 U.S.C. §1983; (2) false arrest; (3) malicious prosecution; (4) excessive force; and (5) failure to sanction or discipline officers against Defendants Upper Merion Township, Upper Merion Police Department, the Borough of Bridgeport and the Borough of Bridgeport Police Department.

In Defendants' Partial Motion to Dismiss, Defendants assert the following: (1) Plaintiff's claims against the Upper Merion Police Department should be dismissed because the Police Department is not a separate entity under Federal Law; (2) Plaintiff's claim for punitive damages against Defendants Zdronga, Fisher and Ballman are time barred; (3) Plaintiff's claim for punitive damages against Defendants Upper Merion Township, Upper Merion Police Department, Zdronga, Fisher, and Ballman, in their official capacities, is not proper under Federal Law; and (4) Plaintiff's claims for intentional torts are not actionable against the municipal defendants.

In her response, Plaintiff agrees that the claims against Upper Merion Police Department should be dismissed, and that the punitive damages claims should not apply to the municipal defendants. However, Plaintiff argues in her response that the punitive damages claim against Defendants Zdronga, Fisher, and Ballman, in their individual capacities, are not time barred. Plaintiff does not respond as to whether intentional torts are actionable against municipal defendants, or whether the punitive damages claims against Defendants Zdronga, Fisher, and Ballman, in their official capacities, is proper.

Discussion

A court should grant a motion to dismiss for failure to state a claim only if it appears to a certainty that no relief could be granted under any set of facts which could be proved. See Hishom v. King & Spalding, 467 U.S. 69, 73 (1984). When deciding a motion to dismiss, the court must "construe the complaint in the light most favorable to the Plaintiff, and determine whether, under any reasonable reading of the pleadings, the Plaintiff is entitled to relief." Colburn v. Upper Darby Township, 838 F.2d 663, 665-6 (3d Cir. 1988), cert. denied, 489 U.S. 1065 (1989). The Federal Rules of Civil Procedure require notice pleadings in civil proceedings. Fed. R. Civ. P. 8(a) (2006). A unanimous Supreme Court stated that:

[g]iven the Federal Rules simplified standard for pleading, a court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. If the pleading fails to specify the allegations in a manner that provides sufficient notice, a defendant can move for a more definite statement under Rule 12(e) before responding. Moreover, claims lacking merit may be dealt with through summary judgment under Rule 56. The liberal notice pleading of Rule 8(a) is the starting point of a simplified pleading system, which was adopted to focus on the merits of the claim.

Swierkiewicz v. Sorema, 534 U.S. 506 (2002) (emphasis added).

Federal Rule of Civil Procedure 15(c)(2) states that the amendment of a pleading relates back to the date of the filing of the original pleading when the claim or defense asserted in the amended pleading arose out of the same transaction or occurrence set forth in the original pleading.

Under the Pennsylvania Political Subdivision Tort Claims Act (hereinafter “the Act”), municipal defendants and their employees are immune from certain state law tort claims. 42 Pa. C.S.A. §§8541 *et seq.* (2006). Immunity under the Act is subject to two (2) limitations. Id. First, the Act provides eight (8) exceptions to the immunity defense, which include the following: (1) vehicle liability; (2) care, custody or control of personal property; (3) real property; (4) trees, traffic controls and street lighting; (5) utility service facilities; (6) streets; (7) sidewalks; and (8) care, custody or control of animals. Id. Second, individual employees are not immune from liability when they commit an intentional tort. Id.

Analysis

I. Punitive Damages Claim Against Defendants Zdronga, Fisher, and Ballman

Plaintiff’s original Complaint was filed on July 25, 2006, well within the two year statute of limitations. The original Complaint requested “such other relief as appears reasonable and just” from the Defendants. Pl. Compl. P. 8. Plaintiff’s Amended Complaint specifically requested punitive damages from Defendants Zdronga, Fisher, and Ballman. Since both requests for relief relate to the same transaction or occurrence, the Amended Complaint relates back to the date of the filing of Plaintiff’s original Complaint. As such, Plaintiff’s request for punitive

damages from Defendants Zdronga, Fisher, and Ballman is not time barred.

However, punitive damages cannot be recovered from government officials being sued in their official capacity. Gregory v. Chehi, 843 F.2d 111, 120 (3rd Cir. 1988). As such, Plaintiff's request for punitive damages from Defendants Zdronga, Fisher, and Ballman in their official capacities will be dismissed.

II. Intentional Tort Claims against Municipal Defendants

In her Amended Complaint, Plaintiff filed state law claims for false arrest, unlawful imprisonment, and excessive force against the Defendants. Because the above claims do not fall into one of the Act's enumerated exceptions, Plaintiff cannot assert the claims against Upper Merion Township. As such, the state law claims for false arrest, unlawful imprisonment, and excessive force will be dismissed against Upper Merion Township.

Conclusion

For the reasons stated above, Defendants' Partial Motion to Dismiss will be granted as to Plaintiff's claims against the Upper Merion Police Department, Plaintiff's claims for punitive damages against Upper Merion Township, Plaintiff's request for punitive damages against Defendants Zdronga, Fisher, and Ballman in their official capacities, and Plaintiff's intentional tort claims against Upper Merion Township. Defendants' Motion will be denied as to Plaintiff's request for punitive damages against Defendants Zdronga, Fisher, and Ballman in their individual capacities. An appropriate order follows.

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ORDER

Presently pending is Defendants’ Upper Merion Township, Upper Merion Police Department, Sgt. Charles Zdroga, Police Officer Toby Fisher and Police Officer Michael Ballman’s (hereinafter “Defendants”) Partial Motion to Dismiss, and Plaintiff’s response thereto. For the reasons stated, Defendants’ Motion is granted in part and dismissed in part.

AND NOW, this 29th day of December 2006, **IT IS HEREBY ORDERED THAT** Defendants’ Partial Motion to Dismiss is **GRANTED IN PART AND DENIED IN PART**.

IT IS FURTHER ORDERED THAT Defendants’ Motion is **GRANTED** as to the following:

1. Plaintiff’s claims against the Upper Merion Police Department,
2. Plaintiff’s claims for punitive damages against Upper Merion Township,
3. Plaintiff’s request for punitive damages against Defendants Zdronga, Fisher, and Ballman in their official capacities, and
4. Plaintiff’s intentional tort claims against Upper Merion Township.

IT IS FURTHER ORDERED THAT Defendants’ Motion is **DENIED** as to Plaintiff’s request for punitive damages against Defendants Zdronga, Fisher, and Ballman in their individual capacities.

BY THE COURT:

s/ Clifford Scott Green, S.J.
CLIFFORD SCOTT GREEN, S.J.