

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

PRESTON STROMAN and JANICE MYERS : CIVIL ACTION
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: :
v. : :
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: :
LOWER MERION TOWNSHIP, ET AL. : NO. 06-3858

MEMORANDUM

Padova, J.

February 7, 2007

Plaintiffs Preston Stroman and Janice Myers brought this action asserting violations of 42 U.S.C. § 1983, the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1 (“RFRA”), and state law claims of assault, battery, false arrest, false imprisonment, and intentional infliction of emotional distress against Lower Merion Township (“the Township”), the Lower Merion Township Police Department (“the Police Department”), and six Lower Merion police officers. The complaint alleges that on January 31, 2005, Plaintiffs were leaving a laundromat at 61st and Lancaster Avenues in Philadelphia when they were approached by Defendant Police Officers Colletta, Temoyan and Monroe. (Compl. ¶¶ 14-15.) They allege these Officers seized and handcuffed Stroman at gunpoint, pushed him to the ground and detained him despite the fact that he was peaceful and cooperative. (Compl. ¶ 16.) Myers claims she was seized and handcuffed at gunpoint by Defendants Monroe, McGowan and Lane. (Compl. ¶ 17.) Myers additionally asserts that, despite her cries that she had

just had surgery and could not lie on the ground on her stomach, she was forced to do so causing excruciating pain and fear. (Compl. ¶ 18.) Myers claims that Monroe searched her by putting his hands all over her body, “including on her private parts and under her religious garb and undergarments,” even though she had asked to be searched by a female officer. (Compl. ¶ 19.) After being detained in a cell at Lower Merion Police headquarters, for three hours, Plaintiffs were released without charges. (Compl. ¶ 21.) They allege that their arrests were a result of Lower Merion’s pattern, practice and custom of subjecting citizens to unreasonable force, arrest, and prosecution in the absence of probable cause. (Compl. ¶ 23.)

Lower Merion Township Police Department moves to dismiss because it is not a separate entity from the Township. The Township seeks to dismiss the Monell¹ claim, the state law intentional tort claims, and any claim for punitive damages against both it and its officers in their official capacities. All Defendants seek dismissal of the RFRA claim because Myers has not identified how religion is implicated. For the reasons that follow, all claims against the Police Department are dismissed, the intentional tort claims are dismissed against the Township, and the RFRA claim is dismissed in its entirety.

I. LEGAL STANDARD

When deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), a court may look only to the facts alleged in the complaint and its attachments. Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994). The court must accept as true

¹See Monell v. Dept. of Soc. Services, 436 U.S. 658, 691-95 (1978) (holding that municipal liability under 42 U.S.C. § 1983 may not be proven under the respondeat superior doctrine, but must be founded upon evidence that the government unit itself supported a violation of constitutional rights).

all well-pleaded allegations in the complaint and view them in the light most favorable to the plaintiff. Angelastro v. Prudential-Bache Sec., Inc., 764 F.2d 939, 944 (3d Cir. 1985). The court, however, “need not credit a complaint’s ‘bald assertions’ or ‘legal conclusions.’” Cal. Pub. Employees’ Ret. Sys. v. The Chubb Corp., 394 F.3d 126,143 (3d Cir. 2004) (citing Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997)). A Rule 12(b)(6) motion will be granted when a plaintiff cannot prove any set of facts, consistent with the complaint, which would entitle him or her to relief. Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988).

II. DISCUSSION

A. The Police Department

Defendants first assert that the Police Department is not a separate entity from the Township, and thus should be dismissed. We agree. Numerous cases have held that a municipal police department is not a separate legal entity that can be sued apart from the municipality. DeBellis v. Kulp, 166 F.Supp.2d 255, 264 (E.D. Pa. 2001) (“In Section 1983 actions, police departments cannot be sued in conjunction with municipalities, because the police department is merely an administrative arm of the local municipality, and is not a separate judicial entity.”); Pino v. Baumeister, Civ. A. No. 96-5233, 1997 WL 792958 (E.D. Pa. Dec. 24, 1997) (holding that Lower Merion Police Department is not a party subject to suit under § 1983); Dooley v. City of Philadelphia, 153 F. Supp. 2d 628, 637 n.1 (E.D. Pa. 2001); Brown v. City of Philadelphia, Civ. A. No. 97-4737, 1998 WL 372549, at *4 (E.D. Pa. May 20, 1998); Regalbuto v. City of Philadelphia, 937 F.Supp. 374, 377 (E.D. Pa. 1995); Baldi v. City of Philadelphia, 609 F.Supp. 162, 168 (E.D. Pa. 1985); City of Philadelphia v. Glim, 613 A.2d 613, 616 (Pa. Commw. Ct. 1992); Zamichieli v. Stott, Civ. A. No. 96-254, 1999 WL 447311, at *3 (E.D. Pa. July 1, 1999) (“Because all suits, including

those brought under Section 1983, growing out of activities of a department of the City of Philadelphia must be brought in the name of the City of Philadelphia, an action against the Police Department of Philadelphia cannot be maintained.”); but see Williams v. Lower Merion Twp., Civ. A. No. 94-6863, 1995 WL 461246 (E.D. Pa. Aug. 2, 1995) (stating that 53 Pa. Con. Stat. Ann. § 16257, proving that “no such department [of the City of Philadelphia] shall be taken to have had . . . a separate corporate existence, and hereafter all suits growing out of their transactions . . . shall be in the name of the city of Philadelphia,” applies only to the City of Philadelphia and is not pertinent to Lower Merion Township). As Plaintiffs cite no authority to support their contention that a police department can be a separate entity from its municipality, the Police Department is dismissed.

B. Punitive Damages

Defendants next contend that all claims for punitive damages against the Township and the Police Officers in their official capacities must be dismissed because such damages are not recoverable against municipalities under § 1983.² As Plaintiffs concede this point, the claim against the Township is dismissed. See City of Newport v. Fact Concerts, Inc., 453 U.S. 247, 271 (1981) (holding that punitive damages may not be awarded against municipalities under § 1983).

C. The RFRA claim

Defendants argue that the RFRA claim should be dismissed for failure to state a claim upon which relief may be granted. RFRA, 42 U.S.C. § 2000bb-1, provides:

²It should be noted that the Motion seeks dismissal of all punitive damages claims brought against the Police Officers in their official capacities, but does not address the ability to recover punitive damages against the Officers in their individual capacities. The Complaint, however, does not name the Officers in their official capacities, but only seeks punitive damages against them in their individual capacities. Thus, the punitive damages argument is confined to the Township.

(a) Government shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b) of this section.

(b) Exception – Government may substantially burden a person’s exercise of religion only if it demonstrates that application of the burden to the person –

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(c) Judicial relief – A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

Defendants argue that the RFRA count fails to state a claim upon which relieve may be granted because Plaintiff Myers has failed to identify “what religious experience was mandated,” and has failed to specify what religion was implicated. We find that the RFRA claim must be dismissed because the Supreme Court has held the statute unconstitutional, an argument not raised by Defendants, but one that we nonetheless must apply.

In Employment Div., Dept. of Human Resources of Ore. v. Smith, 494 U.S. 872 (1990), the Supreme Court held that the Free Exercise Clause does not inhibit enforcement of otherwise valid laws of general application that incidentally burden religious conduct. This case, in effect, overruled Sherbert v. Verner, 374 U.S. 398, 402-403 (1963) (holding that governmental actions that substantially burden a religious practice must be justified by a compelling governmental interest). Smith, 494 U.S. at 884 (“To make an individual’s obligation to obey [otherwise valid laws of general application] contingent upon the law’s coincidence with his religious beliefs, except where the State’s interest is “compelling”– permitting him, by virtue of his beliefs, ‘to become a law unto himself,’ . . . – contradicts both constitutional tradition and common sense.”) In Smith, the Court ruled that the Free Exercise Clause did not bar Oregon from enforcing its blanket ban on peyote

possession with no allowance for sacramental use of the drug. Following Smith, Congress enacted RFRA.

In City of Boerne v. Flores, 521 U.S. 507, 516 (1997), the Supreme Court held that RFRA, which is “universal” in its coverage, and by its terms applied to all Federal and State law, lacked any Commerce Clause or Spending Clause basis for congressional action. As applied to States and their subdivisions, the Court held that the Act exceeded Congress’ remedial powers under the Fourteenth Amendment. Id., at 532-536. Following City of Boerne, Congress again acted, passing the Religious Exercise in Land Use and By Institutionalized Persons Act, 42 U.S.C. § 2000cc, *et seq.* (RLUIPA). “[I]nvoing federal authority under the Spending and Commerce Clauses, RLUIPA targets two areas: Section 2 of the Act concerns land-use regulation, 42 U.S.C. § 2000cc; § 3 relates to religious exercise by institutionalized persons, § 2000cc-1.” Cutter v. Wilkinson, 544 U.S. 709, 715 (2005) (footnote omitted). Clearly, neither of these provisions apply to Plaintiff’s claim. Accordingly, Myers’ federal civil rights claim based on RFRA is dismissed.

D. The Monell Claims

Defendants also seek dismissal of Plaintiffs’ Monell claim for failure to state a cause upon which relief may be granted. In their Complaint, Plaintiff assert a Monell claim based upon an alleged policy of the Township to tolerate, ratify and be deliberately indifferent to: the use of unreasonable force; excessive force and unlawful arrests; the proper exercise of police powers in violation of the Free Exercise Clause; the monitoring of officers suffering from emotional or psychological problems; the failure to take remedial actions against officers involved in complaints of misconduct; and the failure to follow established policies regarding the use of force and arrest powers. (Compl. ¶ 30.) They go on to assert that the Township “failed to properly sanction or

discipline officers, who are aware of and conceal and/or aid and abet violations of constitutional rights of citizens other (sic, should be “by”) Lower Merion police officers, thereby causing and encouraging Lower Merion Police, including defendants, to violate the rights of citizens such as Plaintiffs.” (Compl. ¶ 31.) The Township argues that the Monell claim is insufficient.

In Monell, the Supreme Court established that municipal liability under 42 U.S.C. § 1983 may not be proven under the respondeat superior doctrine, but must be founded upon evidence that the government unit itself supported a violation of constitutional rights. 436 U.S. at 691-95. Thus, municipal liability attaches only when “execution of a government’s policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury.” Id. at 694. In order to state a claim against a municipality under Section 1983, a plaintiff must allege in the complaint: (1) a policy or custom that deprived him or her of a federally protected right, (2) that the municipality, by its deliberate conduct, acted as the “moving force” behind the alleged deprivation, and (3) a direct causal link between the policy or custom and the plaintiff’s injury. Bd. of the County Comm’rs. v. Brown, 520 U.S. 397, 404 (1997).

The Township argues that the Plaintiffs have failed to allege that it has a policy to condone constitutional violations by its officers; have failed to allege any action by any policymaker; have failed to provide any basis for a finding of defective training; and have failed to allege a causal connection between a training deficiency and their alleged injuries. (Defendants’ Brief at Unnumbered Page 9.) Plaintiffs respond, with no elaboration, that their allegations are sufficient and they are entitled to discovery to flesh them out. (Plaintiffs’ Brief at Unnumbered Page 10.)

Although bare-boned, at this stage in the litigation, we find that the allegations of the Complaint satisfy the pleading requirement for a Monell claim. In ¶ 30 of the Complaint, the

Plaintiffs allege a policy or custom of deliberate indifference to the use of unreasonable force, excessive force and unlawful arrests, as well as a failure to train. In ¶ 31, they appear to plead the “moving force” and causation elements. Although the language of these allegations is somewhat garbled and far from precise, it is sufficient to state a Monell claim. Accordingly, the motion is denied as to this claim.

E. Intentional Infliction of Emotional Distress

Defendants next argue that the emotional distress claim must be dismissed because: (1) as an intentional tort, it cannot be maintained against the municipal defendants; and (2) Plaintiffs have not adequately pled injury as to the individual defendants. Plaintiffs appear to concede that there is no cause of action for emotional distress against the Township,³ but assert they have adequately pled a claim against the others. (Plaintiffs’ Brief at Unnumbered Page 10.)

To state a claim of intentional infliction of emotional distress under Pennsylvania law, the following elements must be alleged: (1) the conduct must be extreme and outrageous; (2) it must be intentional or reckless; (3) it must cause emotional distress; and (4) that distress must be severe.” Hoy v. Angelone, 691 A.2d 476, 482 (Pa. Super. 1997), citing Hooten v. Pennsylvania College of Optometry, 601 F. Supp. 1151, 1155 (E.D. Pa. 1984); Restatement (Second) of Torts §46 (1979). However, the Pennsylvania courts have allowed recovery in only very egregious cases. Hoy, 691 A.2d at 482 (holding that the existence of a sexually hostile work environment does not establish the

³Plaintiffs do not discuss the Township in their response to this aspect of the Motion, and only argue the claim should not be dismissed against the individual defendants. They also state that they do not seek to assert intentional tort claims against the Township. Accordingly, the claim is dismissed as to the Township. See Latkis v. York, 258 F. Supp. 2d 401, 405 (E.D. Pa. 2003) (holding that intentional infliction of emotional distress is an intentional tort not actionable against a municipality).

requisite outrageousness to recover under a claim of intentional infliction of emotional distress); D'Ambrosio v. Pennsylvania Nat'l. Mut. Cas Ins. Co., 431 A.2d 966 (Pa 1981) (holding that an insurer's bad faith could not state claim); Forster v. Manchester, 189 A.2d 147 (Pa. 1963) (holding it was not outrageous conduct to follow an accident victim to conduct surveillance to determine the extent of the injury); Mullen v. Suchko, 421 A.2d 310 (Pa. Super. 1980) (holding that broken promise of financial support from lover was not extreme and outrageous); cf. Papieves v. Lawrence, 263 A.2d 118 (Pa. 1970) (holding that concealing a child's death and withholding body from parents stated claim). Extreme and outrageous conduct is "defined as conduct which is so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." Johnson v. Caparelli, 625 A.2d 668, 672 (Pa. Super. 1993).

Accepting as true all of the well pled allegations, we cannot conclude that the Plaintiffs could not prove any set of facts consistent with the Complaint which would entitle Plaintiffs to relief under the emotional distress claim. Plaintiffs assert that they were stopped, searched, arrested without probable cause, and held in custody for three hours without being charged. Myers adds that, after informing the Officers of recent surgery, she was forced stomach-down on the pavement and indecently treated, causing her great pain.

The validity of an emotional distress claim depends in part on the depravity and egregiousness of Defendants' conduct. Such determination is fact intensive and, under the circumstances set forth in this Complaint, better addressed as a matter of law under Rule 56 or Rule 50. We deny the Motion in this regard.

F. Other Intentional Torts

Finally, Defendants argue that Plaintiffs' other state law intentional tort claims must be dismissed against the Township and the assault claim must be dismissed against the other Defendants because the Plaintiffs have not identified any specific officer who had any physical contact with them. Plaintiffs respond that they do not seek to assert intentional tort claims against the Township. (Brief at Unnumbered Page 11.) Accordingly, that portion of the motion is granted as unopposed. As to the assault claim, Plaintiffs argue that, under federal notice pleading, they do not have to state their claim with any further specificity. They add, however, that they have stated that Myers was assaulted by Officer Monroe. They make no identification of the Officers who allegedly assaulted Plaintiff Stroman.

We find that the Complaint is not deficient as to the assault claim against Stroman. Notice pleading requires only a "short and plain statement" of the grounds upon which jurisdiction, and the plaintiffs' entitlement to relief, are based. Fed. R. Civ. P. 8(a). We are to construe complaints so "as to do substantial justice." Fed. R. Civ. P. 8(f). "Plaintiffs may be unaware of the identities and roles of relevant actors and . . . unable to conduct a pre-trial investigation to fill in the gaps. But by itself, this lack of knowledge does not bar entry into a federal court." Alston v. Parker, 363 F.3d 229, 233 n.6 (3d Cir. 2004) (holding that inmate's § 1983 claim is not subject to heightened pleading requirements). Notice pleading and the liberal discovery rules even allow for the naming of fictitious defendants as stand-ins until the identities can be learned through discovery, id. (citing Hindes v. FDIC, 137 F.3d 148, 155 (3d Cir. 1998)), with the plaintiff "given an opportunity through discovery to identify the unknown defendants, unless it is clear that discovery would not uncover the identities, or that the complaint would be dismissed on other grounds." Alston at 233 n.6 (quoting Gillespie

v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980)). As there is no suggestion that Plaintiffs will never be able to discover the identity of the officer who allegedly assaulted Stroman, the claim must be permitted to proceed.

G. Conclusion

In conclusion, the motion to dismiss is granted as to all claims against the Lower Merion Police Department, all punitive damages claims against the Township, the RFRA claim, and all state law intentional tort claims against the Township. The claims remaining in the action are: the assault, battery, false arrest, false imprisonment, intentional infliction of emotional distress and § 1983 claims (including punitive damages) against the individual Officers, and the Monell claim against the Township for compensatory damages. An appropriate Order follows.

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ORDER

And now, this 7th day of February, 2007, upon consideration of Defendants' Motion for Partial Dismissal Pursuant to Fed. R. Civ. P. 12(b)(6) (Docket Entry # 5), Plaintiffs' Memorandum of Law in Response thereto (Docket Entry #10), and Defendants' Reply to Plaintiffs' Response (Docket Entry # 12), **IT IS HEREBY ORDERED** that said Motion is **GRANTED IN PART AND DENIED IN PART** as follows. The Motion is **GRANTED** as to:

1. All claims against the Lower Merion Police Department.
2. All punitive damages claims against Lower Merion Township.
3. Plaintiffs' First Cause of Action, to the extent it seeks to state a claim pursuant to the Religious Freedom Restoration Act.
4. All state law intentional tort claims against Lower Merion Township.

The Motion is **DENIED** in all other respects.

BY THE COURT:

/s/ John R. Padova

John R. Padova, J.