

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

ESTATE OF GERALDINE EMILY : CIVIL ACTION
MOSER, JOSEPH JUDE OLIVER, :
ADMINISTRATOR, : NO. 98-3525
Plaintiff, :
v. :
EXETER TOWNSHIP BOROUGH :
COUNCIL MEMBERS, JAMES :
LODER, TED LIS and BRIAN HOUP, :
Defendants. :

BUCKWALTER, J.

September 4, 1998

M E M O R A N D U M

Plaintiff, Joseph Jude Oliver ("Oliver"), in his capacity as administrator for the estate of his deceased girlfriend, Geraldine Emily Moser ("Moser"), has filed pro se the instant civil rights action alleging violations of 42 U.S.C. §§ 1983 and 1985.¹ Presently, before the court are a motion to dismiss submitted by defendants, the Exeter Township Council

¹ Oliver also claims that defendants committed perjury and obstructed of justice in violation of "18 U.S.C. Criminal Code." (Complaint at ¶ 6). Title 18, Chapter 73 of the United States Code entitled "Obstruction of Justice", 18 U.S.C. § 1501 et seq., and Chapter 79, entitled "Perjury", 18 U.S.C. § 1621 et seq., are both criminal statutes, enforceable only by the United States Department of Justice. As no private right of action exists under either provision, Oliver's claims based on allegations, scattered throughout his complaint, that defendants committed perjury and/or obstructed justice are dismissed.

Members ("Council Members), Police Officer, James Loder ("Loder") and Supervising Police Officer, Ted Lis ("Lis") and a motion to dismiss submitted by defendant, Berks County Deputy Coroner, Brian Houpp ("Houpp"). For the following reasons the motions will be granted.

I. Background²

On November 28, 1997 Moser was involved in a serious automobile accident at the intersection of St. George Place and Gibraltar Road in Exeter, Pennsylvania, when an oncoming vehicle, driven by Jill Marie Osterling ("Osterling") failed to stop at a stop sign. (Complaint at ¶'s 13 and 25). Moser sustained severe injuries to her head, neck, left hand, back and right leg. (Complaint at ¶ 15). Recovery was extremely slow and painful and Moser was prescribed heavy doses of narcotic drugs. (Complaint at ¶ 16). On the morning of December 19, 1997 Oliver, who resided with Moser, called 911 in a panic, stating "[h]urry up, [h]urry, I can't handle it my girlfriend committed suicide she hung herself, she might still be alive, send help . . ."

(Complaint at ¶ 42). Despite his initial reaction, Oliver now claims that Moser "suffered a wrongful death" as a result of her extensive injuries and medication. (Complaint at ¶ 17). In his capacity as Deputy Coroner of Berks County, defendant Houpp signed

² All background information is derived from Oliver's complaint.

Moser's death certificate concluding that her cause of death was suicide by strangulation. (Complaint at ¶ 47).

II. Legal Standard

A motion to dismiss pursuant to Rule 12(b)(6) tests the legal sufficiency of the complaint. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Under Rule 12(b)(6), the Court must determine whether the allegations contained in the complaint, construed in the light most favorable to plaintiff, show a set of circumstances which, if true, would entitle him to the relief requested. Gibbs v. Roman, 116 F.3d 83, 86 (3d Cir. 1997)(citing Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996)). Dismissal is appropriate only when it clearly appears that the plaintiff has alleged no set of facts which, if proven, would entitle him to relief. Conley, 355 U.S. at 45-46; Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990).

III. Discussion

A. Section 1983

To maintain a cause of action under 42 U.S.C. § 1983 a plaintiff must establish: 1) the alleged conduct was committed by a person acting under color of state law; and 2) the conduct deprived the plaintiff of rights, privileges and immunities secured by the Constitution or laws of the United States. See e.g., Hicks v. Feeney, 770 F.2d 375, 377 (3d Cir. 1985). Section 1983 is not a source of substantive rights; it only provides "a

method for vindicating federal rights elsewhere conferred.”
Graham v. Connor, 490 U.S. 386, 393-94 (1989). Consequently,
Section 1983 does not provide “a right to be free of injury
wherever the State may be characterized as the tortfeasor” -- the
plaintiff must show a deprivation of a federally protected right.
Paul v. Davis, 424 U.S. 693, 701 (1976).

Additionally, Section 1983 claims against a
municipality or its agency must allege: (1) the existence of a
custom or policy of a municipality which is of such long standing
to have the force of law, and (2) that one of the municipality's
employees violated the plaintiff's civil rights while acting
pursuant to that policy or custom. See Monell v. Department of
Social Services, 436 U.S. 658 (1978). Liability of a municipal
defendant cannot be established simply upon a respondeat superior
theory. See Id.; Jett v. Dallas Independent Sch. Dist., 491
U.S. 701 (1989).

Oliver's Section 1983 claims are based on defendants'
alleged violations of the Due Process and Equal Protection
clauses of the Fourteenth Amendment. (Complaint at ¶ 6).
Because, however, Oliver is proceeding pro se his pleadings will
be liberally construed. See Haines v. Kerner, 404 U.S. 519, 520
(1972).

1. Claims against the Council Members

As to the Council Members, Oliver alleges the following. From November 1994 until the date of Moser's accident, Council Members engaged in a "total pattern of official misconduct" in that they were aware that because of a hazardously high speed limit, 35 miles per hour, the intersection of Gibraltar Road and St. George Place had been the sight of numerous traffic accidents. (Complaint at ¶'s 7, 8 and 12). Yet, in deliberate indifference to the safety of passengers and pedestrians, Council Members refused to lower the speed limit. (Complaint at ¶ 12). Their inaction in this regard was the cause of Moser's accident and ultimately her death. (Complaint at ¶ 18). After Moser's accident, Council Members attempted to "cover-up" their previous "wrong doing" by lowering the speed limit to 25 miles per hour. (Complaint at ¶ 23).

Presently, Council Members argue that even a liberal reading of the complaint reveals only Oliver's dissatisfaction with the way they performed discretionary duties, which is not actionable under Section 1983. At most, Oliver may pursue a claim under the Pennsylvania Political Subdivision Tort Claims Act, a state law claim which Council Members contend this court should not retain jurisdiction over.

For purposes of the present motion I presume the viability of Oliver's tenuous theory of causality. Had the speed

limit been lower, Osterling would have stopped, would not have hit Moser, who then would not have suffered a "wrongful death"/suicide. Additionally, I assume, for arguments sake, that the Council Members' failure to lower the speed limit was part of a long standing municipal policy or custom. Yet, neither of these presumptions will save Oliver's claim. In essence he seeks recovery for damage from an automobile accident caused by the Council Members' intentional or negligent, failure to reduce the speed limit. These allegations do not implicate a federal right. The pleadings, even when construed liberally, do not reveal that Council Members violated the Equal Protection Clause of the Fourteenth Amendment in that they acted with discriminatory animus. Furthermore, I am unpersuaded by Oliver's contention that their refusal to lower the speed limit amounted to a deprivation of life, Moser's, without due process of law. Oliver fails to explain why recovery could not be obtained in state court under traditional tort-law principles, Baker v. McCollan, 443 U.S. 137, 146 (1979), and he does not refute Council Members' suggestion that such relief is actually specifically provided for by Pennsylvania's Political Subdivision Tort Claims Act.³ See 42 Pa. Con. Stat. Ann. § 8542 (West 1982 &

³ Section 8542 provides, in relevant part:
(a) . . . a local agency shall be liable for damages on account of an injury to a person or property within the limits set forth in this subchapter if both the following conditions are satisfied and the injury occurs as a result of one of the acts set forth in subsection (b):

(continued...)

Supp. 1998). Accordingly, I find that the circumstances surrounding Moser's death do not give rise to Section 1983 liability. See Hull v. City of Duncanville, 678 F.2d 582, 584-5 (5th Cir. 1982)(Plaintiff's claim that a train-vehicle accident caused by municipality's negligent and intentional failure to enforce 25 mile per hour speed limit and to properly maintain crossing and traffic signals was at most a state law tort and did not implicate a federal right so as to be redressable under Section 1983). Therefore, Oliver's Section 1983 claims against the Council Members will be dismissed.

2. Claims against Officers Loder and Lis

Oliver alleges the following actions by Officers Loder and Lis establish Section 1983 violations.

Loder was on duty at the time of Moser's accident, he investigated the accident, and, therefore, witnessed Osterling recklessly speed through the stop sign and collide directly into

³(...continued)

(1) The damages would be recoverable under common law or a statute creating a cause of action if the injury were caused by a person not having available a defense under section 8541 (relating to governmental immunity generally) or section 1846 (relating to defense of official immunity); and
(2) The injury was caused by the negligent acts of the local agency or an employee thereof acting within the scope of his office or duties with respect to one of the categories listed in subsection (b). . . .

(b) . . . The following acts by a local agency or any of its employees may result in the imposition of liability on a local agency:

. . . .
(4) . . . A dangerous condition of trees, traffic signs, lights or other traffic controls . . . under the care, custody or control of the local agency

42 Pa. Con. Stat. Ann § 8542 (West 1982 & Supp. 1998).

Moser's van, nearly totaling the van. (Complaint at ¶'s 24 and 25). Yet, despite this knowledge, Loder "intentionally, maliciously, and deliberately" wrote an accident report minimizing the severity of the accident. (Complaint at ¶ 29). He stated only that Osterling was a "careless driver"; that Moser's van was only "moderately damaged" and failed to list Moser's injuries. (Complaint at ¶'s 29-32). Furthermore, Loder did not cite Osterling for any traffic violations or bring criminal charges against her, "due to his personal relationship" with her "knowing her and her family on friendly terms" and his "personal bias, prejudice and inequities against Ms. Moser." (Complaint at ¶'s 29 and 33). Likewise, Officer Lis, acting intentionally, maliciously and deliberately approved the "false and factually misleading" accident report prepared by Loder and also took no action against Osterling. (Complaint at ¶'s 34 and 35).

Again, Oliver's allegations fail to implicate federal rights, in fact, there is no description of what, if any harm, federally protected or otherwise, befell Moser as a result of the belittling accident report or Osterling's escape from criminal or civil sanctions for her part in the accident. Accordingly, Oliver's Section 1983 claims against Loder and Lis will be dismissed.

3. Claims against Houp

Paragraphs 36 through 60, nine single space typed pages, contain descriptions of Houp's various misdeeds. These allegations can be distilled into two claims.

First, Oliver alleges defamation. By identifying the cause of death on Moser's death certificate as suicide, Houp irreparably harmed her reputation -- it "stigmatized the good character and reputation she earned for years while living . . ." (Complaint at ¶ 37). Defendant, Houp, is correct these allegations of defamation are not sufficient to state a claim under Section 1983.

The Supreme Court has held that an individual cannot claim a constitutionally protected interest in his or her reputation, Siegert v. Gilley, 500 U.S. 226, 233 (1991), thus allegations of defamation alone do not suffice to form a Section 1983 claim. See Paul v. Davis, 424 U.S. 693 (1976). Defamation is only actionable under Section 1983 if it occurs in the course of or is accompanied by a change or extinguishment of a right or status guaranteed by state law or protected by the Constitution. Clark v. Township of Falls, 890 F.2d 611, 619 (3d Cir. 1989)(citing Paul, 424 U.S. at 701-12). Such cases implicate the constitutional guarantee of due process. Id. Courts have labeled the showing required to bring a Section 1983 claim for defamation "stigma plus." See e.g., Defeo v. Sill, 810 F.Supp.

648, 656 (E.D.Pa. 1993) ("Unless coupled with a tangible injury such as a loss of employment or extinction of a vested right recognized by state law, defamation by state officials is not actionable under Section 1983").

I need not reach the issue of whether Oliver has made the requisite "stigma plus" allegations because Oliver's prior admission that Moser hung herself is part of public court record. Thus, his claims that Houp's conclusion of suicide was defamatory is clearly meritless. In a separate action filed by Oliver seeking life insurance benefits under Moser's policy, District Court Judge Franklin S. Van Antwerpen denied recovery based on Oliver's own admission that Moser committed suicide. Oliver v. Allstate Civ. A. No. 98-1918 (E.D.Pa. June 17, 1998). Judge Van Antwerpen based his finding on the policy's exclusion for loss caused by "suicide while sane or self-destruction while insane" and Oliver's admission in his complaint that the "tragic condition of her [Moser's] disability somehow overpowered her normal logic and reasoning, . . . leading directly to her death by hanging herself from an electrical cord hanging from an attic rafter for many previous years." Id. at n. 1. Thus, Oliver's prior admission that Moser took her own life belies his present assertions that Houp's identification of her cause of death as suicide was defamatory.

Second, Oliver claims that Moser's estate was deprived of property rights without due process of law because Houp, prior to identifying suicide as the cause of death, "did not give any proper written notice, conducted no full or fair hearing for challenge or examination of facts nor allowed fair gathering and presentation of favorable facts, circumstances and evidence demonstrating non-suicide death." (Complaint at § 38). Even assuming such process was due and was denied, Oliver, bound by his prior admissions, is unable to identify a property interest of which the estate has been deprived.

Oliver claims that, but for, Houp's conclusion that Moser took her own life her estate would have been able to collect under Moser's life insurance policy. (Complaint at ¶ 37). As discussed above, Judge Van Antwerpen has already ruled that Moser's estate cannot recover under the life insurance policy, thus, the policy does not create a property interest.

Oliver also asserts that Houp's suicide conclusion foreclosed the possibility of Moser's estate pursuing claims against Osterling for causing Moser's "wrongful death" through her reckless driving. (Docket No. 6, Oliver's Response at 3; Complaint at ¶ 39). Again, his previous admission that Moser took her own life is clearly fatal to this assertion. I note, additionally, that because he has not identified barriers to state court relief, Oliver is still free to allege in state court

that Osterling's reckless driving was a contributing factor in Moser's suicide, although the viability of such claim appears highly questionable. Accordingly, Oliver's Section 1983 claims against defendant, Houp, are dismissed.

B. Section 1985 Claims

Oliver also alleges that all defendants' actions violated 42 U.S.C. § 1985. Section 1985 authorizes an "action for the recovery of damages" against "two or more persons" who conspire to (1) prevent federal officers from performing their duties, 42 U.S.C. § 1985(1); (2) intimidate parties, witnesses or jurors in federal cases (or in state cases where the conspiracy is motivated by an intent to deny equal protection), 42 U.S.C. § 1985(2); or (3) deprive other persons of equal protection of the laws, 42 U.S.C. § 1985(3). Oliver alleges no facts that would support a claim under Sections 1985(1) or (2). If Oliver alleges any Section 1985 claim, it would be under subsection (3). A claim under Section 1985(3), however, requires that there must be "some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." Carpenters v. Scott, 463 U.S. 825, 834 (1983) (quoting Griffin v. Breckenridge, 403 U.S. 88, 102 (1971)); See also, Bedford v. SEPTA, 867 F.Supp. 288, 294 (E.D.Pa. 1994) (same). Oliver has not pled any class-based discriminatory animus as the motivation

of defendants' actions. Consequently, his Section 1985 claims against all defendants are dismissed. An order follows.

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ADMINISTRATOR,	:	
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EXETER TOWNSHIP BOROUGH	:	
COUNCIL MEMBERS, JAMES	:	
LODER, TED LIS and BRIAN HOUP,	:	
Defendants.	:	

O R D E R

AND NOW, on the 4th day of September 1998, upon consideration of: 1) a motion to dismiss submitted by Defendants, Exeter Township Borough Council Members; James Loder and Brain Lis (Dkt. # 3) and Plaintiff's response (Dkt.# 5); and 2) Defendant, Brian Houpp's motion to dismiss (Dkt. #4) and Plaintiff's response (Dkt. # 6), it is hereby ordered that the motions are **GRANTED** and the above captioned action is **DISMISSED**. The Clerk shall mark this case as **CLOSED**.

BY THE COURT:

RONALD L. BUCKWALTER, J.