IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

SALOMIE COOPER, Individually, and As Guardian and Next of Friend for KRISTEN L. FRAZIER,	)	
Plaintiffs,	)	
v.	)	**C.A. No. 00C-08-174 JEB**
OFFICER VILLABURDI and SERVICES FOR CHILDREN, YOUTH, AND THEIR FAMILIES, and WILMINGTON POLICE DEPARTMENT,	)	
Defendants.	)	

Submitted: January 10, 2001
Decided: October 2, 2001

Defendant's Motions to Dismiss and Motion for Summary Judgment
- Motion to Dismiss Granted -

OPINION

Appearances:

Caroline P. Ayres, Esq., P.O. Box 85, Wilmington, DE 19899
Attorney for Plaintiffs.

Paulette Sullivan Moore, Esq., 800 North French Street, 9th Floor, Wilmington, DE 19801
Attorney for Defendants Officer Villaburdi and Wilmington Police Department

Robert F. Phillips, Esq., 820 North French Street, 6th Floor, Wilmington, DE 19801
Attorney for Defendant Services for Children, Youth, and Their Families.

JOHN E. BABIARZ, JR., JUDGE.

I. FACTS

On August 18, 2000, Plaintiffs filed a complaint in this court alleging "violation of the United States Constitution, gross negligence, wrongful imprisonment, negligence, violation of the Civil Rights Act, 42 U.S.C. Sections 1981, 1982, and 1983, negligent training and supervision, intentional infliction of emotional distress, and wrongful imprisonment."[1]

On October 17, 2000, this Court denied without prejudice Plaintiffs' motion to amend their complaint.

On November 3rd, 2000, this Court granted Defendant Services for Children, Youth, and Their Families' **(hereinafter SCYTF) motion to remove the case from arbitration. Defendant SCYTF has also filed a motion to dismiss for lack of jurisdiction, a motion to dismiss for failure to state a claim, and a motion for summary judgment. All three of Defendant's motions are warranted in this case, and the Court chooses to dismiss plaintiffs complaint for failure to state a claim.**

A discussion of the facts alleged by Plaintiffs is impossible, because beyond the parties names, there are only legal conclusions and references to alleged "actions" by the Defendants that are never described at all.

II. STANDARD OF REVIEW

[1] Pls.' Compl. at 2.

In considering a motion to dismiss, the Court must accept as true all allegations contained in the plaintiff's complaint.[2] The test of sufficiency is whether the plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint.[3]

The Court may grant summary judgment if it concludes that "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as a matter of law."[4] The moving party bears the initial burden of showing that no material issues of fact are present.[5] Once such a showing is made, the burden shifts to the nonmoving party to demonstrate that there are material issues of fact in dispute.[6] In considering a motion for summary judgment, the Court must view the record in a light most favorable to the nonmoving party.[7] The Court's decision must be based solely on the record presented and not on

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[2] Plant v. Catalytic Constr. Co., Del. Super., 287 A.2d 682, 686 (1972), aff'd, Del.Supr., 297 A.2d 37 (1972).

[3] Spence v. Funk, Del. Supr., 396 A.2d 967, 968, (1978).

[4] **Super. Ct. Civ. R. 56(c); Burkhart v. Davies, Del. Supr., 602 A.2d 56, 59 (1991).**

[5] **Moore v. Sizemore, Del. Supr., 405 A.2d 679, 680 (1979).**

[6] **Id. at 681.**

[7] **Burkhart, 602 A.2d at 59.**

all evidence "potentially possible."[8]

III. DISCUSSION

The complaint itself is a logical starting point to discuss some of the many problems with Plaintiff's complaint and subsequent filings with this Court.

THE LACK OF FACTS ALLEGED BY PLAINTIFFS

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[8] **Rochester v. Katalan, Del. Supr., 320 A.2d 704, 708 (1974) (citing United States v. Article Consisting of 36 Boxes, D. Del., 284 F. Supp. 107 (1968), aff'd, 415 F.2d 369 (3d Cir. 1969))**

Plaintiffs' 11-page complaint is a swamp of legal conclusions and vague allegations. The only "facts" alleged with the barest amount of specificity in the Plaintiffs' complaint are the parties names and the claimed injury date of March 2000. Beyond that, there are claims that the Defendants actions "resulted in the unlawful imprisonment and assault of Plaintiff's daughter" and that "Defendants kidnapped the above-mention child [Kristen Frazier], causing Plaintiff much pain, suffering, and anguish."[9] Plaintiffs merely describe the results of Defendant's alleged actions in legal terms, but Plaintiffs do not depict in simple terms exactly what events and actions resulted in the claimed injuries. In sum, there is no short and plain statement of Plaintiffs' claim as required by Superior Court Civil Rule 8.

THE LAW CITED BY PLAINTIFFS

Plaintiffs cite 42 U.S.C. Sections 1981, 1982, and 1983, and to the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution, among other areas of the law.

42 U.S.C. Section 1981 prohibits racial discrimination in the making and enforcing of contracts. There is no mention of any contracts in Plaintiffs' complaint.

[9] Pls.' Compl. at pp. 2, 4. Another problem with the complaint is that "Plaintiff"is used without clearly indicating which Plaintiff is referred to.

42 U.S.C. Section 1982 prohibits discrimination in real and personal property transactions. There is no mention of any property transactions anywhere in Plaintiffs' complaint.

42 U.S.C. Section 1983 prohibits violations of constitutional rights by a person or persons acting under color of state law.[10] But, neither States nor state entities - such as Defendant SCYTF - are considered "persons" under Section 1983.[11] Further, as stated above, there is no way to determine what actions of the Defendants fit the requirements of those laws.

Plaintiffs' Eighth Amendment claim is meaningless, as the cruel and unusual punishment doctrine applies to punishment imposed after conviction, and there is no allegation that Plaintiffs have already been convicted of a crime.

Plaintiffs' Fifth Amendment claim is inapplicable, as that provision applies to federal government actions and not State or local government actions.[12]

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[10] West v. Adkins, 487 U.S. 42, 48 (1988).

[11] Will v. Michigan Department of Public State Police, 491 U.S. 58, 70-71 (1989).

[12] House v. New Castle County, D. Del, 824 F.Supp. 477 (1993).

Putting aside Plaintiffs' claim for negligent conspiracy to kidnap[13], which does not exist as a viable claim, Plaintiffs claim that Defendants were both grossly negligent and negligent. Neither allegation of negligence is plead with any particularity as to the circumstances constituting negligence, as required by Superior Court Civil Rule 9(b). Again, in reading Plaintiffs' complaint and proposed amended complaint, the Court has no idea what events lead to up to and form the basis for Defendants' alleged negligence.

The bare-bones pleading put forth by the Plaintiffs here cannot be said to satisfy the notice pleading requirements of Superior Court pleadings, much less statutory requirements of 42 U.S.C. Section 1983 and the heightened standards of particularity for negligence claims.

<u>THE RESPONSES BY PLAINTIFFS</u>

Plaintiffs responses to Defendant SCYTF's motions are a cut-and-paste morass of general statements of law that are often inapplicable to this case. For example, in Plaintiffs' response to Defendant SCYTF's 12(b)(1) motion to dismiss, Plaintiffs' include a section on qualified immunity and states that "Defendant cites numerous cases in support of its argument that the Defendant enjoys the privilege of qualified immunity."[14] Defendant cited no cases on qualified immunity in it's motion to dismiss,

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[13] Pls.' Compl. at p. 4.

[14] Pls.' Resp. in Opp'n to Def.'s Mot. to Dismiss at B.

and Plaintiffs' attempt at refuting this non-existent argument is curious.

THE STATUS OF PLAINTIFF COOPER

Plaintiff Salomie Cooper has a warrant for her arrest for Third Degree Assault on her daughter, Plaintiff Kristen Frazier. The warrant was effective March 3, 2000, and apparently remains open to this day.

Defendant urges the Court to apply the Doctrine of Fugitive Disentitlement, whereby Plaintiff Cooper's suit would by thrown out by virtue of her fugitive status.[15] While the Court has inherent authority to protect its proceedings and judgments, principles of deference counsel that the Doctrine of Fugitive Disentitlement must be used reasonably and with restraint.[16] Further, because Defendant's Motion to Dismiss is granted, it is unnecessary to inquire whether this is an appropriate case to apply that doctrine.

IV. CONCLUSION

For the foregoing reasons, Defendant **SCYTF's** 12(b)(1) Motion to Dismiss is **GRANTED.**

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Judge John E. Babiarz, Jr.

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[15] Schmidt v. Schmidt, Del.Supr., 610 A.2d 1374 (1992).

[16] Degen v. United States, 517 U.S. 820, 822-823 (1996).

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Original to Prothonotary

Plaintiffs also seek to add claims **under 42 U.S.C. § 1983, alleging that by refusing to accept the petition, Defendants have deprived them of their constitutional "right to petition for a Charter Commission Election...[and the] right to petition for redress and of access to the Courts."[17]**

The First Amendment protects the right of an individual to speak freely, to advocate ideas, to associate with others, and to petition his government for redress of grievances.[18] The government may not infringe upon these rights either by a general prohibition against all petitions or by imposing sanctions for the circulation of petitions.[19]

However, the First Amendment right to petition and advocate provides no guarantee that a petition will persuade or that advocacy will be effective.[20] Nothing in the First Amendment or related case law interpreting it suggests that the right to petition requires government officials to listen or respond to communications of members of the public on public issues.[21] **As Justice Holmes suggested many years ago, disagreement with public policy and disapproval of officials' responsiveness is to be registered**

17 Pls.' Am. Compl. at 4.

18 Smith v. Arkansas State Highway Employees, 441 U.S. 463, 464 (1979).

19 Id. at 464.

20 Id. at 464-465.

21 **Minnesota State Bd. for Community Colleges v. Knight, 465 U.S. 271, 285 (1984).**

principally at the polls.[22]

Plaintiffs' constitutional petition rights have not been infringed by Defendants' denial of the petition in question. Plaintiffs submitted a petition which was properly subjected to official verification for statutory compliance, and subsequently denied as lacking the required signatures. Plaintiffs have not been restrained or barred from submitting further petitions. Plaintiffs are free to re-submit a petition on the same or any other issues of concern. There are no facts alleging a denial of access to the Courts.

Under such circumstances, Plaintiff's motion to add claims under **42 U.S.C. § 1983** must be denied as futile.

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[22] Bi-Metallic Investment Co. v. State Board of Equalization, 239 U.S. 441 (1915); **Knight, 465 U.S. at 285.**