

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

LESLIE BATISTE,	:	
	:	C.A. No. 04C-07-001WLW
Plaintiff,	:	
	:	
v.	:	
	:	
CORPORAL ARTHUR LEE,	:	
individually and as a Police Officer	:	
for the NEW CASTLE COUNTY	:	
POLICE DEPARTMENT,	:	
	:	
Defendant.	:	

Oral Argument Heard: September 17, 2004
Order Issued: October 14, 2004

ORDER

Upon Defendants' Motion to Dismiss and
Motion for More Definite Statement. Granted.

Darryl K. Fountain, Esquire, Wilmington, Delaware; attorney for the Plaintiff.

Michele Allen, Esquire, New Castle County Law Department, New Castle,
Delaware; attorneys for the Defendants.

WITHAM, J.

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On September 17, 2004, this matter was heard before the Court. Plaintiff's counsel failed to attend the motion hearing. Before the Court is a Motion to Dismiss and a Motion for a More Definite Statement filed by Defendants, Corporal Arthur Lee and New Castle County Department of Police. The Court will assume all well-pleaded facts as true for purposes of considering this Motion to Dismiss. From the submissions of the parties it appears to this Court that:

FACTS

1. On or about September 7, 2002, Corporal Arthur Lee allegedly received harassing phone calls from the Plaintiff, Leslie Batiste. Corporal Lee then reported these calls to a Sergeant of the New Castle County Police Department. The Sergeant went to Plaintiff's place of employment to speak to Plaintiff. When Plaintiff refused to come outside to talk, the Sergeant prepared an arrest warrant charging Plaintiff with harassment. The warrant was later approved and Plaintiff was arrested at his place of employment on September 12, 2002. The case against Plaintiff was dismissed on January 14, 2003 for failure to prosecute.
2. Plaintiff's Complaint contends that Corporal Lee falsely charged him with making harassing phone calls because Corporal Lee was having an affair with Plaintiff's girlfriend. In his Complaint, Plaintiff specifically alleges: (1) Negligent Failure to Supervise, (2) Interference with Economic Relations, (3) Malicious Prosecution, (4) violation of the Civil Rights Act, 42 U.S.C. §1983, (5) Negligent Infliction of Emotional Distress, and (6) Defamation.
3. Defendants contend that Plaintiff's Complaint should be dismissed because

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the Police Department and Corporal Lee (in his official capacity as a municipal employee) are non-suable entities and that they are additionally protected under the County and Municipal Tort Claims Act. Defendants also contend that Plaintiff has failed to properly plead a claim under the Civil Rights Act by not establishing any evidence of a custom or policy of the Police Department and failing to show deliberate indifference in training its officers that caused this violation.

4. Defendants also assert that Counts II and IV of Plaintiff's Complaint are lacking in definiteness. Count II alleges Interference with Economic Relations and Count IV alleges a violation of the Civil Rights Act and of the First, Fourth, Fifth and Fourteenth Amendments. Plaintiff has responded and argues that he has satisfied the minimum standard of pleading, particularly for a "notice pleading" jurisdiction such as Delaware.

DISCUSSION

Motion to Dismiss

5. The standard of review to evaluate a Motion to Dismiss under Rule 12(b)(6) is that the Court must assume all well-pleaded facts or allegations in the complaint as true.¹ A complaint will not be dismissed unless the Plaintiff would not be entitled to recover under any circumstances susceptible of proof.² In order to be dismissed,

¹*RSS Acquisition, Inc. v. Dart Group Corp.*, 1999 WL 1442009, at *2 (Del. Super.).

²*Id.*

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the complaint must be entirely without merit as a matter of fact or law.³ Additionally, every reasonable factual inference must be drawn in favor of the complainant.⁴

6. It has been established that the New Castle County Police Department is part of the municipality of New Castle and therefore a non-suable government entity.⁵ The Court therefore finds that the New Castle County Police Department may not be sued as a separate entity. The Police Department is also immune from tort claims under the County and Municipal Tort Claims Act.⁶ Under the Tort Claims Act, “ all governmental entities and their employees shall be immune from suit on any and all tort claims seeking recovery of damages.”⁷ A municipality may be liable, however, for its “ negligent acts or omissions causing property damage, bodily injury or death.”⁸ Plaintiff has not alleged that Defendants have in any way caused property

³*Id.*

⁴ *Ramunno v. Cawley*, 705 A.2d 1029, 1036 (Del. 1998).

⁵ *See, e.g., Breitigan v. State of Delaware*, 2003 WL 21663676 at *2 (D. Del.). “In the present case, as is made clear by the New Castle County Code, the New Castle County Police Department and Trustees are not separate entities for purposes of suit, but rather, are distinct departments or entities of the County government itself. *See 9 Del. C. §§ 1331, 1332, 1384 . . . NCCC §§ 2.03.200, 2.05.505.*” *Id.*

⁶ 10 *Del. C.* §4011(a). *See also Thomas v. Wilmington Police Department*, 1994 WL 315232 at *3-4 (Del. Super.).

⁷ 10 *Del. C.* §4011(a).

⁸ 10 *Del. C.* §4012.

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damage, bodily injury or death and, consequently, the Municipal Tort Claims Act protects the Police Department from this tort claim.⁹ The New Castle County Police Department is accordingly dismissed from the action.

7. Corporal Lee, in his capacity as a police officer, is also protected under the County and Municipal Tort Claims Act. Under §4011 of the Act, governmental employees are generally immune from suit.¹⁰ A governmental employee may be personally liable, nonetheless, for “acts or omissions causing property damage, bodily injury or death in instances in which the governmental entity is immune . . . but only for those acts which were not within the scope of employment or which were performed with wanton negligence or willful and malicious intent.”¹¹ Although, assuming Plaintiff’s allegations are true, it may be alleged that Defendant Corporal Lee’s actions were willful, wanton, or malicious, he did not cause property damage, bodily injury or death.¹² He is therefore immune from suit under the Tort Claims Act in his official capacity. This decision, however, does not preclude further action against Corporal Lee in his personal capacity.

⁹ See 10 Del. C. §4012. Note that “economic harm alone does not constitute ‘property damage’ as that term is used in the Act.” *Dale v. Town of Elsmere*, 702 A.2d 1219, 1223 (Del. Super. Ct. 1997) (citing holding of *Carr v. Town of Dewey Beach*, 730 F.Supp. 591, 602 (D.Del. 1990)).

¹⁰ 10 Del. C. §4011(a).

¹¹ 10 Del. C. §4011(c).

¹² *Id.*

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Civil Rights Claim

8. Plaintiff has also failed to demonstrate a violation of a constitutionally protected right due to a custom or policy of the municipality under §1983.¹³ Plaintiff pled no facts that could reasonably be inferred to establish a custom or policy of the New Castle County Police Department that caused this harm to Plaintiff. Neither has Plaintiff made any showing of “deliberate indifference” on the part of the New Castle County Police Department in the training of its officers.¹⁴ Plaintiff has therefore failed to establish a violation of the Civil Rights Act.

Motion for a More Definite Statement

9. Because this Court has granted Defendants’ Motion to Dismiss, the Motion for a More Definite Statement has become a moot issue and the Court need not consider whether Plaintiff has met his pleading requirements with respect to the New Castle County Police Department and Corporal Arthur Lee in his official capacity.

¹³ See *Monell v. Department of Social Services*, 436 U.S. 658, 690-91 (1978).

¹⁴ See *City of Canton v. Harris*, 489 U.S. 378, 388 (1989).

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THEREFORE, Defendants' Motion to Dismiss the Police Department and Corporal Lee, in his official capacity, is *granted*.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.

J.

WLW/dmh

oc: Prothonotary

xc: Order Distribution