

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

SYLVIA HARRIS & : C.A. No. 06c-08-031 RFS
CLARICE HERNHOLM-KENDRICK, :
 :
 Plaintiffs, :
 :
 v. :
 :
 KENNY HOPKINS, individually and jointly, :
& BOB RALEY, individually and jointly, :
& HOLLY LAKE CAMPGROUND, :
 :
 Defendants. :

ORDER ON MOTION TO PROCEED *IN FORMA PAUPERIS*
AND UPON REVIEW OF COMPLAINT

Date Submitted: September 14, 2006

DATE DECIDED: December 8, 2006

Sylvia Harris and Clarice Hernholm-Kendrick, Lot 287, Holly Lake Campground, 32087 Holly Lake Road, Millsboro, DE 19966 and P.O. Box 14, St. Georges, DE 19733

Kenny Hopkins, Bob Raley, and Holly Lake Campground, 32087 Holly Lake Road, Millsboro, DE 19966 **(A copy is sent to this address to provide defendants with notice of this ruling, but by sending a copy, the Court is not in any way ruling that jurisdiction has been obtained over defendants.)**

Stokes, J.

Sylvia Harris and Clarice Hernholm-Kendrick (“plaintiffs”) have filed a complaint, more fully described below, and a motion to proceed *in forma pauperis*. This is my decision wherein I grant the motion to proceed *in forma pauperis* and review the complaint.

In support of their respective motions to proceed *in forma pauperis*, plaintiffs each have submitted affidavits which establish they are indigent and consequently, are entitled to the granting of their respective motions. However, the granting of a motion to proceed *in forma pauperis* does not mean that the case automatically progresses. Instead, this Court must review the complaint and allow the litigation to proceed only if it finds the action is not legally frivolous. 10 Del. C. § 8803(b).

I now turn to the complaint. The following allegations appear therein.

Plaintiffs rented a campsite from Holly Lake Campground for a period of one year. They moved a camper from West Virginia to the campsite at an expense of not less than \$1,600.00. Plaintiff Clarice Hernholm-Kendrick accepted a job with an expected income of \$500-\$600 per week. Plaintiffs are lesbians and a couple. They decorated their campsite with gay and lesbian decorations. Defendant Kenny Hopkins instructed them to get rid of “those” decorations and said they were a violation of campground policy.

Plaintiffs have a tent on their campsite as do other campers; however, they were “singled out to remove their tent because they put an air conditioner in the side of their tent and for other discrimination reasons.” Complaint, ¶ 10.

Plaintiffs have a small workshop at their campsite, as do other campers; however, management told them having such is against campground policy.

Plaintiffs have lights and other decorations at their campsite, as do other campers;

however, “the management has told the plaintiffs their campsite looks like a yard sale because it is colorful and decorated in gay color themes. This is an act of discrimination.” Complaint, ¶ 12.

At times when guests are visiting, more than three cars will be on site, as occurs with other campers; however, plaintiffs “have been kicked out because they have more than three cars on site because a homophobic neighbor is complaining.” Complaint, ¶ 13.

Plaintiffs describe an episode on August 20, 2006, involving plaintiffs and defendant Kenny Hopkins. The episode centered around an extra vehicle and a nail in the fence. Defendant Hopkins told them they were “now officially kicked out or evicted from the campground.” Complaint, ¶ 14. They allege as follows regarding what happened when they tried to resolve the issue. They were told “we have had to deal with `your type of people before’ go ahead and sue us. The defendant made a rude and discriminating comment to the plaintiff.” Complaint, ¶ 15.

A harassment claim is contained in paragraph 16:

The defendant Kenny Hopkins continued to drive up and down the plaintiff’s road observing plaintiffs when there are over 700 lanes in the campground. In the afternoon about 3 p.m. on Sunday, August 20, 2006 the defendant got out of his truck exactly where the plaintiff Sylvia Harris had parked her pick-up truck next to the bathhouse to do her laundry and the defendant started taking pictures of the plaintiff’s truck. The defendant is engaging in acts of harassment of the plaintiff Sylvia Harris.

On this same day, guests came to visit plaintiffs. Among the guests were two half-African Americans. They were told it cost \$5.00 per carload to enter. When the mother went to get the money, the receptionist learned they were planning to visit plaintiffs. At that time, they were told no visitors were allowed because there were too many cars on site. The guests left their car at another location and as they passed through with plaintiff Clarice Hemholm-Kendrick driving

her vehicle, the following occurred:

Kenny Hopkins ran out to the gate where he was nasty to the plaintiff and guests and stated have you registered them in the office and told the plaintiff she had to register guests in the office and pay \$5 PER PERSON to be allowed in to visit plaintiffs [sic] site. Approximately 20 feet away upon entering the gate there was an employee man in the middle of the road swinging a baseball bat in an intimidating manner as the plaintiffs and guests drove by. The defendant and their employees engaged in racial discrimination, harassment, and terroristic threatening.

Complaint, ¶ 17.

Plaintiffs were told their dog had to remain on a leash in their campsite area. Other campers keep their dogs off the leash in their campsite area. This is discrimination against plaintiffs.

The neighbor's camper is six (6) feet over the property line on plaintiffs' site. "The defendants let other campers abuse the plaintiff's rights and have their trailer on the plaintiff's site." Complaint, ¶ 19.

Other campers have made sexual and other degrading remarks about plaintiffs, and defendants allow those other campers to harass plaintiffs because plaintiffs "are lesbians and gay." Complaint, ¶ 20.

Plaintiffs allege:

The defendants have been heard making other degrading and discriminating remarks about other campers and calling other campers who wanted to rent the same campsite faggots and or allowing other campers to harass and call gay and lesbian campers names such as but not limited to faggots. The defendants have called the plaintiffs degrading and discriminating names.

Complaint, ¶ 23.

Plaintiffs have constructed a deck similar to those of other campers but defendants made them remove theirs because they are gay. Defendants gave them one week to remove the deck and “then the next day stated they were evicting plaintiffs because the deck was not removed within 24 hours. ... State law requires 7 days written notice to comply with any requests from a landlord.” Complaint, ¶ 26.

The defendants gave plaintiffs a list of violations but did not follow State law and provide them seven (7) days written notice to correct the problems.

Defendants have failed to list in writing items which they claim are against camp policy and plaintiffs believe they refuse to do this because they know they are in the wrong if they list them.

In the first paragraph of the complaint, plaintiffs categorize their claims as follows:

- a. discrimination
- b. failure to give proper itemization to comply with policy
- c. damages for unlawful eviction
- d. harassment

In their prayer for relief, plaintiffs ask for the following:

- 1) damages for discrimination and unlawful eviction;
- 2) consequential damages;
- 3) damages for loss of use and enjoyment;
- 4) damages for harassment;
- 5) “for costs incurred, fees, expenses, copy fees, etc incurred in this case, including reasonable fees for work on the case and for time and income missed from work for plaintiff Clarice Hernholm,” and
- 6) for such other and further relief deemed just and proper.

The first claim I address is that for discrimination. Plaintiffs assert two types of discrimination. Plaintiffs allege that defendants racially discriminated against others. Plaintiffs do not have standing to assert a claim of racial discrimination against others. The other

discrimination alleged is that based on plaintiffs' sexual orientation. There is no Delaware law¹ or federal law which outlaws any of the discrimination based on sexual orientation alleged to have occurred in this complaint. All the claims asserting discrimination based on sexual orientation fail. In summary, the claims asserting discrimination are dismissed as legally meritless.

The allegations in the complaint, however, can be read to state a claim for intentional infliction of emotional distress. As explained in Brett v. Berkowitz, Del. Super., C.A. No. 91C-12-251, Lee, J. (April 13, 1995), at 15-16, aff'd, 706 A.2d 509 (Del. 1998):

The elements of that tort are set forth in Farmer v. Wilson, Del. Super., C.A. No. 91C-09-025, Graves, J. (September 28, 1992) at 8-9 as follows:

The elements of the tort of intentional infliction of emotional distress appear in Restatement (Second) of Torts § 46 (1965) as follows:

(1) One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm. [Footnote omitted.]

*** [I]n Cummings v. Pinder, Del. Supr., 574 A.2d 843, 845 (1990), ... [the Supreme Court] stated:

The intentional infliction of severe emotional distress may provide the legal predicate for an award of damages, even in the absence of accompanying bodily harm, if such conduct is viewed as outrageous.

Thus, accompanying bodily harm is not a required element of establishing the tort. The elements which Plaintiff must establish, however, are that he suffered severe emotional distress as a result

¹House Bill 99, introduced on February 13, 2003, and House Bill 36, introduced on March 2, 2005, attempted to make such actions illegal. Those bills did not become law.

of some extreme and outrageous conduct by the defendants.
Cummings v. Pinder, *supra*; Hostetter v. Hartford Insurance Co.,
Del. Super., C.A. No. 85C-06-028, Gebelein, J. (July 13, 1992) at
16-17.

Throughout the complaint, and in particular in paragraphs 15,² 17,³ and 23,⁴ plaintiffs have alleged behavior, which considered together, could be deemed outrageous because the alleged behavior is offensive in manner and actions; psychologically unsettling; and degrading. Plaintiffs also implicitly allege extreme emotional distress. Whether such a claim ultimately will be sustained is fact sensitive.

I turn to the claim for harassment. Although a criminal statute outlaws harassment,⁵ that statute does not provide a basis for a civil cause of action since it is a general criminal statute which is purely penal in nature. Brett v. Berkowitz, *supra* at 12-15. This claim fails and is dismissed as legally meritless.

²They were told “we have had to deal with `your type of people before’ go ahead and sue us. The defendant made a rude and discriminating comment to the plaintiff.”

³“Approximately 20 feet away upon entering the gate there was an employee man in the middle of the road swinging a baseball bat in an intimidating manner as the plaintiffs and guests drove by.”

⁴“The defendants have called the plaintiffs degrading and discriminating names.”

⁵In 11 Del. C. § 1311, it is provided in pertinent part:

(a) A person is guilty of harassment when, with intent to harass, annoy or alarm another person;

(1) He or she insults, taunts or challenges another person or engages in any other course of alarming or distressing conduct which serves no legitimate purpose and is in a manner which the person knows is likely to provoke a violent or disorderly response or cause a reasonable person to suffer substantial emotional distress....

Similarly, I consider whether plaintiffs have stated a private cause of action based upon 11 Del. C. § 1304(a)(2),⁶ the criminal statute making it a hate crime to pick the victim of a crime because of his or her sexual orientation. This statute constitutes a punishing enhancement. The statute does not indicate a legislative intent to provide either an express or implied civil cause of action. Consequently, no civil cause of action may be grounded on this statute. Brett v. Berkowitz, *supra*.

The next claim I examine is for wrongful eviction. The initial question is whether this Court has jurisdiction over such a claim since, if the Landlord-Tenant Code applies, plaintiffs' exclusive remedy is an action for summary possession pursuant to Chapter 57 of 25 Del. C. ACI Realty, Inc. v. Rollins Properties, Inc., Del. Ch., C.A. No. 8454, Hartnett, V.C. (April 18, 1986). However, the Landlord-Tenant Code clarifies that campgrounds are exempt therefrom. 25 Del. C. § 7004(a)⁷, § 7003(16).⁸ Thus, the Landlord-Tenant Code does not apply.

⁶In 11 Del. C. § 1304, it is provided in pertinent part:

(a) Any person who commits, or attempts to commit, any crime as defined by the laws of this State, and who intentionally:

(2) Selects the victim because of the victim's ... sexual orientation... shall be guilty of a hate crime. For purposes of this section, the term "sexual orientation" means heterosexuality, bisexuality, or homosexuality.

⁷In 25 Del. C. § 7004(a), it is provided:

The rental ground upon which a recreational vehicle is placed, including any facilities or utilities thereon, is exempt from the requirements of this subchapter, and nothing in this subchapter may be construed as determining, regulating or governing the legal rights of parties to any lease or rental agreement for the ground on which a recreational vehicle is situated.

⁸In 25 Del. C. § 7003(16), it is provided in pertinent part:

The conclusion the Landlord-Tenant Code does not apply means that defendants did not have to comply with the notice provisions of that Code. Hintze v. Town of Felton, Del. Super., C.A. No. 92C-01-004, Ridgely, P.J. (Jan. 6, 1994). However, the conclusion it does not apply also means the case is not dismissed for lack of jurisdiction.

Based on what plaintiffs have alleged, I conclude they have stated a claim for wrongful eviction, see King v. Aerenson, Del. Super., C.A. No. 61, 1978, Bush, J. (April 3, 1981), or breach of contract.

In conclusion, each plaintiff's motion to proceed *in forma pauperis* is granted. Plaintiffs' claims of discrimination, harassment, and failure to abide by the Landlord-Tenant Code are dismissed as legally meritless. The remaining claims may go forward. Plaintiffs are responsible for following the applicable statutes and rules in effecting service of process.

IT IS SO ORDERED.

Richard F. Stokes, Judge

“Recreational vehicle” means a travel trailer, camping trailer, park trailer, camper, camper motor home or similar accommodation which is primarily designed as temporary living quarters for recreational camping or for seasonal or travel use and which either has its own motor power or is mounted on or drawn by another vehicle.