

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

JERRY L. ALSTON, and TRIPLE 7 )  
PARALEGAL SERVICES, ) C.A. No. 06C-03-025 (JTV)  
)  
Plaintiffs, )  
)  
v. )  
)  
DELAWARE DEPARTMENT OF )  
JUSTICE, VICTIM/WITNESS SERVICES, )  
unknown agents, DELAWARE JUSTICE )  
OF THE PEACE COURT, OFFICIAL )  
PARROTT, individually and as an agent of )  
JUSTICE OF THE PEACE COURT, )  
DELAWARE DEPT. OF SAFETY AND )  
HOMELAND SECURITY, CAPITOL )  
POLICE and OFFICER JEFF DESAUL- )  
NIERS, individually and as an agent of )  
DELAWARE CAPITOL POLICE, )  
TRINETTE R. SCOTT, individually, )  
)  
Defendants. )

*Submitted: July 28, 2006*

*Decided: October 30, 2006*

Jerry L. Alston, Dover, Delaware. *Pro Se.*

Patricia D. Murphy, Esq., Department of Justice, Wilmington, Delaware. Attorney for the State.

*Upon Consideration of Defendants'*

*Motion To Dismiss*

**GRANTED**

**VAUGHN, President Judge**

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## ORDER

Upon consideration of the defendants' motion to dismiss, opposition by Jerry L. Alston ("plaintiff"), and the record of the case, it appears that:

1. The defendants, Delaware Department of Justice, Victim/Witness Services, Delaware Justice of the Peace Court, Magistrate Parrott, individually and as agent of Justice of the Peace Court, Delaware Department of Safety and Homeland Security, Capitol Police, Officer Jeff DeSaulniers, individually and as an agent of Delaware Capitol Police, have filed this motion requesting that the Court dismiss the Complaint filed against them by the plaintiff, Jerry L. Alston, individually and as Triple 7 Paralegal Services, pursuant to Superior Court Civil Rule 12(b)(6). TrINETTE Scott was also named as a defendant in the Complaint, but is not involved in this motion. The plaintiff is seeking \$32,222,019 in damages from the various state employees and agencies.

2. On January 20, 2006, the plaintiff and defendant TrINETTE Scott were in JP Court No. 16, in the matter of *Alston v. Scott*. At a hearing held in that court, an Order was issued, ordering defendant Scott to return a Playstation, a personal hand game, to Mr. Alston within 15 days.<sup>1</sup> Immediately after the January 20, 2006 hearing, Scott assaulted the plaintiff. Capitol Police Corporal, Jeff DeSaulniers ("Cpl. DeSaulniers"), arrested Scott for offensive touching and disorderly conduct. A no-contact order was issued.

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<sup>1</sup> Plaintiff contends that the Order was issued on Feb. 15, 2006. The discrepancy in the date that the Playstation was ordered to be returned is irrelevant.

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3. Thereafter, Scott mailed the Playstation back to the plaintiff per order of the JP Court. Plaintiff subsequently contacted Cpl. DeSaulniers, insisting that Scott be arrested for having contact with him in violation of the no-contact order. Plaintiff admitted to Cpl. DeSaulniers that he did not feel threatened or harassed by the mailing of the Playstation. Exercising his discretion, Cpl. Desaulniers determined that Scott had used the least offensive means to return the Playstation while attempting to remain in compliance with the no-contact order. Therefore, Cpl. DeSaulniers refused to arrest Scott for violating the no-contact order.

4. Plaintiff also alleges that defendant Scott, while filling out paperwork, received excessive legal advice from clerks of the JP Court, when he, Mr. Alston, did not.

5. Plaintiff demands \$32,222,019 in damages arising out of his “foreseeable mental anguish [and] emotional distress.”

4. Although difficult to discern the nature of the allegations against any of the State defendants, it appears plaintiff is alleging a violation of his civil rights. It appears that plaintiff is claiming that ten years of racial and gender discrimination by the State led to the excessive legal advice allegedly given to Trinette Scott by the JP Court clerks as well as to Cpl. DeSaulniers’ failure to arrest Scott for violation of the no-contact order. In addition, it appears that plaintiff may be alleging a common law tort against Cpl. DeSaulniers for his failure to arrest Scott.

5. A dismissal under Rule 12(b)(6) is appropriate only where it appears to a certainty that the plaintiff could not prove any set of facts that would entitle him to

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relief.<sup>2</sup> The court must draw all reasonable inferences in favor of the plaintiff.<sup>3</sup> A *pro se* complaint is held to a somewhat less stringent standard than formal pleadings drafted by lawyers.<sup>4</sup>

6. Any tort claim the plaintiff may assert against either the Justice of the Peace Court or Magistrate Parrott are barred by the doctrine of absolute judicial immunity. Judges have absolute immunity, as to all civil claims or causes of action founded upon an act or omission arising out of the performance of an official duty.<sup>5</sup> It has long been the law in Delaware that a judicial official acting in a judicial capacity within the scope of his jurisdiction cannot be held personally liable for his actions in a civil proceeding.<sup>6</sup> The Magistrate's Order, in the matter of *Alston v. Scott*, was well within the bounds of immunity granted by § 4001.

7. If the plaintiff's pleadings are read in their most favorable light, it appears that plaintiff is asserting a common law tort claim against Cpl. DeSaulniers and the Capitol Police for failing to arrest Scott for an alleged violation of a no-contact order. Cpl. DeSaulniers and the Capitol Police have qualified immunity from tort claims

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<sup>2</sup> *Klein v. Sunbeam Corp.*, 94 A.2d 385 (Del. 1952).

<sup>3</sup> *Meades v. Wilmington Hous. Auth.*, 2005 Del. LEXIS194 citing *Ramunno v. Cawley*, 705 A.2d 1029, 1034 (Del. 1998).

<sup>4</sup> *Alston v. Hudson, Jones, Jaywork, Williams & Liguori*, 748 A.2d 406 (Del. 1999).

<sup>5</sup> 10 *Del. Code.* § 4001.

<sup>6</sup> *Vic. v. Haler*, 514 A.2d 782 (Del. 1986).

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pursuant to 10 *Del. C.* § 4001.<sup>7</sup> In a civil action, the burden is on the plaintiff to prove the absence of one or more of the elements of immunity.<sup>8</sup> The facts indicate that Cpl. DeSaulniers merely exercised the discretion inherent within his position when he chose not to arrest Scott for the alleged violation of the no-contact order. Plaintiff has proffered no evidence that Cpl. DeSaulniers acted with gross or wanton negligence in this case. Also, any claim that DeSaulniers acted in bad faith by the plaintiff is unsubstantiated by any facts articulated by the plaintiff.

8. Notwithstanding § 4001, the plaintiff fails to provide this Court with a basis for granting the relief demanded under tort law. Although plaintiff outlines facts surrounding the failure to arrest, and demands damages, plaintiff does not provide this Court with any legal basis for granting the relief demanded. It does not appear

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<sup>7</sup> The State of Delaware's Tort Claims Act, 10 *Del. C.* § 4001, grants immunity to the State or any public officer or employee if:

(1) The act or omission complained of arose out of and in connection with the performance of an official duty requiring... the interpretation or enforcement of statutes, rules or regulations, ... or any other official duty involving the exercise of discretion on the part of the public officer, employee or member...; (2) The act or omission complained of was done in good faith and in the belief that the public interest would best be served thereby; and (3) The act or omission complained of was done without gross or wanton negligence; provided that the immunity of judges, the Attorney General and Deputy Attorneys General, and members of the General Assembly shall, as to all civil claims or causes of action founded upon an act or omission arising out of the performance of an official duty, be absolute; provided further that in any civil action or proceeding against the State or a public officer, employee or member of the State, the plaintiff shall have the burden of proving the absence of one or more of the elements of immunity as set forth in this section.

<sup>8</sup> 10 *Del. C.* § 4001(3).

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that the plaintiff would be able to prove any set of facts that would entitle him to relief based upon Cpl. DeSaulniers' alleged tortuous conduct.

9. To the extent plaintiff's complaint is construed to allege civil rights claims against the State, all such claims must fail since State employees and agencies are not "persons" within the meaning of the Federal Civil Rights statute.<sup>9</sup>

10. To the extent plaintiff has alleged a civil rights violation against Cpl. DeSaulniers in his individual capacity, for failure to arrest Scott, any such claim must also fail. Immunity is conferred upon a state official performing a discretionary duty that did not violate a clearly established statutory or constitutional right of which a reasonable person would have known.<sup>10</sup> Plaintiff had no statutory or constitutional right to have Scott arrested for Scott's alleged violation of the no-contact order; therefore, any claim against Cpl. DeSaulniers for a civil rights violation in connection with his failure to arrest Scott, must fail.

11. Plaintiff demands \$32,222,019 in damages arising out of his "foreseeable mental anguish [and] emotional distress," but makes no mention of how these damages were proximately caused by the failure to arrest Scott for an alleged violation of a no-contact order or Scott's alleged excessive assistance by the JP Court clerks in filling out paperwork. It appears that plaintiff is generally alleging that widespread racial and gender discrimination exists within the State. It

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<sup>9</sup> *Alston v. Hudson, Jones, Jaywork, Williams & Liguori*, 748 A.2d 406, (Del. 2000), citing *Will v. Michigan Department of State Police*, 491 U.S. 58, 64, 71, 105 (1989); *Cornish v. Delaware State Police & the State of Delaware*, 1995 Del. Super. LEXIS 240.

<sup>10</sup> *Id.*, citing *Vargas-Badillo v. Diaz-Torres*, 114 F.3d 3, 5 (1<sup>st</sup> Cir. 1997).

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further appears that plaintiff has attempted to link that alleged discrimination with the fact that Scott was given excess help in filling out her paperwork by the JP Court clerks and that Scott was not arrested by Cpl. DeSaulniers for violation of the no-contact order. In the case at bar, the record is devoid of any evidence which suggests that any of the State defendants have acted tortuously or have acted to divest plaintiff of any civil or constitutional liberties.

12. Even drawing all inferences in favor of the plaintiff and reading the pleadings in a light most favorable to the plaintiff, it is impossible to glean a colorable cause of action from the allegations.

13. Therefore, with respect to all defendants, defendants' motion to dismiss is *granted*.

**IT IS SO ORDERED.**

/s/ James T. Vaughn, Jr.

President Judge

oc: Prothonotary  
cc: Order Distribution  
File