

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Marcia S. Krieger**

Civil Action No. 16-cv-02630-MSK-NYW

ZANE SCHOENFELD,

Plaintiff,

v.

**KRISTEN THOMPSON,
GERARD O'HALLORAN, and
TRAVIS SIDES**

Defendants.

**OPINION AND ORDER ADOPTING RECOMMENDATION AND GRANTING
MOTIONS TO DISMISS**

THIS MATTER comes before the Court pursuant to the Magistrate Judge's Recommendation (# **62**) that Mr. O'Halloran's Motion to Dismiss (# **23**) and Ms. Thompson's Motion to Dismiss¹ (# **51**) be granted, to which Mr. Schoenfeld lodges no objection; and Mr. Schoenfeld's Objections (# **68**) to the Magistrate Judge's Recommendation (# **65**) that Mr. Sides' Motion to Dismiss (# **60**) be granted.

FACTS

According to the Amended Complaint (# **48**), in 2013, Mr. Schoenfeld was convicted of attempted sexual assault in violation of C.R.S. § 18-3-402(1)(a). Pursuant to that conviction, Mr. Schoenfeld registered as a sex offender as required by Colorado law. He completed the standard registration form, which includes a section asking for "Electronic Communication Identifiers" –

¹ Ms. Thompson's prior Motion to Dismiss (# **21**) was superseded by her subsequent motion, and the Court denies the prior motion as moot.

namely, e-mail addresses and other social media account information pursuant to C.R.S § 16-22-108(2.5)(a). The Amended Complaint appears to imply that Mr. Schoenfeld “mistakenly fill[ed]” out this section, even though his conviction was not among those enumerated as a “child sex crime” in C.R.S. § 16-22-108(2.5)(c) that would require registration of such information.

In 2016, Ms. Thompson, Mr. Schoenfeld’s Probation Officer, notified Mr. O’Halloran, a Deputy Sheriff in Washington County, Colorado, that Mr. Schoenfeld was using an e-mail address that had not been disclosed on his sex offender registration. Mr. O’Halloran prepared an affidavit for an arrest warrant for Mr. Schoenfeld for failure to register, and then supplied that affidavit to Mr. Sides, a Deputy District Attorney, for review. Mr. Schoenfeld contends that Mr. Sides “recklessly disregarded the fact that Mr. Schoenfeld could not have committed the offense of failure to register an e-mail address as a matter of law,” and that he failed to review Mr. Schoenfeld’s criminal history to ensure that Mr. Schoenfeld was indeed required to register his e-mail addresses under C.R.S. § 16-22-108(2.5). Mr. Sides approved Mr. O’Halloran’s affidavit, the arrest warrant was issued, and Mr. Schoenfeld was arrested. Mr. Schoenfeld contends that, as a result of this arrest, he was detained in Washington County for two weeks and lost his job.

Thereafter, Mr. Sides filed a felony charge against Mr. Schoenfeld for failure to register the e-mail address in violation of C.R.S. § 18-3-412(1)(k). Mr. Sides dismissed that charge about a month later.

Based on these facts, Mr. Schoenfeld commenced this action, alleging a single nominal claim for violation of 42 U.S.C. § 1983 against all Defendants, alleging that their actions caused Mr. Schoenfeld to be falsely arrested in violation of the 4th Amendment and 14th Amendment. That claim also asserts that Ms. Thompson and Mr. O’Halloran further engaged in malicious prosecution against him.

All three Defendants moved to dismiss the claims against them, and the Court referred each of those motions to the Magistrate Judge for a Recommendation. On June 7, 2017, the Magistrate Judge recommended (# 62) that both Ms. Thompson and Mr. O'Halloran's Motions to Dismiss be granted. No clear error appears in the Recommendation, proper notice was given to Mr. Schoenfeld, and he did not file any Objections to this Recommendation pursuant to Fed. R. Civ. P. 72(b). *See* Docket # 66 (Mr. Schoenfeld noting that "Travis Sides is the only Defendant that the Plaintiff continues to assert his claims against"). Accordingly, the Court adopts the Recommendation of dismissal of these claims.

On June 15, 2017, the Magistrate Judge issued a second Recommendation (# 65), recommending that Mr. Sides' Motion to Dismiss be granted as well. Specifically, the Magistrate Judge found that the constitutional offenses of false arrest and malicious prosecution differ in regard to whether the seizure of the victim occurred before or after the institution of legal process. In other words, a false arrest claim lies when a person is seized without probable cause and without the institution of legal process, whereas malicious prosecution provides the analysis when an individual is seized pursuant to legal process. Because Mr. Schoenfeld's arrest and detention occurred as the result of an arrest warrant – legal process – his claim for false arrest against Mr. Sides is not cognizable.

Mr. Schoenfeld filed timely Objections (# 68) to that Recommendation. In large part, Mr. Schoenfeld's "Objections" are, quite literally, the exact same text as his response to Mr. Sides' Motion to Dismiss, including asides on issues such as absolute prosecutorial immunity that are not responsive to any matters addressed by the Recommendation. Beyond cosmetic or introductory text, the two documents differ only insofar as to two new paragraphs that appear in the Objections. One, found at page 8 of the Objections and beginning "The Plaintiff was accused

of probation violations as a result of the bogus Washington County case . . .” is of no significance. The other constitutes the bulk of page 3 of the Objections, beginning with the text “Therefore, there was no probable cause to charge the Plaintiff with violation C.R.S. § 18-3-412(1)(k) as a matter of law. . . .” That paragraph is the only one in the Objections to specifically refer to the findings in the Recommendation, and it makes two primary points: (i) that the Magistrate Judge erred in “conclu[ding] that there was ‘arguable’ probable cause,” and that the Magistrate Judge erred in finding “that the Amended Complaint failed to allege that Sides’ conduct was reckless.” Mr. Schoenfeld goes on to argue that Mr. Sides’ failure to check Mr. Schoenfeld’s criminal history to ensure that he was obligated to disclose the e-mail address he was accused of concealing was “reckless as a matter of law.”

ANALYSIS

A. Standard of review

The Court reviews the objected-to portions of a Recommendation *de novo*. Fed. R. Civ. P. 72(b). It is essential that objections be “sufficiently specific to focus the district court’s attention on the factual and legal issues that are truly in dispute.” *U.S. v. One Parcel of Real Property*, 73 F.3d 1057, 1060 (10th Cir. 1996). Thus, objections which simply reassert the exact same motion papers the party has previously submitted fails to discharge the party’s obligations. *Id.*

Where a party files no timely objections to a Recommendation, the Court reviews that Recommendation under whatever standard of review it deems appropriate. *Summers v. State of Utah*, 927 F.2d 1165, 1167 (10th Cir.1991).

B. Mr. Schoenfeld's Objections

By the standard set forth above, Mr. Schoenfeld has preserved two, and only two, specific objections to the actual contents of the Recommendation: (i) the finding that Mr. Sides had “arguable” probable cause, and (ii) the finding that Mr. Schoenfeld had not adequately alleged Mr. Sides’ recklessness. However, the Recommendation did not make any particular findings on either of these issues. The Magistrate Judge noted that “Defendant Sides argues essentially that the claim for false arrest fails . . . because ‘arguable probable cause’ existed” and that “the allegations in the Amended Complaint do not demonstrate that he acted in reckless disregard,” but “declin[e]d to address either contention.” *Docket # 65* at 8-9. Instead, the Magistrate Judge noted that she “perceiv[e]d a more fundamental problem with the claim” – namely, the distinction between the false arrest claim that Mr. Schoenfeld was asserting and the malicious prosecution claim he was not – and based the Recommendation on that problem instead. *Id.* at 9. Thus, Mr. Schoenfeld’s specific objections address issues that the Magistrate Judge did not consider and which did not contribute to the outcome.

Mr. Schoenfeld has offered no objections (specific or general) that address the particular distinction that the Magistrate Judge relied upon in making the recommendation. As such, this Court reviews it under whatever standard it deems appropriate. Reviewing the motion to dismiss *de novo*, the Court agrees with the Magistrate Judge that the law recognizes a distinction between false arrests and malicious prosecutions and that the two claims differentiated by the presence of absence of legal process supporting the arrest. *See generally Wallace v. Kato*, 549 U.S. 384, 390 (2007). Because Mr. Schoenfeld’s arrest was pursuant to a warrant, his allegedly unconstitutional detention is cognizable as malicious prosecution, rather than false arrest. This

might be perceived as a distinction in nomenclature over substance and that one should examine the essence of Mr. Schoenfeld's claim, rather than the label he has chosen to give it but for two facts. First, Mr. Schoenfeld is represented by counsel, and thus the liberal review accorded to pleadings by pro se parties is not appropriate. Second, Mr. Schoenfeld's Amended Complaint expressly makes clear that he does not wish to assert a malicious prosecution claim against Mr. Sides. Paragraph 17 of the Amended Complaint makes that point unambiguously, not once, but twice: "The Plaintiff is not suing Defendant Travis Sides for Malicious Prosecution. Travis Sides is sued for his conduct in reviewing and approving the legally insufficient affidavit in support of arrest warrant in Washington County. He is not sued for malicious prosecution."² *Docket # 48*, ¶ 17. Thus, the Court agrees with the Magistrate Judge that Mr. Schoenfeld has not and does not intend to articulate a malicious prosecution claim against Mr. Sides, and the asserted false arrest claim is not cognizable. In such circumstances, dismissal is the appropriate remedy.

CONCLUSION

For the foregoing reasons, the Court **ADOPTS** the Recommendation (# 62), **DENIES** Ms. Thompson's Motion to Dismiss (# 21) as moot, and **GRANTS** Mr. O'Halloran's Motion to Dismiss (# 23) and Ms. Thompson's Motion to Dismiss (# 51). The Court **OVERRULES** Mr. Schoenfeld's Objections (# 68) and **ADOPTS** the Recommendation (# 65), and **GRANTS** Mr.

² The Court could, of course, construct additional arguments that place these statements in a seemingly different context, but we are already far afield of the respective roles of counsel and the court. The Court does not and should not make arguments on Mr. Schoenfeld's behalf, and he has not made those necessary arguments here.

Sides' Motion to Dismiss (# 60). All claims having been dismissed as against all parties, the Clerk of the Court shall close this case.

Dated this 20th day of July, 2017.

BY THE COURT:



Marcia S. Krieger

Marcia S. Krieger
Chief United States District Judge