

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DAVID F. BROWN,

Plaintiff,

v.

ORDER

10-CV-210

WEST VALLEY ENVIRONMENTAL
SERVICES, LLC, et al.,

Defendants.

This case was referred to Magistrate Judge Hugh B. Scott, pursuant to 28 U.S.C. § 636(b)(1)(A). On April 30, 2010, defendants West Valley Environmental Services LLC and David Pritchard (collectively the “WVES” defendants) filed a motion to dismiss the original complaint as to them. On May 27, 2010, defendant Cattaraugus County Sheriff's Office and department employees filed a motion to dismiss. On July 26, 2010, West Valley Environmental Services, LLC and David Pritchard filed a motion to dismiss cross claims.

On September 2, 2010, Magistrate Judge Scott filed a Report and Recommendation, recommending that West Valley Environmental Services, LLC and David Pritchard's motion to dismiss the original complaint as to them [Dkt. No. 10] be granted in part (as to failure to allege civil rights claim either under 42

U.S.C. § 1983 or as a Bivens action; dismissing co-defendants' crossclaim for indemnification and contribution) and denied as to necessary party contentions and the exercise of supplemental jurisdiction over plaintiff's state law claim.

Magistrate Judge Scott further recommended that the motion of defendants Cattaraugus County Sheriff's Department and Department Employees to dismiss [Dkt. No. 16] should be denied. Magistrate Judge Scott also recommended that the motion by West Valley and Pritchard to dismiss crossclaims against them [Dkt. No. 33] be granted.

The Court has carefully reviewed the Report and Recommendation, the record in this case, and the pleadings and materials submitted by the parties, and no objections having been timely filed, it is hereby

ORDERED, that pursuant to 28 U.S.C. § 636(b)(1), and for the reasons set forth in Magistrate Judge Scott's Report and Recommendation, West Valley Environmental Services, LLC and David Pritchard's motion to dismiss the original complaint as to them [Dkt. No. 10] is granted in part (as to failure to allege civil rights claim either under 42 U.S.C. § 1983 or as a Bivens action; dismissing co-defendants' crossclaim for indemnification and contribution) and denied as to necessary party contentions and the exercise of supplemental jurisdiction over plaintiff's state law claim. The motion of defendants Cattaraugus County Sheriff's Department and Department Employees to dismiss [Dkt. No. 16] is denied. The

motion by West Valley and Pritchard to dismiss crossclaims against them [Dkt. No. 33] is granted.

On July 16, 2010, plaintiff filed a motion for leave to file an amended complaint. On August 24, 2010 Magistrate Judge Scott filed an Order denying plaintiff's motion. On September 7, 2010, plaintiff filed an objection to the Order.

Pursuant to 28 U.S.C. § 636(b)(1)(A), the district court "may reconsider any pretrial matter under this [section] where it has been shown that the magistrate's order is clearly erroneous or contrary to law." The Court has reviewed plaintiff's objections and Magistrate Judge Scott's Order. Upon such review, the Court finds that Magistrate Judge Scott's Order is neither clearly erroneous nor contrary to law.

Accordingly, the Court affirms the Order.

The case is referred back to Magistrate Judge Scott for further proceedings.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: January 13, 2011