

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MEGAN HOOKEY, OM-6044)	
)	Civil Action No. 08 - 1733
Plaintiff,)	
)	District Judge Joy Flowers Conti
v.)	
)	
JOSEPH PELZER, Warden; CHERYL)	
McGAVITT, Head Nurse; EDWARD)	
STRAW, Captain; WASHINGTON)	
COUNTY; MICHAEL FAGELLA, District)	
Attorney; LISA SUTHERLAND, Adult)	
Probation Officer; BRIAN GORMAN, Public)	
Defender; PAUL M. POZONSKY, Judge and)	
JOHN C. PETTIT,)	
)	
Defendants.)	

MEMORANDUM ORDER

The above captioned case was initiated by the filing of a Motion to Proceed *In Forma Pauperis* (ECF No. 1) on December 22, 2008, and was referred to a united states magistrate judge for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

On February 1, 2011, the magistrate judge filed a report and recommendation recommending that the motion to dismiss filed by defendant Paul M. Pozonsky (ECF No. 41) be granted, that the motion to dismiss filed by defendant Brian Gorman (ECF No. 52) be granted and that the motion to dismiss filed by defendant Michael Fagella (ECF No. 57) be granted. The report further noted that plaintiff's claims remained pending against defendants Joseph Pelzer, Cheryl McGavitt, Edward Strawn, and Lisa Sutherland.

Megan Hookey ("Plaintiff") filed objections to the report and recommendation on February 16, 2011 wherein she raises three issues (ECF No. 65). Plaintiff first objects to the dismissal of

defendant Judge Pozonsky on the basis that the relief she is seeking is criminal liability. A plaintiff may not seek to impose criminal liability against a defendant in a civil rights action. See Linda R.S. v. Richard D., 410 U.S. 614, 619 (1973) (holding that a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another). Thus, her first objection does not undermine the recommendation of the magistrate judge.

Plaintiff next objects to the dismissal of liability against Washington County. As an initial matter, the Court notes that Washington County is not listed as a separate defendant in section 4 of Plaintiff's complaint (ECF No. 37 at 3) where she specifically listed each of the defendants. Thus, in recommending dismissal of the claims against Washington County, the report and recommendation was discussing liability against the various defendants in their official capacity. Plaintiff seeks to impose liability against Washington County based on its alleged custom of tolerating female inmate abuse at the Washington County Prison ("WCP"). Such claims survive against the remaining defendants Joseph Pelzer, Cheryl McGavitt, and Edward Strawn, in their official capacity, as those defendants are employees of the WCP. Moreover, Plaintiff may seek leave of court to file an amended complaint to add Washington County as a separate defendant if she so chooses. Thus, her second objection does not undermine the recommendation of the magistrate judge either.

In her third objection, plaintiff states that she did not know about the death of one of the defendants, John C. Pettit, former District Attorney of Washington County. Plaintiff may file a motion to substitute an executor or administrator for defendant Pettit if she so chooses. Thus, her third objection also is without merit.

After *de novo* review of the pleadings and documents in the case, together with the report and recommendation, and the objections thereto, the following order is entered:

AND NOW, this 24th day of February, 2011;

IT IS HEREBY ORDERED that the motion to dismiss filed by defendant Paul M. Pozonsky (ECF No. 41) is **GRANTED**, that the motion to dismiss filed by defendant Brian Gorman (ECF No. 52) is **GRANTED** and that the motion to dismiss filed by defendant Michael Fagella (ECF No. 57) is **GRANTED**. Plaintiff's claims remain pending against defendants Joseph Pelzer, Cheryl McGavitt, Edward Strawn, and Lisa Sutherland.

IT IS FURTHER ORDERED that the report and recommendation dated February 1, 2011 (ECF No. 64) is **ADOPTED** as the opinion of the court.

IT IS FURTHER ORDERED that this case is remanded back to the magistrate judge for further pretrial proceedings.

By the Court:

/s/ Joy Flowers Conti
Joy Flowers Conti
United States District Judge

cc: Megan Hookey, OM-6044
SCI Muncy
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