

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

WILLIAM KEISLING,	:	
Plaintiff,	:	1:09-cv-2181
	:	
v.	:	Hon. John E. Jones III
	:	
RICHARD RENN, <i>et al.</i> ,	:	Hon. J. Andrew Smyser
	:	
Defendants.	:	

MEMORANDUM AND ORDER

May 12, 2009

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

This matter is before the Court on the Report and Recommendation (“R&R”) of Magistrate Judge J. Andrew Smyser (Doc. 45), filed on March 9, 2010, which recommends that we grant the following Motions to Dismiss: (1) the Motion to Dismiss filed by York County Judicial District Court, Richard Renn, John S. Kennedy, Sheryl Ann Dorney, Maria Musti Cook, J. Robert Chuk, Ronald Castille and the Supreme Court of Pennsylvania (collectively “the Judicial Defendants”) (Doc. 18); (2) the Motion to Dismiss filed by Defendant County of York and Pamela S. Lee (collectively the “York County Defendants”); and (3) the Motion to Dismiss filed by York Daily Record, Rick Lee, and Media News Group (collectively the “Media Defendants”). (Doc. 21).

Plaintiff filed objections to the R&R on March 23, 2010. (Doc. 54). The Defendants interposed briefs in opposition to the Plaintiff's Objections. (Docs. 62, 65 and 67). Accordingly, this matter is ripe for disposition. For the reasons set forth below, we shall adopt the R&R in its entirety, grant the above-referenced Motions to Dismiss and and remand this matter to Magistrate Judge Smyser for further pre-trial proceedings.

I. STANDARDS OF REVIEW

A. Review of Report and Recommendation

When objections are filed to the report of a magistrate judge, the district court makes a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objections are made. 28 U.S.C. § 636(b)(1); *United States v. Raddatz*, 447 U.S. 667, 674-75 (1980). The court may accept, reject, or modify, in whole or in part, the magistrate judge's findings or recommendations. *Id.* Although the standard of review is *de novo*, 28 U.S.C. § 636(b)(1) permits whatever reliance the district court, in the exercise of sound discretion, chooses to place on a magistrate judge's proposed findings and recommendations. *Raddatz*, 447 U.S. at 674-75; *see also Mathews v. Weber*, 423 U.S. 261, 275 (1976); *Goney v. Clark*, 749 F.2d 5, 7 (3d Cir. 1984).

B. Motion to Dismiss

In considering a motion to dismiss pursuant to Rule 12(b)(6), courts “accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief.” *Phillips v. County of Allegheny*, 515 F.3d 224, 231 (3d Cir. 2008) (quoting *Pinker v. Roche Holdings, Ltd.*, 292 F.3d 361, 374 n.7 (3d Cir. 2002)). In resolving a motion to dismiss pursuant to Rule 12(b)(6), a court generally should consider only the allegations in the complaint, as well as “documents that are attached to or submitted with the complaint, . . . and any matters incorporated by reference or integral to the claim, items subject to judicial notice, matters of public record, orders, [and] items appearing in the record of the case.” *Buck v. Hampton Twp. Sch. Dist.*, 452 F.3d 256, 260 (3d Cir. 2006).

A Rule 12(b)(6) motion tests the sufficiency of the complaint against the pleading requirements of Rule 8(a). Rule 8(a)(2) requires that a complaint contain a short and plain statement of the claim showing that the pleader is entitled to relief, “in order to give the defendant fair notice of what the claim is and the grounds upon which it rests. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). While a complaint attacked by a Rule 12(b)(6) motion to dismiss need not contain detailed factual allegations, it must contain “sufficient factual matter, accepted as true, to ‘state claim to relief that is

plausible on its face.” *Ashcroft v. Iqbal*, --- U.S. ---, ---, 129 S. Ct. 1937, 1949 (2009). To survive a motion to dismiss, a civil plaintiff must allege facts that ‘raise a right to relief above the speculative level. . . .’ *Victaulic Co. v. Tieman*, 499 F.3d 227, 235 (3d Cir. 2007) (quoting *Twombly*, 550 U.S. at 555). Accordingly, to satisfy the plausibility standard, the complaint must indicate that defendant’s liability is more than “a sheer possibility.” *Iqbal*, 120 S.Ct. At 1949. “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of entitlement to relief.’” *Id.* (quoting *Twombly*, 550 U.S. at 557).

Under the two-pronged approach articulated in *Twombly* and later formalized in *Iqbal*, a district court must first identify all factual allegations that constitute nothing more than “legal conclusions” or “naked assertions.” *Twombly*, 550 U.S. at 555, 557. Such allegations are “not entitled to the assumption of truth” and must be disregarded for purposes of resolving a 12(b)(6) motion to dismiss. *Iqbal*, 129 S.Ct. at 1950. Next, the district court must identify “the ‘nub’ of the . . . complaint – the well-pleaded, nonconclusory factual allegation[s].” *Id.* Taking these allegations as true, the district judge must then determine whether the complaint states a plausible claim for relief. *See id.*

However, “a complaint may not be dismissed merely because it appears unlikely that the plaintiff can prove those facts or will ultimately prevail on the merits.” *Phillips*, 515 F.3d at 231 (citing *Twombly*, 127 S.Ct. 1964-65, 1969 n.8). Rule 8 “does not impose a probability requirement at the pleading stage, but instead simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of the necessary element.” *Id.* at 234.

II. PROCEDURAL AND FACTUAL BACKGROUND

Plaintiff William Keisling (“Plaintiff” or “Keisling”) filed this civil action, *pro se*, on November 6, 2009. (Doc. 1). On December 23, 2009, Plaintiff filed an Amended Complaint. (Doc. 13).

Plaintiff, is a self-proclaimed “professional writer of books.” (Doc. 13, ¶ 11). Plaintiff’s works “involve vital issues of public interest, including matters of government corruption and other topics of compelling public concern.” (*Id.*). Plaintiff alleges that “[f]or more than a decade [he] has been engaged in researching and documenting unaddressed allegations of systemic corruption in and around York County and its courthouse, and the methods by which this unchecked systemic corruption has grown to threaten the safety of the children, and citizens, of York County.” (Doc. 13, ¶ 12).

The Defendants named in the Amended Complaint are as follows: Richard Renn ("Renn"), the President Judge of the York County Court of Common Pleas; Ronald Castille ("Castille"), the Chief Justice of the Pennsylvania Supreme Court; John S. Kennedy ("Kennedy"), a Judge on the York County Court of Common Pleas; Sheryl Ann Dorney ("Dorney"), a Judge on the York County Court of Common Pleas; Maria Musti Cook ("Cook"), a Judge on the York County Court of Common Pleas; J. Robert Chuk ("Chuk"), the District Court Administrator for the York County Court of Common Pleas; Pamela S. Lee ("Pamela Lee"), the Prothonotary of York County; The *York Daily Record*, a newspaper; Rick Lee ("Rick Lee"), a reporter for the *York Daily Record*; MediaNews Group ("MediaNews"), the owner of the *York Daily Record*; the Schaad Detective Agency; Russell Wantz ("Wantz"), the owner of the Schaad Detective Agency; L.C. "Larry" Heim, an attorney; Katherman, Heim and Perry, a law firm; the Supreme Court of Pennsylvania; the County of York; the York County Judicial District Court; National City Mortgage Company; Freddie Mac; Doreen Wentz, identified as an agent for National City Mortgage Company and Freddie Mac; PNC Bank; Federal Home Loan Mortgage Corp.; Mark J. Urden, an attorney; the Urden Law Firm; Louis A. Simoni, an attorney; Alan M. Minato, an attorney; and John Doe(s).

The Amended Complaint, a fairly massive pleading that spans 56 pages and contains 277 paragraphs alleges that Plaintiff has been a victim of “insider justice” and retaliation at the hands of judges and officials in York County and in the Pennsylvania appellate courts as a result of the books that he has written and Plaintiff’s refusal to “play ball” with “this corrupt system.” (Doc. 13, Plaintiff brings this lawsuit pursuant to 42 U.S.C. § 1983, alleging that the Defendants violated his rights under the First Amendment, “namely his rights to petition for a redress of grievances, and his rights to free and protected speech.” (Doc. 13, ¶ 5). Defendants also allegedly violated Plaintiff’s Fourteenth Amendment Rights to substantive and procedural due process.

Plaintiff alleges that there is a conspiratorial relationship amongst the Judges of the York County Court of Common Pleas, the York County Court of Common Pleas, the Administrator of the York County Court of Common Pleas, the Chief Justice of the Supreme Court of Pennsylvania, media reporters, county detectives, private detectives, attorneys, financial institutions and other persons to harm the Plaintiff and to violate his federally-protected rights. The alleged harm involves, *inter alia*, a mortgage foreclosure action against the Plaintiff, the loss of custody of his daughter, and a defamation action against him.¹

¹ We shall not endeavor to provide an exhaustive factual summary herein, inasmuch as Magistrate Judge Smyser aptly undertook this herculean task in his R&R. Accordingly, we shall

III. DISCUSSION

As noted above, Magistrate Judge Smyser recommends that we grant the Motions to Dismiss of the Judicial Defendants, the York County Defendants, and the Media Defendants as to Defendant Rick Lee only. The essence of Plaintiff's objections to the recommendations of Magistrate Judge Smyser is that the Motions should be denied and he should be given the opportunity to engage in discovery to "document the factual basis for depriving [him] of these most basic and sacred of American rights." (Doc. 54, p. 6). Plaintiff alternatively argues that he should be given leave to amend his complaint, asserting that amendment would not be futile in this case.

We shall now turn to a review of the Magistrate Judge's recommendation on each Motion to Dismiss, *in seriatim*.

A. Judicial Defendants' Motion to Dismiss

1. York County Judges

refer the parties and the reader to pages 3 to 14 of the R&R for the pertinent factual allegations in this matter and incorporate it herein by reference.

Magistrate Judge Smyser recommends that this action be dismissed against the individual York County Judges, namely Judges Renn, Dorney, Kennedy and Cook, on the basis of judicial immunity.

It is well-established that “judges are immune from suit under section 1983 for monetary damages arising from their judicial acts.” *Gallas v. Supreme Court of Pennsylvania*, 211 F.3d 760, 768 (3d Cir. 2000). To determine whether judicial immunity is applicable, a court engages in a two-step inquiry. “First, a judge is not immune from liability for non-judicial actions, i.e. actions not taken in the judge’s judicial capacity.” *Gallas, supra* at 768 (quoting *Mireles v. Waco*, 502 U.S. 9, 11 (1991)). “Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction.” *Id.*

“With respect to the first inquiry, ‘the factors determining whether an act by a judge is a ‘judicial’ one relate to the nature of the act itself, i.e. whether it is a function normally performed by a judge, and to the expectations of the parties, i.e. whether they dealt with the judge in his judicial capacity.’” *Gallas, supra* at 768 (quoting *Stump v. Sparkman*, 435 U.S. 349, 362 (1978)). “With respect to the second inquiry, we must distinguish between acts in the ‘clear absence of all jurisdiction,’ which do not enjoy the protection of absolute immunity, and acts that are merely in ‘excess of jurisdiction,’ which do enjoy that protection.” *Id.* at 769

(internal citations omitted). In sum, judicial immunity shields a judge from liability for judicial acts even if those acts were taken in error, if they were done maliciously, if they were in excess of the judge's authority, if the judge committed grave procedural errors, or if the judge's actions were unfair or controversial. *Id.* at 769.

Based on the factual allegations in the Amended Complaint, it is clear that Magistrate Judge Smyser was correct in concluding that judicial immunity applies to each of the individual York County Judges. All of the alleged conduct attributed Judges Renn, Dorney, Kennedy and Cook of which Plaintiff complains took place in the course of Plaintiff's various lawsuits before these Judges. To the extent Plaintiff baldly alleges that "concerned citizens" or "community members" witnessed conduct on the part of these judicial officers that involves conduct outside the lawful jurisdiction of that officer, such vague and tangential claims are insufficient to support Plaintiff's § 1983 claim.

Accordingly, because Plaintiff has failed to make any well-pleaded allegations of conduct on the part of Judges Renn, Dorney, Kennedy and Cook other than conduct of these judicial officers that was within the exercise of their jurisdiction, we shall accept Magistrate Judge Smyser's recommendation that the

Amended Complaint be dismissed as to these Defendants on the basis of absolute judicial immunity.

2. **Supreme Court of Pennsylvania and York County Court of Common Pleas**

Magistrate Judge Smyser recommends that Defendants Supreme Court of Pennsylvania and York County Court of Common Pleas should be dismissed from this action based on Eleventh Amendment immunity.

The Eleventh Amendment provides:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens of any Foreign State.

It is well-established that Eleventh Amendment immunity applies to each state in the union, and that no state is amenable to a lawsuit unless it consents. In the absence of consent, a suit in federal court against a state or one of its agencies is barred by the Eleventh Amendment. *See Alabama v. Pugh*, 438 U.S. 781, 782 (1978).

The Commonwealth of Pennsylvania has not waived its Eleventh Amendment immunity, nor does 42 U.S.C. § 1983 override a state's Eleventh Amendment immunity. *See* 42 P.C.S.A. § 8521(b); *see also, Quern v. Jordan*, 440 U.S. 332 (1979). Thus, because the Pennsylvania Supreme Court and the York

County Court of Common Pleas are state governmental entities that are immune from a federal § 1983 suit, we can easily accept Magistrate Judge Smyser's appropriate recommendation that they be dismissed as Defendants from this action².

3. Defendant Chief Justice Ronald Castille

Magistrate Judge Smyser recommends that the claim against Defendant Chief Justice Castille be dismissed on the basis of qualified immunity.

Governmental officials are shielded from liability on the basis of qualified immunity if the official's actions did not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." *Hope v. Pelzer*, 536 U.S. 730, 739 (2002) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). The qualified immunity analysis has two steps. The first inquiry is whether the facts alleged by the plaintiff has alleged make out a violation of a constitutional right. *Id.* If the plaintiff fails to make out a constitutional violation, the qualified immunity inquiry ends and the officer is entitled to immunity. *Bennett v. Murphy*, 274 F.3d 133, 136 (3d Cir. 2002). If the plaintiff can establish a constitutional violation, the court next inquires as to whether the right was clearly

² We likewise further accept Magistrate Judge Smyser's conclusion that this action must be dismissed against the York County Judges in their *official* capacity on the basis of Eleventh Amendment immunity.

established, meaning whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted. *See Saucier v. Katz*, 533 U.S. 194, 201-202 (2001).

Plaintiff's alleges that Chief Justice Castille violated Plaintiff's federally protected right by "acting in his role as chief court administrator of the state, [Castille] publicly warned the League of Women Voters, and others, in May 2008, following that organization's filing of a lawsuit alleging insider political shenanigans on the Pennsylvania Supreme Court, that the League's lawsuit, 'slanders the entire Supreme Court of Pennsylvania with baseless and irresponsible charges . . . The parties may have subjected themselves to sanctions, and the attorney may have subjected himself to disciplinary action.'" (Doc. 13, ¶ 272).

As noted by Magistrate Judge Smyser, while Plaintiff may have found this statement by Chief Justice Castille offensive to him, on its face, this allegation clearly gives no rise to a violation of *Plaintiff's* federally protected rights. Accordingly, Chief Justice Castille protected from this suit by qualified immunity, and we need not move to the second step of the qualified immunity analysis.

4. Defendant Chuk

Magistrate Judge Smyser concludes that Defendant Chuk, the Court Administrator for the York County Court of Common Pleas is entitled to qualified immunity. We agree with this recommendation as well.

Plaintiff alleges that Defendant Chuk violated his constitutional rights by not informing him when Chuk, as Court Administrator, assigned his case to Defendant Judge Dorney, with whom Plaintiff alleges a conflict of interest. Plaintiff alleges that Chuk's actions "amount[] to star-chamber justice."

Plaintiff's allegations clearly do not rise to the level of a constitutional violation. There is no inference to be drawn from Plaintiff's allegations that Chuk's conduct in assigning Plaintiff's case to Dorney was anything other than a civil case assignment by Chuk, taken in the course of his ordinary duties as Court Administrator. Moreover, even assuming that Defendant Chuk was performing something other than a ministerial act by assigning Plaintiff's case to Judge Dorney, Plaintiff possessed the right to seek Judge Dorney's recusal. Accordingly, we shall adopt Magistrate Judge Smyser's recommendation that this action be dismissed against Defendant Chuk on the basis of qualified immunity.

B. York County Defendants' Motion to Dismiss

1. Defendant Pamela Lee

Magistrate Judge Smyser recommends that the action be dismissed against Defendant Pamela Lee, the Prothonotary of York County because Plaintiff has failed to state a claim upon which relief can be granted as against her.

There are two factual incidents involving Defendant Pamela Lee that Plaintiff alleges rise to a the level of a constitutional violation. First, Plaintiff alleges that Lee failed to notify him or his attorney that a motion to compel pending in one of Plaintiff's cases was assigned to Defendant Judge Cook instead of assigned directly to the motions judge. The second factual allegation involves Lee's issuance, in her capacity as Prothonotary, of a writ of possession in Plaintiff's mortgage foreclosure action.

Plaintiff has failed to show how any of the above-referenced conduct by Lee violated his constitutional rights. It is evident to the Court that Lee undertook this conduct in her capacity as Prothonotary for York County. Again, other than rendering a bald conclusory statement, there is nothing provided in the Amended Complaint showing that her acts were part of a conspiracy against the Plaintiff with its purpose to deprive him of his rights. Accordingly, we shall adopt the Magistrate Judge's recommendation of dismissal as against Defendant Pamela Lee

2. County of York

Magistrate Judge Smyser recommends that this action be dismissed against the Defendant County of York pursuant to *Monell v. Department of Social Services*, 436 U.S. 658 (1978).

Under *Monell*, a municipality cannot be held liable for the unconstitutional acts of its employees on a theory of *respondeat superior*. *Id.* at 691. To appropriately state a claim against a municipality, the plaintiff must allege that the violation of his rights was caused either by a policy or a custom of the municipality. *Id.* at 694; *Berg v. County of Allegheny*, 219 F.3d 261, 275 (3d Cir. 2000). “To satisfy the pleading standard, [a plaintiff] must identify a custom or policy, and specify what exactly that custom or policy was.” *McTernan v. City of York*, 564 F.3d 636, 658 (3d Cir. 2009).

Here, as Magistrate Judge Smyser aptly notes, Plaintiff’s lengthy Amended Complaint is utterly devoid of any allegation of a policy or custom of the County of York that gave rise to alleged constitutional violations. Thus we shall adopt Magistrate Judge Smyser’s recommendation to dismiss this case as against the County of York.

C. Media Defendants' Motion to Dismiss³

Magistrate Judge Smyser recommends that this action be dismissed as against Defendant Rick Lee because Plaintiff cannot maintain a § 1983 claim against a private individual.

It is well established that to state a claim under § 1983, a plaintiff “must allege both a deprivation of a federally protected right and that this deprivation was committed by one acting under color of state law.” *Lake v. Arnold*, 112 F.3d 682, 689 (3d Cir. 1997). The requirement that a defendant act under color of state law is essential in order to establish a § 1983 claim. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 150 (1970).

Rick Lee is a reporter for a newspaper. He is clearly a private person, rather than a state actor. Plaintiff alleges that Rick Lee refused to publish Plaintiff's comments in the newspaper and that this refusal violated his constitutional rights. However, there is no suggestion that Rick Lee acted under color of state law in any fashion.⁴ Moreover, newspapers and newspaper reporters have the First

³ Magistrate Judge Smyser only addressed the Media Defendant's Motion with respect to Defendant Rick Lee because on February 4, 2009, the Media Defendants filed a suggestion of bankruptcy indicating that Affiliated Media, Inc. f/k/a MediaNews Group, Inc. Had filed a bankruptcy petition in the United States Bankruptcy Court for the District of Delaware on January 22, 2009.

⁴ The fact that Rick Lee and Pamela Lee are married does nothing to save Plaintiff's § 1983 claim against Rick Lee.

Amendment right to refuse to publish comments. *See Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 257 (1974). The fact that Rick Lee refused to publish Plaintiff's comments simply does not violate Plaintiff's rights under the First Amendment. Accordingly, we shall adopt Magistrate Judge Smyser's conclusion that the Media Defendants' Motion to Dismiss should be granted as to Defendant Rick Lee.⁵

D. Leave to Amend

"[I]f a complaint is subject to Rule 12(b)(6) dismissal, a district court must permit a curative amendment unless such an amendment would be inequitable or futile." *Phillips v. County of Allegheny*, 515 F.3d 224, 245 (3d Cir. 2008).

Based on all of the foregoing, and despite Plaintiff's proclamations to the contrary, we can envision no circumstances, based on the allegations set forth in the Amended Complaint, that would allow Plaintiff to state a civil rights action against any of the Defendants that are the subject of this R&R. This pleading runs directly afoul of both *Twombly* and *Iqbal*, in that Plaintiff attributes his personal legal setbacks, via both naked assertions and legal conclusions, to various actors. For the reasons set forth herein, those claims are beyond salvaging. Accordingly, we find

⁵ To the extent Plaintiff purports to bring a common law fraud claim against Rick Lee, this claim also fails. Plaintiff simply has not alleged any facts concerning Defendant Rick Lee that lead to a reasonable inference of fraud.

that leave to amend would be futile here, thus we shall not give Plaintiff leave to do so.

IV. CONCLUSION

Accordingly, we shall adopt Magistrate Judge Smyser's R&R in its entirety. This matter shall be remanded to Magistrate Judge Smyser for further pre-trial management.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The R&R of Magistrate Judge Smyser dated March 9, 2010 (Doc. 45) is **ADOPTED** in its entirety.
2. The Judicial Defendants' Motion to Dismiss (Doc. 18) is **GRANTED**. The Clerk shall terminate the following parties as Defendants: York County Judicial District Court, Richard Renn, John S. Kennedy, Sheryl Ann Dorney, Maria Musti Cook, J. Robert Chuk, Ronald Castille and the Supreme Court of Pennsylvania.
3. The York County Defendants' Motion to Dismiss (Doc. 20) is **GRANTED**. The Defendant shall terminate County of York and Pamela S. Lee as Defendants to this action.

4. The Media Defendants' Motion to Dismiss (Doc. 21) is **GRANTED** with respect to Defendant Rick Lee only, and the Clerk shall terminate Defendant Rick Lee as a party to this action.
5. This matter is remanded to Magistrate Judge Smyser for all further pre-trial proceedings.

s/ John E. Jones III
John E. Jones III
United States District Judge