

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

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November 19, 2015

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RE: Brett W. Conley v. Francine L. Conley, et. al.
C.A. No. S15C-01-004 ESB

Dear Mr. Conley and Counsel:

This is my decision on the Defendants' three Motions to Dismiss Plaintiff Brett W. Conley's *pro se* amended complaint pursuant to Superior Court Civil Rule 12. Plaintiff Conley filed an amended complaint purportedly alleging a single defamation claim against his former wife, Francine L. Conley, New Castle County Police Officer Diane Smith, the New Castle County Government, Delaware State Police Officer Stephen Yeich, and the State of Delaware. This litigation arises out of a domestic dispute between Plaintiff Conley and Defendant Conley. Plaintiff

Conley alleges that the defendants defamed him in, among other things, police reports, affidavits, social media, throughout judicial proceedings, and amongst the law enforcement community, which resulted in him losing his job as a New Castle County police officer. I have granted the Defendants' Motion to Dismiss because Plaintiff Conley has failed to properly state a claim for which relief may be granted and because his claims are barred by the statute of limitations and various privileges and immunities enjoyed by the Defendants.

STANDARD OF REVIEW

A motion to dismiss requires the Court to determine “whether a plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint.”¹ When deciding a motion to dismiss, the Court accepts as true all well-pleaded allegations in the complaint, and draws all reasonable inferences in favor of the plaintiff.² “Where allegations are merely conclusory, however, (*i.e.*, without specific allegations of fact to support them) they may be deemed insufficient to withstand a motion to dismiss.”³

DISCUSSION

¹ *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

² *Ramunno v. Crawley*, 705 A.2d 1029 (Del. 1998).

³ *Lord v. Solder*, 748 A.2d 393, 398 (Del. 2000).

Plaintiff Conley makes numerous allegations of defamation against the Defendants. In order to state a claim for defamation, a plaintiff must show: “(1) a false and defamatory communication concerning the plaintiff was made; (2) the communication was published to third parties; (3) the third party understood the defamatory nature of the communication; (4) the publisher was at fault; and (5) the plaintiff suffered an injury as a result.”⁴ At a minimum, a plaintiff in a defamation suit must identify the substance of the defamatory statements and whether they were actually published.⁵

Defenses Applicable to All Defendants

1. The Rules of Pleading

_____ Plaintiff Conley has not complied with the Superior Court’s rules of pleading despite being given two chances to do so. Plaintiff Conley’s amended complaint is eight pages long and consists of 19 paragraphs. Each paragraph contains numerous sentences. Plaintiff Conley’s amended complaint is not broken down by count or by defendant or by element. The subject matter of the amended complaint relates to domestic problems involving Plaintiff Conley and Defendant Conley. Superior Court Civil Rule 8(a)(1) provides that a claim for relief “shall contain a short and plain

⁴ *Wharton v. Worldwide Dedication Serv.*, 2007 WL 404770, at *2 (Del. Super. 2007).

⁵ *See Doe v. Cahill*, 884 A.2d 451, 463-64 (Del. 2005).

statement of the claim showing that the pleader is entitled to relief.” Superior Court Civil Rule 8(e)(1) provides that “each averment of the pleading shall be simple, concise and direct.” Plaintiff Conley’s original complaint did not comply with Superior Court Civil Rule 8. I gave Plaintiff Conley an opportunity to file an amended complaint in compliance with Superior Court Civil Rule 8. Plaintiff Conley did file an amended complaint. However, Plaintiff Conley’s amended complaint does not comply with Superior Court Civil Rule 8, making it virtually impossible for me to sort out the allegations in his amended complaint. Therefore, I have dismissed Plaintiff Conley’s amended complaint for this reason.

2. Failure to State a Claim for Which Relief May be Granted

There are five elements of a defamation claim. Two of the elements that a plaintiff must allege are that (1) the communication was published to a third party, and (2) the third party understood the defamatory nature of the communication. Plaintiff Conley has failed to do this throughout his amended complaint. Therefore, I have dismissed Plaintiff Conley’s amended complaint for this reason as well.

3. The Statute of Limitations

A defamation claim is subject to a two year statute of limitations.⁶ Plaintiff Conley filed his initial complaint on January 8, 2015. Thus, all of his claims that

⁶ 10 *Del. C.* §8119.

arose before January 8, 2013, are barred by the statute of limitations. I can tell from reviewing Plaintiff Conley's amended complaint that some of his claims are barred by the statute of limitations because they involve events that occurred in 2011 and 2012. However, due to the vague nature of Plaintiff Conley's amended complaint when it comes to the applicable time periods it is impossible to tell how much of Plaintiff Conley's defamation claim is time-barred and how much is not. The responsibility for this confusing situation rests with Plaintiff Conley and no one else. I gave Plaintiff Conley two choices to clean up his complaint, but he was unable to do so. Plaintiff Conley does not merit a third chance. Thus, I have dismissed his amended complaint for this reason as well.

Claims Against Francine L. Conley

Many of Defendant Conley's alleged statements are protected under the Absolute Litigation Privilege. The Absolute Litigation Privilege is a common law rule, long recognized in Delaware, that protects statements made by judges, parties, witnesses and attorneys in the course of judicial proceedings from defamation claims so long as the party claiming the privilege shows that the statements were issued as part of a judicial proceeding and were relevant to a matter at issue in the case."⁷ Plaintiff Conley's amended complaint make it clear that many of Defendant Conley's

⁷ *Klein v. Sunbeam Corp.*, 94 A.2d 385, 392 (Del. 1953).

alleged statements were made by her in the course of Family Court proceedings and were relevant to those proceedings. Thus, I have dismissed those claims in Plaintiff Conley's amended complaint against Defendant Conley that are protected by the Absolute Litigation Privilege.

Claims Against Officer Yeich and the State of Delaware

Officer Yeich and the State of Delaware are all immune from civil liability under the State Tort Claims Act.⁸ Under the State Tort Claims Act a state employee is exempt from civil liability where the following three elements are present: (1) the act or omission arose out of or in connection with the performance of an official duty involving the exercise of discretion; (2) the act or omission was performed in good faith and in the belief that the public interest would be best served thereby; and (3) the act or omission was made without gross or wanton negligence.⁹ The plaintiff has the burden of proving the absence of one or more of those elements in order to show inapplicability of immunity.¹⁰ Officer Yeich was, in most if not all times, performing his job as a police officer. Plaintiff Conley has failed to allege that qualified immunity does not apply. To the extent that Plaintiff Conley alleged that Officer

⁸ 10 *Del.C.* § 4001.

⁹ *Id.*

¹⁰ *Abdul-Akbar v. Figliola*, 1990 WL 74326, at *1 (Del. Super. May 18, 1990).

Yeich defamed Plaintiff Conley in any context other than as a police officer or “spread disparaging information” throughout the law enforcement community about Plaintiff Conley, there are simply no facts in Plaintiff Conley’s amended complaint that rise to an actionable level. Furthermore, even if Officer Yeich obtained an arrest warrant for Plaintiff Conley it does not matter because an officer’s statements in an arrest warrant for the purpose of initiating a criminal prosecution are absolutely privileged.¹¹ To the extent that Plaintiff Conley is suing the State of Delaware as the employer of Officer Yeich, the *respondeat superior* theory creates no independent theory of recovery against the State.¹²

Claims Against Officer Smith and New Castle County

Officer Smith and New Castle County are immune from civil liability under the County and Municipal Tort Claims Act.¹³ The Act provides immunity to the County and its employees from suit on any and all tort claims seeking recovery of damages, absent certain narrowly tailored exceptions set forth in 10 *Del.C.* § 4012. “The activities listed in Section 4012 are an exclusive list and ‘are the only activities as to

¹¹ *Tilghman v. Delaware State Univ.*, 2012 WL 3860825, at *6 (Del. Super. 2012).

¹² See *Fields v. Synthetic Ropes, Inc.*, 215 A.2d 427, 432 (Del. 1965).

¹³ 10 *Del.C.* §§ 4010-1013.

which municipal immunity is waived.’”¹⁴ Furthermore, the Court has held that it is the plaintiff’s burden to make an initial showing that his claim fits into one of the three exceptions set forth in the Act.¹⁵ Plaintiff Conley’s amended complaint fails to make any reference to any of the three exceptions set forth in the Act and is devoid of any reference that Smith’s acts were “not within the scope of [her] employment” or were performed “with wanton negligence or willful or malicious intent.” Additionally, Plaintiff Conley has failed to allege that he suffered property damage, bodily injury, or death as required by the Act.¹⁶

CONCLUSION

I accepted as true all well-pled allegations in Plaintiff Conley’s amended complaint and I drew all reasonable inferences in favor of Plaintiff Conley when I considered the Defendants’ Motions to Dismiss. However, Plaintiff Conley’s allegations are simply not well-pled. Plaintiff Conley has not complied with Superior Court Civil Rule 8 and has left out critical elements of a defamation claim. Moreover, Plaintiff Conley’s claims are barred in whole or in part by the statute of limitations and the various privileges and immunities enjoyed by the Defendants. I

¹⁴ *Sussex County v. Morris*, 610 A.2d 1354, 1357 (Del. 1992).

¹⁵ *Gattis v. City of Wilmington*, 2003 WL 1365838, at *1-2 (Del. Super. March 17, 2003).

¹⁶ 10 *Del.C.* § 4011(c).

find that Plaintiff Conley can not recover under any conceivable set of circumstances against any of the Defendants. Therefore, I have granted the Defendants' Motions to Dismiss and have dismissed Plaintiff Conley's amended complaint with prejudice.¹⁷

IT IS SO ORDERED.

Very truly yours,

/s/ E. Scott Bradley

E. Scott Bradley

ESB/sal

cc: Prothonotary

¹⁷ Plaintiff Conley's amended complaint mentions a "Sergeant Miller." It does not state his first name and it does not list him in the caption as one of the defendants. I was not sure if the allegations mentioning "Sergeant Miller" were part of Plaintiff Conley's defamation claim or were merely background information. Since "Sergeant Miller" was not listed as a defendant, I assumed the allegations against him were merely background information. Therefore, I have concluded that "Sergeant Miller" is not a defendant in this case. In any event, if Sergeant Miller had been a defendant, then I would have dismissed the claims against him for the reasons I dismissed the claims against the other defendants generally and Officer Yeich and the State of Delaware particularly.