IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

SANDRA JONES, Plaintiff, v. TROOP 7 STATE POLICE OFFICER DYKSTRA, DEPT. OF JUSTICE PROSECUTOR TUNNELL, FAMILY COURT SUSSEX COUNTY JUDGE SOUTHWARD, STATE OF DELAWARE ATTORNEY GEN. JANE BRADY, and STATE OF DELAWARE POLICE ADMIN., COL CHAFFINCH, Defendants,	)	Civil Action No. 03-047-KAJ

MEMORANDUM ORDER

The plaintiff, Sandra Jones ("Jones"), a pro se litigant, has filed this action pursuant to 42 U.S.C. § 1983 and requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

I. STANDARD OF REVIEW

When reviewing pauper applications, the Court must make two separate determinations. First, the Court must determine whether Armstead is eligible for pauper status pursuant to 28 U.S.C. § 1915. On July 7, 2003, the Court determined that Jones has insufficient funds to pay the requisite filing fee and granted her request to proceed in forma pauperis. (D.I. 7)

Second, the Court must "screen" the complaint to determine whether Jones' complaint is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary

relief from a defendant immune from such relief pursuant to 28 U.S.C. § 1915(e)(2)(B). The United States Supreme Court has held that 28 U.S.C. § 1915(e)(2)(B)'s term "frivolous" when applied to a complaint, "embraces not only the inarguable legal conclusion, but also the fanciful factual allegation," such that a claim is frivolous within the meaning of § 1915(e)(2)(B) if it "lacks an arguable basis either in law or in fact," Neitzke v. Williams, 490 U.S. 319, 325 (1989).[1]

When reviewing complaints pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court must apply the standard of review set forth in Fed. R. Civ. P. 12(b)(6). Neal v. Pennsylvania Bd. of Prob. & Parole, CA No. 96-7923, 1997 WL 338838 (E.D. Pa. June 19, 1997)(applying Rule 12(b)(6) standard as appropriate standard for dismissing claim under § 1915A).[2] Under this standard, the Court must "accept as true the factual allegations in the complaint and

---

[1] Neitzke applied § 1915(d) prior to the enactment of the Prisoner Litigation Reform Act ("PLRA"). Section 1915 (e)(2)(B) is the re-designation of the former § 1915(d) under the PLRA. Therefore, cases addressing the meaning of frivolous under the prior section remain applicable. See § 804 of the PLRA, Pub.L.No. 14-134, 110 Stat. 1321 (April 26, 1996).

[2] The bases for dismissal under § 1915A are virtually identical to § 1915(e)(2)(B). Section 1915A(a) requires the Court to screen prisoner complaints seeking redress from governmental entities, officers or employees before docketing, if feasible and to dismiss those complaints which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant immune from such relief. Therefore, the Court applies the § 1915A standard of review when screening non-prisoner complaints pursuant to § 1915(e)(2)(B).

all reasonable inferences that can be drawn therefrom." Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996). Pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Estelle v. Gamble, 429 U.S. 97, 106 (1976) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). As discussed below, the Jones' complaint has no arguable basis in law or in fact and shall be dismissed as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B).

II. DISCUSSION

A. The Motion to Amend the Complaint

Jones filed this Complaint on January 16, 2003. (D.I. 2) She filed an Amended Complaint on January 17, 2003.[3] (D.I. 3) On June 11, 2003, Jones filed another Motion to Amend the Complaint to add the Secretary of State as a defendant. (D.I. 5) "After amending once or after an answer has been filed, the plaintiff may amend only with leave of the court or the written consent of the opposing party, but 'leave shall be freely given when justice so requires.'" Shane v. Fauver, 213 F.3d 113, 115 (3d Cir. 2000) (quoting Fed. R. Civ. P. 15(a)). "Among the

[3] The Court will refer only to the Amended Complaint (D.I. 3) when discussing Jones' allegations.

grounds that could justify a denial of leave to amend are undue delay, bad faith, dilatory motive, prejudice, and futility." In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1434 (3d Cir. 1997). In this case, because the Court has determined that the Complaint is frivolous within the meaning of 28 U.S.C. § 1915(e)(2)(B), allowing Jones to amend the Complaint to add the Secretary of State as a defendant would be futile. Consequently, Jones' Motion to Amend the Complaint (D.I. 5) shall be denied.

B. The Complaint

Although Jones has attempted to set out her allegations in detail, her complaint is difficult to understand. She appears to be alleging that she was the victim of an assault and that the Defendants have violated her rights under the Fourteenth Amendment in connection with the prosecution of a criminal case regarding the assault. (D.I. 3)

Jones names Delaware Attorney General M. Jane Brady ("Brady") and Delaware State Police Superintendent, L. Aaron Chaffinch ("Chaffinch") as Defendants. However, she does not raise any specific allegations against them. Rather, the Complaint focuses on the following Defendants: Donna Dykstra ("Dykstra"), Deputy Attorney General Tunnell ("Tunnell"), and Family Court Judge Southward ("Southward").

Jones alleges that Tunnell violated her rights under the Fourteenth Amendment by refusing to give Jones copies of

evidence, refusing to offer evidence at the trial, and refusing to call witnesses Jones' believed were necessary to the case. (D.I. 3 at 6-10) Next, Jones alleges that Dykstra assisted Tunnell in violating her rights under the Fourteenth Amendment by also refusing to give her copies of evidence during the trial, and by not offering the Police Report into evidence during the trial. (Id. at 12-13) Third, Jones alleges Southward violated her rights under the Fourteenth Amendment by interrupting her during her testimony and not allowing her to speak freely during the trial, by making her leave the court room when her son and nephew testified, and by making her leave the courtroom during the closing arguments. (Id. at 14-18) Finally, Jones argues that the Defendants were all motivated to violate her constitutional rights because she filed a previous lawsuit against the Delaware State Police. Jones v. State of Delaware, CA No. 02-1637-KAJ. (Id. at 4-6) Jones further argues that Southward is a member of the Ku Klux Klan and is biased against her because she is African-American. (Id. at 16) Jones requests that the Court award her compensatory damages in the amount of $205,000,000.00.

C. Analysis

1. Vicarious Liability

To the extent that Jones is attempting to hold Brady and Chaffinch vicariously liable, her claims must fail. Supervisory

liability cannot be imposed under § 1983 on a respondeat superior theory. See, Monell v. Dep't. of Social Services of City of New York, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). In order for a supervisory public official to be held liable for a subordinate's constitutional tort, the official must either be the "moving force [behind] the constitutional violation" or exhibit "deliberate indifference to the plight of the person deprived." Sample v. Diecks, 885 F.2d 1099, 1118 (3d Cir. 1989) (citing City of Canton v. Harris, 489 U.S. 378, 389 (1989)). As noted above, Jones does not raise any specific allegations regarding Brady or Chaffinch. Rather, Jones appears to be arguing that these Defendants are liable simply because of their supervisory positions. (D.I. 3)

Nothing in the complaint indicates that these Defendants were the "driving force [behind]" the actions of Tunnell or Dykstra, or that they were aware of Jones' allegations and remained "deliberately indifferent" to her plight. Sample v. Diecks, 885 F.2d at 1118. Consequently, Jones' claims against Brady and Chaffinch have no arguable basis in law or in fact. Therefore, Jones' claims against Brady and Chaffinch are frivolous and shall be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

2. Absolute Immunity

a. Jones' Claim against Tunnell

To state a claim under 42 U.S.C. §1983, a plaintiff must allege "the violation of a right secured by the Constitution or laws of the United States and must show that the alleged deprivation was committed by a person acting under color of state law." West v. Atkins, 487 U.S. 42, 48 (1988) (citing Parratt v. Taylor, 451 U.S. 527, 535 (1981)) (overruled in part on other grounds Daniels v. Williams, 474 U.S. 327, 330-31 (1986)). While Tunnell clearly was acting under color of state law, in this case, Jones has not alleged a violation of a right secured by the Constitution of the United States. Jones alleges that Tunnell violated her Fourteenth Amendment rights by refusing to give her copies of evidence, not calling witnesses Jones believed were necessary to the case, and not offering certain evidence at the trial. (D.I. 3 at 6-10) Although Jones was the victim of the crime being prosecuted by Tunnell, Jones' Fourteenth Amendment rights were not in jeopardy during the trial. As the prosecutor, Tunnell represented the State of Delaware, not Jones.

The United States Supreme Court has held that prosecutors are absolutely immune from suits for monetary damages "in initiating a prosecution and in presenting the State's case."

Imbler v. Pachtman, 424 U.S. 409, 431 (1976). Furthermore, such immunity cannot be overcome by allegations of malice. Id. at 427. Consequently, Tunnell is immune from suit for monetary liability under 42 U.S.C. § 1983 for the allegations Jones sets forth. Jones' Fourteenth Amendment claim against Tunnell has no arguable basis in law or in fact. Therefore, Jones' Fourteenth Amendment claim against Tunnell is frivolous and shall be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

b. Jones' Claim Against Dykstra

Jones' Fourteenth Amendment claim against Dykstra must also fail. Jones alleges that Dykstra, a witness at the criminal trial, also violated her Fourteenth Amendment rights by refusing to give her copies of a police report and refusing to offer the police report into evidence during the trial. Witnesses are also absolutely immune and may not be sued for damages under § 1983. Brisco v. LaHue, 460 U.S. 320 (1983). Jones alleges in her Complaint that when she requested copies of evidence, Dykstra referred her to Tunnell and Tunnell denied her copies. Clearly, as a witness, Dykstra had no control over the evidence, nor could Dykstra independently offer evidence during the trial. It is unclear whether Jones is arguing that Dykstra acted as a witness or as a prosecutor. However, the distinction is inconsequential because in either event, Dykstra is entitled to absolute immunity. Id.; Imbler, at 431. Consequently, Dykstra is immune

from suit for monetary liability under 42 U.S.C. § 1983 for the allegations Jones sets forth. Jones' Fourteenth Amendment claim against Dykstra has no arguable basis in law or in fact. Therefore, Jones' Fourteenth Amendment claim against Dykstra is frivolous and shall be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

c. Jones' Claim Against Southward

Jones alleges that Southward also violated her Fourteenth Amendment rights during the trial. The United States Supreme Court has held that judges are absolutely immune from suits for monetary damages and such immunity cannot be overcome by allegations of bad faith or malice. Mireles v. Waco, 502 U.S. 9, 11 (1991). Furthermore, judicial immunity can only be overcome if the judge has acted outside the scope of his judicial capacity or in the "complete absence of all jurisdiction." Id. at 11-12. Here, Jones alleges that Southward interrupted her during her testimony and refused to let her speak freely during the trial. (D.I. 3 at 14-18) She further alleges that Southward would not allow her in the court room during the testimony of certain witnesses, or for closing arguments. (Id.) Nothing in Jones' complaint indicates that Southward was acting outside the scope of his judicial capacity, or in the absence of all jurisdiction. Id. In fact, it appears that Southward acted completely within the scope of his judicial authority to control his court room and

the conduct of the proceedings. Consequently, Southward is immune from suit for monetary liability under 42 U.S.C. § 1983 and Jones' claim lacks an arguable basis in law or in fact. Therefore, Jones' claim is frivolous within the meaning of 28 U.S.C. § 1915(e)(2)(B).

NOW THEREFORE, at Wilmington this 19th day of March, 2004, IT IS HEREBY ORDERED that,

1. Jones' Motion to Amend the Complaint (D.I. 5) is **DENIED**.

2. Jones' complaint is **DISMISSED** as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B).

Kent A. Jordan
UNITED STATES DISTRICT JUDGE