

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

JANELLE L. BARLASS,

Plaintiff,

OPINION and ORDER

10-cv-454-slc¹

v.

CITY OF JANESVILLE,
Janesville Chief of Police STEVEN KOPP,
JANESVILLE GAZETTE NEWSPAPER
and DENISE CARPENTER,

Defendants.

This is a proposed civil action for monetary and injunctive relief in which plaintiff Janelle L. Barlass contends that several defendants in Janesville, Wisconsin violated her rights under the constitution and state law. On September 7, 2010, I dismissed plaintiff's complaint against defendants Janesville Police Department, Chief of Police Steve Kopp, the Janesville Gazette and Denise Carpenter because it violated Fed. R. Civ. P. 8. On September 21, 2010, plaintiff filed a second amended complaint, dkt. #6, raising constitutional and state law claims against defendants City of Janesville, Steve Kopp, the Janesville Gazette, Denise Carpenter, Farrokh Shahlapour, Amir Sharifi and Laura Baker. On October 8, 2010, I granted plaintiff leave to proceed on her claims that defendants City of Janesville and Steve Kopp retaliated against her

¹ For the purpose of issuing this order, I am assuming jurisdiction over this case.

in violation of the First Amendment and violated her right to equal protection under the law by discriminating against her because of her association with a protected class. Also, I granted plaintiff leave to proceed on her defamation claim against defendant Denise Carpenter. I denied plaintiff leave to proceed on her claims against defendants Farrokh Shahlapour and Amir Sharifi. Finally, I stayed a decision whether plaintiff may proceed on her defamation claims against defendants Kopp and the Janesville Gazette, giving plaintiff an opportunity to supplement her complaint with information about her compliance with the notice requirements under Wis. Stat. §§ 893.80(1) and 895.02(2).

Since my last order, plaintiff has filed a supplement to her complaint, dkt. #9, and two motions to supplement her complaint, dkt. ## 10 and 11. In addition to including information about her compliance with notice requirements, plaintiff seeks to revive several of the claims that were dismissed in the previous order, reinstate several previously dismissed defendants and add two additional defendants to the lawsuit, Mark Shroeder, who was Shahlapour's attorney, and Arland Stone, a notary. She has also included several exhibits and a table of cases and statutes. Unfortunately, plaintiff has added so much additional information to her complaint that it is unwieldy and difficult to follow.

After reviewing plaintiff's supplement and motions to supplement, I conclude that plaintiff may proceed on her defamation claim against defendant Janesville Gazette. She may not proceed on her defamation claim against defendant Steve Kopp, because she has not satisfied the notice of claim requirements of Wis. Stat. § 893.80(1). In addition, although plaintiff includes claims that were dismissed previously against defendants Carpenter, Shahlapour and

Sharifi, she may not proceed on these claims. Also, plaintiff may not proceed on her claim against defendant Mark Shroeder. Finally, I will deny plaintiff's motions to supplement her complaint and add new claims and defendants, dkt. ##10 and 11, because the court lacks jurisdiction over the claims plaintiff seeks to add.

For a complete recitation of plaintiff's factual allegations, see this court's orders dated September 7, 2010, dkt. #3, and October 8, 2010, dkt. #8.

DISCUSSION

A. Defamation Claims against Defendants Steve Kopp and the Janesville Gazette

In the October 8, 2010 order, I stayed a decision whether to grant plaintiff leave to proceed on her defamation claims against defendants Steve Kopp and the Janesville Gazette because I could not determine whether she had complied with Wisconsin's notice of claim requirements. When a plaintiff intends to sue an "officer, official, agent or employee" of a governmental subdivision "for acts done in their official capacity or in the course of their agency or employment," Wisconsin law requires the claimant to give defendant notice of the claim within 120 days of the injury. Wis. Stat. § 893.80(1)(a). In addition, the claimant must present the defendant an itemized statement of the relief sought and give defendant an opportunity to grant or disallow the claim. Wis. Stat. § 893.80(1)(b). The individual cannot bring suit without complying with these requirements. Orthmann v. Apple River Campground, Inc., 757 F.2d 909, 911 (7th Cir. 1985). Thus, in order to sue defendant Kopp for defamation, plaintiff must have complied with § 893.80(1) before bringing suit.

In her first supplement, dkt. #9, plaintiff alleges that she has provided notice to defendant Kopp and is “currently awaiting disallowment.” Unfortunately for plaintiff, this means that she may not proceed with her defamation claim against defendant Kopp. As I explained to plaintiff in the previous order, she may not bring suit until all of the requirements of § 893.80(1)(b) are satisfied, including the disallowance of the claim. Because Kopp has not disallowed the claim, plaintiff may not proceed on her defamation claim against Kopp at this time.

With respect to plaintiff’s defamation claim against defendant Janesville Gazette, I told her that before bringing suit, she must comply with the notice requirements in Wis. Stat. § 895.05(2), including providing notice of the false statements and a reasonable opportunity for the newspaper to correct the statements. Plaintiff alleges that she provided notice to defendant Janesville Gazette sometime last year, but that it refused to correct the false information or cease printing false information about plaintiff. These allegations suggest that plaintiff has complied with Wis. Stat. § 895.05(2). Thus, plaintiff may proceed with her defamation claim against this defendant.

B. Claims against Defendant Denise Carpenter

In the October 8, 2010 order, I granted plaintiff leave to proceed on a defamation claim against defendant Denise Carpenter. However, I denied plaintiff leave to proceed on her claim that Carpenter had retaliated against her in violation of her constitutional rights because Carpenter is not a governmental actor and therefore cannot be liable for constitutional violations.

In her supplement, dkt. #9, plaintiff includes a claim against defendant Carpenter in which she alleges that Carpenter retaliated against her and conspired to violate plaintiff's constitutional rights. I have already explained to plaintiff that she may not bring claims based on constitutional violations against Carpenter. Thus, plaintiff may not proceed on this claim.

C. Defendants Farrokh Shahlapour, Amir Sharifi and Mark Schroeder

In her second amended complaint, plaintiff asserted several claims against defendants Shahlapour and Sharifi: (1) Shahlapour and Sharifi retaliated against her in violation of the First Amendment; (2) Shahlapour and Sharifi conspired to overthrow her business; and (3) Shahlapour defamed her. In the October 8, 2010 order, I concluded that plaintiff may not bring a First Amendment retaliation claim against Shahlapour and Sharifi because they are not governmental actors and the First Amendment operates only against the government. In addition, I concluded that this court lacked subject matter jurisdiction over plaintiff's state law claims for conspiracy and defamation because the plaintiff's citizenship is not diverse from that of defendants,' as required under 28 U.S.C. § 1332, and the claims are not "so related" as to "form part of the same case or controversy" under the supplemental jurisdiction statute, 28 U.S.C. § 1367, as plaintiff's claims against the other defendants, .

I explained to plaintiff that the facts supporting her federal claims concern actions taken by the city council, police department and chief of police, including harassment of plaintiff's customers, overpolicing of her bar, repeated requests that plaintiff appear before the alcohol

licensing board and the city's and Kopp's motivations for their actions. In contrast, the facts and events that are relevant to plaintiff's claims against defendants Shahlapour and Sharifi include the business contracts and leases between plaintiff and these defendants, the "worthless" check that Shahlapour attempted to cash, plaintiff's relinquishment of her leased property and Sharif's attempts to end his business relationship with plaintiff and have Corvinas's liquor license revoked. These facts are not part of the "common nucleus of operative fact" that supports the federal claims.

In her supplement, dkt. #9, plaintiff includes a retaliation claim against defendant Shahlapour and conspiracy claims against defendants Shahlapour and Sharifi. She also asserts a conspiracy claim against defendant Mark Schroeder, Shahlapour's lawyer, based on his involvement in Shahlapour's alleged attempts to evict plaintiff from her property. However, plaintiff simply repeats the claims that were dismissed previously. She alleges no new facts to suggest that these claims are part of the same case or controversy as her federal claims. Therefore, plaintiff may not proceed on her claims against defendants Shahlapour, Sharifi or Schroeder in federal court.

D. Motion to File Supplemental Claim, dkt. #10

In her motion to file a supplemental claim, dkt. #10, plaintiff seeks to add a conspiracy claim against Arland Stone, who allegedly conspired with Amir Sharifi to destroy plaintiff's business. In particular, plaintiff alleges that Stone entered the wrong date on a document that allowed Sharifi to relinquish the liquor license owned by plaintiff's bar.

I will deny plaintiff's motion to file the supplemental claim. I have concluded already that plaintiff may not proceed on her conspiracy claim against Sharifi. Her conspiracy claim against Stone is even less related to her federal claims and thus does not part of the "common nucleus of operative fact" that supports the federal claims.

E. Motion to File Amended Motion

In her motion to file an amended motion, dkt. #11, plaintiff seeks to add claims of retaliation, conspiracy and defamation against defendants Shahlapour and Sharifi, based on the same set of facts alleged in her second amended complaint and her supplement, dkt. #9. As discussed above, these claims are not sufficiently related to plaintiff's federal claims to exercise supplemental jurisdiction over them. Therefore, plaintiff's motion will be denied.

ORDER

IT IS ORDERED that

1. Plaintiff Janelle Barlass is GRANTED leave to proceed on the following claims:
 - (a) Defendants City of Janesville and Steve Kopp retaliated against her in violation of the First Amendment and violated her right to equal protection under the law by discriminating against her because of her association with a protected class;
 - (b) Defendant Denise Carpenter defamed plaintiff by stating that plaintiff was ruining Carpenter's business and causing downtown Janesville to be unsafe;
 - (c) Defendant Janesville Gazette defamed plaintiff by printing false information

about her.

A copy of plaintiff's second amended complaint, dkt. #6, supplement, dkt. #9, this court's October 8, 2010 order, dkt. #8, and this order are being forwarded to the United States Marshal for service on defendants.

3. Plaintiff is DENIED leave to proceed on the following claims for failure to state a claim upon which relief may be granted:

(a) Defendant Steve Kopp defamed plaintiff;

(b) Defendant Carpenter retaliated against plaintiff in violation of the First Amendment;

(c) Defendant Farrokh Shahlapour and Amir Sharifi retaliated against plaintiff in violation of the First Amendment.

4. Plaintiff is DENIED leave to proceed on the following claims for lack of subject matter jurisdiction:

(a) Defendants Shahlapour, Sharifi and Mark Schroeder conspired to ruin plaintiff's business;

(b) Defendants Farrokh Shahlapour defamed plaintiff.

5. Plaintiff's motion to file a supplemental claim, dkt. #10, and motion to file an amended motion, dkt. #11, are DENIED.

6. For the remainder of this lawsuit, plaintiff must send defendants or defendants' attorney a copy of every paper or document that she files with the court. The court will

disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that she has sent a copy to defendants or defendants' attorney.

3. Plaintiff should keep a copy of all documents for her own files. If plaintiff does not have access to a photocopy machine, she may send out identical handwritten or typed copies of her documents.

Entered this 3d day of November, 2010.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge