

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

STEVEN RAY WILLIAMS,

Plaintiff,

v.

OPINION & ORDER

CITY OF MAUSTON, BRIA LAW OFFICE, and
CITY ATTORNEY,

14-cv-841-jdp

Defendants.

Pro se plaintiff Steven Ray Williams filed a complaint alleging that City of Mauston police officers entered his home without a warrant and, as a result, violated his Fourth Amendment rights. Plaintiff's initial complaint identified the City of Mauston, Bria Law Office, and the city attorney as defendants. After considering plaintiff's allegations, I dismissed his complaint for failure to state a claim upon which relief can be granted, pursuant to Federal Rule of Civil Procedure 8. I allowed him the opportunity to amend his complaint to address the problems I identified. Dkt. 4.

Now plaintiff has filed a proposed amended complaint. Dkt. 5. Plaintiff did not properly caption the amended complaint or explicitly identify who he has chosen to name as defendants. But in light of my previous instructions to plaintiff to explicitly identify the specific law enforcement officers who entered his home without a warrant, I will assume that plaintiff intends to name Officer Zobel as a new defendant, because he specifically alleges that Officer Zobel was one of the officers who entered his home in the body of the amended complaint. Plaintiff has also identified the city attorney by name, Rebecca Richards Bria, so I will assume that she is also a defendant. After reviewing plaintiff's amended allegations, I will grant him leave to proceed with his Fourth Amendment claim against Officer Zobel. I will

deny plaintiff leave to proceed against the City of Mauston, Bria Law Office, and the city attorney (i.e., Ms. Bria), and I will dismiss them from this case.

ALLEGATIONS OF FACT

I draw the following facts from plaintiff's proposed amended complaint. Dkt. 5.

On September 13, 2011, at 11:00 a.m., plaintiff went to a liquor store in Mauston, Wisconsin. On his way home, he stopped at a friend's apartment; the friend was not home, so plaintiff began drinking wine in his friend's yard. As he sat drinking wine, plaintiff noticed a "rope with a noose" hanging out of a car. *Id.* at 1. The rope concerned plaintiff, and so he called the police. The police arrived, determined "it was nothing," and drove plaintiff home. *Id.*

About two hours later, police officers—including Office Zobel—entered plaintiff's home without a warrant and handed him a citation for telephone misuse. Plaintiff went to court and pleaded not guilty to the citation. Plaintiff then attempted to settle the citation with Rebecca Richards Bria, the city attorney. Ms. Bria informed plaintiff that he "was being charged with battery also" (although she did not produce a criminal complaint that plaintiff could take a look at). Plaintiff "threatened their lives" because he did not believe that Ms. Bria had any evidence to support the battery charge. *Id.* He alleges that because he was "terrified for [his] life" and did not want to be charged with battery, he eventually accepted the citation in exchange for dismissal of the battery charge.

ANALYSIS

Plaintiff brings a Fourth Amendment claim for unlawful entry without a search warrant, pursuant to 42 U.S.C. § 1983. In my previous order, I determined that plaintiff had alleged a Fourth Amendment violation,¹ but I told plaintiff that he needed to identify the individuals responsible in an amended complaint: “although plaintiff has alleged that law enforcement officers entered his home without a warrant and without announcing themselves, in violation of the Fourth Amendment, plaintiff has not identified the individuals responsible for the alleged constitutional violation.” Dkt. 4, at 3. Now plaintiff has identified Officer Zobel as one of the officers who entered his home without a warrant, and I will grant plaintiff leave to proceed on his Fourth Amendment claim against Officer Zobel.

But I cannot allow plaintiff to proceed against the City of Mauston. A plaintiff may not sue a municipal entity for constitutional violations committed by its employees or agents. *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 694 (1978). Rather, a municipal entity is only liable for constitutional violations pursuant to § 1983 if a municipal custom or policy caused the underlying injury. *Id.* Nothing in plaintiff’s proposed amended complaint identifies any municipal custom or policy responsible for any alleged constitutional violation.

Plaintiff has not stated a claim against the city attorney, Ms. Bria, either. A complaint “must be presented with intelligibility sufficient for a court or opposing party to understand whether a valid claim is alleged and if so what it is.” *Vicom, Inc. v. Harbridge Merchant Servs., Inc.*, 20 F.3d 771, 775 (7th Cir. 1994). At this point, I cannot tell: (1) whether plaintiff intends to name Rebecca Richards Bria as a defendant (he does not name her in a caption or

¹ “At this stage, absent facts that would justify warrantless entry, plaintiff has stated [a] claim for unlawful entry.” Dkt. 4, at 3.

otherwise expressly identify her as a defendant in his proposed amended complaint); or (2) how she wronged him. This is reason enough to deny plaintiff leave to proceed against Ms. Bria. Even if I read plaintiff's allegations as generously as I possibly could and inferred that plaintiff is attempting to allege that Ms. Bria charged plaintiff with battery without proof, or committed some type of prosecutorial misconduct when she used the unsupported charge to influence plaintiff's decision to plead guilty to the citation, plaintiff still has not stated a claim. First, "federal courts are rarely the appropriate forum for malicious prosecution claims[,]" because individuals do not have a federal right to not be prosecuted without probable cause. *Ray v. City of Chicago*, 629 F.3d 660, 664 (7th Cir. 2011). Accordingly, "to state a viable malicious prosecution claim under § 1983, a plaintiff must allege a violation of a particular constitutional right, such as the right to be free from unlawful seizures under the Fourth Amendment, or the right to a fair trial under the Due Process Clause." *Welton v. Anderson*, 770 F.3d 670, 673 (7th Cir. 2014), *reh'g and suggestion for reh'g en banc denied*, (Jan. 20, 2015), *cert. denied*, 135 S. Ct. 2895 (2015) (citations and internal quotation marks omitted). Plaintiff has not alleged that Ms. Bria violated any of his constitutional rights—she did not seize him, did not subject him to unfair proceedings, and did not deprive him of any liberty interest. And even if plaintiff had alleged an independent constitutional violation attributable to Ms. Bria, he has not alleged any facts that would demonstrate that she acted with the requisite malice. "To state a malicious prosecution claim under § 1983, a plaintiff must demonstrate that (1) he has satisfied the elements of a state law cause of action for malicious prosecution; (2) the malicious prosecution was committed by state actors; and (3) he was deprived of liberty." *Id.* at 674. Under Wisconsin law, malicious prosecution requires proof of six elements, including "malice in instituting the

former proceedings[.]” *Wis. Pub. Serv. Corp. v. Andrews*, 2009 WI App 30, ¶ 23, 316 Wis. 2d 734, 766 N.W.2d 232. Plaintiff has not alleged any facts that would allow me to infer that Ms. Bria acted with malice toward plaintiff, or that her actions resulted in any deprivation of liberty.² Plaintiff has not stated a malicious prosecution claim against Ms. Bria, either under state law or pursuant to § 1983. And I am unable to conceive of any other claim plaintiff could possibly bring against Ms. Bria.

For these reasons, I will grant plaintiff leave to proceed against Officer Zobel, and I will deny plaintiff leave to proceed against the City of Mauston, Bria Law Office, and the city attorney (i.e., Ms. Bria).

ORDER

IT IS ORDERED that:

1. Plaintiff Steven Ray Williams is GRANTED leave to proceed on his Fourth Amendment claim against Officer Zobel.
2. Plaintiff is denied leave to proceed against the City of Mauston, Bria Law Office, and the city attorney, and these defendants are DISMISSED.
3. The clerk’s office will update the caption to reflect the above changes.
4. The clerk’s office will make sure that the United States Marshals Service serves Officer Zobel with a copy of plaintiff’s amended complaint and this order. Plaintiff should not attempt to serve Officer Zobel on his own at this time.
5. For the time being, plaintiff must send Officer Zobel a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer who will be representing Officer Zobel, he should serve the lawyer directly rather than defendant. The court will disregard documents plaintiff submits that do not

² On top of this, even if plaintiff takes issue with how Ms. Bria handled the citation and the battery charge, she is likely entitled to absolute prosecutorial immunity. *See Imbler v. Pachtman*, 424 U.S. 409, 431 (1976) (holding that prosecutors are entitled to absolute immunity for prosecutorial acts).

show on the court's copy that he has sent a copy to defendant or to defendant's attorney.

6. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of his documents.
7. If plaintiff moves while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and defendant or the court are unable to locate him, his case may be dismissed for his failure to prosecute it.

Entered June 1, 2016.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge