IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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RICHARD P. SKLAR,

Plaintiff,

ORDER

03-C-288-C

v.

CITY OF VERONA,[1]

Defendant.

- -

In this civil action, plaintiff Richard Sklar contends that defendant City of Verona violated his constitutional rights when its city attorney knowingly released false information that plaintiff had been convicted of theft in 1982. Now before the court is defendant's motion to dismiss for failure to state a claim upon which relief may be granted pursuant to Fed. R. Civ. P. 12(b)(6). Defendant advances two arguments in support of its motion to dismiss: (1) under Paul v. Davis, 424 U.S. 693 (1976), plaintiff has no constitutional right

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[1] Originally, plaintiff named both the City of Verona and David Uphoff as defendants. However, this court dismissed Uphoff from the case in an order dated September 25, 2003, after plaintiff signed a stipulation to dismiss all claims against Uphoff See Stip. and Order of Dismissal, dkt. #12.

to be protected from injury to his reputation; (2) even assuming that the city attorney did violate plaintiff's constitutional rights, defendant cannot be held liable because plaintiff does not allege that defendant had a policy or custom of disseminating false information about convictions. I conclude that plaintiff's complaint against the defendant City of Verona must be dismissed because nothing in the complaint allows an inference to be drawn that defendant had a policy or custom on which former defendant Uphoff acted when he allegedly violated plaintiff's constitutional rights.

In deciding a motion to dismiss for failure to state a claim, a court must construe the complaint liberally in favor of the plaintiff, taking as true all well-pleaded factual allegations and all reasonable inferences which may be drawn from them. Leahy v. Board of Trustees of Community College Dist. No. 508, 912 F.2d 917, 921 (7th Cir. 1990). A motion to dismiss should be denied unless "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Id. (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). All reasonable inferences are to be drawn in favor of the plaintiff. Sutliff, Inc. v. Donovan Cos., 727 F.2d 648, 654 (7th Cir. 1984). Legal conclusions without factual support are not sufficient. Benson v. Cady, 761 F.2d 335, 338 (7th Cir. 1985).

In his complaint, plaintiff alleges the following facts:

ALLEGATIONS OF FACT

Twenty years ago, David S. Uphoff, the city attorney for defendant City of Verona, informed the Wisconsin State Crime Information Bureau that plaintiff Richard Sklar had been convicted of theft. However, Uphoff knew that the report was false; in fact, plaintiff had been convicted of disorderly conduct. The false report sent to the bureau severely impaired plaintiff's ability to obtain employment. In 2001, plaintiff filed a petition in state court to reopen his case and expunge his conviction. The court granted his petition in September 2001.

OPINION

Federal law provides a remedy to individuals whose constitutional rights have been violated by any "person" acting under color of state law. See 42 U.S.C. § 1983. The Supreme Court has held that local governments are among the "persons" to which § 1983 applies. Monell v. Department of Social Services of the City of New York, 436 U.S. 658, 690 (1983). However, liability under § 1983 is predicated upon fault. Galdikas v. Fagan, 342 F.3d 684, 693 (7th Cir. 2003). Unlike many causes of action, § 1983 does not impose liability automatically on the employers of those who violate a plaintiff's constitutional rights. Palmer v. Marion County, 327 F.3d 588, 594 (7th Cir. 2003); see also Garrison v. Burke, 165 F.3d 565, 571 (7th Cir. 1999) ("municipalities cannot be held liable for § 1983

claims under a theory of respondeat superior"). Rather, the plaintiff must show that the employer, in this case, the city of Verona, *caused* the deprivation by enacting a policy or custom on which former defendant Uphoff was acting when he allegedly violated plaintiff's constitutional rights. Monell, 436 U.S. at 694.

Plaintiff does not allege that defendant had a policy or custom of disseminating false information about convictions. He alleges only that Uphoff, defendant's city attorney, knowingly sent a false report to the crime information bureau. If plaintiff's failure to allege the existence of a policy was only an inadvertent omission, it would be appropriate to allow him to amend his complaint to correct the deficiency. However, in his brief, plaintiff makes clear that he has no reason to believe that Uphoff was acting pursuant to a policy or custom of defendant. He writes, "It is too great a burden for a plaintiff to be knowledgeable of a particular municipality's customs of policy, especially if plaintiff does not live there." Plt.'s Br., dkt. #10, at 3. Unfortunately for plaintiff, the Federal Rules of Civil Procedure impose a duty on all plaintiffs, including those not represented by counsel, to perform an "inquiry reasonable under the circumstances" to insure that the allegations in the complaint have evidentiary support or are likely to have such support after the plaintiff has an opportunity an opportunity to take discovery. Fed. R. Civ. P. 11(b)(3). Because plaintiff admits he has no knowledge of a policy or practice of defendant, allowing him to amend his complaint would only make him vulnerable to sanctions under Rule 11 for asserting a frivolous claim.

Accordingly, defendant's motion to dismiss will be granted and I will dismiss the case with prejudice.

ORDER

IT IS ORDERED that defendant City of Verona's motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) is GRANTED. The clerk of court is directed to enter judgment in favor of defendants and close this case.

Entered this 20th day of October, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge