

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

WILLIAM A. PARUS,

Plaintiff,

and

ALLSTATE INSURANCE COMPANY,
GERMANTOWN MUTUAL
INSURANCE COMPANY,

Intervening Plaintiffs,

OPINION AND ORDER
05-C-0063-C

v.

ANDREW C. CATOR, THOMAS
KROEPLIN, DAWN BRESNAHAN,
individually and in her official capacity
as an employee of the Town of Minocqua
Police Department, TOWN OF
MINOCQUA, WISCONSIN,
CLAY KREITLOW, individually
and in his capacity as an employee
of the Town of Woodruff Police Department,
and TOWN OF WOODRUFF, WISCONSIN,

Defendants.

A love triangle, a small town and the Driver's Privacy Protection Act, 18 U.S.C. §§

2721-2725, set the scene for this civil action. Plaintiff William A. Parus contends that defendants Andrew Cator, Thomas Kroeplin, Dawn Bresnahan, the Town of Minocqua, Clay Kreitlow and the Town of Woodruff violated his rights under the Act when they obtained or disclosed information about him to defendant Cator and that, as a consequence, they are liable to him for civil damages, pursuant to 18 U.S.C. § 2724. Federal question jurisdiction exists. 28 U.S.C. §1331.

The case is before the court on motions filed by defendants Bresnahan, Town of Minocqua and Cator. Defendant Cator's motion requires no discussion; his motion was directed at a part of Count 6 that alleged he had violated the Driver's Privacy Protection Act by using a false statement. Plaintiff has dismissed that claim against Cator. However, defendant Cator filed a counterclaim together with his motion to dismiss, in which he alleges that plaintiff intentionally or negligently inflicted emotional distress upon him. Plaintiff responded to the filing of the counterclaim with a motion to make more definite and certain, which Cator has opposed.

I conclude that plaintiff has alleged facts against defendants Bresnahan and Town of Minocqua that, if true, would permit a reasonable jury to grant him relief. Therefore, I will deny the motion to dismiss. I will grant Parus's motion for a more definite statement of the counterclaim because defendant Cator's counterclaim does not meet the minimum pleading standards of Fed. R. Civ. P. 8.

For the sole purpose of deciding these motions, I accept as true the allegations in the complaint.

BACKGROUND

Sometime before September 20, 2004, defendant Andrew Cator had a romantic relationship with Julie Erickson. After the relationship came to an end, Erickson began dating plaintiff William Parus. On September 20, 2004, Cator saw a car in Erickson's driveway and wanted to know the owner. At approximately 1:00 pm, defendant Clay Kreitlow, an employee of the Woodruff Police Department, called defendant Dawn Bresnahan, a dispatcher for the Minocqua Police Department, and asked her to "run a plate" on the license number from plaintiff's car. Defendant Bresnahan told defendant Kreitlow plaintiff's name, residential address and type of car as they appeared on the database of the State of Wisconsin Department of Motor Vehicles.

A few minutes later, defendant Kreitlow called again, saying that his earlier call for information had been made on behalf of defendant Cator, who had said he was interested in purchasing the car in Erickson's driveway. Defendant Kreitlow told defendant Bresnahan that he believed defendant Cator wanted the information for other reasons and told her that he had given defendant Cator no information except that the car's owner was "a local guy." Defendants Kreitlow and Bresnahan agreed that no one should give the information to

defendant Cator. Defendant Kreitlow instructed Bresnahan not to give out information about plaintiff's plate to anyone else who called.

About two minutes later, defendant Thomas Kroeplin, defendant Cator's uncle and a conservation officer with the Wisconsin Department of Natural Resources, called defendant Bresnahan and asked her to "run me a plate." Defendant Bresnahan laughed and told defendant Kroeplin the number of plaintiff's license plate before he had a chance to give it to her. She refused twice to give him the information, but after he persisted and assured her that he would not disclose it, she told him that the car belonged to plaintiff. Despite his assurances to defendant Bresnahan, defendant Kroeplin informed defendant Cator that the car in Erickson's driveway was plaintiff's.

Approximately twenty minutes later, Erickson called 911. When defendant Bresnahan answered, Erickson told her that defendant Cator had just been to her home, had kicked out a porch light, threatened plaintiff with bodily harm and warned Erickson that she'd never see their child again. Defendant Bresnahan dispatched a police officer to Erickson's home.

Over the next several months, defendant Cator harassed and threatened plaintiff and Erickson repeatedly. The Minocqua police intervened several times. Plaintiff filed a complaint with this court on February 1, 2005.

OPINION

Motion to Dismiss

A court will grant a motion to dismiss only if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations" of the complaint. Cook v. Winfrey, 141 F. 3d 322, 327 (7th Cir. 1998) (citing Hishon v. King & Spalding, 467 U.S. 69, 73, (1984)). In considering a motion to dismiss, a court must accept as true all well-pleaded factual allegations in the complaint, drawing all reasonable inferences in favor of the plaintiff. Hishon, 467 U.S. at 72; Yeksigian v. Nappi, 900 F.2d 101, 102 (7th Cir. 1990). However, the complaint must set forth factual allegations sufficient to give the defendants fair notice of the allegations against them. Herdrich v. Pegram, 154 F.3d 362, 369 (7th Cir. 1998).

The Driver's Privacy Protection Act authorizes a civil action against any "person who knowingly obtains, discloses or uses personal information [pertaining to the claimant], from a motor vehicle record, for a purpose not permitted under [18 U.S.C. §2721]." 18 U.S.C. § 2724. As a law enforcement officer, defendant Bresnahan is not liable for disclosing personal information from a motor vehicle record, so long as she does so while carrying out the functions of a law enforcement agency. 18 U.S.C. § 2721(b)(1). It is a question of fact whether she was carrying out the functions of a law enforcement agency when she gave defendant Kroeplin information about plaintiff. For the purpose of deciding the motion to

dismiss, I must assume that plaintiff will be able to show that defendant was not carrying out these functions when she talked to defendant Kroeplin.

Defendants Bresnahan and Minocqua have moved to dismiss plaintiff's claim of negligent infliction of emotional distress against defendant Bresnahan (count 8) on the ground that plaintiff did not file a notice of claim as required under Wis. Stat. § 893.80 before a state law claim can be prosecuted against a municipality or employee of a municipality. In response to this motion, plaintiff disavows any attempt to bring a state law claim. Rather, it appears, he is alleging negligent infliction of emotional distress as a form of injury resulting from the alleged violation of the Act. Whether plaintiff can obtain damages for this kind of injury is an issue to be determined in the future. Defendants did not raise it in their motion to dismiss. I will deny the motion to dismiss insofar as it relates to plaintiff's failure to state a claim against defendants Bresnahan and Minocqua on which relief may be granted and to plaintiff's failure to file a notice of claim and I will construe count 8 of plaintiff's complaint as not asserting a state law tort claim against defendant Bresnahan or defendants Cator and Kroeplin.

Motion for a More Definite Statement of Counterclaim

Fed. R. Civ. P. 12(e) governs motions for more definite statement. Rule 12(e) provides:

If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

Fed. R. Civ. P. 8(e)(1) requires that "[e]ach averment of a pleading shall be simple, concise, and direct." Moreover, Rule 8(a) provides that a pleading which sets forth a claim for relief "shall contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief."

Rule 12(e) motions are rarely granted, Scarborough v. R-Way Furniture Co., 105 F.R.D. 90, 92 (E.D. Wis. 1985); indeed, "judges are admonished to exercise their discretion sparingly in ordering more definite statements. . . . A motion under Rule 12(e) must be denied where the subject complaint is not so vague or ambiguous as to make it unreasonable to use pretrial devices to fill any possible gaps in detail." Id. at 91. It is "universally assumed that . . . the motion is proper only when the pleading to which it is addressed is so vague that it cannot be responded to." 5A Charles Alan Wright & Arthur Miller, Federal Practice and Procedure § 1377 (1983). The "generally accepted current construction of Rule 12(e) is that the movant's ability to prepare a responsive pleading is to be measured in terms of the

minimal duty imposed on him by the federal pleading rules and the possibility that he might be prejudiced by attempting to answer the pleading in its existing form." Id.

Rule 12(e) is designed to prevent unintelligibility rather than lack of detail. See, e.g., 2A James W. Moore et al., Moore's Federal Practice ·12. 18[1] (2d ed. 1992). A motion for a more definite statement should not be used to obtain factual details or as a substitute for discovery. International Harvester Co. v. General Ins. Co. of America, 45 F.R.D. 4, 6 (E.D. Wis. 1968) (motion for more definite pleading is not substitute for discovery proceedings; improper to use motion to elicit any facts beyond those needed to plead responsively). Nonetheless, Rule 12(e) was intended "as a means of relief where there is vagueness and ambiguity in the sense of indefiniteness of facts as well as in instances where there is vagueness and ambiguity in the sense of lacking in clarity of expression." Hartman Electrical Mfg. Co. v. Prime Mfg. Co., 9 F.R.D. 510, 514 (E.D. Wis., 1949).

Having reviewed defendant Cator's counterclaim, I agree that he has failed to indicate what plaintiff allegedly said or did or when, where, and under what circumstances he might have said or done something that makes him liable to defendant. In defendant Cator's brief in opposition to plaintiff's motion, he refers to the sample complaints in the index of the Federal Rules of Civil Procedure. Cator should have noted that even those minimal complaints allege dates and locations and give a brief description of the incident giving rise to the action. Cator notes correctly that the purpose of Rule 12(e) is to avoid unnecessary

delay. He seems unaware of the irony of choosing to make that statement in a six-page brief rather than simply fleshing out the allegations in the counterclaim as plaintiff requested. Accordingly, plaintiff's motion for a more definite statement will be granted.

ORDER

IT IS ORDERED that

1. Defendant Andrew Cator's motion to dismiss that portion of Count 6 that alleges that he violated the Driver's Privacy Protection Act by making a false statement is DENIED as moot;

2. The motion to dismiss filed by defendants Dawn Bresnahan and Town of Minocqua is DENIED; and

3. Plaintiff William A. Parus's motion for a more definite statement is GRANTED with respect to defendant Cator's counterclaim. Defendant Cator may have until June 27, 2005, in which to serve and file a counterclaim that sets out in sufficient detail what plaintiff is alleged to have done or said in violation of defendant Cator's rights. If he fails to do so,

the present counterclaim will be dismissed.

Entered this 17th day of June, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge