

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

TERRY L. MILES,

Plaintiff,

v.

MEMORANDUM and ORDER
05-C-640-S

TREMPEALEAU COUNTY, WISCONSIN
COUNTY MUTUAL INSURANCE COMPANY,
PETER GIEROK, WILLIAM NEMER, DANE
MOREY, RANDALL NIEDERKORN, KEVIN
AIONA, BARB SEMB, STEPHEN JELEN,
DAVID LYNGEN, BRETT SEMINGSON, MIKE
WINESKI, NANCY KNUDTSON and
DANIEL SCHREINER,

Defendants.

Plaintiff Terry L. Miles commenced this civil action against defendants Trempealeau County and Wisconsin County Mutual Insurance Company. He also names the following individual defendants in this complaint: Peter Gierok, William Nemer, Dane Morey, Randall Niederkorn, Kevin Aiona, Barb Semb, Stephen Jelen, David Lyngen, Brett Semingson, Mike Wineski, Nancy Knudtson and Daniel Schreiner. Plaintiff claims that these defendants violated his constitutional rights.

On December 23, 2005 defendants Trempealeau County and Wisconsin County Mutual Insurance Company moved to dismiss plaintiff's complaint and to require him to post a bond for costs. On January 18, 2006 defendants Gierok, Nemer and Morey moved to dismiss plaintiff's complaint. Plaintiff filed opposition briefs to both motions.

A complaint should be dismissed for failure to state a claim only if it appears beyond a reasonable doubt that the plaintiffs can prove no set of facts in support of the claim which would entitle the plaintiffs to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). In order to survive a challenge under Rule 12(b)(6) a complaint "must contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory." Car Carriers, Inc. v. Ford Motor Co., 745 F. 2d 1101, 1106 (7th Cir. 1984).

FACTS

For purposes of deciding the motions to dismiss the facts as alleged in plaintiff's complaint are taken as true.

Plaintiff Terry L. Miles is an adult resident of the State of Wisconsin. Defendant Trempealeau County is a Wisconsin municipal corporation that is insured by defendant Wisconsin County Mutual Insurance Company. Defendant Peter Gierok was the District Attorney and defendant William Nemer was the Assistant District Attorney. Defendant Dane Morey was a circuit judge in Trempealeau County. Defendants Randall Niederkorn, Kevin Aiona, Barb Semb, Stephen Jelen, David Lyngen, Brett Semingson, Mike Wineski and Daniel Schreiner were employees of the Trempealeau County Sheriff's Department. Defendant Nancy Knudtson was the District Attorney's legal secretary.

Plaintiff alleges that because he tried to expose misconduct by a City of Whitehall Police Officer he was subjected to harassment by the defendants from 1988 through 1999. Plaintiff's house was burglarized on October 1, 1999.

MEMORANDUM

Defendants Trempealeau County and Wisconsin County Mutual Insurance Company move to dismiss for failure to state a claim and that the action is barred by the statute of limitations. Plaintiff has not alleged facts that support any claim for relief under federal law. Further, any claim based on plaintiff's 1988-1999 allegation would be barred by Wisconsin's six year statute of limitations. Gray v. Lacke, 885 F.2d 399, 407-409 (7th Cir. 1989), cert. denied, 494 U.S. 1029 (1990). Plaintiff has filed a motion to toll the statute of limitations. He has not presented any meritorious arguments why the statute of limitations should be tolled and his motion will be denied. The motion to dismiss of defendants Trempealeau County and Wisconsin County Mutual Insurance Company will be granted.

Defendants Peter Gierok, William Nemer and Dane Morey have filed a separate motion to dismiss. As prosecutors defendants Nemer and Morey would be entitled to prosecutorial immunity. Imbler v. Pachtman, 424 U.S. 409, 430 (1976). Defendant Dane Morey is entitled to judicial immunity. Stump v. Sparkman, 435 U.S. 349,

355-56 (1978). Accordingly, the motion to dismiss plaintiff's complaint by defendants Gierok, Nemer and Morey will be granted.

There are no allegations in the complaint that support any federal law claim against any of the remaining defendants and were there claims alleged they would be barred by the statute of limitations. Accordingly, plaintiff's complaint against them will also be dismissed and judgment will be entered in favor of all defendants against plaintiff dismissing his complaint and all claims contained therein.

Plaintiff's motion for an order for the Wisconsin Department of Justice to release contact information of special agent Paul Sogla will be denied as moot. Plaintiff's motion to introduce other acts evidence will also be denied as moot.

Plaintiff is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his claims must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that the motion of defendants Trempeleau County and Wisconsin County Mutual Insurance Company to dismiss plaintiff's complaint is GRANTED.

IT IS FURTHER ORDERED that the motion of defendants Peter Gierok, William Nemer and Dane Morey is GRANTED.

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IT IS FURTHER ORDERED that plaintiff's motions to toll the statute of limitations, for an order to release contact information of Paul Sogla and to introduce other acts evidence are DENIED.

IT IS FURTHER ORDERED that judgment is entered in favor of defendants Trempealeau County, Wisconsin County Mutual Insurance Company, Peter Gierok, William Nemer, Dane Morey, Randall Niederkorn, Kevin Aiona, Barb Semb, Stephen Jelen, David Lyngen, Brett Semingson, Mike Wineski, Nancy Knudtson and Daniel Schreiner against plaintiff DISMISSING his complaint and all claims contained therein with prejudice and costs.

Entered this 30th day of January, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge