

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

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ROXIAN BRUNNER,

Plaintiff,

v.

PATRICK MCKILLIP,

Defendant.

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ORDER

06-C-362-C

In this civil action, plaintiff Roxian Brunner is proceeding to trial on claims that defendant Patrick McKillip, police chief for the village of Eleva, Wisconsin, defamed and falsely arrested her and used excessive force against her on the night of July 31, 2004. Although plaintiff was represented by counsel from the time her complaint was filed until the time summary judgment had been briefed fully, she is now proceeding pro se.

Now before the court is plaintiff's motion for reconsideration of the court's May 17, 2007 summary judgment opinion. In her motion, plaintiff asks to "clarify" certain facts found undisputed on summary judgment and to reconfigure her defamation claim. Because the changes plaintiff wishes to make are not consistent with the facts proposed on summary judgment or with the claims pleaded in her complaint, the motion for reconsideration will

be denied. Moreover, because it is clear that the defamation claim plaintiff wishes to pursue is not the one she pleaded and is wholly unrelated to the federal claims remaining in this lawsuit, I will dismiss her defamation claim without prejudice to her refileing it in state court.

In her motion, plaintiff raises three matters. First, she asserts that the court omitted from the summary judgment opinion facts regarding statements allegedly made by the mayor of the village of Eleva and certain village board members. It is true that these proposed facts were omitted: not only were they disputed, but they were not relevant to plaintiff's claim that the village violated her right to due process and equal protection by failing to stop defendant McKillip from patrolling her bar more frequently than other neighboring bars, an act I found not to rise to constitutional proportions under the facts of this case.

Second, plaintiff alleges a number of additional facts related to her dismissed malicious prosecution claim. None of the facts she alleges were proposed on summary judgment and it is too late to propose them now. Although plaintiff may see her case differently now that she is proceeding pro se, she is not entitled to a second chance at summary judgment. She is bound by the facts developed at summary judgment.

Finally, plaintiff contends that the court misunderstood her defamation claim. She asserts that her claim was not directed to defendant McKillip's allegedly false statement that she had committed a crime; rather, she contends, it was directed to a slur allegedly made about her years earlier by defendant McKillip to one of her friends who was standing in a

convenience store. In her complaint, plaintiff alleged the following under the heading

“Fourth Cause of Action for Defamation”:

That the Defendant McKillip, acting on behalf of the Defendant Village of Eleva made false statements to his fellow law enforcement officer, Deputy Dan Wieczorek, falsely accusing the Plaintiff of engaging in criminal conduct.

That such statement was communicated by speech and conduct to Deputy Wieczorek, as well as in the presence of the patrons of the Plaintiff’s business.

That the allegation that the Defendant had violated the law and thrown ice at Deputy Wieczorek was unprivileged, intended to harm the Plaintiff’s reputation so as to lower her in the estimation of the community and deter third persons from associating or dealing with her.

The complaint contains no mention of the facts upon which plaintiff now contends her defamation claim was premised. Moreover, even if she had included in her complaint the facts she is now alleging, the claim would be so unrelated to plaintiff’s federal claims that I would decline to exercise supplemental jurisdiction over it.

Because plaintiff has made clear that she does not intend to pursue a defamation claim against defendant McKillip for the allegedly false accusation he made against her on the night of July 31, 2004, I will dismiss plaintiff’s defamation claim without prejudice to her refileing it (in whatever form she wishes) in state court.

#### ORDER

IT IS ORDERED that plaintiff Roxian Brunner’s motion for reconsideration is

DENIED.

FURTHER, IT IS ORDERED that plaintiff's defamation claim is DISMISSED without prejudice to plaintiff's refiling it in state court.

Entered this 5th day of June, 2007.

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