

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

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KELLY S. MAHNKE,

Plaintiff,

v.

DANIEL GARRIGAN and  
COLUMBIA COUNTY;

Defendants.  
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OPINION and ORDER

09-cv-408-slc<sup>1</sup>

This is a proposed civil action for monetary relief in which plaintiff, a resident of Cambria, Wisconsin, contends that defendants violated her constitutional rights when her horse was seized from her. Plaintiff has asked for leave to proceed in forma pauperis and has supported her request with an affidavit of indigency. The standard for determining whether

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<sup>1</sup> While this court has a judicial vacancy, it is assigning 50% of its caseload automatically to Magistrate Judge Stephen Crocker. It is this court's expectation that the parties in a case assigned to the magistrate judge will give deliberate thought to providing consent for the magistrate judge to preside over all aspects of their case, so as to insure that all cases filed in the district receive the attention they deserve in a timely manner. At this early date, consents to the magistrate judge's jurisdiction have not yet been filed by all the parties to this action. Therefore, for the purpose of issuing this order I am assuming jurisdiction over the case.

plaintiff qualifies for indigent status is the following:

- From plaintiff's annual gross income, the court subtracts \$3400 for each dependent excluding the plaintiff.
- If the balance is less than \$15,000, the plaintiff may proceed without any prepayment of fees and costs.
- If the balance is greater than \$15,000 but less than \$28,000, the plaintiff must prepay half the fees and costs.
- If the balance is greater than \$28,000, the plaintiff must prepay all fees and costs.
- Substantial assets or debts require individual consideration.

In this case, plaintiff has two dependents. Her monthly income is \$2,015, which makes her annual income \$24,180. Plaintiff's balance comes to \$17,380 after subtracting \$3400 for each dependent. Because plaintiff's income falls in the \$15,000 to \$28,000 range, she must prepay half the fees and costs. If she wishes to proceed with this action, she will have to pay \$175, which is half the \$350 filing fee.

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972). However, because plaintiff is requesting leave to proceed under the in forma pauperis statute, his complaint must be dismissed if it is legally frivolous, malicious, fails to state a claim upon which relief

may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915(e)(2)(B). I conclude that plaintiff has alleged facts from which it may be inferred that defendant Daniel Garrigan violated her Fourth and Fourteenth Amendment rights, but she has not alleged facts from which it may be inferred that defendant Columbia County violated her constitutional rights. I will allow plaintiff to proceed on her Fourth and Fourteenth Amendment claims against defendant Garrigan. However, plaintiff has failed to state a claim against defendant Columbia County and that defendant will be dismissed from the case.

In her complaint, plaintiff alleges the following facts.

#### ALLEGATIONS OF FACT

Plaintiff Kelly S. Mahnke is a resident of Cambria, Wisconsin. Defendant Daniel Garrigan is employed as a detective at the Columbia County Sheriff's Office. Defendant Columbia County is a municipal entity located in the state of Wisconsin.

On July 4, 2003, Detective Daniel Garrigan seized plaintiff's horse without a warrant. On July 16, 2003, plaintiff delivered a Petition for Return of Seized Property to the Columbia County Courthouse. Plaintiff's attorney re-filed the petition on July 18, 2003. On July 29, 2003, defendant Garrigan advised plaintiff in writing that no charge would be filed against plaintiff and that her horse would be returned to her after she paid a fee.

However, defendant refused to return her horse.

On September 26, 2003, plaintiff received in the mail a complaint charging her with Intentionally Mistreating Animals. The charges were dropped but she was sued by defendant Columbia County for the cost of the horse's care. On December 16, 2003, at a court hearing, the district attorney asked to sell the horse to pay for its costs of care. The judge ordered that the horse be returned, on the condition that plaintiff's veterinarian checked the place where plaintiff was going to keep the horse. Plaintiff complied but her horse was not returned to her by defendant Garrigan.

On January 3, 2004, plaintiff attempted to retrieve her property, but defendant Garrigan told her that he was going to arrest her for disorderly conduct. She left without her horse. Two days later she was able to get her horse back. A lien was placed on plaintiff's home by Columbia County for the costs of care while the Wisconsin Court of Appeals reviewed her case.

## DISCUSSION

Plaintiff contends that defendant Garrigan violated her Fourth Amendment and Fourteenth Amendment rights when he seized her horse. Plaintiff alleges that defendant Garrigan took her horse without a warrant and kept her horse from her from July 2003 to January 2004.

The Fourth Amendment prohibits unreasonable searches and seizures. In Siebert v. Severino, 256 F.3d 648, 656 (7th Cir. 2001), the court held that a seizure of a horse without a warrant was unreasonable. Therefore, I will allow plaintiff to proceed on her Fourth Amendment claim against defendant Garrigan,

Also, plaintiff claims that defendant Garrigan deprived her of her horse without due process in violation of the Fourteenth Amendment. A procedural due process claim requires a two-step analysis. First, was the plaintiff deprived of a constitutionally protected interest in life, liberty or property? Second, if so, what process was she due with respect to that deprivation? Porter v. DiBlasio, 93 F. 3d 301, 305 (7th Cir. 1996). Plaintiff alleges that she was deprived of her property without a pre-deprivation hearing. In Siebert, 256 F.3d at 660, the court held that an individual whose horse was removed from her possession was entitled to a pre-deprivation hearing. Therefore, I will allow plaintiff to proceed on this claim. However, she will have to prove that the circumstances of her case required a pre-deprivation hearing.

Finally, plaintiff's allegations against defendant Columbia County concern a state court action. She alleges that Columbia County sued her for the cost of care of the horse and placed a lien on her home while the Wisconsin Court of Appeals considered her case. I understand from her allegations that she is challenging a state circuit court decision to award Columbia County the costs of care for her horse. In Rooker v. Fidelity Trust Co., 263

U.S. 413 (1923), and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 486 (1983), the United States Supreme Court held that federal district courts lack jurisdiction to entertain appeals of the decisions of a state's highest court. The Rooker-Feldman doctrine has been extended to apply to decisions of lower state courts. E.g., Ritter v. Ross, 992 F.2d 750, 755 (7th Cir. 1993); Keene Corp. v. Cass, 908 F.2d 293 (8th Cir. 1990). Under the doctrine, a litigant may not obtain review of a state court judgment merely by recasting it as a civil rights action under § 1983. Ritter, 992 F.2d at 754. Rooker-Feldman bars a federal court from entertaining not only claims actually reviewed in state court but also other claims, including constitutional claims, that are "inextricably intertwined" with the claims heard by the state court. Leaf v. Supreme Court of Wisconsin, 979 F.2d 589, 598 (7th Cir. 1992) (quoting Feldman, 460 U.S. at 486). Thus, this court has no authority to review the Wisconsin state court's determination.

Moreover, as a municipality, defendant Columbia County cannot be liable unless a municipal policy or custom caused the constitutional injury. Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 507 U.S. 163, 166-67 (1993). Plaintiff has not alleged that any municipal custom or policy deprived her of her constitutional rights. For this reason, defendant Columbia County will be dismissed from this action.

## ORDER

IT IS ORDERED that:

1. Plaintiff Kelly S. Mahnke's request for leave to proceed in forma pauperis is DENIED with respect to her claim that defendant Columbia County violated her constitutional rights; defendant Columbia County is DISMISSED from this lawsuit;

2. Plaintiff's request for leave to proceed in forma pauperis is GRANTED with respect to her claim that defendant Garrigan violated her Fourth and Fourteenth Amendment rights when he removed her horse from her possession. However, before plaintiff may proceed she must pay \$175, which is half the \$350 fee for filing this case. If plaintiff fails to pay this fee by August 19, 2009, the clerk of court is directed to close this case as voluntarily dismissed without prejudice. If plaintiff pays the \$175 filing fee, copies of plaintiff's complaint and this order will be sent to the United States Marshal for service on defendant Garrigan.

3. For the remainder of this lawsuit, plaintiff must send defendant a copy of every paper or document that she files with the court. Once plaintiff learns the name of the lawyer that will be representing the defendant, she should serve the lawyer directly rather than defendant. The court will disregard documents plaintiff submits that do not show on the court's copy that plaintiff has sent a copy to defendant or to defendant's attorney.

4. Plaintiff should keep a copy of all documents for her own files. If she is unable to

use a photocopy machine, she may send out identical handwritten or typed copies of her documents.

Entered this 29<sup>th</sup> day of July, 2009.

BY THE COURT:

/s/

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BARBARA B. CRABB  
District Judge