IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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MICHAEL L. VAN BLARICOM and
LIZABETH A. CASPER,

Plaintiffs,

OPINION AND ORDER

13-cv-12-bbc

v.

OFFICER ADAM BRUNCLIK,
OFFICER JON FICK, LT. RAYMOND PARR,
OFFICER RON AMBROZAITIS and
MARK PETERSON, all in their individual
capacities,[1]

Defendants.

- -

In this action brought under 42 U.S.C. § 1983, plaintiffs Michael L. Van Blaricom and Lizabeth A. Casper contend that defendants Adam Brunclik, John Fick, Raymond Parr, Ron Ambrozaitis and Mark Petersen violated their rights under the Fourteenth Amendment by depriving them of their truck without due process of law. Defendants' motion to dismiss under Fed. R. Civ. P. 12(b)(6), dkt. #3, and motion for sanctions under Fed. R. Civ. P. 11, dkt. #9, are ready for decision.

I will grant defendants' motion to dismiss in full. Plaintiffs have not alleged that defendants Fick, Parr and Ambrozaitis participated in the alleged violations, so they are

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[1] Defendants' counsel has advised the court that the correct spelling of Mark Peterson's last name is "Petersen."

entitled to be dismissed. As for defendants Brunclik and Petersen, even when plaintiffs' allegations are read in the light most favorable to them, they do not show that reasonable persons in defendants' position would have known that they would be violating plaintiffs' rights to due process when they impounded the truck. Wisconsin law provided a mechanism for challenging a forfeiture and plaintiffs have not alleged that this state law did not give them an adequate procedure to challenge the retention of their truck while forfeiture proceedings were pending. Therefore, I have to conclude that defendants are entitled to qualified immunity. Plaintiffs' complaint against Brunclik and Petersen must be dismissed for that reason.

I will grant defendants' motion for sanctions in part. Although plaintiffs' due process claims against defendants Brunclik and Peterson are not foreclosed by the relevant precedent, the claims against the defendants Fick, Parr and Ambrozaitis are clearly frivolous.

In their complaint, plaintiffs have alleged the following facts.

ALLEGATIONS OF FACT

Defendants Adam Brunclik, Jon Fick, Ron Ambrozaitis, Raymond Parr and Mark Petersen are employees of the Chetek (Wisconsin) Police Department. Brunclik, Fick and Ambrozaitis are police officers, Parr is a police lieutenant and Petersen is the chief of police.

On July 3, 2011, plaintiffs Michael Van Blaricom and Lizabeth Casper were traveling in their truck in Chetek, Wisconsin. Van Blaricom was driving. Allegedly, defendants Brunclik and Ambrozaitis saw a lit brick of firecrackers thrown from the driver's window of

the truck, causing Brunclik to initiate a traffic stop. Shortly thereafter, defendant Fick arrived at the scene, where he spoke with Casper while Brunclik spoke with Van Blaricom.

Fick began searching plaintiffs' vehicle. Afterwards, he claimed to have had permission from both plaintiffs but Van Blaricom did not consent to the search. (The complaint is silent about whether Casper consented.) Plaintiffs allege that Fick claimed to have discovered a small bottle of Dr. McGillicuddy's filled with a gray powdery substance and a soda bottle filled with some material, both of which had fuses protruding from their caps. Van Blaricom was arrested on suspicion of possessing explosives for an unlawful purpose.

Officers at the scene called in defendant Parr, who called the bomb squad when he saw the alleged explosive devices. Van Blaricom was later charged with possession of explosive devices with the intent to commit a crime, in violation of Wis. Stat. § 941.31(1), which is a Class F felony, and with disorderly conduct in violation of Wis. Stat. §§ 947.01, which is a Class B misdemeanor. Casper was not arrested or charged with a crime.

After Van Blaricom's arrest, Brunclik had plaintiffs' truck impounded. When Casper attempted to retrieve the vehicle from the towing company the next morning, she was told she needed the permission of defendant Petersen, the chief of police. When she called the police department, Petersen told her that "release of the truck was out of his hands" and she would need to "take it up with the District Attorney's office." The truck remained impounded.

On July 28, 2011, 25 days after the incident, an assistant district attorney filed a

forfeiture complaint. Wisconsin v. Van Blaricom, Case No. 11 CV 399 (Barron County). The state sought forfeiture of plaintiffs' truck under Wis. Stat. § 973.075(1)(b)(1m)(a) on the ground that the truck was used in the transportation of an improvised explosive device. Plaintiffs filed their answer to the forfeiture complaint on August 18, 2011.

In September 2011, a representative of the Chetek Police Board met with plaintiffs and passed along a message from Petersen: if plaintiffs would agree to give up their claim to the vehicle, Petersen would see to it that the charges were reduced to misdemeanors and Van Blaricom would get off with only some fines. Plaintiffs declined the offer. On October 4, 2011, the district attorney's office offered Van Blaricom a similar plea deal: if he would plead guilty to three amended counts of disorderly conduct and agree not to contest the forfeiture, then the district attorney would dismiss the felony counts. Plaintiffs refused to withdraw their objection to the forfeiture because they believed the state would be unable to prove Van Blaricom possessed the explosive "with intent to use such explosive to commit a crime," as required by Wis. Stat. § 941.31(1).

Around February 10, 2012, the state amended the charges against Van Blaricom to two felony counts of possession of improvised explosive devices under Wis. Stat. § 941.31(2)(b) ("Whoever makes, buys, sells, transports, possesses, uses or transfers any improvised explosive device, or possesses materials or components with intent to assemble any improvised explosive device, is guilty of a Class H felony."), and one misdemeanor count of disorderly conduct under Wis. Stat. §§ 947.01. On June 4, 2012, Van Blaricom pleaded guilty to two misdemeanor counts of disorderly conduct and the felony charges were

dismissed on the prosecutor's motion. Wisconsin v. Van Blaricom, Case No. 2011 CF 204 (Barron County).

The forfeiture case was placed on the circuit court's calendar for a hearing on July 13, 2012. The day before the hearing, the state sought a continuance because it claimed a necessary witness was unavailable to testify. In fact, the witness was available to testify but was unwilling to testify that the devices seized from Van Blaricom were improvised explosive devices and without that testimony, the state could not meet its burden of proof in the forfeiture case. After hearing oral arguments on July 13, 2012, the court denied the state's request for a continuance, dismissed the forfeiture complaint, ordered the immediate return of plaintiffs' truck and directed the state to pay all storage and impound fees.

STATE COURT RECORDS

Defendants' motion to dismiss relies on facts about the forfeiture action relating to plaintiffs' truck that were not included in the complaint. Ordinarily a motion to dismiss is limited to the allegations in the complaint, but the court may take judicial notice of state court documents without converting a motion to dismiss into a motion for summary judgment. Henson v. CSC Credit Services, 29 F.3d 280, 284 (7th Cir. 1994).

On November 29, 2011, the circuit court held a hearing on the forfeiture complaint. At the hearing, plaintiffs "opted not to go forward until the resolution of [the] criminal case" against Van Blaricom. Aberg Aff., Certified Civil Court Record, dkt. #4-3. After noting that the criminal and forfeiture cases were "to track with one another," the court set the jury trial

on the criminal case for March 28, 2012.

OPINION

I. MOTION TO DISMISS

A. Personal Involvement

As an initial matter, the complaint contains no allegations that defendants Fick, Parr or Amrozaitis took any action relevant to plaintiffs' due process claims. Plaintiffs allege that these defendants participated in the traffic stop but plaintiffs are not challenging the constitutionality of the stop or Van Blaricom's arrest. Under 42 U.S.C. § 1983, a person may not be held liable unless he participated in the alleged unconstitutional conduct. Sheik-Abdi v. McClellan, 37 F.3d 1240, 1248 (7th Cir. 1994). Therefore, I will dismiss the complaint as against defendants Fick, Parr and Amrozaitis and consider only plaintiffs' claim that defendant Brunclik seized their truck without due process and that Petersen was responsible for its continued retention. In addition, plaintiffs have alleged that Petersen played a role in plea negotiations relating to the forfeiture proceedings. Drawing inferences in plaintiffs' favor, I will assume that these allegations are sufficient to establish the personal involvement of defendants Brunclik and Petersen in depriving plaintiffs of their truck.

B. Qualified Immunity

The doctrine of qualified immunity protects government employees from being sued in their individual capacities for monetary relief, unless the plaintiff shows that (1) the facts

make out a violation of the plaintiff's federal rights and (2) those rights at issue were clearly established at the time of the defendants' alleged misconduct. Saucier v. Katz, 533 U.S. 194, 201 (2001); Pearson v. Callahan, 555 U.S. 223, 231-32 (2009). Because qualified immunity is immunity from suit, the Supreme Court has "emphasized that qualified immunity questions should be resolved at the earliest possible stage of a litigation." Anderson v. Creighton, 483 U.S. 635, 646 n.6 (1987) (citing Harlow v. Fitzgerald, 457 U.S. 800, 817 (1982)). Although complaints are generally not dismissed under Fed. R. Civ. P. 12(b)(6) on qualified immunity grounds because the defense often involves disputed factual issues, Alvarado v. Litscher, 267 F.3d 648, 651 (7th Cir. 2001), dismissal is appropriate when "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." McMath v. City of Gary, Indiana, 976 F.2d 1026, 1031 (7th Cir. 1992) (quotation omitted).

Defendants deny that they violated plaintiffs' clearly established rights to due process by seizing and retaining their truck. On this second prong, the issue is "whether reasonable public officials in [defendants'] position would have understood that what they were doing was unlawful." Kerr v. Farrey, 95 F.3d 472, 480 (7th Cir. 1996) (citing Anderson, 483 U.S. at 640). A plaintiff may establish this by citing closely analogous cases that establish the right at issue and its application to the factual situation at hand, thus demonstrating that it was "certain" or "apparent" that the defendant's conduct was unlawful at the time. Doyle v. Camelot Care Centers, Inc., 305 F.3d 603, 620 (7th Cir. 2002). On a motion to dismiss, defendants may prevail if they can demonstrate that reasonable persons in their position

would not have known that their conduct violated plaintiffs' constitutional rights. "'Whether an official may be held personally liable for his or her actions turns on the objective reasonableness of the action, assessed in light of the legal rules that were clearly established at the time.'" Id. (quoting Townsend v. Vallas, 256 F.3d 661, 672 (7th Cir. 2001)). Accordingly, I must determine whether defendants have shown that reasonable persons in their position would not have known that their actions violated plaintiffs' right to due process.

C. Due Process Requirements

The Fourteenth Amendment prohibits state governments from depriving any person of his or her property "without due process of law." U.S. Const. amend. XIV. The "fundamental requirement of due process is an 'opportunity to be heard at a meaningful time and in a meaningful manner.'" City of Los Angeles v. David, 538 U.S. 715, 717 (2003) (quoting Mathews v. Eldridge, 424 U.S. 319, 333 (1976)). Whether this test is met in any particular situation is determined by a balancing test, taking into consideration the private interests affected by the official action, the government's interests, the risk of mistake and the likely benefit of additional procedures. Mathews, 424 U.S. at 335.

As a general rule, the state must provide a hearing before depriving a person of property, but this rule does not apply in "extraordinary situations." Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663, 679 (1974). The Supreme Court has recognized that police officers may seize property involved in illegal activity without predeprivation

notice or hearing if the property could be easily moved, destroyed or concealed. Calero-Toledo, 416 U.S. at 679; United States v. $8,850 in U.S. Currency, 461 U.S. 555, 562, n.12 (1983); United States v. All Assets & Equipment of West Side Building Corp., 188 F.3d 440, 443 (7th Cir. 1999). Plaintiffs have not alleged that defendants did not have authority to seize the truck when they suspected it was being used to transport explosives for an unlawful purpose. When officers may seize property without a predeprivation hearing, due process requires only "that the government provide meaningful procedures to remedy erroneous deprivations." Tucker v. Williams, 682 F.3d 654, 661 (7th Cir. 2012) (citing Parratt v. Taylor, 451 U.S. 527, 541 (1981)).

D. Plaintiffs' Due Process Claim

Plaintiffs were deprived of their truck for 13 months. "[T]he use of one's automobile is certainly an important interest, and deprivation of it for more than a brief period could interfere severely with a person's ability to make a living and his access to both the necessities and amenities of life." Miller v. City of Chicago, 774 F.2d 188, 192 (7th Cir. 1985) (internal quotation omitted). The allegations in plaintiffs' complaint are sufficient to suggest that defendants Brunclik and Petersen were responsible for the seizure and retention of their truck but not sufficient to show that they were denied a meaningful opportunity to challenge the deprivation of their truck.

The seizure and forfeiture without prior judicial process were authorized by state law because the seizure was incident to an arrest. Wis. Stat. § 973.075(2)(a). The statute also

provides that "all vehicles" (with certain irrelevant exceptions) are subject to seizure and forfeiture if they are used "[t]o transport any property or weapon used or to be used or received in the commission of any felony." Wis. Stat. § 973.075(1)(b)(1m)(a); State v. One 1997 Ford F-150, 2003 WI App 128, ¶ 17, 265 Wis. 2d 264, 665 N.W.2d 411. State law also requires that the forfeiture proceeding begin within thirty days of the date of the seizure or conviction, whichever is earlier. Wis. Stat. § 973.076(2)(a). The "defendant may request that the forfeiture proceedings be adjourned until after adjudication of any charge concerning a crime which was the basis for the seizure of the property" and that "request shall be granted." Id.

Defendant Brunclik seized plaintiffs' truck incident to Van Blaricom's arrest on a felony charge. The arrest occurred on July 3, 2011 and the state filed its forfeiture action on July 28, 2011, within the thirty-day limit. Accordingly, defendants' conduct was authorized by state law. The only remaining question is whether the forfeiture proceedings provided adequate process for plaintiffs. (Plaintiffs argue in their brief that defendants employed "a process outside of that provided by statute . . . in an attempt [to] force plaintiffs to forfeit their vehicle." Plts.' Br., dkt. #7, at 6. If they are referring to their allegations that Petersen played a part in the plea negotiations in an effort to gain possession of the truck, their claim has no merit, even if it can be proved.)

Several of plaintiffs' objections to the forfeiture can be disposed of quickly because the objections are irrelevant to plaintiffs' due process claim. First, they argue that the forfeiture action should not have been filed because the charges were "inflated" to felony

status and the action should have been dropped when the charges were amended in February 2012. These arguments challenging the merits of the forfeiture have nothing to do with plaintiffs' procedural due process claim. Moreover, plaintiffs have not challenged the validity of the initial charges and the amended charges still included felony counts that would be sufficient to support the forfeiture. Most important, plaintiffs do not allege that defendants Brunclik or Petersen participated in the decisions about what criminal charges to file and whether to file and continue the forfeiture action. In fact, they allege that these actions were taken by the district attorney.

Second, plaintiffs object to Petersen's use of the forfeiture proceeding as a bargaining chip in plea negotiations, but they have cited no authority to suggest there is anything improper about including forfeiture sanctions in plea negotiations and I am aware of none. Libretti v. United States, 516 U.S. 29, 38 (1995) (upholding forfeiture promises in plea agreements against various constitutional challenges). Last, plaintiffs accuse Petersen of persecuting Van Blaricom for reporting inappropriate conduct by a police officer, but a defendant's motive is irrelevant in due process analysis. Miller v. Dobier, 634 F.3d 412, 415 (7th Cir. 2011) (if there is no deprivation of property "there is no constitutional duty to provide due process; but if there is such a deprivation, the duty attaches regardless of the motive for the deprivation") (citing Wallace v. Robinson, 940 F.2d 243, 247-48 (7th Cir. 1991 (en banc)).

Plaintiffs' only colorable constitutional objection is to the delay in the forfeiture proceedings. Plaintiffs allege that defendants retained plaintiffs' truck while waiting 25 days

to file the forfeiture action and a year to resolve the forfeiture action. Whether these delays violated plaintiffs' due process rights requires consideration of the private interests affected, including the length or finality of the deprivation. Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1, 19 (1978); Logan v. Zimmerman Brush Co., 455 U.S. 422, 436-37 (1982) (state court remedy may be insufficient if lengthy, speculative and incapable of entirely vindicating plaintiff's rights). An unjustified and lengthy delay in the initiation or prosecution of forfeiture proceedings may violate due process. $8,850 in U.S. Currency, 461 U.S. at 567.

Except for one opinion from this court, plaintiffs have cited no case law regarding the post deprivation legal process required for forfeitures. The case law is uncertain. Two lines of cases seem applicable. Simms v. District of Columbia, 872 F. Supp. 2d 90, 97 (D.D.C. 2012) (describing two lines of cases). First, in $8,850 in U.S. Currency, 461 U.S. at 567, the Supreme Court determined that a claimant's due process rights were not violated when the Customs Service held $8,850 for 18 months before initiating a forfeiture proceeding. Drawing on an analogy with a defendant's right to a speedy trial, the Court adopted a balancing test that takes into account the length of the delay, the reason for the delay, the claimant's assertion of his right and the prejudice to the claimant. Id. at 564. The Court held that the 18-month delay in the case before it was not unreasonable because the delay was attributable to pending administrative and criminal proceedings, id. at 567-68; the government had not delayed those proceedings unduly; and the claimant had not taken advantage of procedures available to him to hasten the forfeiture proceeding. Id. at 659.

Plaintiffs' allegations would fail to state a claim under the framework established in $8,850 in U.S. Currency because the public record shows that the delay was attributable to them. Plaintiffs asked to adjourn the forfeiture proceeding until Van Blaricom's criminal charges were resolved and the court was required to grant their request. Wis Stat. § 973.076(2)(a). Plaintiffs have not alleged that defendants proceeded in a dilatory fashion in Van Blaricom's criminal case or that the delay caused them any unfair prejudice.

However, in several cases, including one decided by the Court of Appeals for the Seventh Circuit, courts have applied a different analysis to vehicle forfeitures. In Krimstock v. Kelly, 306 F.3d 40, 55 (2d Cir. 2002), the plaintiff challenged New York City's vehicle forfeiture scheme that gave the city 25 days to initiate forfeiture proceedings, id. at 49, and in practice had forfeiture cases dragging on for months or years. Id. at 45-46. The court analyzed the scheme under the general due process balancing test set out in Mathews, 424 U.S. at 319, rather than the test discussed in $8,850 in U.S. Currency, because the latter case concerned only the delay in the proceedings rather than the retention of property pending the proceeding. Id. at 68. The court of appeals reasoned that vehicles are essential for transportation and employment; innocent owners were likely affected; and the city could protect its interest with a bond. Krimstock, 306 F.3d at 67-68. It found that New York City's forfeiture scheme violated due process because it failed to provide a prompt hearing to contest the seizure or provide interim relief short of retention while the forfeiture hearing is pending. Id. at 55.

The Court of Appeals for the Seventh Circuit followed the reasoning of Krimstock in

Smith v. City of Chicago, 524 F.3d 834, 838 (7th Cir. 2008). It held that Illinois's forfeiture statute violated due process because it permitted the state to retain a vehicle for either 97 or 142 days (depending on the value of the vehicle) without a mechanism to test the validity of retention and without a mechanism for fashioning an appropriate bond while the forfeiture procedure was pending. The Supreme Court granted certiorari in Smith on the question "whether Illinois law provides a sufficiently speedy opportunity for an individual, whose car or cash police have seized without a warrant, to contest the lawfulness of the seizure." Alvarez v. Smith, 558 U.S. 87 (2009). However, the Court vacated Smith as moot without reaching the merits because the underlying property dispute had been resolved during the appeal and the plaintiff had not sought damages. Id.

Surprisingly, neither plaintiffs nor defendants cited Krimstock or Smith. However, even if I determined that Smith was controlling, it would not establish that plaintiffs' clearly established rights were violated by the forfeiture proceedings against their truck. First, the Wisconsin statute provides that forfeiture actions must begin within 30 days, and the forfeiture against plaintiffs' truck was filed in 25 days. The delay is substantially shorter than the delay authorized in the Illinois statute, which permitted the state to wait up to 142 days to file a forfeiture action. Second, plaintiffs have not alleged that Wisconsin did not provide an adequate procedure to challenge the retention of their vehicle while the forfeiture proceedings were pending. Last, plaintiffs can hardly object to the length of their forfeiture proceeding when they asked for the stay at the hearing at which a trial date was set in March 2012.

By itself, Krimstock is not sufficient to show that at the time plaintiffs' truck was seized it was clearly established that due process required a hearing within 25 days. If no binding precedent exists, a right is clearly established only if "there was such a clear trend in the caselaw that we can say with fair assurance that the recognition of the right by a controlling precedent was merely a question of time." Jacobs v. City of Chicago, 215 F.3d 758, 767 (7th Cir. 2000). It appears that no other federal court of appeals has addressed Krimstock and it has received mixed review in lower courts. Compare People v. One 1998 GMC, 2011 IL 110236, 960 N.E.2d 1071 (applying $8,850 in U.S. Currency to vehicle forfeiture and declining to apply Krimstock and Smith) with Simms, 872 F. Supp. 2d at 97 (applying Krimstock rather than $8,850 in U.S. Currency). Because it was not clearly established that due process would be violated by a 25-day delay in the initiation of forfeiture proceedings or a one-year delay in completing those proceedings while a criminal case is resolved, defendants Brunclik and Petersen are entitled to qualified immunity.

Plaintiffs argue that dismissal on the basis of qualified immunity is inappropriate in this case because the facts relevant to the qualified immunity defense are within the knowledge and control of the defendants. However, plaintiffs have not explained what additional facts they believe would show that qualified immunity is inappropriate. Plaintiffs know what procedural protections they were given. The facts relevant to plaintiffs' due process claim are contained in the allegations and the public record and those facts demonstrate that defendants Brunclik and Petersen are entitled to qualified immunity.

II. MOTION FOR SANCTIONS

When they filed their motion to dismiss, defendants also served on plaintiffs a motion for sanctions under Fed. R. Civ. P. 11. It appears that defendants satisfied the procedural requirements of Rule 11, and plaintiffs have not challenged the motion for sanctions on procedural grounds. Rule 11 requires "the district court [to] undertake an objective inquiry into whether the party or his counsel should have known that his position is groundless." District No. 8, International Association of Machinists & Aerospace Workers, AFL-CIO v. Clearing, a Division of U.S. Industries, Inc., 807 F.2d 618, 622 (7th Cir. 1986).

Defendants' argument that plaintiffs' due process claim are frivolous relies entirely on the fact that this court held that similar claims were "legally frivolous" in Lofftin v. Madison Police Dept., 03-C-437-C, 2003 WL 23315791 (W.D. Wis. Sept. 23, 2003). In Lofftin, a prisoner alleged that his vehicle and money were seized when he was arrested on drug charges that were later dropped. In screening the complaint under 28 U.S.C. § 1915A, I held that Wis. Stat. § 961.55 authorized both the seizure of the prisoner's property without a hearing incident to his arrest on drug charges and the forfeiture of both the vehicle he had used to transport the controlled substances and the money he had derived from the sales. Wis. Stat. § 961.55(2)(a), (1)(d) & (e). Any delay in the return of his property did not give rise to a due process claim because the plaintiff could have contested the forfeiture action or, if no forfeiture action had been filed, he could have filed an action for return of seized property under Wis. Stat. § 968.20 or for conversion under Wis. Stat. § 893.51. Id. at *2 (citing Jones v. State, 226 Wis. 2d 565, 594 N.W.2d 738 (Wis. 1999); T.W.S., Inc.

v. Nelson, 150 Wis. 2d 251, 440 N.W.2d 833 (Ct. App. 1989)). Because these procedures provided adequate post deprivation remedies, I concluded that the plaintiff's due process claim was legally frivolous.

Although most of plaintiffs' attempts to distinguish their case from Lofftin are frivolous, they identified one salient factual difference: in Lofftin the plaintiff had not alleged that he had been deprived of his vehicle for more than a year. Although plaintiffs' counsel failed to explain the legal relevance of this fact, it is a central factor in the due process analysis that I discussed above. Moreover, neither side cited any of the relevant developments in the case law since Lofftin. Because Lofftin did not foreclose a due process claim on the facts alleged by plaintiffs, I will not impose sanctions on plaintiffs for filing the claims against defendants Brunclik and Petersen.

However, I agree with defendants that plaintiffs' complaint was obviously frivolous with respect to defendants Fick, Parr and Amrozaitis. Nothing the complaint suggests that these three defendants played any role in the seizure or the forfeiture proceedings. The failure of plaintiffs' counsel to respond to this argument is an implicit admission that counsel failed to investigate the basis of the claims against Fick, Parr and Ambrozaitis. As for plaintiffs' suggestion that discovery was necessary to determine which defendants were proper, the court of appeals has observed that "the need for discovery does not excuse the filing of a vacuous complaint. No matter how such inquiries come out, . . . courts must ask the right question: whether the side filing the pleading knew enough at the time." Frantz v. United States Powerlifting Federation, 836 F.2d 1063, 1068 (7th Cir. 1987).

Accordingly, defendants are entitled to sanctions for having to defend against plaintiffs' due process claims against defendants Fick, Parr and Amrozaitis. Nisenbaum v. Milwaukee County, 333 F.3d 804, 811 (7th Cir. 2003) (abuse of discretion not to award sanctions when five of six defendants were sued without legal or factual basis because no facts supported municipal liability and county board members had legislative immunity).

However, Rule 11 is not a "blanket fee shifting" provision and the court "has an obligation to award only those fees which directly resulted from the sanctionable conduct." Divane v. Krull Electric Co., 319 F.3d 307, 314 (7th Cir. 2003). The moving party must prove the portion of their costs caused by the sanctionable conduct. Id. Defendants have asked only for all costs related to the motion to dismiss and have not attempted to isolate costs specific to defendants Fick, Parr and Ambrozaitis. Defendants may have until April 30, 2013 to identify any fees or costs that they believe were incurred because of plaintiffs' inclusion of these three defendants in this suit.

ORDER

IT IS ORDERED that

1. The motion to dismiss, dkt. #3, filed by defendants Adam Brunclik, Jon Fick, Raymond Parr, Ron Ambrozaitis and Mark Petersen is GRANTED.

2. The complaint filed by plaintiffs Michael L. Van Blaricom and Lizabeth A. Casper is DISMISSED WITH PREJUDICE and the Clerk of Court is directed to enter judgment accordingly and close this case.

3. Defendants' motion for sanctions, dkt. #9, is GRANTED IN PART. Sanctions will be imposed on plaintiffs' counsel for bringing suit against defendants Fick, Parr and Ambrozaitis. The motion is DENIED in all other respects. Defendants may have until May 13, 2013, to file a supplement identifying fees and costs actually incurred as a result of the inclusion of defendants Fick, Parr and Ambrozaitis as named defendants. Plaintiffs' counsel will have until May 27, 2013 in which to respond.

Entered this 25th day of April, 2013.

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