

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

CG6 CONCRETE SPECIALISTS, INC., et al.)))	
Plaintiffs,)	Civil Action No.: 5:04CV00014
v.)	<u>MEMORANDUM OPINION</u>
DEPT. OF POLICE, TOWN OF BERRYVILLE, VIRGINIA, et al.)))	By: Hon. Glen E. Conrad United States District Judge
Defendants.)	

Plaintiffs, CG6 Concrete Specialist, Inc. (“CG6”) and Kenneth D. Liggins, proceeding pro se, filed this case against the Town of Berryville, the Town of Berryville Police Department, the Town Manager (Keith Dalton), and the Town Police Chief (D. Elden Nesselrodt). The case is currently before the court on the defendants’ motions to dismiss pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure,¹ as well as the plaintiffs’ motion to add claims against a new party.² As the court explained during the motions hearing held on September 14, 2004, the defendants’ Rule 12(b)(6) motions will be treated as motions for summary judgment.³ For the reasons that follow, the court will grant the defendants’ motions, and deny the plaintiffs’ motion to add claims against a new party.

¹ The defendants contend that the court lacks subject matter jurisdiction over the plaintiff’s claims and that the plaintiffs have failed to state a claim for which relief may be granted.

² The plaintiffs wish to add claims against the Mayor of the Town of Berryville, Rick Sponseller.

³ See Fed. R. Civ. P. 12(b) (“If, on a motion asserting the defense numbered (6) to dismiss ... matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56....”).

BACKGROUND

Mr. Liggins serves as president of CG6, a business located in the Town of Berryville. On July 13, 2003, Mr. Liggins found a ticket from the police department on the windshield of a CG6 vehicle. The ticket indicated that the vehicle did not have a current town decal. Mr. Liggins refused to pay the ticket and subsequently received a law enforcement notice from the police department. The notice stated that an enforcement warrant would be issued if the ticket was not paid within five working days. CG6 was also cited for not having a business license, as required by a town ordinance. During the hearing on the defendants' motions, Mr. Liggins explained that CG6 was ultimately convicted of violating the ordinance in general district court. However, no further action was taken by the police department with respect to the town decal ticket.

The plaintiffs filed this case against the defendants on March 1, 2004. The plaintiffs allege that they are not required to obey the town ordinances, because CG6 is located in an area known as Josephine City, which was illegally annexed by the Town of Berryville in 1989. The plaintiffs allege that the illegal annexation violated their due process rights. The plaintiffs further allege that the defendants violated their due process rights by enforcing the town ordinances against them, in spite of the illegal annexation.

DISCUSSION

The defendants have moved to dismiss the case for lack of subject matter jurisdiction under Rule 12(b)(1), and for failure to state a claim upon which relief may be granted under Rule 12(b)(6). As previously stated, the defendants' Rule 12(b)(6) motions will be treated as motions for summary judgment.

Motions to Dismiss Under Rule 12(b)(1)

Although the substantive allegations in the plaintiffs' complaint are somewhat ambiguous, pro se complaints must be liberally construed. De'Lonta v. Angelone, 330 F.3d 630, 633 (2003). In the complaint, the plaintiffs rely upon the due process clause of the Fourteenth Amendment. The plaintiffs also claim that the defendants conspired against them and violated their 7th Amendment right to a jury trial. This court clearly has subject matter jurisdiction over these claims, because they "arise under" the Constitution and/or involve substantial questions of federal law. 28 U.S.C. § 1331. Since the plaintiffs seek to recover only monetary damages, the court will construe the plaintiffs' federal claims under 42 U.S.C. § 1983. The plaintiffs also appear to assert a state law claim for malicious prosecution. The court may exercise supplemental jurisdiction over this claim, because it arises out of the same case or controversy as the plaintiffs' federal claims. 28 U.S.C. § 1367(a). For these reasons, the court concludes that subject matter jurisdiction is proper.

Motions for Summary Judgment

Under Rule 56 of the Federal Rules of Civil Procedure, summary judgment is properly granted if "there is no genuine issue as to any material fact and the ... moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). "The Supreme Court has stressed that Rule 56 mandates the entry of summary judgment 'against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.'" Cottom v. Town of Seven Devils, 30 Fed. Appx. 230, 234 (4th Cir. 2002) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)). In determining whether to grant a motion for summary judgment, the court must view the record in the light most favorable to the non-moving party. Terry's Floor Fashions, Inc. v. Burlington

Industries, Inc., 763 F.2d 604, 610 (4th Cir. 1985).

Due Process Claims: All of the plaintiffs' claims are based on their assertion that Josephine City was illegally annexed by the Town of Berryville. Although not specifically asserted in their complaint, the plaintiffs allege in a subsequent memorandum that the town violated Mr. Liggins's right to due process by not allowing him to vote for or against the annexation. The plaintiffs further allege that this due process violation gives rise to a claim under § 1983.⁴ However, this claim is untimely. The plaintiffs acknowledge that the annexation became effective on January 1, 1989. Therefore, the applicable two-year statute of limitations expired long before this case was filed.⁵

The plaintiffs further allege that the defendants violated their due process rights by issuing the town decal ticket.⁶ This allegation also fails to state a claim upon which relief may be granted. The plaintiffs acknowledge that they could have contested the violation by contacting the police chief.⁷ However, the plaintiffs did not contest the violation or exhaust any other available state remedies. The court is advised that the plaintiffs never paid the ticket, and that no further action has been taken by the police department. Since the plaintiffs have not been deprived of a liberty or property interest as a result of the ticket, the plaintiffs cannot establish a violation of their due process rights. To establish a due process violation, the plaintiffs must demonstrate that "there exists a liberty or property interest which has been

⁴ See Plaintiffs' Memorandum in Support of Motion to Quash the Town of Berryville, VA and Keith Anthony Dalton, Town Manager Motion to Dismiss Pursuant to Rule 12(b)(6).

⁵ Because § 1983 does not explicitly provide its own statute of limitations, the court must borrow the personal injury statute of limitations from the relevant state. Wilson v. Garcia, 471 U.S. 261, 266-269 (1985). Virginia applies a two-year statute of limitations to personal injury claims. Va. Code Ann. § 8.01-243(A).

⁶ The complaint states that the defendants "seek to make the [plaintiffs] pay for an illegal ticket, and to obtain business licenses when in fact they [know] CG6 Concrete Specialists, Inc. and Kenneth D. Liggins are not a part of the Town of Berryville in Virginia legally."

⁷ According to the complaint, the ticket stated as follows: "if you wish to contest this violation you may do so by contacting the Chief of Police at 540-955-3863."

interfered with by the State” and that “the procedures attendant upon that deprivation” were constitutionally deficient. Ky. Dep’t of Corr. v. Thompson, 490 U.S. 454, 460 (1989).

Unlike the town decal ticket, the police department did take action against the plaintiffs for violating the town ordinance requiring a business license. During the motions hearing, Mr. Liggins reported that CG6 was convicted in general district court for violating the ordinance, and that the company was fined \$182.09. Although the plaintiffs claim that the conviction violated their due process rights, Mr. Liggins acknowledged at the hearing that they have not appealed the conviction or exhausted any other state remedies. Because the conviction has not been reversed on appeal, the plaintiffs cannot seek damages in federal court for constitutional violations related to the conviction. Pursuant to the United States Supreme Court’s ruling in Heck v. Humphrey, 512 U.S. 477, 486-487 (1994), plaintiffs must prove that an allegedly unconstitutional conviction has been reversed on direct appeal or declared invalid by a state tribunal, in order to recover damages under § 1983.

Jury Trial Claim: The plaintiffs also allege that the defendants violated their Seventh Amendment right to a jury trial.⁸ This claim is without merit. It is clearly established that the “Seventh Amendment’s right to a trial by jury in the federal courts has not been extended to the States through the Fourteenth Amendment.” Letendre v. Fungate, 701 F.2d 1093, 1094 (4th Cir. 1983) (citing to Olesen v. Trust Co. of Chicago, 245 F.2d 522 (7th Cir.)). The court also notes that the defendants were not entitled to a jury trial under the Sixth Amendment, since the Sixth

⁸ The complaint quotes the Seventh Amendment, which provides as follows: “In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment's jury trial provision only applies to offenses that carry a maximum authorized prison term of more than six months. Blanton v. N. Las Vegas, 489 U.S. 538, 542 (1989).

Conspiracy Claim: Additionally, the plaintiffs allege that the police chief and the town manager are carrying out a conspiracy against them. In order to establish a conspiracy claim under § 1983, the plaintiffs must show: (1) an actual violation of a right protected by § 1983; and (2) actions taken in concert by the defendants with the specific intent to violate the aforementioned right. Tigrett v. Rector & Visitors of the Univ. of Va., 137 F. Supp. 2d 670, 680 (W.D. Va. 2001). Since the plaintiffs have not shown an actual violation of a protected right, the plaintiffs have no cause of action for conspiracy under § 1983.

Malicious Prosecution Claim: Although not clearly stated in the complaint, the plaintiffs appear to assert a claim for malicious prosecution against the defendants. The court will consider this claim under state law, since the United States Court of Appeals for the Fourth Circuit has made it clear “there is no such thing as a § 1983 malicious prosecution claim.” Lambert v. Williams, 223 F.3d 257, 261-262 (4th Cir. 2000). Under Virginia law, “malicious prosecution is established by proof that a defendant: (1) instituted or procured a criminal prosecution of the plaintiff; (2) without probable cause; (3) acted maliciously; and (4) the prosecution was terminated in a manner not unfavorable to the plaintiff.” Brice v. Nkaru, 220 F.3d 233, 237 (4th Cir. 2000). As previously explained, the conviction in general district court has not been reversed on appeal or otherwise terminated in a manner favorable to the plaintiffs. For this reason, the malicious prosecution claim must be dismissed as a matter of law.

Motion to Add Claims Against a New party

The plaintiffs wish to add claims against the Mayor of the Town of Berryville, Rick Sponseller. The plaintiffs allege that the mayor signed the illegal annexation agreement, which

annexed Josephine City without due process. The plaintiffs further allege that the mayor discriminated against Mr. Liggins and other black residents of Josephine City, by failing to inform them of the town's intent to annex Josephine City, and by failing to allow the citizens to vote for or against the annexation. The plaintiffs also claim that the mayor, the town manager, and the police chief have conspired against them.

The plaintiffs' motion to add new claims against the mayor must be denied as futile. As previously explained, any § 1983 claims arising from the annexation are untimely. The plaintiffs also have no cause of action for conspiracy, since they have shown no actual violation of a right protected by § 1983.

CONCLUSION

For the reasons stated, the defendants' motions for summary judgment will be granted, and the plaintiffs' motion to add claims against a new party will be denied. The Clerk is directed to send certified copies of this Memorandum Opinion and the accompanying Order to the plaintiff and to all counsel of record.

ENTER: This 30th day of September, 2004.

/S/ GLEN E. CONRAD

United States District Judge

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CG6 CONCRETE SPECIALISTS, INC., et al.)	
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Plaintiffs,)	Civil Action No.: 5:04CV00014
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v.)	<u>ORDER</u>
)	By: Hon. Glen E. Conrad
DEPT. OF POLICE, TOWN OF BERRYVILLE, VIRGINIA, et al.)	United States District Judge
)	
)	
Defendants.)	

For the reasons stated in a Memorandum Opinion filed this day, it is hereby

ORDERED

as follows:

1. The defendants' motions for summary judgment¹ are **GRANTED**.
2. The plaintiffs' motion to add claims against a new party is **DENIED**.

The Clerk is directed to strike the case from the active docket of the court, and to send a certified copy of this Order and the attached Memorandum Opinion to the plaintiff and to all counsel of record.

ENTER: This 30th day of September, 2004.

_____/S/ GLEN E. CONRAD_____
United States District Judge

¹ As explained in the Memorandum Opinion, the court construed the defendants' motions to dismiss as motions for summary judgment.