MARIN v. MCCLINCY et al

2014 | Cited 0 times | W.D. Pennsylvania | April 11, 2014

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA MEL M. MARIN,) Plaintiff,)

v.) 1:11-cv-00132 Electronic Filing WILLIAM MCCLINCY and) Judge David S. Cercone MELISSA A. THOMPSON) Defendant.)

OPINION I. Introduction

laintiff filed a complaint in this Court on July 20, 2011, naming William M and alleging violations of his rights under the First and Fourteenth Amendments along with

several state law claims. 1

(Doc. No. 4 1

Plaintiff, also known as Melvin M. Marinkovic, is a serial pro se filer who has filed vexatious litigation in this court in Mel Marin v. The Erie Times, et al., 1:11cv102 (Doc. No. 18), aff'd, 525 F. App'x 74 (3d Cir. 2013); In re: Joseph Fragile, et al., 2:11cv788 (Doc. No. 8); In re: Joseph Fragile, et al., 2:11cv789 (Doc. No. 7), Mel Marin v. Tom Leslie, et al., 2:09cv1453 (Doc. No.s 57 & 58) and Melvin M. Marinkovic v. Mayor Joseph Sinnott, et al., 1:12cv139 (Doc. No. 21).. He also has filed over 70 proceedings in other jurisdictions and been placed on the "Vexatious Litigant List" by the State of California in connection with a filing in the San Diego Superior Court at No. 720715. See Transmittal Statement of the Bankruptcy Court to Accompany Notice of Appeal (Doc. No. 1-14) in In re: Joseph Fragile, et al., 2:11cv789 (W.D. Pa. June 15, 2011) at 6 n.3. Plaintiff "was once a law clerk in the federal court and a 9 th

Circuit extern." Verified First Amended Complaint in Melvin M. Marinkovic v. Mayor Joseph Sinnott, et al., 1:12cv139 (Doc. No. 3) at ¶ 112. Plaintiff also uses different addresses in different states to maintain his pending cases. He frequently claims not to have received mail at the address he maintains in the court's docket and seeks to reset his own deadlines for compliance with any particular pretrial deadline. A review of his filings in the related dockets reflects the use of such tactics. See e.g. Motion for Service (Doc. No. 13 in 1:12cv139); Motion for an Order to Allow Filing of Opposition to Motion to Dismiss Out-of-Time (Doc. No. 17 in 1:12cv139); Notice of and Motion for Leave to Allow Responses to Order of April 11, 2013 Out-of-Time and Request for Clerk to Send Case Management Order and Declaration in Support (Doc. No. 51 in 2:09cv1453) at 1; Notice of and

summary judgment. (Doc. [34] w [38] will be denied. II. Background

individual who has one on any application for a professional or occupational license or

4304.1(a)(1)-(2). On December 1, 2010 plaintiff submitted his

Doc. No. 33 at ¶ 3); (Doc. No. 40 at ¶ 1). Plaintiff did not provide his social security number in the designated space on the Pennsylvania application. (Doc. No. 36, Exhibit C-1). His application was reviewed by EMMCO employee Ms. Thompson who advised plaintiff in a letter dated December 20, 2010 that the application was incomplete because he had not included his Social Security number. (Doc. No. 33 at ¶ 4); (Doc. No. 36, Exhibit C at ¶ 9). Ms. Thompson sent the incomplete application back to plaintiff and asked that he resubmit a completed form. (Id.). Plaintiff returned the letter and the incomplete application to Ms. Thompson. (Doc. No. 36 at ¶ 12). Plaintiff alleges that the Third Circuit and the District of Columbia Circuit sealed his military record, which included his social security number, in prior cases due to his classified military service with the United States Special Forces. (Doc. No. 33 at ¶ 6). He allegedly Motion to Supplement Motion for Late Response to Order of April 11, 2013 Out-of-Time and Request for Clerk to Send 2011 Case Management Order (Doc. No. 55 in 2:09cv1453) at 1; Plaintiff's Notice of and Motion for Leave to File a Pre-Trail Statement Out-of-Time (Doc. No. 31 in 2:06cv690) at 1; Plaintiff's Notice of Change of Address and Motion for Remailing (Doc. No. 52 in 1:11-cv-132); Motion for Leave to File Opposition to Summary Judgment Out of Time (Doc. No. 64 in 1:11-cv-132 at 5-6); Motion for Leave to File Third Amended Complaint Out of Time (Doc. No. 65 in 1:11-cv-132 at 1). The docket verifies that in accordance with the Local Rules all orders and opinions are mailed to plaintiff at the mailing address he has provided for the particular case (which includes a change of address upon proper notification to the Clerk).

and received permission to submit the record from one of these cases, which contained his social

security number, in lieu of a completed application. (Id.).

Plaintiff resubmitted the incomplete application along with a copy of an application he has previously submitted in California which included his social security number. 2

(Doc. No. 40 at ¶ 1); (Doc. No. 36, Exhibit C-3). He instructed Ms. Thompson to process the Pennsylvania application by using the information from the California application. (Doc. No. 36 at ¶ 14-15). Plaintiff requested that Mr. McClincy, Executive Director of EMMCO, reassign the processing Doc. No. 33 at ¶ 8); (Doc. No. 36 at ¶ 21). Plaintiff alleges that Mr. McClincy explained that EMMCO could verify the California application and that he would have it done immediately. (Doc. No. 33 at ¶ 9). Defendants were able to avers she was unable to complete the Pennsylvania application because the Pennsylva requires that applicants complete their own applications. (Doc. No. 36, Exhibit A at ¶ 8-9). Her

sworn affidavit provides the following:

7. The Pennsylvania Department of Health directs EMMCO West to return

incomplete applications to the applicant with instructions as to what information is missing. 8. Pursuant to the direction of the Pennsylvania Department of Health,

because Plaintiff did not provide his social security number, I was required 12. Pursuant to the direction of the Pennsylvania Department of Health, I am

(Doc.

7. The Pennsylvania Department of Health directs EMMCO West to return

incomplete applications to the applicant with instructions as to what

2 California on November 23, 2010. (Doc. No. 38 at ¶ 5); (Doc. No. 40 at ¶ 1).

information is missing. 8. Pursuant to the direction of the Pennsylvania Department of Health,

because Plaintiff did not provide his social security number, Ms.

19. inability to process his application and/or complete his application for him

were not considered in making the decision to continue to comply with the incomplete application to him with instructions as to what information is missing. (Doc. No. 36 at Exhibit B).

In a letter dated April 27, 2011 Ms. Thompson informed plaintiff that she and Mr. McClincy had been instructed that they were not permitted to complete the application for him. (Doc. No. 36, Exhibit G). Ms. Thompson asked plaintiff to complete the application and return Id.). Plaintiff did not resubmit a completed application. (Doc. No. 36 at ¶ 25). III. Standard of Review

Federal Rule of Civil Procedure 56(c) provides that summary judgment may be granted if, drawing all inferences in favor of the non-moving party, the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. Summary judgment may be granted against a party who fails to adduce facts sufficient to establish the existence of any element essential to that party s claim, and upon which that party will bear the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986). The moving party bears the initial burden of identifying evidence which demonstrates the absence of a genuine issue of material fact. When the movant does not bear the burden of proof on the claim, the movant s initial burden may be met by demonstrating the lack of record evidence to

support the opponent s claim. National State Bank v. National Reserve Bank, 979 F.2d 1579, 1582 (3d Cir. 1992).

Once that burden has been met, the non-moving party must set forth specific facts showing that there is a genuine issue for trial, or the factual record will be taken as presented by the moving party and judgment will be entered as a matter of law. Matsushita Electric Industrial Corp. v. Zenith Radio Corp., 475 U.S. 574 (1986) (quoting Fed.R.Civ.P. 56 (a), (e)) (emphasis in Matsushita). An issue is genuine only if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

In meeting its burden of proof, the opponent must do more than simply show that there is some metaphysical doubt as to the material facts. Matsushita, 475 U.S. at 586. The non-moving party must present affirmative evidence in order to defeat a properly supported motion and cannot simply reassert factually unsupported allegations. Williams v. Borough of West Chester, 891 F.2d 458, 460 (3d Cir. 1989). Nor can the opponent merely rely upon conclusory allegations in [its] pleadings or in memoranda and briefs. Harter v. GAF Corp., 967 F.2d 846 (3d Cir. 1992). Likewise, mere conjecture or speculation by the party resisting summary judgment will not provide a basis upon which to deny the motion. Robertson v. Allied Signal, Inc., 914 F.2d 360, 382-383 n.12 (3d Cir. 1990). If the non-moving party s evidence merely is colorable or lacks sufficient probative force summary judgment must be granted. Anderson, 477 U.S. at 249-250; see also Big Apple BMW, Inc. v. BMW of North America, 974 F.2d 1358, 1362 (3d Cir. 1992), cert. denied, 507 U.S. 912 (1993) (although the court is not permitted to weigh facts or competing inferences, it is no longer required to turn a blind eye to the weight of the evidence). IV. Discussion

a. First Amendment Retaliation Plaintiff alleges that defendants refused to process his application in retaliation for his

complaints to the Bureau of EMS in Harrisburg, Pennsylvania and the filing of the instant suit. (Doc. No. 39 at 6-7). He argues that defendants intended to prevent him from working as an EMT in Pennsylvania and their alleged actions were sufficient to deter a person of ordinary firmness from engaging in protected speech. (Id.). Amendment retaliation claim is without merit.

Section City of Oklahoma City v. Tuttle, 471 U.S. 808,

816 (1985). A prima facie case under § 1983 requires a showing that the plaintiff was: (1) deprived of a federal right (2) by a person acting under color of state law. Conn v. Gabbert, 526 U.S. 286, 290 (1999). U.S. Const. amend I. The due process clause of the Fourteenth

Amendment precludes the states from abridging the freedom of speech provided by the First Amendment. Grosjean v. American Press Co., 297 U.S. 233, 243-244 (1936). In order to state a prima facie case for the violation of First Amendment rights under § 1983, the plaintiff must demonstrate

that: (1) he engaged in a constitutionally protected speech; (2) he suffered retaliatory action sufficient to deter a person of ordinary firmness from exercising their constitutional rights; and (3) there was a causal link between the protected speech and the retaliation. Thomas v. Independence Township, 463 F.3d 285, 296 (3d Cir. 2006). Crawford-El v. Briton, 523 U.S. 574, 612 n. 10 (1998).

Plaintiff cannot satisfy the final prong causation requirement. In order to establish proximity between the protected activity and the allegedly retaliatory action, or (2) a pattern of , 864 F. Supp.2d 361, 385 (3d Cir. 2012). application or complete it on his behalf.

The Pennsylvania code applications for professional licenses. § 4304.1(a)(1)-(2). Further, as sworn by defendants in

their affidavits, the Department requires EMMCO to return incomplete applications and prohibits employees from completing them for the applicants. (Doc. No. 36 Exhibits B-C). Plaintiff refused to fill out a required portion of the application. Accordingly, defendants were not able to process his incomplete application. Any temporal proximity between p alleged complaints to the Bureau of EMS plication is insufficient to establish a causal link. In other words, there is nothing beyond mere speculation to support the proposition that defendants were motivated by something other than their need to comply with the directives of the Bureau.

Similarly, no pattern of antagonism is evident. Ms. Thompson discussed the status of the application with plaintiff by mail and over the telephone. (Doc. No. 36 Exhibit C-2, C-4, F, G). In her letter dated December 20, 2010, Ms. Thompson informed plaintiff that she had attempted to contact him by telephone but was told she had the wrong number. (Doc. No. 36 Exhibit C-2, F). She asked him to verify his contact information and resubmit a completed application. (Id.). After a phone conversation with plaintiff, Ms. Thompson explained in a letter dated April 27, 2011 that the Bureau would not permit her to complete the application for him. (Doc. No. 36 Exhibit G). She politely requested that plaintiff resubmit a complete application at which time

she wou Id.). The mail correspondence between the parties evidences that defendants were forthcoming with plaintiff on the state of his application and what was needed for him to complete it. Given this evidence and the lack of anything beyond conjecture to counter it, the finder of fact incomplete application with a motive to retaliate against plaintiff in violation of his first amendment rights. 3

Accordingly, defendants are entitled to summary judgment on retaliation claim.

b. Procedural Due Process Claim Plaintiff argues that defendants violated his right to procedural due process under the Fourteenth Amendment. (Doc. No. 39 at 17). This argument is unavailing because plaintiff has failed to provide evidence to support a finding that he was deprived of a protected property interest.

Const. amend XIV, § 1. The Third Circuit

employs a two- guarantee of procedural due process. Alvin v. Suzuki, 227 F.3d 107, 116 (3d Cir. 2000). In order to state a prima facie case for deprivation of procedural due process under § 1983 a plaintiff must Id.

3 Of course, plaintiff cannot rely on bald accusations and assertions that are not supported by any evidence at this juncture. See Harter, 967 F.2d at 851 (non-moving party has the burden of coming forward with specific facts that create a material issue for trial and cannot meet this burden by relying on "conclusory allegations in his pleadings or in memoranda and briefs"); Robertson, 914 F.2d at 382-383 n.12 (same).

The procedural safeguards provided by the Fourteenth Amendment are applicable to the Bd. of Regents of St. Colleges v. Roth, 408 U.S. 564, 576 (1972). In order for a person to have a property interest in a benefit or he must have more than an abstract need, desire, or unilateral expectation of it. Id. Id.

Moreover, [p]rotected interests in property are normally not created by the Constitution. Rather they are created and their dimensions are defined by an independent source such as state Goss v. Lopez, 419 U.S. 729, 735 (1975) (internal quotations omitted).

There is no Pennsylvania case law or statute that gives plaintiff a protected interest in an EMS license. Nevertheless, [a] license, once obtained by compliance with law, becomes a valued privilege or right in the nature of property, which may not be suspended or revoked Balfour Beatty Const. Inc. v. Dept.of Transp., 783 A.2d 901, 908 (Pa. Commw. Ct. 2001). A property right may not be found, however, if the right to practice the occupation has not yet accrued. See Brady v. Com., St. Bd. of Chiropractic Examiners, 471 A.2d 572, 575 (Pa. Commw. Ct. 1984).

Here, plaintiff did not complete the application required to receive and EMS license. Consequently, he did not have or obtain a protected property interest.

The Supreme Court has refused to recognize a property interest in a benefit which did not automatically renew and was not guaranteed under state law or administrative policy. Roth, 408 U.S. at 578. In Roth, an assistant professor was hired by Wisconsin State University for a fixed term of one school year. Id. at 566. At the end of that term he was informed that he would not be rehired. Id. He brought suit alleging a violation of his rights under the Fourteenth

Amendment. Id. at 568. Wisconsin law provided that public university professors could become tenured employees only after four continuous yearly terms of employment. Id. New professors were entitled to nothing beyond one year of employment. Id. The Court held that the professor did not have a property interest in continued employment sufficient to invoke the safeguards of due process.

Id. was for a fixed term and there was no state law providing automatic renewal the plaintiff n Id.

Similar to the fixed term employment at issue in Roth, EMS licenses are valid for a finite time and do not automatically renew. See 35 Pa. C. S. § 8115(c) (requiring Emergency Medical Technicians to re-register for certification every three years); § 8116(c) (Advanced Emergency Medical Technicians must re-register every two years); § 8117(d) (Paramedics must re-register every two years). McDonald v. Pa. St. Police, Civ. A. No. 9-442, 2009 WL 3241858, * 4 (W.D. Pa. Oct. 2, 2009).

In Lockhart v. Matthew -500 (3d Cir. 2003), an applicant for an EMT license renewal was denied due to indications in his record that he could not meet a lift and carry requirement. Id. He was granted three extensions to come forward with evidence of his ability to meet the requirement but failed to provide it. Id. at 500. He brought suit alleging violation of due process. Id. at 499. The Third Circuit held that the plaintiff did not possess a property interest in an EMT license because it naturally expired and did not automatically renew. Id. at 500-501. See also McDonald v. Pa. St. Police, Civ. A. No. 9-442, 2009 WL 3241858, * 4 (W.D. Pa. Oct. 2, 2009) (citing Lockhart for the rule t Speck

v. City of Phila., Civ. A. No. 6-4976, 2007 WL 2221423, *6 (E.D. Pa. July 31, 2007) (holding that although police officers have a protected interest in continued employment once hired, they do not have a property interest in certification for employment given the fixed term of the license); Cf. Herz v. Degnan, 648 F.2d 201, 208 (3d Cir. 1981) (finding a protected interest in a license to practice psychology that automatically renewed upon payment of a fee).

Plaintiff lacked the requisite property interest. Accordingly, defendants' motion for summary judgment on plaintiff's procedural due process claim must be granted.

c. Substantive Due Process Claim e process clause. (Doc.

No. 39 at 18). This argument also is unavailing. Plaintiff lacked a property interest entitled to protection under substantive due process.

The due process clause of the Fourteenth Amendment has a substantive element which bars certain actions by the government regardless of the fairness of procedures in place to implement them. Planned Parenthood of S.E. Pa. v. Casey, 505 U.S. 833, 846 (1992). All of the invasion by the States. Id. at the time of the adoption of the Fourteenth Amendment marks the outer limits of the

Id. at 848. A deprivation by state officials which does not offend procedural due process may still give rise to a substantive due process cla Nicholas v. Pa. St. U., 227 F.3d 133, 139 (3d Cir. 2000) (internal

citation omitted). A property interest which falls under the protection of substantive due process may not be taken by the state for arbitrary, irrational, or improper reasons. Id.

A non-legislative substantive due process claim requires the plaintiff to establish a property interest protected under the due process clause of the Fourteenth Amendment and a deprivation of that interest by the government which shocks the conscience. Id. at 139-140. Not all property interests which fall under the protection of the procedural element of the due process clause are protected under the substantive portion. Reich v. Beharry, 883 F.2d 239, 243-245 (3d Cir. 1989). In order to state a substantive due process claim the deprived property interest must particular quality Nicholas Supreme Court provides very little guidance as to what constitutes this certain quality of property

Nicholas, 227 F.3d at 140. (internal citation omitted). Whether an interest is protected under the substantive element is not determined by reference to state law. Id.

The threshold question is whether the interest is fundamental under the United States Constitution. Id. (citing Regents of U. of Mich. v. Ewing, 474 U.S. 214, 229 (1985)). If the answer to that inquiry is yes then the plaintiff is protected by substantive due process from arbitrary or irrational deprivation. Nicholas, 227 F.3d at 142. If the interest is not fundamental under the Constitution then the government action does not violate the substantive element and will be valid if it satisfies procedural due process standards. Id.

Ownership of real property is an interest sufficient to warrant protection under the substantive component of due process. DeBlasio v. Zoning Bd. of Adjustment for Twp. of W. Amwell, 53 F.3d 592, 600-601 (3d Cir. 1995), overruled on other grounds by United Artists Theater Circuit, Inc. v. Twp. of Warrington, 316 F.3d 392 (3d Cir. 2003). The Third Circuit has declined to extent the protection to other rights created under state law such as public employment. Simic v. Pitts. Water and Sewer Auth., Civ. A. No. 13-802, 2013 WL 6058463, *9 (W.D. Pa. Nov. 18, 2013) (citing , Civ. A. No. 6-1931, 2007 WL 2845073

(M.D. Pa. Sept. 26, 2007). The Supreme Court has cautioned that the doctrine of judicial self- Collins v. City of Harker Heights, 503 U.S. 115, 125 (1992).

Plaintiff lacks the requisite fundamental property interest to sustain his substantive due process claim. In this jurisdiction non-legislative substantive due process review is limited to cases involving a quality of interest analogous to real property ownership. Simpson v. Henry, Civ. A. No. 11-278, 2011 WL 6000608, * 5 (W.D. Pa. Nov. 30, 2011) (citing Nicholas, 227 F.3d at 141). His interest in the license at issue is not comparable to the rights which have been found fundamental under the Constitution. Because plaintiff has failed to produce facts that establish the requisite fundamental property interest, his substantive due process claim must fail.

d. Conversion and Invasion of Privacy Plaintiff argues that defendants committed the tort of conversion by filing copies of his EMT applications as exhibits in connection with this lawsuit. (Doc. No. 39 at 9-10). Plaintiff also argues that filing these applications constituted a tortious invasion of privacy and intrusion of seclusion. (Doc. No. 39 at 13). These arguments fail because the filing of

these documents as exhibits was privileged under Pennsylvania law.

All charges, all allegations and averments contained in regular pleadings

addressed to and filed in a court of competent jurisdiction, which are pertinent and material to the redress of relief sought, whether legally sufficient to obtain it or not, are absolutely Kemper v. Fort, 219 Pa. 85, 93 (Pa 1907). The Pennsylvania application is the presentation of their legal defenses. Namely, that plaintiff refused to provide his social security

number despite being required to provide it under state law. The California application also is

factually pertinent. Plaintiff initially sought a license in Pennsylvania through reciprocity with California. Defendants were able to verify the California license but remained unable to Plaintiff sued defendants over the manner in which they handled plaintiff's application. Both applications were pertinent to the charges, allegations and averments at evidentiary

support.

ations properly were Rule 5.2 of the Federal Rules of Civil Procedure provides the following:

in an electronic or paper filing with the court that contains an ind - security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, or financial account number, a party or nonparty making the filing may include only:

(1) the last four digits of the social security number and taxpayer-

identification number; (2) (3) (4) the last four digits of the financial-account number. Fed. R. Civ. P. 5.2 (a). Defendants appropriately redacted the above information from the ap addition that home addresses must be redacted to include only the name of the city and state. LCvR 5.2(D)(5). Plaintiff included post office box addresses on the applications rather than a home address. Accordingly, defendants complied with Local Rule 5.2 and p conversion and invasion of privacy cannot proceed further.

e. Interference with Prospective Contractual Relationship Finally, plaintiff argues that defendants tortiously interfered with his prospective careers

as an EMT and politician. (Doc. No. 39 at 15). Plaintiff asserts that he intended to use the salary he would have earned as an EMT in 2011 to pay for his congressional election campaign. 4

(Doc. No. 33 at ¶ 19- e, plaintiff claims he was unable to earn a salary of $165,000 per year as a member of Congress. (Id. at ¶ 20). for tortious interference must fail for the reasons that follow.

The following elements are necessary to prevail in a claim for intentional interference intent to harm the plaintiff by preventing the relation from occurring; (3) the absence of privilege

or justification on the part of the defendant; and (4) the occasioning of actual damage resulting Thompson Coal Co. v. Pike Coal Co., 412 A.2d 466, 471 (Pa. Glenn v. Point Park College, 272 A.2d 895, 898-99 (Pa. 1971). This

requires a showing of something Id. at 899. An objective standard must be applied Phillips v. Selig, 959 A.2d 420, 428 (3d Cir. 2008).

Plaintiff has failed to establish the threshold element of a prospective contractual relation. Assuming that upon completion of his Pennsylvania application plaintiff would have qualified for a license via reciprocity with California, it does not follow that he possessed more than a mere hope of finding employment as an EMS. Plaintiff has provided no evidence of an employer that was prepared to hire him upon receipt of his Pennsylvania license.

4 The court notes that during the time plaintiff owned the house in Erie he ran for office in that congressional district and filed a lawsuit when the local newspaper commented on his candidacy. See generally Mel Marin v. The Erie Times, et al., 1:11cv102 (Doc. No. 18), aff'd, 525 F. App'x 74 (3d Cir. 2013). Of course, plaintiff claimed to be a Pennsylvania resident in order to pursue his candidacy and that lawsuit. See supra, n. 1.

Moreover, Pennsylvania courts have consistently required more evidence than the existence Phillips, 959 A.2d at 429. In Thompson Coal Co., the court refused to find a reasonable probability that a year-to-year lease which had been consistently renewed for ten years would renew after the set termination date. Id. (citing Thompson Coal Co., 412 A.2d at 471). In Strickland v. U. of Scranton, 700 A.2d 979, 982 (Pa. Super. 1997), the court did not find a reasonable probability that a tenured university administra or that he would have been offered a contract with another school absent the alleged interference. Id. at 985-986. Plaintiff asks this Court to recognize an expectancy which is even more remote that those alleged in Thompson Coal Co and Strickland. Pennsylvania courts would decline to hold that a prospective contractual relationship arises merely upon receipt of a professional license. falls short of the mark for the same reasons. He cannot establish more than a mere expectancy or hope that he would have achieved elected office. Since he has failed to proffer evidence to support the threshold element of the tort, defendants are entitled to summary judgment on prospective contractual relationship.

Furthermore, even if plaintiff had a reasonable expectancy of employment after receiving his license, there is insufficient evidence to support the element of intent relationship allegedly interfered with is prospective rather than existing, specific intent on the

part of the defendant to cause harm to the plaintiff must be alleged to make out a cause of Geary v.

U.S. Steel Corp, 319 A.2d 174, 179 (Pa. 1974). The instant case does not present any evidence that would support a finding incomplete application with the specific intent of harming his prospective career or earnings.

Section 4304.1(a)(1)-(2) of the Pennsylvania Code requires the inclusion of social security . (Doc.

No. 36 at Exhibit B- viewed as purposeful retaliation intended to deprive plaintiff of prospective contractual advantage.

f. Civil Conspiracy Plaintiff claim that defendants conspired to prevent him from receiving a license is also unavailing. (Doc. No. 39 at 13). In order to state a cause of action for civil conspiracy it must be

do an unlawful act or to do a lawful act by unlawful means or for an unlawful purpose, (2) an Phillips, 959 of action for Id. (citing McKeeman v. Corestates Bank, 751 A.2d 655, 660 (Pa. Super. 2000). Having failed to establish his aforementioned claims, no cause of action exists upon which plaintiff may anchor his conspir civil conspiracy collapses under its own weight.

g. Qualified Immunity Defendants argue that they are shielded from any liability by the doctrine of qualified immunity. (Doc. No. 35 at 12). Having concluded tha constitutional rights our inquiry could end here. the issue of qualified immunity must be decided at the earliest possible stage of litigation,

however, the Court will determine whether defendants are entitled to qualified immunity. Hunter v. Bryant, 502 U.S. 224, 227 (1991). See Egolf v. Witmer, 526 F.3d 104, 111-112 (3d Cir. 2008) (declining to analyze the Constitutional claims and granting qualified immunity under

Robinson v. Arrugueta, 415 F.3d 1252, 1256 (11th Cir. 2005) (proceeding to the second prong after determining that there was not a constitutional violation).

Government officials performing discretionary functions may be shielded from liability

Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). The doctrine balances two interests exercise power irresponsibly and the need to shield officials from harassment, distraction, and

Pearson v. Callahan, 555 U.S. 223 (2009). In Saucier v. Katz, 533 U.S. 194, 201 (2001) modified, Pearson, 555 U.S. at 223, the Supreme Court outlined a two-part test for determining whether a defendant is shielded by qualified immunity. Id. ht most favorable to the

Id. If a constitutional right could not have been violated even if the allegations were established, then the analysis comes to an end. Id. If, however, a violation could have occurred s, then the inquiry turns to Id. t of the Id. 5

Assuming for the sake of argument th defendants are nevertheless entitled to qualified immunity because the rights were not clearly

McLaughlin v.

5 In Pearson, the Court reconsidered the sequence of the Saucier test. 555 U.S. at 236. The Court discarded any courts of appeals should be permitted to exercise their sound discretion in deciding which of the Id.

Watson, 271 F.3d 566, 571 (3d Cir. 2001) (internal citation inquiry in determining whether a right is clearly established is whether it would be clear to a Saucier, 533 U.S. at 202.

Summary judgment based upon qualified immunity is proper if the law did not provide the officer with notice that the conduct at issue clearly was unlawful. Id. tion and

[the] circumstances confronting the officer to determine whether a reasonable state actor could Kelly v. Borough of Carlisle, 622 F.3d 248, 253 (3d Cir. 2010) (citing Anderson v. Creighton, 483 U.S. 635, 641 (1987); Berg v. County of Allegheny, 219 F.3d 261, 272 (3d Cir. 2000); Paff v. Kaltenbach, 204 F.3d 425, 431 (3d Cir. 2000)). plainly incompetent or those who knowHunter v. Bryant, 502 U.S. 224,

229 (1991) (internal citations omitted).

support the proposition that defendants violated a clearly established right by refusing to process -(2) of the Pennsylvania code required complying with that law by refusing to process the incomplete application. It follows that

existing law could not possibly have provided result. See Wilson v. Layne Anderson, the

right allegedly violated must be defined at the appropriate level of specificity before a court can determine . A reasonable state official would certainly have

believed that refusing to process the application was lawful. In other words, defendants' actions a knowing violation of the law. Hunter, 502 U.S. at 229. Accordingly, summary judgment based on the application of qualified immunity is appropriate. V. Conclusion

For the foregoing will be granted and motion will be denied. An appropriate order will follow.

Date: April 10, 2014

s/David Stewart Cercone

David Stewart Cercone United States District Judge

cc: Mel M. Marin General Delivery 1001 Frederick Road Catonsville, MD 21228

(Via First Class Mail) Thomas P. McGinnis, Esquire Jeffrey D. Truitt, Esquire

Karin Romano Galbraith, Esquire (Via CM/ECF Electronic Mail)