



Aquino v. City of Charlotte et al

2022 | Cited 0 times | W.D. North Carolina | June 28, 2022

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA

CHARLOTTE DIVISION DOCKET NO. 3:21-cv-00618-FDW-DSC

THIS MATTER is before the Court Dismiss for Lack of Jurisdiction and Motion to Dismiss for Failure to State a Claim. (Doc. No.

10). This motion has been fully briefed and is ripe for disposition by the Court. For the reasons stated herein, De GRANTED IN PART the First Amendment and otherwise DENIED IN PART; and for

Failure to State a Claim is GRANTED.

I. BACKGROUND Taking the allegations in the Complaint, (Doc. No. 1), as true, the following background is relevant to disposition of these motions. Plaintiff is a police officer who works for the Charlotte Mecklenburg CMPD Id. at 2. In 2014, one of her former colleagues filed suit against her alleging libel, slander, and intentional infliction of emotional distress. Id. at 8. The jury found her liable for slander, and the City of Charlotte City subsequently settled the AIMEE IRENE AQUINO,

Plaintiff, vs. CITY OF CHARLOTTE and SPENCER B. MERRIWEATHER III,

Defendants.

ORDER case and paid the settlement on her behalf. Id. Relying on CMPD, the City, and the then district Id.

In November 2018, Defendant Merriweather wrote a letter (the Giglio letter the Chief that would no longer use Plaintiff as a witness in criminal or traffic cases because of the slander verdict. Id. at 9. The CMPD then determined she could no longer perform her job-related duties, suspended her without pay, and cited her to the Civil Service Board for termination. Id. at 10. Instead of terminating her, the Civil Service Board suspended her for ninety days and reinstated her employment. Id. Since her reinstatement, of a civilian in non-emergency police services . . . [and] is requiring [her] to retake the state exam

and retake many classes at the police academy before CMPD will reissue . . . her badge, firearm, or



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uniform Id. at 11. The Giglio letter remains in place. Id.

On November 12, 2021, Plaintiff filed the present case against Merriweather and the City seeking declaratory and injunctive relief against both and damages from the City. (Doc. No. 1). She asserts that under the Fourteenth Amendment of the U.S. Constitution, her First Amendment rights, and her rights under Article I, §§ 1 and 19 of the North Carolina Constitution. Id. at 14 23. She also sues the City for breach of contract. Id. at 23. Merriweather now moves to dismiss all claims against him. (Doc. No. 10).

II. JURISDICTION Merriweather asserts that sovereign immunity bars him. (Doc. No. 11, pp. 8 Case 3:21-cv-00618-FDW-DSC Document 16 Filed 06/28/22 Page 2 of 8 counsel the Court to dismiss these claims. Id. at 10. Both arguments fail. Sovereign immunity does not bar federal law actions against state officials for prospective relief. *Edelman v. Jordan*, 415 U.S. 651, 677 (1974) (citing *Ex parte Young*, 209 U.S. 123 (1908)). future conduct of that office to the requirement of

Wicomico Nursing Home v. Padilla, 910 F.3d 739, 748 (4th Cir. 2018) (quoting *Edelman*, 415 U.S. at 664). Here, Plaintiff requests that the Court declare her right to further process and issue an injunction requiring Merriweather to provide further process in the future. (Doc. No. 1, pp. 24 25). Thus, she requests prospective relief, and sovereign immunity does not bar her claims. Prosecutorial immunity applies only to actions for damages, not to actions for injunctive or declaratory relief. See *Imbler v. Pachtman*, 424 U.S. 409, 431 (1976); *Nivens v. Gilchrist*, 444 F.3d 237, 250 (4th Cir. 2006). lains against Merriweather for injunctive and declaratory relief. The Complaint purports to state a cause of action against both Defendants for violation of elief against Merriweather on this claim. (Doc. No. 1, pp. 20 21). To the extent she does request damages from Merriweather in connection with her First Amendment claim, sovereign immunity precludes the Court from exercising jurisdiction. See *Buckhannon Bd. & Care Home, Inc. v. W.* , 532 U.S. 598, 609 n.10 (2001). Therefore, dismissal of this claim is appropriate. See , 8 F.4th 281, 283 (4th Cir. 2021) (affirming dismissal for lack of subject matter jurisdiction due to state sovereign immunity), cert. denied, 142 S. Ct. 465, 211 L. Ed. 2d 283 (2021).

III. FAILURE TO STATE A CLAIM Merriweather substantive due process claim, and claims under the North Carolina Constitution must be dismissed under Rule 12(b)(6) of the Federal Rules of Civil Procedure. (Doc. No. 11, pp. 11 25). Rule 12(b)(6) provides that a claim may be dismissed for failure to state a claim upon which relief can be granted. In conducting a Rule 12(b)(6) inquiry, the court must determine if the allegations constitute Federal Rule of Civil Procedure 8(a)(2). To survive a motion to dismiss, the factual allegations in

the pleading must suffice *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Thus, a pleading state a claim to re *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570).



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plaintiff pleads factual content that allows the court to draw the reasonable inference that the

Id. (quoting *Twombly*, 550 U.S. at 556). The court must draw all reasonable factual inferences in favor of the party asserting the claim. *Priority Auto Grp., Inc. v. Ford Motor Co.*, 757 F.3d 137, 139 (4th Cir. 2014). In a Rule 12(b)(6) analysis, the court must separate facts from legal conclusions, as mere conclusions are not entitled to a presumption of truth. *Iqbal* itals of the elements of Id. However, well- pled factual allegations are entitled to a presumption of truth, and the court should determine whether the allegations plausibly give rise to an entitlement to relief. Id. at 679. A. Procedural Due Process Claims

Here, Plaintiff asserts that Merriweather deprived her of three property and liberty interests without due process of law: (1) her property interest in continued employment as a police officer with CMPD, (2) her liberty interest in pursuing a common calling of her choice, and (3) her liberty interest in remaining free from government stigma that forecloses future employment opportunities. (Doc. No. 1, pp. 16 20). All three claims fail under Rule 12(b)(6).

employment with CMPD fails because it was not Merriweather who changed her employment

status, but her employer, CMPD. A plaintiff has no claim for deprivation of property without due process of law as to someone who did not deprive her of that property. Though Plaintiff alleges that the Giglio letter caused her termination, she also alleges that CMPD suspended her, the Civil in non- Id. at 10 11. She has no claim for deprivation of her property

interest in continued employment with CMPD against Merriweather.

common calling of her choice fails for similar reasons. First, CMPD altered her employment status,

not Merriweather. Id. Second, the Due Process Clause protects few rulings on this subject address complete prohibitions

on practicing a calling, not mere interrup *Conn v. Gabbert*, 526 U.S. 286, 291 92 (1999). By her own admission, Plaintiff retains a position with CMPD, and CMPD will allow her to reacquire her former status if she retakes the state exam and classes at the police academy. (Doc. No. 1, p. 11). Therefore, Merriweather has not deprived Plaintiff of her liberty interest in practicing a calling of her choice.

thereby deprived her of her liberty interest in her reputation, (Doc. No. 1, pp. 12, 20), also fails

must allege that the charges against him: (1) placed a stigma on his reputation; (2) were made public by the employer; (3) were made in conjunction with his termination or demotion; and (4) were false. *Sciolino v. City of Newport News*, 482 F.3d 642, 646 (4th Cir. 2007). Here, the Giglio letter was not issued in conjunctio in status and by a different government actor. (Doc. No. 1, pp. 10 11). Thus,



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Plaintiff has failed

to state a claim for deprivation of her liberty interest in her reputation. See *Roe v. Lynch*, 997 F.3d 80, 85 Giglio letter because different government actors were responsible for the issuance of the letter and the termination). B. Substantive Due Process Claim Plaintiff also asserts that Merriweather violated her substantive due process rights. (Doc. No. 1, pp. 16 19). This claim fails under Rule 12(b)(6). To make out a claim for a violation of they had . . . a [liberty or] property interest; (2) that the state deprived them of this [liberty] or property interest; and (3) that the state's action falls so far beyond the outer limits of legitimate governmental action that no process could cure the deficiency. *Sylvia Dev. Corp. v. Calvert Cty.*, 48 F.3d 810, 827 (4th Cir. 1995). Here, Plaintiff has failed to adequately allege the third element of a substantive due process cause of action. She challenges only the procedure Merriweather followed before issuing the Giglio letter, not his right to issue the letter or preclude her from testifying at all. (Doc. No. 1, pp. 17 18). She fails to allege that no process could cure the deficiency. Therefore, she has not made out a claim for violation of her substantive due process rights. C. State Law Claims

Plaintiff argues that Merriweather violated her rights under Article I, § 19 of the North Carolina Constitution, the law of the land clause. The North Carolina Supreme Court has synonymously with due process of law as used in the Fourteenth Amendment to the United States Constitution. *Bacon v. Lee*, 549 S.E.2d 840, 856 (N.C. 2001) (citing *In re Moore*, 221 S.E.2d 307, 309 (N.C. 1976)). Accordingly, courts consider interpretations of the federal Due Process Clause persuasive in interpreting the law of the land clause. *Id.* law of the land clause are identical to her federal Due Process Clause claims. (Doc. No. 1, pp. 21 22). Because Plaintiff has failed to state a claim under the Due Process Clause and the Court perceives no reason to construe the law of the land clause differently here, Plaintiff has failed to state a claim under Article I, § 19 of the North Carolina Constitution. Plaintiff further argues that Merriweather violated her rights under Article I, § 1 of the North Carolina Constitution, which declares inalienable right of all persons. The North Carolina Supreme Court has used this provision only

infrequently, including - twentieth century, see, e.g., *State v. Ballance*, 51 S.E.2d 731, 734 (N.C. 1949), and a towing ordinance in 2014. *King v. Town of Chapel Hill*, 758 S.E.2d 364, 371 (N.C. 2014). In 2018, the North Carolina Supreme Court held that a public employee has a claim against his employer under the fruits of their labor clause when that employer violates its own rules or policies regarding promotions. *Tully v. City of Wilmington*, 810 S.E.2d 208, 216 (N.C. 2018). More recently, the

comply with its own established policies before terminating him sufficient to state a claim under the fruits of their labor clause. , 866 S.E.2d 773, 780 (N.C. Ct. App. 2021). Here, however, Plaintiff alleges the Giglio letter deprived her of the fruits of her labor by lies for [her]. (Doc. No. 1, p. 22). She does not allege Giglio letters. Further, Merriweather is not her employer. Therefore, North Carolina law does not recognize claim. The Court must dismiss this claim as well.



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IV. ORDER

Jurisdiction, (Doc. No. 10), is GRANTED IN PART to the extent claim for damages against Merriweather under the First Amendment and otherwise DENIED IN

PART; GRANTED. The Court dismisses only the claims against Merriweather in the Complaint.

IT IS SO ORDERED.

