

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FILED
U. S. DISTRICT COURT
DISTRICT OF NEBRASKA

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ROBERT H. EBEL
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PAUL A. BONACCI,)
) 4:CV91-3037
)
Plaintiff,)
) MEMORANDUM AND ORDER ON
) MOTIONS TO DISMISS BY
vs.) DEFENDANTS FLANAGAN
) AND VAN PELT
)
THE CATHOLIC ARCHBISHOP OF)
OMAHA, et al.,)
)
)
Defendants.)

The plaintiff, Paul A. Bonacci, has brought this action against various individuals and entities for deprivation of civil rights, personal injury, and abuse of statutory authority relating to grand juries. As to defendants Van Pelt and Flanagan, Bonacci seeks monetary and equitable relief under 42 U.S.C. § 1983 for their alleged violation of Nebraska state law regulating grand jury procedure. Jurisdiction is claimed under 28 U.S.C. § 1343 for the civil rights claims; pendent and ancillary jurisdiction is claimed for the related state claims.

Pursuant to Fed. R. Civ. P. 12(b) and (e), defendants Van Pelt and Flanagan have moved for dismissal for failure to state a claim upon which relief can be granted and, in the alternative, for a more definite statement. The plaintiff has not responded to the motions.

Pursuant to Rule 12(b)(6), "a motion to dismiss a complaint should not be granted unless it appears beyond doubt that the plaintiff can prove no set of facts which would entitle him to relief." Morton v. Becker, 793 F.2d 185, 187 (8th Cir. 1986). In resolving such motions, allegations in the complaint must be taken as true. In addition, the complaint and "all reasonable inferences arising therefrom" must be construed in favor of the plaintiff. Id. Applying this standard to the amended complaint, I find the plaintiff has failed to state a valid cause of action and shall grant the motions to dismiss.

I. FACTS AND ALLEGATIONS

The allegations contained in the amended complaint present a litany of sexual and physical abuse beginning when the plaintiff was six years old and ending in his own arrest and conviction for child sexual abuse. In 1990, a Douglas County grand jury was empowered to investigate the failure of the Franklin Credit Union in Omaha, Nebraska. This investigation eventually encompassed accusations that prominent Omaha businessmen had operated a child sex ring of which Bonacci had allegedly been a victim. Bonacci testified before this grand jury as to matters relating to his

involvement in this sex ring and was subsequently indicted for perjury.

Defendant Van Pelt was duly appointed as Special Prosecutor of the Franklin Credit Union investigation. The amended complaint alleges Van Pelt, "in taking testimony from witness Mark Coleman knew Coleman was presenting false and perjured testimony . . . Van Pelt further suppressed from the Grand Jury written documents in Van Pelt's possession which clearly established that Coleman's testimony was perjured." (Amended Complaint ¶ 21).

According to the Amended Complaint, defendant Flanagan, the grand jury foreman, made public statements alleging that the grand jury indicted Bonacci because he would not recant his testimony. The plaintiff also alleges Flanagan should not have been grand jury foreman because of accusations of pandering made against him, that Flanagan improperly shared grand jury information with other individuals, and that after release of the grand jury report, Flanagan made improper public disclosures of grand jury proceedings. (Amended Complaint ¶¶ 22, 26-27).

II. PROSECUTORIAL IMMUNITY

The allegations against Van Pelt are not materially different from those made in another case recently dismissed by this court on the basis of absolute immunity. DeCamp v. Douglas County Franklin Grand Jury, CV90-L-345 (D. Neb. Jan. 3, 1991). In that case, I concluded that the grand jurors and the special prosecutor were entitled to absolute immunity from liability under section 1983 so long as the complained of conduct was undertaken pursuant to their judicial authority. Id. at 4-5. See Imbler v. Pachtman, 424 U.S. 409, 423-24 (1976). See also Slavin v. Curry, 574 F.2d 1256 (5th Cir. 1978) (prosecutor was absolutely immune from claims that he presented fraudulent and illegal evidence to the grand jury); Rose v. Koch, 465 F. Supp. 1157 (E.D.N.Y. 1979) (absolute prosecutorial immunity applied where prosecutor allegedly presented false evidence to grand jury). Accordingly, the claims against Van Pelt will be dismissed as he is absolutely immune from liability for acts taken within the scope of his prosecutorial role.

IV. GRAND JUROR MISCONDUCT

I shall also dismiss the claims against Flanagan, although for reasons different than those relating to Van Pelt. Absolute immunity is equally applicable to grand jurors, including the jury foreman, for acts taken pursuant to their judicial function. However, the sum of the allegations against Flanagan focus on conduct taken outside his statutorily created role and in violation of the statutes creating and defining that role.

Nevertheless, dismissal is proper because the allegations do not state a claim upon which relief can be granted. First, the allegations regarding Flanagan's improper communications with non-jury members during the grand jury proceedings present a claim that the grand jury process and the resulting indictment were tainted. The same can be said for the claim that Flanagan should not have been permitted to serve as jury foreman. However, even if those allegations are true, they do not state a claim for relief as Flanagan is not the proper party from whom to seek equitable relief and no cause of action for damages has been stated.

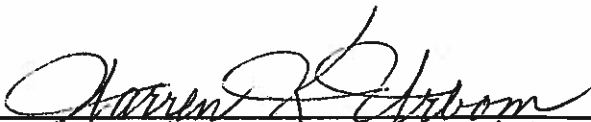
Second, the allegation that Flanagan made public statements regarding the grand jury proceedings after the grand jury was dismissed does not state a claim for damages. There is no allegation that these statements caused injury to the plaintiff. At most, such conduct would indicate a violation of the juror's oath, an infraction that does not subject the offender to civil liability.

IT IS THEREFORE ORDERED that:

1. defendant Van Pelt's motion to dismiss, filing 40, is granted; and
2. defendant Flanagan's motion to dismiss, filing 43, is granted.

Dated July 18, 1991.

BY THE COURT


Senior United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FILED
U. S. DISTRICT COURT.
DISTRICT OF NEBRASKA

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PAUL A. BONACCI,

CV 91-3037

Plaintiff,

NORBERT H. EBEL *cb*
CLERK

v.

DEFENDANT MICHAEL FLANAGAN'S
MOTION FOR MORE DEFINITE
STATEMENT AND MOTION TO DISMISS

THE CATHOLIC ARCHBISHOP OF
OMAHA, a non-profit corporation,
LAWRENCE KING, PETER CITRON,
ALAN BAER, HAROLD ANDERSON,
ROBERT WADMAN, MICHAEL HOCH,
KENNETH BOVASSO, NEBRASKA
PSYCHOLOGICAL ASSOCIATION,
INC., f/k/a NEBRASKA PSYCHIATRIC
INSTITUTE, a non-profit corporation,
THE CITY OF OMAHA, NEBRASKA, a
municipal corporation, THE OMAHA
PUBLIC SCHOOL DISTRICT, OMAHA
WORLD HERALD COMPANY, a
corporation, J.L. BRANDEIS AND
SONS, INC., a corporation, THE
DOUGLAS COUNTY GRAND JURY,
MICHAEL FLANAGAN, an individual,
and SAMUEL VAN PELT, an individual,

Defendants.

Pursuant to Fed.R.Civ.P. 12(b) defendant Michael Flanagan moves the court for an order dismissing the above-captioned action on the grounds that:

- (1) The court lacks jurisdiction over the subject matter of this litigation;
- (2) Plaintiff's complaint fails to state a claim upon which relief can be granted as to this defendant;
- (3) This court lacks jurisdiction over the defendant Flanagan in any capacity as a member of the Douglas County Grand Jury pursuant to the protection of the Eleventh Amendment; and

(4) The defendant listed in his official and individual capacities is entitled to absolute immunity, or in the alternative, qualified immunity. Thus, this court lacks jurisdiction over said defendant.

In the alternative, pursuant to Fed.R.Civ.P. 12(e), defendant moves the court for an order requiring plaintiff to make his complaint herein more definite on the grounds that:

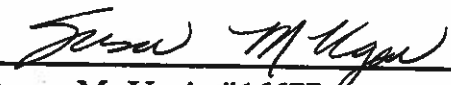
(1) Plaintiff's complaint fails to specifically allege which of his constitutional rights and civil rights have been violated;

(2) Plaintiff's complaint fails to specifically allege how defendant's actions constituted violations of plaintiff's constitutional rights and civil rights; and

(3) Plaintiff's complaint fails to allege facts sufficient to find that defendant was acting outside the scope of his authority as a member of the grand jury.

Dated this 29th day of March, 1991.

MICHAEL FLANAGAN, Defendant,
BY DON STENBERG, #14023
Attorney General


BY 
Susan M. Ugai, #16677
Assistant Attorney General
2115 State Capitol
Lincoln, NE 68509
Tel: (402) 471-2682

Attorneys for Defendant.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Motion for More Definite Statement and Motion to Dismiss upon the plaintiff herein by placing a copy of the same in the United States Mail, first class postage prepaid, addressed to plaintiff's

attorney of record, John W. DeCamp, DeCamp Legal Services, P.C., 300 Executive Building, 521 South 14th Street, Lincoln, Nebraska 68508, and upon defendants herein by placing a copy of the same in the United States Mail, first class postage prepaid addressed to defendant Catholic Archbishop of Omaha's attorneys of record, Edward D. Hotz, Attorney at Law, 10250 Regency Circle, Suite 100, Omaha, Nebraska 68114, and C.E. Heaney, Jr., Attorney at Law, 10306 Regency Parkway Drive, Omaha, Nebraska 68114; Peter Citron's attorney of record, Lyle Koenig, Attorney at Law, 147 N. 4th Street, P.O. Box 48, Hebron, Nebraska 68370; defendants Alan Baer and J.L. Brandeis and Sons, Inc.'s attorneys of record Edward G. Warin, Attorney at Law, 800 Commercial Federal Tower, 2120 South 72nd Street, Omaha, Nebraska 68124-2342, and Steven W. Seline and Tory M. Bishop, Attorneys at Law, 1650 Farnam St., Omaha, Nebraska 68102; defendant Harold Anderson's attorney of record Tyler B. Gaines, Attorney at Law, 10050 Regency Circle, Suite 200, Omaha, Nebraska 68114; defendant Robert Wadman's attorney of record Michael M. O'Brien, Attorney at Law, 318 S. 19th Street, Omaha, Nebraska 68102; defendants Michael Hoch, Kenneth Bovasso, and the City of Omaha, Nebraska's attorneys of record, James E. Fellows, Deputy City Attorney, and Wendy E. Hahn, Assistant City Attorney, 1819 Farnam Street, Suite 804, Omaha, Nebraska 68102; defendant Omaha Public School District's attorney of record, David M. Pedersen, Attorney at Law, 1500 Woodmen Tower, Omaha, Nebraska 68102-2069; and defendant Omaha World Herald Company's attorney of record, Allen E. Daubman, Attorney at Law, One Pacific Place, Suite 800, 1125 S. 103rd Street, Omaha, Nebraska 68124, on this 29th day of March, 1991.



Susan M. Ugai
Assistant Attorney General

27-378

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above Motion to Dismiss and the accompanying brief were sent on this 4th day of March, 1991, by regular United States mail, postage prepaid, to the following:

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