

Motion for Judgment on the Pleadings Standard

O.C.G.A. § 9-11-12(c) states:

“*Motion for judgment on the pleadings.* After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings 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 Code Section 9-11-56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Code Section 9-11-56.”

Judgment on the pleadings may be granted only if, on the facts as so admitted the moving party is clearly entitled to judgment. Seaboard Coast Line R.R. v. Dockery, 135 Ga. App. 540, 218 S.E.2d 263 (1975); Christner v. Eason, 146 Ga. App. 139, 245 S.E.2d 489 (1978). A motion for judgment on the pleadings may be granted if the complaint is time barred. Braden v. Bell, 222 Ga. App. 144, 473 S.E.2d 523 (1996).

In the interest of judicial economy, it is practical for a trial judge to enter judgment on the pleadings as to one count of a complaint if such count is subject to the motion, even though movant may not be entitled to such judgment as to all counts. First Nat'l Bank v. Osborne, 233 Ga. 602, 212 S.E.2d 785 (1975).

A motion to dismiss a complaint, including a civil rights complaint, for failure to state a claim upon which relief can be granted is subject to a very strict standard. A pro se complaint is not held to stringent standards of formal pleadings and the complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the Plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Johnson v. Jones, 178 Ga. App. 346 (1986).

The Statute of Limitations Standard

The applicable statute of limitation in this case for the false arrest, malicious prosecution and the 42 USC § 1983 claims, being injuries to the person of the Plaintiff, is two years.

O.C.G.A. Section 9-3-33 provides.

“Actions for injuries to the person shall be brought within two years after the right of action accrues, except for injuries to the reputation, which shall be brought within one year after the right of action accrues, and except for actions for injuries to the person involving loss of consortium, which shall be brought within four years after the right of action accrues.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Plaintiff filed the present lawsuit against Cherokee County Georgia, Sheriff Roger Garrison, Preston Peavy, and the Cherokee County Sheriff's Department. The gist of the numerous tort claims made by this pro se Plaintiff in

his "Demand for Injunctory [sic] Relief of 20 Million Dollars," a 25 page pleading filed November 20, 2007, is that he was falsely arrested on September 25, 2001 and thereafter wrongfully prosecuted in Superior Court, as a result of an improper investigation by Defendant Peavy. Peavy was at the time of Plaintiffs arrest employed as an investigator in the Cherokee County Sheriff's office. The Plaintiff alleges that Peavy was the actual perpetrator of the malfeasance against him, and other government employees and officials, including Sheriff Garrison, covered up a nightmare of injustice. It is part of the Plaintiffs case to expose the corruption he sees in the criminal justice system. He also seeks to have his record cleared pertaining to his arrest and information concerning the criminal case expunged from the records.

The Plaintiff was charged in Cherokee County Superior Court in Case numbers 02-CR-0053 and 02-CR-1029 with criminal offenses. The Plaintiff was involved in an incident on September 16, 2001. It is alleged that on September 19, 2001 a false incident report was filed by one Jackie Wagner. Peavey was assigned to investigate the incident and came to the Plaintiff's residence. Plaintiff alleges that Peavy attempted to manufacture his guilt in order to get a conviction. The Plaintiff was arrested on September 25, 2001 on misdemeanor charges. Evidence, including a cross bow and arrows were seized from the residence of the Plaintiff. The Plaintiff would later contend that law enforcement tampered with one of the

seized arrows to remove important exculpatory evidence. The Plaintiff went to trial on or about November 19, 2002 before Judge Sumner. The result of this trial is unclear, but it is alleged that Case 02-CR-0053 was nolle prossed. On December 19, 2005 an Order of Dismissal was entered by Judge Harris on Accusation No. 02-CR-1029. The Plaintiff subsequently filed this pro se civil rights action on November 20, 2007.

A Motion to Dismiss for Want of Service and a Motion for More Definite Statement were filed on December 27, 2007. The Motion for Judgment on the Pleadings was filed on July 31, 2009. The Plaintiff did not file any responses to these motions. The Plaintiff did dismiss the Cherokee Family Violence Center as a defendant on March 19, 2008.

On April 23, 2008 the Court through Senior Superior Court Judge W.A. Foster, III entered a dismissal on the Plaintiff's claims against Judge Sumner and the District Attorney Garry Moss on sovereign immunity grounds.

A review of the pleading fails to reveal any showing that Sheriff Garrison was actually involved in any alleged constitutional deprivation or exercised any control or direction over the alleged Constitutional deprivation. Gilmere v. City of Atlanta, 774 F.2d 1495 (11th Cir. 1985). Furthermore, there has been no showing that Cherokee County had any policy, practice or custom that allegedly deprived

the Plaintiff of a constitutional right, nor any causal link between any such policy practice or custom leading to his arrest and prosecution. Monell v. Department of Social Services, 436 U.S. 658 (1978).

It also appears that the Cherokee County Sheriff's Department is not a legal entity capable of being sued. Shelby v. City of Atlanta, 578 F. Supp. 1368 (N.D. Ga. 1984). However it is an "original agency" for the purposes of O.C.G.A. 35-3-37, the expungement statute.

The Plaintiff argues that the Defendants "continuing corruption" somehow avoids the statute of limitations on the damage and/or tort claims. Even applying very liberal pleading requirement to these claims, the Court can find no legal authority or precedent to support this conclusory legal position.

As to the expungement claim by the Plaintiff, the Court finds that the Plaintiff *may* be entitled to expungement per O.C.G.A. 35-3-37. It does not appear from the pleadings that the Plaintiff followed the necessary steps to apply for expungement pursuant to the applicable code section. The court directs the Plaintiff, should he still desire to seek expungement of the subject arrest, to make his request in writing to the original agency having custody or control of the records(the Cherokee Sheriff's Department) to expunge their records and notify GCIC. The Cherokee County Sheriff's Department will supply any necessary

forms to the Plaintiff. After determination by the agency on the expungement request, the Plaintiff will have 30 days to appeal the decision to this court. The court shall thereafter conduct a de novo hearing and may order such relief as it finds to be required by law. Should the Plaintiff not pursue this remedy within sixty days from the date of this order, upon application by the attorney for the Sheriff's office, and with notice to the Plaintiff for an opportunity to respond, the final remaining claim of expungement of the arrest record may stand dismissed, without prejudice.

In the recent Supreme Court decision of Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955 (May 21, 2007) the United States Supreme Court held that a Plaintiff must plead a plausible, rather than merely a conceivable claim, and a complaint will not survive simply because there is some conceivable set of facts which would entitle the Plaintiff to relief. This court notes there is an absence of factual allegations supportive of the alleged corruption, conspiracies and civil rights violations charged by the Plaintiff in this case. However, this Court has applied the liberal Johnson v. Jones standard to the claims of the Plaintiff.

SUMMARY

Applying the applicable standards, and assuming all the Plaintiff's claims are correct, the Court finds all the Plaintiffs monetary damage or personal injury

and civil rights claims to be time barred, as his right of action began to accrue on September 25, 2001 and this lawsuit was filed on November 20, 2007. The Court finds the Plaintiff's claim for expungement of his arrest records is not time barred and may proceed as directed above. Accordingly;


The Defendant Cherokee County, Georgia's Motion for Judgment on the Pleadings is **HEREBY GRANTED**.

The Defendant Cherokee County Sheriff's Department Motion for Judgment on the Pleadings is **HEREBY GRANTED** as to the tort and damage claims, but **HEREBY DENIED** as to the expungement claim.

The Defendant Sheriff Roger Garrison's Motion for Judgment on the Pleadings is **HEREBY GRANTED**.

The Defendant Preston Peavy's Motion for Judgment on the Pleadings is **HEREBY GRANTED**.

SO ORDERED this 25th day of February, 2010.



Murphy C. Miller, Judge
CHEROKEE County Superior Court