

Farwell v. Town of Brookline CV-00-086-M 10/20/00
UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

Clarence Farwell,
Plaintiff

v.

Civil No. 00-86-M
Opinion No. 2000 DNH 222

Town of Brookline, Town of Milford,
Town of Hollis, Town of Pepperell,
Deborah Clark, David Turgeon,
Steven Desilets, and Richard Darling,
Defendants

ORDER

Clarence Farwell brings this action pursuant to 42 U.S.C. § 1983, seeking damages for alleged violations of his constitutional rights. Specifically, he claims that defendants unlawfully arrested him and, in so doing, used excessive force. He also brings several common law and state constitutional claims, over which he says the court may properly exercise supplemental jurisdiction. Named as defendants are the Town of Brookline, New Hampshire, the Town of Milford, New Hampshire, the Town of Hollis, New Hampshire, and the Town of Pepperell, Massachusetts (collectively, the "Municipal Defendants"). Also named as defendants, and sued in their individual capacities, are

Brookline Police Officer Deborah Clark, Hollis Police Officer David Turgeon, Sergeant Steven Desilets of the Hollis Police Department, and Hollis Police Chief Richard Darling. No individual employees of the towns of Milford or Pepperell are identified in the complaint.

Pursuant to Federal Rule of Civil Procedure 12(c), the Town of Pepperell and the Town of Milford move for judgment on the pleadings as to all claims against them. In response, plaintiff has not moved to amend his complaint. Instead, he simply objects to the relief requested by the Municipal Defendants.

Discussion

Plaintiff's complaint in this case is virtually identical to that filed by Marcia Farwell in Farwell v. Brookline, et al., No. 00-89-M (the sole apparent distinction being that Marcia Farwell also asserts a claim for wrongful prosecution). The arguments raised by the Municipal Defendants in support of their motions for judgment on the pleadings and plaintiff's arguments in opposition are likewise virtually identical to those presented in

the companion case. Consequently, the court need not recount the facts underlying the parties' dispute, nor need it restate its discussion of the complaint's legal shortcomings.

For the reasons discussed in the contemporaneous order in the companion case of Farwell v. Brookline, et al., No. 00-89-M (D.N.H. October 20, 2000) (granting in part and denying in part defendants' motions for judgment on the pleadings), defendants' motions for judgment on the pleadings (documents no. 8 and 10) are granted in part and denied in part. As to all Municipal Defendants, counts 1 and 2 are dismissed without prejudice. Count 3 is dismissed, without prejudice, as to the towns of Pepperell and Milford. Finally, as to all defendants, plaintiff's claims based upon alleged violations of the New Hampshire Constitution are dismissed without prejudice.

Plaintiff is, however, granted leave to file an amended complaint. To the extent he is able, consistent with the requirements of Fed. R. Civ. P. 11, he may amend his complaint to cure the equally applicable deficiencies identified in the

court's recent order in the case filed by Marcia Farwell. Should he elect to file an amended complaint, plaintiff shall do so on or before November 20, 2000.

SO ORDERED.

Steven J. McAuliffe
United States District Judge

October 20, 2000

cc: Kenneth G. Bouchard, Esq.
Donald E. Gardner, Esq.
John A. Curran, Esq.
Michael B. O'Shaughnessy, Esq.