

Newell v. Bedford

CV-94-479-SD 12/23/96

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Scott A. Newell

v.

Civil No. 94-479-SD

Town of Bedford, NH, et al

O R D E R

Defendants have filed a motion seeking leave to file a motion to dismiss. Document 50.¹ The plaintiff objects. Document 51.²

1. Background

In this action, plaintiff Scott Newell seeks damages resulting from an incident wherein, while he was riding a bicycle on a public way during the hours of darkness, he was stopped and ultimately arrested by two police officers employed by the Town

¹The motion to dismiss is attached to the motion seeking leave to file.

²Plaintiff apparently believes that, as a motion for judgment as a matter of law under Rule 50(a), Fed. R. Civ. P., was previously denied, the time limitations for renewal of such motion here apply. The court respectfully disagrees, and therefore will consider the motion to dismiss. The court also considers the plaintiff's objection to the motion on the merits.

of Bedford, New Hampshire. Claiming violation of his federal civil rights, together with violations of certain provisions of state law, he brought this suit, naming both police officers and their employer as defendants.

A jury trial was held in this court between September 17 and 25, 1996. Furnished with special verdicts, the jury found that one of the officers, Robert Gagliardi, had not violated plaintiff's rights under either federal or state law. However, the jury was unable to agree concerning the remaining claims, and the court therefore accepted their partial verdict and declared a mistrial as to the claims pending against Officer McFadden and the Town of Bedford as concerned his actions. A new trial on the remaining claims will be held in the future.

2. Discussion

When presented with a motion to dismiss, the court must take the factual averments contained in the complaint as true, indulging every reasonable inference helpful to the plaintiff's cause. Garita Hotel, Ltd. v. Ponce Fed'l Bank, 958 F.2d 15, 17 (1st Cir. 1992). Defendants' approach, contained in their motion, seeks to have the court draw, from the facts presented at the first jury trial, inferences which are favorable to them and not to the plaintiff.

This the court will not do. On review of the authorities relied on by the defendants, and based upon its knowledge of the evidence available to plaintiff, the court finds and rules that the motion to dismiss must be and accordingly it is herewith denied.

3. Conclusion

The court has granted defendants' motion to file a motion to dismiss. Document 50. The court has considered the motion to dismiss and finds that it must be and accordingly it is herewith denied.

SO ORDERED.

Shane Devine, Senior Judge
United States District Court

December 23, 1996

cc: Bruce E. Kenna, Esq.
Barton L. Mayer, Esq.
Robert E. McDaniel, Esq.