

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

KRISTIN DOUGLAS,)	
)	
Plaintiff)	
)	
v.)	Docket No. 02-102-P-H
)	
YORK COUNTY, et al.,)	
)	
Defendants)	

RECOMMENDED DECISION ON DEFENDANTS’ MOTION TO DISMISS

Defendants York County and the York County Sheriff’s Department¹ move to dismiss the claim asserted against them by the plaintiff in this action arising out of events alleged to have taken place in 1971. I recommend that the court grant the motion in part.

I. Applicable Legal Standard

The motion to dismiss invokes Fed. R. Civ. P. 12(b)(6). Motion at 1. “When presented with a motion to dismiss, the district court must take as true the well-pleaded facts as they appear in the complaint, extending the plaintiff every reasonable inference in his favor.” *Medina-Claudio v. Rodríguez-Mateo*, 292 F.3d 31, 34 (1st Cir. 2002) (citation and internal punctuation omitted). The defendant is entitled to dismissal for failure to state a claim only when the allegations are such that the plaintiff can prove no set of facts to support the claim for relief. *Clorox Co. Puerto Rico v. Proctor*

¹ Also named in the complaint as defendants are former sheriff Richard D. Dutremble and unknown deputy sheriffs employed by the York County Sheriff’s Department in the fall of 1971. Complaint and Jury Claim (“Complaint”) (Docket No. 1) at 1 & ¶¶ 4-5. The complaint appears to assert claims against the unnamed deputy sheriffs in their individual capacities, *id.* ¶¶ 10, 72-82, in which case the defendant sheriff’s department might not be liable for any judgment against them. There is no indication in the file that Dutremble has (continued on next page)

& Gamble Commercial Co., 228 F.3d 24, 30 (1st Cir. 2000) (citation and internal punctuation omitted); *see also Tobin v. University of Maine Sys.*, 59 F.Supp.2d 87, 89 (D. Me. 1999).

II. Factual Background

The complaint includes the following relevant factual allegations. The plaintiff, currently a resident of Hawaii, was stopped by police for traffic violations during the fall months of 1971 and arrested. Complaint ¶¶ 2, 6. She was then transported to the York County jail, where she remained for approximately two weeks, either because she was unable to make bail or because court was not in session. *Id.* ¶¶ 7, 9. At the time, the plaintiff was approximately twenty-one years of age. *Id.* ¶ 8. The jail in use at that time in York County was almost 100 years old “and not fit for use as a jail.” *Id.* ¶ 13. The jail had only one cell for female detainees or prisoners and could be reached only by walking past cells of male detainees or prisoners. *Id.* ¶ 15.

The York County jail was understaffed and had no female guards. *Id.* ¶ 47. It had a policy of using an inmate “turnkey” or “trustee” who had possession of keys to all jail cells. *Id.* ¶ 16. The plaintiff’s cell was opened by the prisoner trustee, who came into her cell and forced her to have sexual intercourse with him. *Id.* ¶ 18. Several other prisoners then entered the cell and also raped the plaintiff. *Id.* For a period of days thereafter, the plaintiff was gang-raped daily. *Id.* ¶ 19. No other female prisoners were in the jail when the rapes occurred. *Id.* ¶ 21. The defendants provided the key to the women’s cell to the prisoner trustee with the knowledge that he would enter the plaintiff’s cell and sexually assault her. *Id.* ¶ 23. The plaintiff became pregnant as a result of the rapes. *Id.* ¶ 24. As a result, the plaintiff was disowned by her family. *Id.* ¶ 25. The plaintiff arranged through friends for an abortion outside the state of Maine. *Id.* ¶¶ 26-29.

been served, and the moving parties state that he died in 1993. Motion to Dismiss, etc. (“Motion”) (Docket No. 3) at 2 n.2.

Prior to her incarceration, the plaintiff was suffering from depression, post-traumatic stress disorder and other related mental illnesses. *Id.* ¶ 33. She had been abused by her parents and stepfather. *Id.* ¶¶ 34, 36-39. At the time of her incarceration, she was mentally ill and suffering from an overall inability to function in society that prevented her from protecting her legal rights. *Id.* ¶ 40. Immediately after the first rape the plaintiff began to suffer post-traumatic stress disorder and/or rape trauma syndrome, which caused her an overall inability to function in society that prevented her from protecting her legal rights. *Id.* ¶ 41. She currently suffers from depression, post-traumatic stress disorder, rape trauma syndrome and other mental illnesses. *Id.* ¶ 31.

III. Discussion

The claim against York County and the York County Sheriff's Department is brought under 42 U.S.C. § 1983. *Id.* ¶ 60. The moving defendants contend that the claim is barred by the applicable statute of limitations. Motion at 2. "The Supreme Court directs federal courts adjudicating civil rights claims under 42 U.S.C. § 1983 to borrow the statute of limitations applicable to personal injury actions under the law of the forum state." *Street v. Vose*, 936 F.2d 38, 39 (1st Cir. 1991). Under Maine law, the applicable statute of limitations is provided by 14 M.R.S.A. § 752, which requires that an action be commenced within six years after the cause of action accrues. The plaintiff contends, Plaintiff's Response to Defendant's Motion to Dismiss, etc. ("Opposition") (Docket No. 4) at 2 & 6, that this statute is tolled in the circumstances of her claim by 14 M.R.S.A. § 853, which provides that "If a person entitled to bring any of the actions under sections 752 to 754 . . . is a minor, mentally ill, imprisoned or without the limits of the United States when the cause of action accrues, the action may be brought within the times limited herein after the disability is removed."² For section 1983 claims,

² Minor changes, not including the language quoted here, were made to section 853 in 1977 and 1985. Historical Note, 14 M.R.S.A. § 853 (1980 & Supp. 2001).

the tolling of the statute of limitations is also governed by state law. *Benitez-Pons v. Commonwealth of Puerto Rico*, 136 F.3d 54, 59 (1st Cir. 1998).

Under Maine law, a person is “mentally ill” for purposes of 14 M.R.S.A. § 853 if she suffers from an overall inability to function in society that prevents her from protecting her legal rights. *McAfee v. Cole*, 637 A.2d 463, 466 (Me. 1994). “Whether a person is mentally ill within the meaning of 14 M.R.S.A. § 853 is a question of fact.” *Bowden v. Grindle*, 675 A.2d 968, 971 (Me. 1996). The plaintiff invoking this exception to the statute of limitations must have been mentally ill when the cause of action accrued. *Dasha v. Maine Med. Ctr.*, 665 A.2d 993, 994 (Me. 1995).

The moving defendants first argue that applying 14 M.R.S.A. § 853 to this claim would be inconsistent with the underlying goals of section 1983, citing *Board of Regents of the Univ. of the State of New York v. Tomanio*, 446 U.S. 478, 487 (1980) (state tolling statute applies to section 1983 claim unless statute is inconsistent with policies underlying section 1983). Motion at 4. The defendants correctly identify the chief goals of section 1983 as deterrence and compensation. *Id.*; *Hardin v. Straub*, 490 U.S. 536, 539 (1989). A tolling statute that allows a plaintiff to receive compensation for injuries many years after she might otherwise do so can hardly be said to be inconsistent with the compensation goal of section 1983. *See Hardin*, 490 U.S. at 543. Similarly, with respect to the moving defendants, a county and a sheriff’s department still in existence and still operating a jail, it is impossible to hold as a matter of law that deterrence will not result from allowing the plaintiff to go forward with her claim.

The defendants argue in the alternative that the complaint fails to allege facts sufficient to meet the requirements of 14 M.R.S.A. § 853. Motion at 5-8. They support this argument primarily with citations to case law arising from summary judgment or after trial, neither of which is subject to the standard of review applicable to motions to dismiss. The complaint does allege that the plaintiff was

unable to function in society due to mental illness in a way that prevented her from protecting her legal rights at the times relevant under section 853. The defendants dismiss these statements as “conclusory allegations or bold assertions” which the court is not required to credit. *Id.* at 7. However, the case law cited by the defendants in support of that characterization predates the Supreme Court’s recent opinion in *Swierkiewicz v. Sorema N. A.*, 122 S.Ct. 992 (2002), in which the Court held that, under a notice pleading system and Fed. R. Civ. P. 8(a)(2), federal courts may not require a plaintiff to plead facts establishing a *prima facie* case, but rather may only require that a complaint give the defendant fair notice of the claim and the grounds on which it rests. 122 S.Ct. at 997-98. The complaint meets this standard. The defendants’ suggestion that some of the allegations in the complaint actually tend to show that the plaintiff was able to function in society at the time of the alleged arrest, Reply to Plaintiff’s Opposition to Defendant’s [sic] Motion to Dismiss, etc. (Docket No. 5) at 5 n.2, like much of their argument, would be more appropriately advanced in support of a motion for summary judgment. This court may not weigh the allegations of a complaint against each other for purposes of a motion to dismiss. If the plaintiff may prove a set of facts under any of the allegations in the complaint that state a claim for relief, that is sufficient.

The defendants also ask that the plaintiff’s claim for exemplary or punitive damages against them, Complaint at 10, be dismissed. Motion at 8 n.4. Punitive damages are not available against governmental entities under section 1983. *McLain v. Milligan*, 847 F. Supp. 970, 980 (D. Me. 1994); *see Colvin v. McDougall*, 62 F.3d 1316, 1319 (11th Cir. 1995) (no punitive damages under § 1983 against sheriff’s department). The moving defendants are entitled to dismissal of this portion of the demand for relief in Count I of the complaint.

IV. Further Proceedings

The defendants have moved, in the alternative, for an order pursuant to Fed. R. Civ. P. 12(e) directly the plaintiff to file a more definite statement with respect to her claim of mental illness or for a 60-day stay during which the parties would conduct limited discovery on this issue, after which the defendants would presumably file a motion for summary judgment. Motion at 8-9. The plaintiff objects to the first requested alternative but does not respond to the second. Opposition at 10. The circumstances of this case, in which the claim against the defendant arises out of events alleged to have occurred 31 years ago and in which the plaintiff's mental status at that time will be determinative of her ability to proceed with the claim, can best be described as unusual. These circumstances do not fit within the scope of Rule 12(e); a more definite statement would not resolve the outstanding factual issues. If the court adopts my recommendation with respect to the motion to dismiss, fairness and judicial economy dictate that the issue of the applicability of the exception to the statute of limitations created by 14 M.R.S.A. § 853 be decided before the other substantive issues in the case are addressed. A stay of the action might accomplish this purpose, but it would be more appropriate for this court to issue a scheduling order establishing an initial limited discovery period of 60 days directed only to this issue, to be followed by a motion for summary judgment, if any is to be filed, within a set number of days, with the future course of the proceeding to be determined, if necessary, after the motion for summary judgment is decided.

V. Conclusion

For the foregoing reasons, I recommend that the motion of defendants York County and the York County Sheriff's Department to dismiss be **GRANTED** as to any claim against them for punitive or exemplary damages and otherwise **DENIED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum and request for oral argument before the district judge, if any is sought, within ten (10) days after being served with a copy thereof. A responsive memorandum and any request for oral argument before the district judge shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 12th day of July, 2002.

David M. Cohen
United States Magistrate Judge

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