

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

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| WILLIAM C. BLOOMQUIST, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | CIVIL No. 03-276-P-S |
| |) | |
| JUSTICE PAMELA ALBEE, et al.,) |) | |
| |) | |
| Defendants) |) | |

**ORDER AFFIRMING IN PART THE
RECOMMENDED DECISION OF THE MAGISTRATE JUDGE**

On September 29, 2004, the United States Magistrate Judge filed her Recommended Decision (Docket # 102) with the Court. Plaintiff filed his Objection to the Recommended Decision (Docket # 106) on October 18, 2004. Defendants Portland Press Herald, Kennebec Journal Online Central Maine Morning Sentinel, Blethen Newspapers, Inc., David Hench, David Connerty-Marin, Bridgton News Corporation, WGME, Inc., Pacific and Southern Company d/b/a BCSH-TV, and WMTW Broadcast Group, LLC (together, the "Media Defendants") filed their Response to the Objection (Docket # 107) on October 25, 2004.

I have reviewed and considered the Magistrate Judge's Recommended Decision, together with the entire record, and have made a de novo determination of all matters adjudicated by the Recommended Decision (Docket # 102).

The Court's review has focused on three specific objections asserted by Plaintiff in his Objection. First, Plaintiff insists that his claims against the Media Defendants were timely filed in accordance with the

Maine rules for calculating the two year statute of limitation. Second, Plaintiff maintains that his alleged detention until 6 p.m. on November 29, 2001 (while he was awaiting bond after surrendering to police around 5 p.m. on November 28, 2001) tolled the statute of limitations pursuant to 14 M.R.S.A. § 853. Third, Plaintiff objects to the Magistrate Judge's sua sponte dismissal of his Section 1983 claims based on a finding that the Media Defendants are not state actors.

With respect to Plaintiff's second and third objections, the Court concurs with the recommendations of the United States Magistrate Judge. In short, for the reasons set forth in the Recommended Decision, the Court finds no evidence to support tolling the statute of limitations on November 29, 2001 and also concludes that the Media Defendants are not state actors subject to claims under 42 U.S.C. § 1983.

What remains is Plaintiff's first objection regarding the application of the statute of limitations. In her Recommended Decision, the Magistrate Judge ultimately concluded that any "false light" claims arising from publications on November 28, 2001 and November 29, 2001 were untimely. Plaintiff objects to this conclusion and argues that his complaint, which was filed on December 1, 2003, was timely under Tesseo v. Brown, 712 A.2d 1059 (Me. 1998) and Maine Rule of Civil Procedure 6(a). Upon de novo review of this properly filed objection, the Court finds that Plaintiff is partially correct. Specifically, under Tesseo and Rule 6(a), Plaintiff's December 1, 2003 Complaint was timely filed as to any allegations that he was portrayed in a "false light" by a publication or broadcast occurring on or after November 29, 2001.

Under Tesseo, a claim based on a November 29, 2001 publication accrued on November 30, 2001 and the two year statute of limitations would have run on November 29, 2003. Since November 29, 2003 was a Saturday, Rule 6(a) specifically allowed the limitations period to be extended until Monday, December 1, 2003.

However, Plaintiff was not entitled to this extension for any publications made on or before

November 28, 2001. The statute of limitations for a “false light” claim premised on a November 28, 2001 publication would have run on Friday, November 28, 2003. Plaintiff’s bare assertion without any supporting documentation does not support a conclusion that this Friday was a “legal holiday.” Me. R. Civ. P. 6(a); see also 4 M.R.S.A § 1051 (listing all legal holidays recognized by the State of Maine); Garcia-Velazquez v. Frito Lay Snacks Caribbean, 358 F.3d 6, 9 (1st Cir. 2004) (explaining that even if a court or clerk’s office is closed for business, the day is not considered a “legal holiday”).¹ In fact, this Court was open for business on Friday, November 28, 2003. Thus, in order to meet the statute of limitations, Plaintiff would have needed to file any “false light” claims based on November 28, 2001 publications on or before November 28, 2003. For this reason, the Court concurs with the Magistrate Judge’s recommendation to dismiss claims based on pre-November 29, 2001 publications and broadcasts. However, the Court finds that Plaintiff’s allegations based on publications made on or after November 29, 2001 were timely filed.

Defendants, nonetheless, urge the Court to consider affirming the Recommended Decision’s dismissal of any and all claims premised on publications made on or after November 29, 2001. Specifically, Defendants argue for dismissal of claims based on publications made *after* November 29, 2001 for the reasons stated in the Recommended Decision. With respect to claims based on November 29, 2001 publications, Defendants ask the Court to consider dismissal on any of the alternative grounds asserted in their Joint Motion for Partial Judgment on the Pleadings (Docket # 47).²

¹ While the parties’ filings and the Recommended Decision cite to Maine Rule of Civil Procedure 6(a) and the coordinating Maine statute defining “legal holidays” for the State of Maine, the Court notes that the same outcome would be reached if the comparable Federal Rules of Civil Procedure were applied. See Fed. R. of Civ. P. 6(a).

² Defendants’ opening argument in their Response to Plaintiff’s Objection to the Recommended Decision asserts that Plaintiff’s Objection, which was filed on October 18, 2004, was not filed within the allotted ten day period. In fact, by the Court’s calculation, Plaintiff’s objection was timely filed. The Recommended Decision was filed on September 29, 2004. Plaintiff’s ten business days for filing an objection began to run the following day, September 30, 2004. Excluding intervening weekends and court holidays, Plaintiff’s ten business days ended on October 14, 2004. However, Plaintiff also was entitled to three additional calendar days for “service by mail” per the District of Maine’s Administrative

The Recommended Decision dismissed allegations premised on articles appearing on or after November 30, 2001 based on a finding that Plaintiff had failed to state any such claim with sufficient specificity. Despite an apparent invitation from the Magistrate Judge to revisit this issue via an objection to the Recommended Decision,³ Plaintiff has not objected to the recommended dismissal of claims premised on publications that occurred on or after November 30, 2001. Thus, the Court deems Plaintiff to have waived any such objection and will affirm the dismissal of these claims due to failure to state a claim with sufficient specificity.

Having affirmed both the dismissal of all claims based on publications *prior to* November 29, 2001 as untimely and the dismissal of all claims based on publication *after* November 29, 2001 for failure to state a claim, the Court is left to consider whether there is an alternative basis for dismissing those claims premised on publications on that actually occurred on November 29, 2001. The Recommended Decision specifically listed those allegations from Plaintiff's Amended Complaint as follows:

- On November 29, 2001 Defendant Portland Press Herald ran two separate newspaper articles, one entitled "Arsenal Seized from Baldwin Home" and the other entitled "Abuse Enquiry Leads to Seizure of Weapons Cache." Defendant Portland Press Herald ran articles about Plaintiff over the course of several days with follow-ups weeks later.⁴ (Am. Compl. (Docket # 7) ¶ 54.)
- On November 29, 2001, Defendant Blethan Newspapers, Defendant Kennebec Journal Online Central Maine Morning Sentinel, and Defendant Jerry Harkavy did publish a defamatory article based on false and fabricated statements with blatant disregard for the truth. This article was calculated and intended to defame Plaintiff and contained numerous intentional falsehoods maliciously calculated to injure and damage Plaintiff's reputation in the community. **Specific falsehoods can be found in Appendix A.** (Am. Compl. ¶ 64.)
- On November 29, 2001, Defendant Blethan Newspapers, and Defendant Jerry Harkavy

Procedures Governing Electronic Case Files. Since this three day period ran out on a Sunday, Plaintiff was allowed until Monday, October 18, 2004 to file his objection. See Fed. R. Civ. P. 6(a).

³ See Recommended Decision (Docket # 102) at 10 & n.8.

⁴ The Court finds that this last sentence about unspecified follow-ups is vague and insufficient to state a claim related to any publication occurring after November 29, 2001.

did with blatant disregard for the truth publish a defamatory article based on the false and fabricated statements. This article was calculated and intended to defame Plaintiff and contained numerous intentional falsehoods maliciously calculated to injure and damage Plaintiff's reputation in the community. **Specific falsehoods can be found in Appendix A.** (Am. Compl. ¶ 65.)

(Rec. Dec. (Docket # 102) at 6.)

In light of the lengthy excerpts of quoted text contained in Appendices A-2 through A-9 (Am. Compl. ¶¶ 633-637), even Defendants admit that these allegations “contain enough specificity” to state a claim. (Defs.’ Joint Mot. For Partial J. (Docket # 47) at 10-11.) Thus, the Court must conclude that Plaintiff’s allegations concerning the above listed November 29, 2001 publications are both timely and sufficiently specific to stay a claim. Absent being given leave to further amend his complaint, Plaintiff will be limited to pursuing his claims based on the specific statements listed in paragraphs 633 through 637 of his Amended Complaint. See Veilleux v. National Broadcasting Co., 8 F. Supp. 2d 23, 35-36 (D. Me. 1998) (explaining that such a limitation is necessary in order to give defendants adequate notice and thereby allow them to prepare a defense).

It may well turn out that Plaintiff cannot prove these allegations by a preponderance of the evidence or even survive summary judgment. See, e.g., Yohe v. Nugent, 321 F.3d 35, 42-45 (1st Cir. 2003) (affirming summary judgment in favor of defendant newspapers based on the fair reporting privilege). However, at this stage, the Court must “accept all of the [Plaintiff’s] well-pleaded factual averments as true . . . and draw all reasonable inferences in his favor.” Rivera-Gomez v. Castro, 843 F.2d 631, 635 (1st Cir. 1988) (explaining the standard applied when a court is asked to make “an extremely early assessment of the merits of the case” under Federal Rule of Civil Procedure 12(c)). Viewing the Amended Complaint from this vantage point, the Court cannot conclude that “it appears beyond doubt that the plaintiff can prove no set of facts [related to these November 29, 2001 publications] that would entitle him to relief.” Id. This

conclusion is especially warranted where, as here, the publications at issue are not even part of the record before the Court. Thus, with respect to claims based upon the November 29, 2001 publications by Defendants Portland Press Herald, Blethan Newspapers, Kennebec Journal Online Central Maine Morning Sentinel and Jerry Harkavy, the Court must deny the Motion for Judgment on the Pleadings.

Finally, the Court must address the impact of its statute of limitations ruling on Plaintiff's claim for trespass. The Magistrate Judge recommended dismissal of the trespass claim based on her conclusion that the statute of limitation had run to the extent that Plaintiff was "attempting to state a claim for a trespass that allegedly occurred before November 30, 2001." (Rec. Dec. (Docket # 102) at 7.) In light of the Court's finding that that the statute of limitations bars only those claims for events that occurred prior to November 29, 2001, there is a chance that Plaintiff may be able to proceed on his trespass claim against the various Media Defendants. While the Court has substantial doubts with respect to the merits of Plaintiff's rather vague trespass allegations against the Media Defendants, the Court will allow Plaintiff an opportunity to conduct discovery on this claim.

1. It is therefore ORDERED that the Recommended Decision of the Magistrate Judge is hereby AFFIRMED IN PART.
2. The Order is as follows:

Plaintiff's motion to stay judgment on defendants' motion to dismiss pending discovery is DENIED.

Judgment on the pleadings is GRANTED on behalf of all the Media Defendants as to Plaintiff's claims under 42 U.S.C. § 1983 (Counts 13, 15 & 16).

Judgment on the pleadings is GRANTED on behalf of all the Media Defendants as to all "false light" counts to the extent that they pertain to statements published or broadcast prior to November 29, 2001 due to such claims being filed after the passage of the statute of limitations.

Judgment on the pleadings is GRANTED on behalf of all the Media Defendants as to all “false light” counts to the extent that they pertain to statements published or broadcast on or after November 30, 2001 due to failure to state a claim with sufficient specificity.

Judgment on the pleadings is DENIED with respect to the November 29, 2001 publications by Defendants Portland Press Herald, Blethan Newspapers, Kennebec Journal Online Central Maine Morning Sentinel and Jerry Harkavy.

Judgment on the pleadings is DENIED with respect to the trespass claim (Count 41) asserted against various Media Defendants.

SO ORDERED.

/s/ George Z. Singal
Chief U.S. District Judge

Dated this of December 21st day 2004.

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