

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE**

KENT COUNTY COURTHOUSE
38 THE GREEN
DOVER, DELAWARE 19901
PHONE: (302) 735-3910

CHARLES W. WELCH, III
JUDGE

July 19, 2016

Ms. Nina Shahin
103 Shinnecock Road
Dover, DE 19904

Daniel A. Griffith, Esq.
Whiteford, Taylor & Preston, LLC
The Renaissance Centre, Suite 500
405 North King Street
Wilmington, DE 19801

RE: Nina Shahin v. Dover Police Officer Dale Boney, Badge #10216, et al.
C.A. No.: CPU5-14-000682

Decision on Plaintiff's Rule 59(d) Motion to Alter or Amend Judgment

Dear Ms. Shahin and Mr. Griffith:

The Court is in receipt of the Motion to Alter and Amend Judgment and, in the alternative, Motion for Relief from Judgment that has been filed by the plaintiff, Nina Shahin, for this matter. The motions were filed pursuant to Court of Common Pleas Civil Rules 59(d) and 60(b).¹ "Regardless how it is styled, a motion filed within ten days of entry of judgment questioning the correctness of a judgment may be treated as a motion to alter or amend the judgment under Rule 59[(d)]."² The Court will not consider the plaintiff's motion under Rule 60(b). The plaintiff's motion will be treated pursuant to Rule 59(d) because the motion was filed within 10 days after entry of judgment, does not state or rely on any proper grounds under Rule 60(b), solely relies on arguments raised under Rule 59(d), and the motion, in substance,

¹ Plaintiff's motion cited to Rule 59(b) of the Court of Common Pleas Civil Rules. Rule 59(b) addresses motions for a new trial. However, in her motion, Plaintiff titled the motion as a motion to alter or amend judgment which is normally made under Rule 59(d). Plaintiff's intent and the substance of her motion fall under Rule 59(d) Motion to Alter or Amend Judgment. Therefore, the Court will address her motion accordingly.

² *Rankin v. Heckler*, 761 F.2d 936, 942 (3d Cir. 1985); see also *Desmond v. Super. Ct. of Del.*, 2016 WL 559404, at *2 n.1 (D. Del. Feb. 12, 2016) (Petitioner's Motion to Alter or Amend Judgment and Motion for Relief was treated by the Court as a motion to alter or amend judgment).

questions the correctness of the Court's judgment. After careful consideration by the Court, the plaintiff's Motion to Alter and Amend Judgment is denied for the reasons provided below.

FACTS

On or about September 3, 2014, the plaintiff filed a civil tort action against the defendants, State Farm Mutual Automobile Insurance Co. and Officer Dale Boney ("Boney"). In her Complaint, the plaintiff alleged that Boney caused her damages when he issued her a citation and fabricated a police report that caused State Farm to deny her claim for reimbursement for damages caused to her vehicle in an automobile accident. The defendant, Officer Dale Boney, filed a motion to dismiss the plaintiff's claim against him, contending that he is immune from liability under The County and Municipal Tort Claims Act, 10 *Del. C.* § 4011.

On December 15, 2015, the Court entered an order requesting additional argument from the plaintiff as to her position on Officer Dale Boney's immunity defense under The County and Municipal Tort Claims Act. The plaintiff's Response raised, for the first time, a claim under 42 U.S.C. § 1983 and failed to address the immunity defense.

On April 13, 2016, the Court entered its Order granting the defendant's Motion to Dismiss pursuant to 10 *Del. C.* § 4011.³ Thereafter, the plaintiff filed the instant motion. The plaintiff seeks to alter or amend the Court's April 13, 2016, Order granting the defendant's Motion to Dismiss.

STANDARD OF REVIEW

In Delaware, a motion to alter or amend judgment will be granted if the movant shows: "(1) an intervening change in controlling law; (2) the availability of new evidence; or (3) the need to correct clear error of law or to prevent manifest injustice." *King v. McKenna*, 2015 WL 5168481, at *3 (Del. Super. Aug. 24, 2015). "[T]he Court will deny the motion if it merely restates arguments already considered and rejected during the litigation." *Id.*

³ See *Shahin v. Boney*, 2016 WL 3152575 (Del. Com. Pl. Apr. 13, 2016).

DISCUSSION

By her motion, the plaintiff seeks to alter or amend the Court's disposition as to her claim against Officer Dale Boney. In her motion, the plaintiff raises the following arguments: (1) the Court's first action was made one year and three months since the plaintiff's filing and, therefore, the Court failed to timely prosecute her claim; (2) in the Court's Letter Opinion, the Court failed to take any disposition as to the defendant, State Farm; (3) the Court failed to hold a pre-trial hearing to determine all the facts and legal responsibilities and, therefore, the Court made a decision without any hearing or calling of witnesses, which is a questionable legal procedure; and (4) the Court, in its decision, failed to state the standards of applicable law under which the case has been filed.

In this instant matter, the plaintiff has not demonstrated any of the requirements for Civil Rule 59(d) relief. In her motion, the plaintiff has not alleged new evidence or a change in controlling law. However, based on the arguments raised in the plaintiff's motion, the motion may be construed as asserting a claim to alter or amend judgment to correct clear error of law or to prevent manifest injustice.

First, the plaintiff argues that the Court should alter or amend its decision due to clear error of law or manifest injustice because the Court's Order dismissing her claim against the defendant was entered one year and three months after she filed her claim. The plaintiff does not state any law to support her claim nor does she show that she suffered any prejudice due to the delay of the Court's adjudication of her claim. Furthermore, any delay in the disposition of the plaintiff's claim is partly attributed to the number of motions and pleadings filed by the plaintiff in this case that the Court has had to review and consider.

Next, the plaintiff contends that the Court failed to provide any disposition for the defendant, State Farm. Again, the plaintiff fails to show that there was a clear error of law or manifest injustice. This claim is meritless because the Court did not "fail" to provide a disposition as to her claim against State Farm. State Farm did not file a motion to dismiss and, therefore, no disposition has been required to date.

The plaintiff further asserts that the Court failed to hold a pre-trial hearing to determine all the facts and legal responsibilities and, therefore, made a decision without any hearing or calling of witnesses, which is a questionable legal procedure. This claim is also meritless. Under Court of Common Pleas Civil Rule 16(c), the Court is not mandated, but, has discretion as to whether to hold a pre-trial conference. Civil Rule 16(c) states as follows:

Pre-Trial Conferences. In any action, the Court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference to consider: (1) The simplification of the issues; (2) The necessity or desirability of amendments to the pleadings; (3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof; (4) The limitation of the number of expert witnesses; (5) The advisability of a preliminary reference of issues to a Commissioner for findings to be used as evidence at trial; (6) The selection of an ADR resolution method, appointment of an ADR Practitioner, or to otherwise facilitate ADR resolution when the parties have been unable to do so in accordance with Rule 16 (a); (7) Such other matters as may aid in the disposition of the action.

Furthermore, the Court followed the proper legal procedure under the standard of review for a motion to dismiss. Under such standard, the Court is only required to examine the Complaint, accept all well-pleaded allegations as true, and determine whether the plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof. *Morabito v. Del. Sleep Disorder Ctrs., LLC*, 2015 WL 3882609, at *2 (Del. Super. June 23, 2015) (citations omitted).

The plaintiff's final assertion is that the Court, in its Opinion, failed to state the standards of applicable law under which the case has been filed. The plaintiff claims that the applicable law was 42 U.S.C. § 1983, civil action for deprivation of rights.⁴ To state a claim under 42 U.S.C. § 1983, a plaintiff must allege "the violation of a right secured by the Constitution or laws of the United States and must show that the alleged deprivation was committed by a person acting under color of state law." *Milbourne v. Beecher, et al*, 2016 WL 3583796, at *2 (D. Del. June 30, 2016). Court of Common Pleas Civil Rule 8(a) requires the Complaint to contain "(1) a

⁴ "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . ." 42 U.S.C. § 1983.

short and plain statement of the claim showing that the pleader is entitled to relief and (2) a demand for judgment for the relief to which the party deems itself entitled.” Nowhere in the plaintiff’s Complaint does the plaintiff allege a violation of a Constitutional right or right secured by law.

The first mention of a 42 U.S.C. § 1983 claim was addressed in the plaintiff’s Response to the Court’s Order for additional argument concerning the defendant’s immunity defense under The County and Municipal Tort Claims Act. The Court disregarded the plaintiff’s 42 U.S.C. § 1983 claim because it was improper and outside the scope of the Court’s Order. The proper course was for the plaintiff to file a motion to amend pleadings. However, the plaintiff failed to do so and now seeks to alter or amend the Court’s judgment due to her own mishap. The County and Municipal Tort Claims Act, 10 *Del. C.* § 4011, was the proper applicable law upon which the Court has made its decision to dismiss Boney from the case.

Finally, the Court wishes to address the plaintiff’s request to transfer the case to the United States District Court for the District of Delaware pursuant to 10 *Del. C.* § 1902.⁵ In threatening and disrespectful language, the plaintiff demands transfer of the case “to avoid accusations of violating the Plaintiff’s constitutional rights of ‘due process’ and ‘equal protection’ because of his [the Court’s] professional dishonesty and collusion with professional attorneys representing Defendants and bias and discrimination against the national minority, *pro se* litigant [*sic*].”

The plaintiff’s request is denied. The plaintiff’s claim has been adjudicated and based on the face of the Complaint and the law, the Court had subject matter jurisdiction over the plaintiff’s claim. Furthermore, the plaintiff failed to follow the proper procedure for bringing her claim in federal court. Therefore, the request must be denied.

Finally, the Court would like to remind the plaintiff that the Court will not tolerate the use of abusive language and shows of disrespect towards the Court, other parties, or the attorneys representing them. All parties who come before this Court should conduct themselves in a civil

⁵ § 1902. Removal of actions from courts lacking jurisdiction.

and courteous manner. Anyone refusing to do so may be subject to Court or Common Pleas Civil Rule 11 sanctions. The Court, and all litigants, in this matter have been professional and courteous to the plaintiff. It expects the same courtesy from her. Valid legal argument does not need to contain, and should not contain, slanderous, disrespectful and threatening comments.

CONCLUSION

For the foregoing reasons, the plaintiff's Motion to Alter or Amend Judgment is DENIED. The plaintiff's request to transfer case to the United States District Court for the District of Delaware pursuant to 10 *Del. C.* § 1902 is DENIED.

IT IS SO ORDERED this 19th day of July, 2016.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles W. Welch, III". The signature is fluid and cursive, with the first name "Charles" being the most prominent part.

Charles W. Welch, III

CWW: mek