

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JAY. M. RINGGOLD, SR.,)
)
 Plaintiff,)
)
 v.) Civ. No. 06-17-GMS
)
 WILMINGTON POLICE DEPARTMENT,)
 OFFICER THOMAS CURLEY, and)
 OFFICER NELIDA VEGA,)
)
 Defendants.)

MEMORANDUM

Plaintiff Jay M. Ringgold, Sr., (“Ringgold”), is currently incarcerated at the Delaware Correctional Institute (“DCC”), in Smyrna, Delaware. He filed this lawsuit pursuant to 42 U.S.C. § 1983. Ringgold appears *pro se* and was given leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (D.I. 3.) The court now proceeds to review and screen the complaint pursuant to 28 U.S.C. § 1915 and § 1915A.

I. THE COMPLAINT

Ringgold alleges that at approximately 7:00 PM, on March 10, 2004, and during a police chase, his vehicle was rammed by the police cruisers of the defendants Officer Thomas Curley and Officer Nelida Vega. Ringgold also alleges that on March 11, 2004, while being transported in a van driven by a police officer for the Wilmington Police Department, rear-ended a Jeep Cherokee. Ringgold alleges that he was immediately taken to the hospital upon arrival of medical personnel.

Ringgold alleges that as result of these incidents he sustained injuries. He seeks financial compensation and a formal apology.

II. STANDARD OF REVIEW

When a litigant proceeds *in forma pauperis*, 28 U.S.C. § 1915 provides for dismissal under certain circumstances. When a prisoner seeks redress from a government defendant in a civil action, 28 U.S.C. § 1915A provides for screening of the complaint by the court. Both 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1) provide that the court may dismiss a complaint, at any time, if the action is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant immune from such relief.

Pro se complaints are liberally construed in favor of the plaintiff. *Haines v. Kerner*, 404 U.S. 519, 520-521 (1972). The court must "accept as true factual allegations in the complaint and all reasonable inferences that can be drawn therefrom." *Nami v. Fauver*, 82 F.3d 63, 65 (3d Cir. 1996)(citing *Holder v. City of Allentown*, 987 F.2d 188, 194 (3d Cir. 1993)). An action is frivolous if it "lacks an arguable basis either in law or in fact," *Neitzke v. Williams*, 490 U.S. 319, 325 (1989), and the claims "are of little or no weight, value, or importance, not worthy of serious consideration, or trivial." *Deutsch v. United States*, 67 F.3d 1080, 1083 (3d Cir. 1995). Additionally, a *pro se* complaint can only be dismissed for failure to state a claim when "it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" *Haines v. Kerner*, 404 U.S. 519, 520-521 (1972)(quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)).

III. ANALYSIS

A. 42 U.S.C. § 1983

When bringing a § 1983 claim, a plaintiff must allege that some person has deprived him of a federal right, and that the person who caused the deprivation acted under color of state law.

West v. Atkins, 487 U.S. 42, 48 (1988). Even construing the complaint liberally, Ringgold has not alleged a constitutional violation by the Wilmington Police Department during the March 11, 2004, accident with the Jeep Cherokee. Ringgold has alleged mere negligence, nothing more.

Unfortunately for Ringgold, negligence alone is insufficient to impose liability under § 1983. *Davidson v. Cannon*, 474 U.S. 344, 347 (1986); *Daniels v. Williams*, 474 U.S. 327, 330 (1996). Accordingly, the § 1983 claim against the Wilmington Police Department is dismissed without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1) for failure to state a claim upon which relief may be granted.

B. Supplemental State Claim

Ringgold's supplemental state claim against the Wilmington Police Department is also deficient. The Delaware County and Municipal Tort Claims Act, Del. Code Ann. tit 10, § 4010 *et seq.* provides that all governmental entities and their employees shall be immune from suit on any and all tort claims seeking recovery of damages. Del. Code Ann. tit 10, § 4011(a). While there are exceptions to this broad grant of immunity, the complaint contains no hint that any of the exceptions are applicable to the allegations against the Wilmington Police Department. Del. Code Ann. tit 10, §§ 4011(b), (c).

Therefore, the supplemental state negligence claim against the Wilmington Police Department is dismissed without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1) on the basis of municipal immunity.

IV. CONCLUSION

Based upon the foregoing analysis, the claims against the Wilmington Police Department are dismissed without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1).

Ringgold is allowed to proceed against the remaining defendants on his excessive force claim.
An appropriate order will be entered.



UNITED STATES DISTRICT JUDGE

May 16, 2006
Wilmington, Delaware

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JAY. M. RINGGOLD, SR.,)
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 Plaintiff,)
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 v.) Civ. No. 06-17-GMS
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 WILMINGTON POLICE DEPARTMENT,)
 OFFICER THOMAS CURLEY, and)
 and OFFICER NELIDA VEGA,)
)
 Defendants.)

ORDER

At Wilmington this 16th day of May, 2006, for the reasons set forth in the Memorandum issued this date,

1. The claims against the defendant Wilmington Police Department are DISMISSED without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1) on the bases of municipal immunity and failure to state a claim upon which relief may be granted.

2. The court has identified a cognizable excessive force claim within the meaning of 28 U.S.C. § 1915 and § 1915A(b) against defendants Officer Thomas Curley and Officer Nelida Vega. Plaintiff is allowed to proceed with the claim.

IT IS FURTHER ORDERED that:

1. The clerk of the court shall cause a copy of this order to be mailed to the plaintiff.
2. Pursuant to Fed. R. Civ. P. 4(c)(2) and (d)(2), Ringgold shall complete and return to the clerk of the court an **original** "U.S. Marshal-285" form for the **remaining defendants Officer Thomas Curley and Officer Nelida Vega**, as well as for the **Chief Executive Officer for the City of Wilmington**. Ringgold has provided the court with one copy of the complaint

(D.I. 2) for service upon each remaining defendant. **Ringgold is notified that the United States Marshal will not serve the complaint until all "U.S. Marshal 285" forms have been received by the clerk of the court. Failure to provide the "U.S. Marshal 285" forms for each remaining defendant and the chief executive officer for the City of Wilmington within 120 days of this order may result in the complaint being dismissed or defendants being dismissed pursuant to Federal Rule of Civil Procedure 4(m).**

3. Upon receipt of the completed "U.S. Marshal 285" form(s) as required by paragraph 2 above, the United States Marshal shall serve a copy of the complaint (D.I. 2), this order, a "Notice of Lawsuit" form, the filing fee order(s), and a "Return of Waiver" form upon the defendant(s) identified in the 285 forms.

4. Within **thirty (30) days** from the date that the "Notice of Lawsuit" and "Return of Waiver" forms are sent, if an executed "Waiver of Service of Summons" form has not been received from a defendant, the United States Marshal shall personally serve said defendant(s) pursuant to Fed. R. Civ. P. 4(c)(2) and said defendant(s) shall be required to bear the cost related to such service, unless good cause is shown for failure to sign and return the waiver.

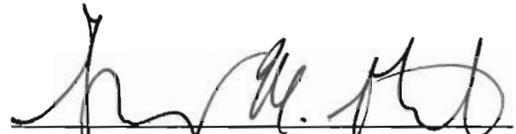
5. Pursuant to Fed. R. Civ. P. 4(d)(3), a defendant who, before being served with process timely returns a waiver as requested, is required to answer or otherwise respond to the complaint within **sixty (60) days** from the date upon which the complaint, this order, the "Notice of Lawsuit" form, and the "Return of Waiver" form are sent. If a defendant responds by way of a motion, said motion shall be accompanied by a brief or a memorandum of points and authorities and any supporting affidavits.

6. No communication, including pleadings, briefs, statement of position, etc., will be

considered by the court in this civil action unless the documents reflect proof of service upon the parties or their counsel.

7. **NOTE: ***** When an amended complaint is filed prior to service, the court will **VACATE** all previous service orders entered, and service **will not take place**. An amended complaint filed prior to service shall be subject to re-screening pursuant to 28 U.S.C. §1915(e)(2) and § 1915A(a). *******

8. **NOTE: ***** Discovery motions and motions for appointment of counsel filed prior to service will be dismissed without prejudice, with leave to refile following service. *******



UNITED STATES DISTRICT JUDGE

May 16, 2006
Wilmington, Delaware