

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

K. KAY SHEARIN, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 02-276-JJF
 :
 STATE OF DELAWARE, TOWN OF :
 ELSMERE, JOSEPH M. BERNSTEIN, :
 and ALL STATE INSURANCE CO., :
 :
 Defendants. :

K. Kay Shearin, Pro Se Plaintiff.

Gregory E. Smith, Esquire, Deputy Attorney General, DELAWARE
DEPARTMENT OF JUSTICE, Wilmington, Delaware.
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Bruce C. Herron, Esquire, SAWYER, AKIN & HERRON, P.A.,
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Attorneys for Defendant Allstate Insurance Company.

MEMORANDUM OPINION

March 21, 2003
Wilmington, Delaware

FARNAN, District Judge.

I. INTRODUCTION

Plaintiff, K. Kay Shearin, a pro se litigant, filed this action pursuant to 42 U.S.C. § 1983 and requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. The Court granted Plaintiff's request for leave to proceed in forma pauperis on April 15, 2002 and directed the United States Marshal to serve the Defendants. On April 15, 2002, the Court also docketed Plaintiff's Complaint, First Amended Complaint and Motion for Preliminary Injunction. (D.I. 3-5) Prior to service, Plaintiff filed a Second Amended Complaint or in the alternative, a Motion for Leave to Amend the Complaint pursuant to Fed. R. Civ. P. 15(b). (D.I. 8) Plaintiff also filed a Second Motion for Preliminary Injunction. (D.I. 9) On April 30, 2002, the Court granted Plaintiff's Motion for Leave to Amend the Complaint and directed the United States Marshal to serve the Amended Complaint. (D.I. 12) On June 28, 2002, Plaintiff filed her third Motion for Preliminary Injunction. (D.I. 20) On, January 14, 2003, Plaintiff filed her fourth Motion for Preliminary Injunction. (D.I. 50)

In response to Plaintiff's filing, Defendant Joseph M. Bernstein ("Bernstein"), through his counsel, filed a Motion for Summary Judgment, an Opening Brief and an Affidavit in support of his motion. (D.I. 21-23) Defendant State of Delaware ("the

State") filed a Motion to Dismiss and an Opening Brief. (D.I. 25-26) Plaintiff then filed an "Opposition" to Bernstein's motion. (D.I. 27) and an "Opposition" to the State's motion. (D.I. 29) Thereafter, Bernstein filed a Reply Brief. (D.I. 31)

In addition, Defendant Allstate Insurance Company ("Allstate") filed an Answer, (D.I. 30) and a Motion to Dismiss and an Opening Brief. (D.I. 39 and 40) Defendant Town of Elsmere ("the Town") also filed an Answer, (D.I. 33) and a Motion to Dismiss and an Opening Brief. (D.I. 41-42) Plaintiff has filed responses to both Allstate's and the Town's motions, (D.I. 43-44) and Allstate has filed a Reply Brief. (D.I. 45)

The Defendants motions are now fully briefed and ripe for the Court's review. For the reasons set forth below, the Plaintiff's Motions for Preliminary Injunction shall be denied. Bernstein's Motion for Summary Judgement shall be granted. The Town's Motion to Dismiss shall be granted. The State's Motion to Dismiss shall be granted. And, Allstate's Motion to Dismiss shall be granted.

II. STANDARD OF REVIEW

1. Motion to Dismiss

When reviewing complaints under Fed. R. Civ. P. 12(b)(6) the Court must "accept as true the 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). Pro

se complaints are held to "less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Estelle v. Gamble, 429 U.S. 97, 106 (1976) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

2. Motion for Summary Judgment

The Court can grant summary judgment only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue is "genuine" if, given the evidence, a reasonable jury could return a verdict in favor of the non-moving party. See e.g., Abraham v. Raso, 183 F.3d 279, 287 (3d Cir. 1999) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-51 (1986)). A fact is "material" if it bears on an essential element of the plaintiff's claim. See e.g., Abraham, 183 F.3d at 28. In order to defeat a motion for summary judgment, the nonmoving party must demonstrate the existence of a material fact supplying sufficient evidence, not mere allegations, for a reasonable jury to find for the nonmovant. See Steelman III v. Carper, 124 F.Supp. 2d 219, 22 (D. Del. 2000) (citing Olson v. General Elec. Aerospace, 101 F.3d 947, 951 (3d Cir. 1996)).

On summary judgment, the Court cannot weigh the evidence or make credibility determinations. See International Union, United Auto., Aerospace & Ag. Implement Workers of America, U.A.W. v. Skinner Engine Co., 188 F.3d 130, 137 (3d Cir. 1999). Instead, the Court can only determine whether there is a genuine issue for trial. See Abraham, 183 F.3d at 287. In doing so, the Court must look at the evidence in the light most favorable to the non-moving party, drawing all reasonable inferences and resolving all reasonable doubts in favor of that party. See Pacitti v. Macy's, 193 F.3d 766, 772 (3d Cir. 1999).

III. BACKGROUND

1. Plaintiff's Claims

Plaintiff has filed a Complaint and two Amended Complaints along with four Motions for Preliminary Injunctions. Plaintiff appears to be raising nine separate claims. First, Plaintiff alleges that the Town has violated her rights to due process and equal protection under the Fourteenth Amendment by threatening to prosecute her under its ordinances regarding yard and property maintenance. (D.I. 3 at 1-2) Second, Plaintiff alleges that the State has also violated her Fourteenth Amendment rights by threatening to prosecute her for violation of the Town's ordinances. (Id. at 2-3) Third, Plaintiff alleges that the State and the Town are now and have been retaliating against her because she filed a previous lawsuit against them. Plaintiff

maintains that the retaliation has occurred on at least three separate occasions when these Defendants prosecuted Plaintiff for violating the Town's property maintenance ordinances. Plaintiff states that she was prosecuted pursuant to § 71-12 and PM 303.4 of § 171-2 of the Town's ordinances in 1994, 1998 and 1999, with only the 1999 prosecution resulting in a conviction. (Id.; D.I. 8) Fourth, Plaintiff alleges that the State has violated her right to a speedy trial by refusing to rule on her motion for a new trial after her 1999 conviction. (D.I. 3 at 3) Fifth, Plaintiff alleges that the State violated her Fourteenth Amendment rights and the Bankruptcy Code by arresting her in April of 2000 for not paying the fine imposed upon her conviction, issuing an arrest warrant for her failure to pay the fine, and sending her a written demand for the fine after she filed her bankruptcy petition and properly notified the State. (Id. at 5-6) Sixth, Plaintiff alleges that the Town ordinances, as well as DEL. CODE ANN. tit. 11 § 4105 (1999) and DEL. CODE ANN. tit. 29 § 4607 (1999) are unconstitutional, both as written and as applied to her. (D.I. 3 at 6) Seventh, Plaintiff alleges that Bernstein has breached his contract with her, breached his fiduciary duty to her, and/or has committed malpractice with regard to his representation of her. (Id. at 4) Eighth, Plaintiff alleges that the Town's employees trespassed on her property and destroyed plants, damaged land, and traumatized her

dogs. (D.I. 8) And, ninth, Plaintiff alleges that Allstate has breached its contract with her by refusing to pay for the damages to her property and refusing to renew her home owner's insurance. (D.I. 4; D.I. 50) Plaintiff requests compensatory and punitive damages, as well as an order enjoining the Town from trespassing on her property. Plaintiff also requests that the Court enter a judgment finding the ordinances and statutes unconstitutional. (Id.)

2. Plaintiff's Motions for Preliminary Injunctions

In her first Motion for a Preliminary Injunction, Plaintiff alleges that on March 22, 2002, she received "a written threat" to enforce § 303.1 and/or § 303.7 of the Town's Property Maintenance Code. (D.I. 5 at 1) Plaintiff requests the Court to issue an order enjoining the State and the Town from enforcing § 303.1 and/or § 303.7 against her. (Id.)

In her second Motion for a Preliminary Injunction, Plaintiff alleges that employees of the Town have "at various times over the past three years, come on to my property without notice and cut down plants, broken my fence, removed dirt and cinder blocks, and paved part of my property." (D.I. 9 at 1-2) Plaintiff requests the Court to issue an order enjoining employees of the Town from trespassing on her property and/or cutting any plants, removing any dirt and/or paving over any part of her property. (Id.)

In her third Motion for a Preliminary Injunction, Plaintiff alleges that on June 26, 2002, she received a notice of violation from the Town regarding § 303.4 and/or § 71-12 of its ordinances. Plaintiff requests the Court to issue an order enjoining the Town from enforcing the ordinances. (D.I. 20)

In her fourth Motion for a Preliminary Injunction, Plaintiff alleges that Allstate has refused to renew her homeowner's insurance. Plaintiff requests the Court to issue an order enjoining Allstate from terminating her homeowner's policy. (D.I. 50) Because the Court shall grant the Defendants' motions as discussed below, Plaintiff's motions for preliminary injunctions shall be denied.

IV. DISCUSSION

1. Plaintiff's Claims Against Bernstein

Plaintiff alleges that Bernstein failed to prepare any defense in her criminal trial and refused to represent her when she was arrested and incarcerated in April 2000 for not paying the fine imposed after her conviction in 1999. She also alleges that Bernstein refused to act on her motion for a new trial and failed to represent her when the Delaware Court of Common Pleas issued an arrest warrant in January 2002. (D.I. 3 at 4-5) In his Motion for Summary Judgment, Bernstein argues that: 1) Plaintiff has only raised state law claims against him for breach of contract, and/or legal malpractice; and 2) Plaintiff lacks

standing to allege breach of contract, because his contract to represent indigent defendants is with the State. In her opposition to Bernstein's Motion for Summary Judgment, Plaintiff maintains that she is raising § 1983 claims against Bernstein stating, "Bernstein is a defendant on my federal claims for money damages as well as on my state law claims against him." (D.I. 27 at 2) The gravamen of Plaintiff's federal claims against Bernstein appears to be that he violated her constitutional right to effective assistance of counsel under the Sixth Amendment.

To the extent that Plaintiff is raising a § 1983 ineffective assistance of counsel claim against Bernstein, her claim must fail. Under § 1983, a plaintiff must show that the person who deprived her of a constitutional right was "acting under color of state law." West v. Atkins, 487 U.S. 42, 48 (1988) (citing Parratt v. Taylor, 451 U.S. 527, 535 (1981)) (overruled in part on other grounds Daniels v. Williams, 474 U.S. 327, 330-31 (1986)). Defense counsel performing the traditional role of an attorney in criminal proceedings does not act under color of state law. See Polk County v. Dodson, 454 U.S. 312 (1981); Black v. Bayer, 672 F.2d 309 (3d Cir. 1982). This is true whether defense counsel is a public defender, court-appointed counsel, or privately retained. See id. Accordingly, Bernstein has not acted under color of state law and can not be sued under 42 U.S.C. § 1983.

Regarding Plaintiff's state law claims, Bernstein correctly argues that as a court appointed attorney, he is an employee of the State for purposes of the State Tort Claims Act. See Browne, 583 A.2d at 949. Furthermore, as a state employee, Bernstein has qualified immunity under 10 Del C. §§ 4001-4005. See id. at 592. The statute confers immunity from civil suits when:

- (1) The act or omission complained of arose out of an in connection with the performance of an official duty requiring a determination of policy, the interpretation or enforcement of statutes, rules or regulations, the granting or withholding of publicly created or regulated entitlement or privilege or any other official duty involving the exercise of discretion on the part of the public officer, employee or member, or anyone over whom the public officer, employee or member shall have supervisory authority;
 - (2) The act or omission complained of was done in good faith and in the belief that the public interest would best be served thereby; and
 - (3) The act or omission complained of was done without gross or wanton negligence.
- 10 Del. C. § 4001(1)-(3) (West 2002).

In order to overcome the presumption of immunity, Plaintiff must prove the "'absence of one or more' of the immunity elements" in 10 Del.C. § 4001(1)-(3). Browne, 582 A.2d at 952. Here, as in Browne, Plaintiff cannot allege that Bernstein was acting outside of his official capacity. See id. Although Plaintiff alleges that Bernstein breached his duty to act as competent counsel by: 1) not preparing any defense for the trial; 2) refusing to represent plaintiff when she was arrested and incarcerated in April 2000; 3) not acting on plaintiff's

motion for a new trial; and 4) not defending plaintiff from the warrant issued by the trial court in January 2002, she has merely presented a laundry list conclusory allegations and not alleged any facts to prove the absence of any of the immunity elements in 10 Del.C. § 4001(1)-(3). See id. Consequently, Plaintiff has failed to allege sufficient facts to overcome the presumption of immunity under the Delaware Tort Claims Act regarding her malpractice claim. See id.

Bernstein also argues that Plaintiff has no standing to allege breach of contract, because his contract is with the State of Delaware. (D.I. 22 at 6-7) The Browne Court held that indigent defendants are not third party beneficiaries to the contract between the State and court appointed counsel. See Browne v. Robb, 583 A.2d at 954-55. Plaintiff contends that she is not alleging she is a third party beneficiary to Bernstein's contract with the State. Rather, she argues that Bernstein has breached his contract with her under the Delaware Rules of Professional Responsibility. (D.I. 27) The Browne Court held that the unique attorney-client relationship between an indigent defendant and his or her court appointed contract counsel "strongly militates against the concept of a contractual relationship upon which the client can sue." id. at 953-54. Consequently, this claim must also fail.

In reviewing the evidence in the light most favorable to

Plaintiff and drawing all reasonable inferences and resolving all reasonable doubts in her favor, the Court finds that there is no genuine issue as to any material fact and Bernstein is entitled to a judgment as a matter of law. See Pacitti v. Macy's, 193 F.3d at 772; Fed. R. Civ. P. 56(c). Therefore, the Court shall grant Bernstein's Motion for Summary Judgment.

2. Plaintiff's Claims Against the Town of Elsmere

Plaintiff alleges that the Town has violated her constitutional rights by threatening to prosecute her and retaliating against her for filing previous law suits. The Town responds by arguing that Plaintiff's claims are barred by the Rooker-Feldman doctrine. (D.I. 42 at 5) The Town also argues that Plaintiff's claims regarding the ordinances and notices are "inextricably intertwined" with the adjudication of her state court conviction. (Id.) Specifically, the Town argues that if the Court were to find the ordinances unconstitutional, such a finding would undermine Plaintiff's conviction. (id.)

Plaintiff appears to be arguing that she is not attempting to challenge her conviction, but rather she is challenging the threatened prosecution in the notices she received on March 22, 2002 and June 26, 2002. (D.I. 3 at 2; D.I. 44 at 3) Plaintiff also appears to be alleging that the Town violated her Fifth Amendment Rights by entering her land, damaging her plants and fence, and traumatizing her pets. (D.I. 8)

To the extent that Plaintiff is challenging the constitutionality of the ordinances, and raising the same claims raised in Shearin v. Town of Elsmere, CA No. 99C-10-181-WTQ, her claims are barred by the Rooker-Feldman doctrine. See Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); Feldman v. Dist. of Columbia Court of Appeals, 460 U.S. 462 (1983). Federal district courts may not review decisions made by State tribunals. See id; see also Stypulkowski v. Stypulkowski, No. 00-CV-3151, 2000 WL 1456739, at *1 (E.D. Pa. Sept. 29, 2000). The Rooker-Feldman doctrine precludes federal district courts from exercising subject matter jurisdiction over "constitutional claims that have been previously adjudicated in state court or that are inextricably intertwined with such a state adjudication." Gulla v. North Strabane Township, 146 F.3d 168, 171 (3d Cir. 1998).

The Rooker-Feldman doctrine first requires a district court to determine whether a plaintiff's constitutional claims have already been adjudicated in state court. Clearly, Plaintiff raised her retaliation and trespassing claims in her civil action filed in the Delaware Superior Court. (D.I. 42, Exhibit A) Consequently, this Court does not have subject matter jurisdiction over these claims. See Rooker, 263 U.S. at 413; Feldman, 460 U.S. at 462.

However, it is not clear whether Plaintiff's claims regarding the constitutionality of the challenged ordinances were

adjudicated during her criminal trial. Nonetheless, even if Plaintiff did not adjudicate her claims in the state court, this Court does not have jurisdiction to hear this matter because the claims are inextricably intertwined with the state adjudication. See Gulla, 146 F.3d at 171. A constitutional claim is "inextricably intertwined" with the particular state court decision if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it. Behr v. Snider, 900 F.Supp. 719, 724 (E.D. Pa. 1995) (quoting Centifanti v. Nix, 865 F.2d 1422, 1430 (3d Cir. 1989)). Plaintiff's claims regarding the constitutionality of the ordinances are "inextricably intertwined" with her conviction because granting Plaintiff's requested relief would "effectively reverse [the] state court's decision[s] or void its ruling[s]." Greist v. Norristown State Hospital, No. 96-CV-8495, 1997 WL 661097, at * 2 (E.D. Pa. Oct. 22, 1997) (citing FOCUS v. Allegheny County Ct. of Common Pleas, 75 F.3d 834, 840 (3d Cir. 1996)). Accordingly, the Court lacks subject matter jurisdiction over her constitutional challenges to the ordinances.

To the extent that Plaintiff has raised new allegations not adjudicated in Shearin v. Town of Elsmere, CA No. 99C-10-181-WTQ, that the Town has violated her Fourteenth Amendment right to equal protection, threatened her with prosecution in retaliation for filing previous lawsuits, and violated her Fifth Amendment

rights in March and April 2002, these claims are not barred by the Rooker-Feldman doctrine. See Desi's Pizza, Inc. v. City of Wilkes-Barre, No. 02-1441, 2003 WL 757016 (3d. Cir. March 6, 2003) (holding that a decision in the plaintiffs' favor on their federal equal protection and statutory discrimination claims would not invalidate the state court's decision finding the plaintiff's restaurant was a public nuisance). However, Plaintiff has failed to allege sufficient facts to support her claims. It has long been established in this circuit, that a complaint under § 1983 must set forth specific facts regarding the defendants' alleged unconstitutional conduct. See Darr v. Wolfe, 767 F.2d 79, 80 (3d Cir. 1985) (collecting cases). Here, Plaintiff merely alleges that on March 22, 2002 and again June 26, 2002, she received a notice of violation regarding the Town's property code and that the notices contained "threats" of prosecution. (D.I. 3 at 1-2; D.I. 20) Plaintiff has offered absolutely no facts to substantiate her conclusory allegation that the Town sent the letter in retaliation for her previous lawsuits.

Regarding her Fifth Amendment claims, Plaintiff alleges that: "In or about the first week of April 2002, persons, working for, with, or on behalf of the Defendant Town of Elsmere trespassed on my property, as such persons had done in the springs of 1999, 2000, 2001 and at various other times in

between, and again destroyed and/or damaged my land, my growing plants (including small trees) and my fence, and this time they also traumatized my dogs." (D.I. 8 at 1) Again, Plaintiff has merely raised conclusory allegations without offering any specific facts to support her claims. Plaintiff's allegations are "wholly lacking in specific facts to support [her] conclusory claim[s]" against the Town. Darr, 767 F.2d at 81. Consequently, it is "'beyond doubt that the plaintiff can prove no set of facts in support of [her] claim[s] which would entitle [her] to relief.'" Estelle v. Gamble, 429 U.S. at 106 (quoting Conley v. Gibson, 355 U.S. at 45-46). Therefore, the Court shall grant the Town's Motion to Dismiss to Plaintiff's claims. However, the Court shall dismiss Plaintiff's new Fourteenth and Fifth Amendment claims without prejudice.

3. Plaintiff's Claims Against the State of Delaware

Plaintiff alleges that the State has violated her constitutional right to a speedy trial. Plaintiff also alleges that the State has retaliated against her for filing previous lawsuits against it. Finally, Plaintiff alleges that the State has violated her rights under the Bankruptcy Code, by arresting her for failing to pay a fine, despite the stay imposed by her bankruptcy action. (D.I. 3 at 5-6)

The State argues that the Plaintiff's claims against it must be dismissed for two reasons. First, the State is immune from

liability under the Eleventh Amendment. See Federal Maritime Commission v. South Carolina State Port Authority, 122 S.Ct. 1864 (2002). Second, the State argues that Plaintiff's claims are precluded by the Rooker-Feldman doctrine. (D.I. 26 at 4-6) The Plaintiff argues that the State is not immune from liability because she is not seeking money damages, rather she is seeking declaratory and injunctive relief. Furthermore, she argues that she should be permitted to amend her complaint to add M. Jane Brady and Ricardo Palacio as defendants. Plaintiff appears to be arguing that these proposed defendants can be sued individually for damages under § 1983. (D.I. 29 at 2)

To the extent that Plaintiff is requesting this Court to order the State to award her a new trial, find the state statutes unconstitutional and find that the State violated her rights under the Constitution and the Bankruptcy Code, her claims must fail under the Rooker-Feldman doctrine. See Rooker, 263 U.S. at 413; Feldman, 460 U.S. at 462. Consequently, it is "'beyond doubt that the plaintiff can prove no set of facts in support of [her] claim[s] which would entitle [her] to relief.'" Estelle v. Gamble, 429 U.S. at 106 (quoting Conley v. Gibson, 355 U.S. at 45-46). Therefore, the Court shall grant the State's Motion to Dismiss to Plaintiff's claims.

Furthermore, Plaintiff's request to amend the complaint to add M. Jane Brady and Ricardo Palacio must also be denied. Under

the Federal Rules of Civil Procedure leave to file an amended pleading shall be "freely given when justice so requires." Fed. R. Civ. P. 15(a). A district court may deny leave to amend only where there has been undue delay, bad faith or dilatory motive on the part of the movant, where the amendment would prejudice the non-movant, or where the amendment would be futile. See Foman v. Davis, 371 U.S. 178, 182-83 (1962).

In this case, there have been no allegations that Plaintiff seeks to amend her complaint to cause undue delay, or that she does so in bad faith or with dilatory motives. See id. Consequently, the only basis for denying leave to amend would be futility. The Third Circuit has determined that an amendment is futile "if the amended complaint cannot withstand a motion to dismiss." Jablonski v. Pan American World Airways, Inc., 863 F.2d 289, 292 (3d Cir. 1988); Wolfson v. Lewis, 168 F.R.D. 530, 534 (E.D. Pa. 1996). Here, it is clear that allowing Plaintiff to amend her complaint in this manner would be futile because judges and judicial officers are entitled to absolute immunity from suit for damages under 42 U.S.C. § 1983. See Mireles v. Waco, 502 U.S. 9 (1991); Gallas v. The Supreme Court of Pennsylvania, 211 F.3d 760, 772 (3d Cir. 2000). Accordingly, Plaintiff's request to amend the complaint will be denied.

4. Plaintiff's Claims Against Allstate Insurance Company

Plaintiff alleges that Allstate breached its contract with

her by refusing to pay for the damage done to her fence and failing to renew her homeowner's insurance. Plaintiff invokes the Court's pendant jurisdiction for these claims. Title 28, United States Code, § 1367 grants jurisdiction over state-law claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. See 28 U.S.C. § 1367(a) (2002). However, "the district court may decline to exercise supplemental jurisdiction over a claim under subsection (a) if ... the district court has dismissed all claims over which it has original jurisdiction." See 28 U.S.C. § 1367(c). Because the Court has dismissed all claims over which it has original jurisdiction, the Court declines to exercise supplemental jurisdiction over Plaintiff's state law claims against Allstate. Therefore, Allstate's Motion to Dismiss shall be granted.

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

K. KAY SHEARIN, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 02-276-JJF
 :
 STATE OF DELAWARE, TOWN OF :
 ELSMERE, JOSEPH M. BERNSTEIN, :
 and ALL STATE INSURANCE CO., :
 :
 Defendants. :

ORDER

At Wilmington this 21st day of March 2003, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

1. Plaintiff's Motion for a Preliminary Injunction (D.I. 5) is DENIED.

2. Plaintiff's Second Motion for a Preliminary Injunction (D.I. 9) is DENIED.

3. Plaintiff's Third Motion for a Preliminary Injunction (D.I. 20) is DENIED.

4. Plaintiff's Fourth Motion for a Preliminary Injunction (D.I. 50) is DENIED.

5. Bernstein's Motion for Summary Judgment (D.I. 22) is GRANTED.

6. The Town's Motion to Dismiss (D.I. 41) is GRANTED.

However, Plaintiff's new retaliation and Fifth Amendment claims shall be dismissed without prejudice. Plaintiff is granted leave

to amend the complaint regarding these claims within twenty (20) days from the date this order is sent, provided she can do so within the constraints of Fed. R. Civ. P. 11 and other procedural rules. See Darr, 767 F.2d at 81.

7. The State's Motion to Dismiss (D.I. 25) is GRANTED.

8. Plaintiff's Request to Amend the Complaint (D.I. 29) is DENIED.

9. Allstate's Motion to Dismiss (D.I. 39) is GRANTED.

10. The Clerk of the Court shall mail a copy of this Memorandum Order to all parties.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE