

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

K. KAY SHEARIN, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 03-503 JJF
 :
 M. JANE BRADY, COURT OF :
 COMMON PLEAS, J. DOE-1 thru :
 J. DOE-10, and R. ROE, :
 :
 Defendants. :

K. Kay Shearin, Elsmere, Delaware.
Pro Se Plaintiff.

Gregory E. Smith, Esquire, Deputy Attorney General, STATE OF
DELAWARE DEPARTMENT OF JUSTICE, Wilmington, Delaware.
Attorney for State Defendants.

MEMORANDUM OPINION

March 25, 2004

Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is the Motion To Dismiss Pursuant To Federal Rule Of Civil Procedure 12(b)(6) filed by Defendants M. Jane Brady and the Court of Common Pleas. (D.I. 12.) For the reasons discussed, the Court will grant in part the Motion.

BACKGROUND

Plaintiff filed the instant lawsuit alleging that the Defendants violated her civil rights in the events leading to her arrest and conviction in the Court of Common Pleas for violations of the Town of Elsmere's weed ordinance. Plaintiff requests the Court to enjoin the Defendants from taking any further action in collecting money from her conviction, award her damages for false arrest and false imprisonment, issue a declaratory judgment that she has filed a petition for habeas corpus, and grant her injunctive relief from future violations of her constitutional rights. (D.I. 2.) By letter dated June 27, 2003, Plaintiff advised the Court that her request for a preliminary injunction and declaratory judgment are moot. (D.I. 8.) However, Plaintiff requests the Court to not dismiss her claim for a declaratory judgment in the event the Court of Common Pleas issues a warrant for her arrest in the future. Id.

STANDARD OF REVIEW

A motion to dismiss tests the legal sufficiency of the complaint. Conley v. Gibson, 355 U.S. 41, 45-56 (1957). In

reviewing a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, courts “must accept as true the factual allegations in the [c]omplaint and all reasonable inferences that can be drawn therefrom.” Langford v. City of Atlantic City, 235 F.3d 845, 847 (3d Cir. 2000). A court will grant a motion to dismiss only when it appears that a plaintiff could prove no set of facts that would entitle him or her to relief. Id.

DISCUSSION

I. Parties’ Contentions

Defendants contend that the Court should dismiss Plaintiff’s Complaint because it is barred by the 11th Amendment of the United States Constitution. Defendants maintain that neither the State, Attorney General Brady, or the Court of Common Pleas are “persons” under Section 1983, and thus, the Complaint must be dismissed. Defendants also contend that Section 1983 does not abrogate the 11th Amendment. Next, Defendants contend that Plaintiff’s Complaint is barred by the Rooker-Feldman doctrine because Plaintiff seeks to overturn the result of her conviction by the instant action. Defendants also contend that collateral estoppel bars the instant lawsuit because Plaintiff has previously litigated the claims asserted in her Complaint before state and federal courts. In addition, Defendants request the Court to enjoin Plaintiff from filing in forma pauperis motions

that involve the enforcement of the Town of Elsmere's weed ordinance.

In response, Plaintiff contends that she is suing Attorney General Brady in her individual capacity, and therefore, her lawsuit is not barred by the 11th Amendment. Further, Plaintiff maintains that Attorney General Brady is not immune in her official capacity under the Anti-Injunction Act or the Bankruptcy Code. Plaintiff also contends that she is not seeking to overturn her conviction or sentence, but instead is asserting unconstitutional acts that took place in the enforcement of her sentence. With respect to Defendant's contention that collateral estoppel bars the instant suit, Plaintiff contends that she has asserted claims in this action, including false arrest, false imprisonment, and violation of a federal court injunction, that were not part of her earlier lawsuits.

II. Decision

Although the parties engage in a lengthy discussion about whether Defendants Attorney General Brady, the Court of Common Pleas, and the State should be dismissed pursuant to the 11th Amendment, the Rooker-Feldman doctrine, and collateral estoppel, the Court concludes that any such analysis is unnecessary because Count 1 of Plaintiff's Complaint (the only claim naming or addressing Defendants Attorney General Brady, the Court of Common Pleas, and the State) is moot. In a June 27, 2003 letter (the

"June 27 letter"), Plaintiff states that "the part of ¶12 praying for a preliminary injunction is now moot, but my prayer for a permanent injunction stands." (D.I. 8.) The only relief Plaintiff requests in Count 1 is a preliminary injunction (D.I. 2 at ¶¶ 2-12). Therefore, the Court will dismiss Count 1 as moot.

The Court will also dismiss Count 3, request for declaratory judgment, because the Court is without subject matter jurisdiction over this claim. "The existence of a case and controversy is a prerequisite to all federal actions, including those for declaratory relief." Peachlum v. City of York, Pennsylvania, 333 F.3d 429, 433 (3d Cir. 2003) (quoting Presbytery of New Jersey of Orthodox Presbyterian Church v. Florio, 40 F.3d 1454, 1462 (3d Cir. 1994)). Plaintiff asserts in the June 27 letter that her request for a declaratory judgment is moot but requests that it not be "stricken, because the situation will re-arise if the Court of Common Pleas issues another warrant while this case is still pending." (D.I. 8.) Clearly, there is no case or controversy with respect to this claim, and therefore, the Court will dismiss Count 3.

Counts 2 and 4 involve unnamed John Doe defendants. The Defendants do not move to dismiss Plaintiff's Complaint against these Defendants.¹ Therefore, the Court will not dismiss Counts

¹ Defendant's Motion to Dismiss does not address any of the allegations in Counts 2 and 4 of Plaintiff's Complaint.

2 and 4 at this stage of the proceedings.²

With respect to Defendants' request to have the Court enjoin Plaintiff from filing in forma pauperis motions in future cases, the Court will deny the request. The Court will not attempt to preclude courts presiding over future cases filed by Plaintiff from exercising their discretion in determining whether Plaintiff may proceed in forma pauperis.

An appropriate Order will be entered.

² Count 2 of the Complaint alleges false arrest and false imprisonment against unnamed John Doe Defendants 1-7. Count 4 involves unnamed John Doe Defendants 8-10.

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 Defendants. :

O R D E R

At Wilmington, this 25th day of March, 2004, for the reasons discussed in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

- 1) Count 1 of Plaintiff's Complaint (D.I. 2) is **DISMISSED** as moot;
- 2) Count 3 of Plaintiff's Complaint (D.I. 2) is **DISMISSED** as moot;
- 3) Defendants M. Jane Brady's and the Court of Common Pleas's Motion To Dismiss Pursuant To Federal Rule of Civil Procedure 12(b)(6) (D.I. 12) Counts 2 and 4 of Plaintiff's Complaint is **DENIED**.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE