STATE OF VERMONT

SUPERIOR COURT Washington Unit	CIVIL DIVISION No. 330-10-20 Wncv
JAMES H. HART, INDIVIDUALLY, and as TRUSTEE OF THE JAMES H. HART REALTY TRUST, Plaintiff, v. TOWN OF BRADFORD, VERMONT, et al. Defendants.	

RULING ON PENDING MOTIONS

Two motions are pending in this case: (1) Mr. Hart's "motion for relief from prior orders upon filing of amended complaint"; and (2) the Bradford Defendants' motion for summary judgment. A detailed review of the unconventional procedural history of this case is necessary to understand the motions.

Procedural history

Mr. Hart has been embroiled in a property dispute (involving issues about easements, access rights, trespass, nuisance, etc.) with his residential neighbors in Bradford for *many* years, generating two lawsuits, and a recent Supreme Court decision, *Jones v. Hart*, 2021 VT 61. It is clear that the dispute has been vitriolic at times and punctuated by intense animosity.

Mr. Hart's claims in this case were not asserted against the neighbors. They were asserted against the Town of Bradford, two of its former police chiefs (Martin and Stiegler), State Trooper White (in individual and official capacities, i.e., the State), and the Orange County Sheriff's Office (OCSO). Mr. Hart has been represented by Attorney Brice Simon throughout this litigation. The original complaint nominally asserted violations of 18 U.S.C. § 242 (count 1); 42 U.S.C. § 1985(3) (count 2); 42 U.S.C. § 1985(2) (count 3); 42 U.S.C. 1983 (counts 4 and 5); and completely unspecified "negligence and tort claims" (count 6); "equitable relief" (count 7); and "gross negligence" (count 8). Despite the labels, the allegations of the original complaint are so jumbled and conclusory that it is fully unclear what legal claims Mr. Hart is trying to raise. Attached to the complaint is an extraordinarily lengthy affidavit (134 paragraphs) from Mr. Hart that does not help. It is a giant list of highly conclusory allegations that is not calculated in any clear way to support any identifiable legal claim or otherwise describe some kind of coherent narrative. What is clear from these filings is that Mr. Hart believes that the named defendants, either in concert with his neighbor–adversaries or each other, have engaged in some sort of vague

"conspiracy" to not help him with his civil dispute with his neighbors and otherwise to aggravate and annoy him. Mere aggravation and annoyance, of course, is not a legal claim. Nor, as a general matter, do Defendants have any evident duty to assist Mr. Hart in a civil dispute.

Following those filings, the Bradford defendants and Trooper White and the State filed motions to dismiss; the OCSO filed a motion for summary judgment. All defendants sought dismissal of the 18 U.S.C. § 242 claim because there is no private right of action under it, and the court agreed. See Decision Regarding All Pending Motions (Mar. 19, 2021). Otherwise, the Bradford defendants only sought dismissal on the basis of the statute of limitations. The court could not identify anything longer than a 3-year limitations period that could possibly apply, but the complaint was too vague as to these defendants to determine whether any claim may have accrued within 3 years of the complaint, and so denied this motion. As for the State and Mr. White, the only allegations related to Mr. White clearly took place *many* years earlier, well before the reach of the limitations period. Their motion to dismiss was granted on that basis. The OCSO's motion was granted on the same basis. The court's ruling assiduously avoids any attempt at identifying the legal claims or addressing their substance.

In the course of the court's decision, it said this:

> This case is complicated by the manner in which the complaint was drafted. Mr. Hart has been represented by Attorney Brice Simon throughout the litigation of this case. However, the complaint apparently was drafted pro se by Mr. Hart himself.[1] Only Mr. Hart signed it. Attorney Simon did not. See V.R.C.P. 11(a) ("Every pleading, written motion, and other document that requires a signature shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party."). The complaint was "verified" by Mr. Hart's "oath to the truth of the allegations." *Johnson v. Harwood*, 2008 VT 4, ¶ 3, 183 Vt. 157. Mr. Hart's signature on the complaint is notarized by Attorney Simon, who also filed the complaint with the court along with his notice of appearance for Mr. Hart. Perhaps the pro se drafting explains in part why, rather than the "simple, concise, and direct" pleading required by the rules, V.R.C.P. 8(e)(1), the complaint instead is nearly 100 paragraphs of scattershot factual allegations, most of which are extraordinarily conclusory and vague. The legal claims are no less vague and bear only relatively tenuous connections to the allegations. Despite this, Attorney Simon never amended the complaint to clarify Mr. Hart's claims.
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> As a preliminary matter, in response to Defendants' motions, Mr. Hart has sought to "consolidate" the motions, convert the dismissal motions to summary judgment motions, and hold an evidentiary hearing at which he proposes that the court will take evidence and conclude that the facts are disputed or for some other reason. These requests all are denied, and it is unclear what Mr. Hart hoped to achieve by asserting them. The court is

[1] Mr. Hart, pro se, later clarified that in fact Attorney Simon drafted the complaint. Attorney Simon has never made any representation as to who drafted it.

> unfamiliar with any practice of consolidating motions, or what doing so might accomplish in this case, and there is nothing to consolidate under Rule 42. The court can convert a motion to dismiss to one for summary judgment in appropriate circumstances, Rule 12(b), but there is no evident utility in doing so here, and Mr. Hart does not say why [he] thinks it might be a good idea. Regardless, in no event would the court hold an evidentiary hearing to determine whether the facts are disputed under either Rule 12(b)(6) or Rule 56 or to establish any fact. Disputes of fact are irrelevant under Rule 12(b)(6) and they must be demonstrated under Rule 56(c) by statements of fact and appropriate evidence in the record. The court never makes any findings of fact under either Rule 12(b)(6) or 56.

Decision Regarding All Pending Motions at 1–2 (Mar. 19, 2021).

The decision prompted a motion to reconsider filed by Attorney Simon, an entry of pro se appearance by Mr. Hart, and a filing called "Second Lawsuit" filed by Mr. Hart in his pro se capacity. Attorney Simon asserted that, in the course of ruling, the court appeared to have not seen a particular factual statement of Mr. Hart's. For his part, Mr. Hart asserted that he was now going to represent himself as to the claims against Mr. White (evidently the ones the court had just dismissed) and the claims newly asserted in the "Second Lawsuit," and Attorney Simon would continue to represent him on the other, original claims. The Second Lawsuit is incomprehensible, but of note, it names several new defendants, including two judges, apparently indicating an expanding conspiracy. Nothing in the record indicates that any of these newly named defendants ever were served.

In a June 3, 2021 decision, the court denied reconsideration, clarifying that it had not missed any statements of fact and otherwise, "There is no basis for altering the March 19 decision."

The court construed Mr. Hart's filings as a motion to amend the complaint, as follows:

> Though represented in this case by Attorney Brice Simon, Mr. Hart has filed a pro se motion to amend the complaint. He appears to be attempting to add numerous additional defendants and claims to this case. He also appears to intend that Attorney Simon will continue representing him insofar as the claims of the original complaint go, but he will represent himself with regard the new claims.
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> . . .
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> Mr. Hart's motion to amend is not granted at this time because the court has not been presented with a proposed amended complaint which meets the essential rules of pleading. See V.R.C.P. 8. Rule 8 requires a complaint to include a "short and plain statement of the claim showing that the pleader is entitled to relief." V.R.C.P. 8(a). And, each allegation of fact must be "simple, concise, and direct." V.R.C.P. 8(e)(1). Vermont law permits a complaint to be a "bare bones statement that merely provides the defendant with notice of the claims against it," but it must do at least that much. *Colby*

v. Umbrella, Inc., 2008 VT 20, ¶ 13, 184 Vt. 1.

> Mr. Hart's proposed amendment as far as it goes does not give Defendants (or the court) fair notice of his claims. It does not (a) identify recognizable legal claims, (b) indicating their constituent legal elements, and (c) including enough factual allegations in support of those elements so that Defendants and the court can reasonably understand what the claims are. Mr. Hart's claims also are not so obvious in the context of the allegations that they may be reasonably inferred. The proposed amendment is, much like the original complaint, a long list of Mr. Hart's perceived insults and aggravations, all not marshalled to clearly assert one or more legal claims. Every perceived insult and aggravation is not a viable legal claim. On the other hand, there may well be claims to be made.
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> Moreover, Mr. Hart's proposed hybrid representation model, in which Attorney Simon will handle certain claims and Mr. Hart (pro se) will handle others, counsels strongly in favor of basic clarity as to the claims and who will be responsible for each one. With regard to any particular claim, Mr. Hart may advocate pro se or he may do so through counsel, but he may not do both at the same time.
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> Mr. Hart shall submit his proposed amendment within 30 days. It must comply with basic pleading rules and this decision. If it contemplates both Attorney Simon's representation and Mr. Hart's own pro se advocacy, it must be signed, subject to Rule 11, by both Attorney Simon and Mr. Hart, and it must clearly distinguish as to who is responsible for each claim. If it contemplates representation by Attorney Simon alone, it must be signed by Attorney Simon.

Decision on Mr. Hart's Motion for Reconsideration and Motion to Amend at 2–3 (filed June 3, 2021).

A single amended complaint was filed on July 2, 2021 by Mr. Hart through Attorney Simon. It does not contemplate Mr. Hart representing himself with regard to any claims, although he has never withdrawn his notice of pro se appearance.

Mr. Hart then filed a "motion for relief from prior orders upon filing of amended complaint." In this two-paragraph motion, he essentially requests that the court entirely rescind its March 19, 2021 order, effectively reinstating the dismissed claims against Mr. White, the State, and the OCSO. He provides no analysis as to how the new complaint somehow cures the deficiencies of the first, no explanation as to what the claims are going forward, and no certification that, or explanation of how, the new complaint complies with Judge Bent's June 3 order. Not surprisingly, Mr. White, the State, and the OCSO oppose this motion.

The Bradford defendants then filed a motion for summary judgment. Although they attempt to piece together relevant allegations to have something to argue against, the thrust of the motion is that no clear legal claims are identifiable in Mr. Hart's filings, and that is insufficient at this point in the litigation, particularly under Rule 56.

Mr. Hart's motion for relief from prior orders

Mr. Hart's motion for relief from prior orders presupposes that the court will accept the amended complaint. It does not. Rule 15(a), unlike other subsections of Rule 15, does not expressly say that the court can condition the discretionary grant of a motion to amend. However, as Wright & Miller notes, "The absence of a comparable provision in Rule 15(a) has quite properly been ignored; it clearly should not be interpreted as preventing the court from imposing conditions on a grant of leave to amend under that subdivision." 6 Wright & Miller, Fed. Prac. & Proc. Civ. § 1486 (3d ed.). Common conditions noted by the treatise include, for example, imposing costs, dismissing with prejudice deleted claims, not permitting the deletion of a judicial admission, narrowing the scope of amendment, etc. See *id.* "The moving party's refusal to comply with the conditions imposed by the court normally will result in a denial of the right to amend." *Id.*

Judge Bent's June 3 order was expressly conditioned on compliance "with basic pleading rules and this decision." The amended complaint does neither. In fact, in ways, it is more unintelligible than the first. The "scattershot factual allegations" of the original complaint now no longer are even separated into discrete counts or organized at all. Mr. Hart justifies this clear lack of compliance with Judge Bent's order, in the course of opposing the Bradford defendants' summary judgment motion, as follows:

> After summarizing Plaintiffs' legal claims, the Amended Complaint sets out the factual allegations that support the alleged violations of Vermont and U.S. law, and the remaining allegations include specific claims for relief by incorporating various elements of the foregoing summarized legal claims. In other words, the Summary of Claims explains which legal causes of action Plaintiff is pursuing, and the Factual Allegations and Claims for Relief that follow explain why Plaintiff is entitled to relief under the summarized claims. Because Plaintiffs' factual allegations are far-ranging, and because many of Plaintiffs' allegations support multiple claims or different potential alternative theories supporting those claims, Plaintiff has not set out discrete "Counts" as is often done. Not only is such an organizational structure not required by Vermont's liberal notice pleadings requirement (V.R.C.P. 8), but also in this case setting out separate counts would be unduly burdensome. Plaintiff has summarized his legal claims and set forth the facts he believes entitle him to relief under those legal theories. Such "short and plain" statements of the claims asserting Plaintiffs' entitlement to relief, with demands for judgment sought, are appropriate.

Mr. Hart's Opposition to Summary Judgment at 3–4 (filed Nov. 22, 2021). In a bid for rudimentary notice, in the June 3 order, Judge Bent required short and plain statements of claims specifically requiring some description of legal elements and supporting allegations such that actual legal claims could be identified, even if by inference. Mr. Hart apparently felt that doing so would be too burdensome. He further determined to violate Rule 10(b), which expressly requires that "[e]ach claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever separation facilitates the clear presentation of the matters set forth."

The amended complaint does not resolve the deficiencies of the original complaint, and it squarely violates Judge Bent's June 3 order and basic pleading standards. For those reasons, the court does not accept it.

Because the amendment has been rejected, Mr. Hart's motion for relief from prior orders is denied.

The Bradford Defendants' motion for summary judgment

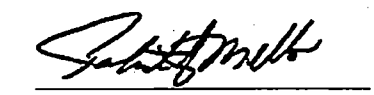
This case was filed nearly a year and a half ago, during which Mr. Hart has failed to identify a cognizable legal claim and during which he has had plenty of time to engage in discovery if he felt that discovery would help him to do so. "It should be remembered that Rule 56 is not merely a technical procedure; it affects the substantive rights of the litigants. A summary-judgment motion goes to the merits of the case." 10A Wright & Miller, Fed. Prac. & Proc. Civ. § 2712 (4th ed.) (citation omitted). Among other things, it "has operated to prevent the system of extremely simple pleadings from shielding claimants without real claims." *Id.* (citation omitted). As the Vermont Supreme Court has explained: "The nonmoving party may survive the motion if it responds with specific facts raising a triable issue, and it is able to demonstrate sufficient evidence to support a prima facie case. If the nonmoving party fails to establish an essential element of its case on which it has the burden of proof at trial, the moving party is entitled to summary judgment as a matter of law." *State v. G.S. Blodgett Co.*, 163 Vt. 175, 180 (1995) (citations omitted).

Such is the case here. Mr. Hart has the burden of proof on all his claims. However, in response to the Bradford defendants' summary judgment motion, which pointedly attacks the lack of any clear, nonconclusory identification of any legal claims in Mr. Hart's filings, Mr. Hart has failed to clearly identify any cognizable legal claims and show how evidence in the record supports their legal elements (which also remain unidentified). He has thus failed to demonstrate any triable issue and has not successfully opposed summary judgment.

Order

For the foregoing reasons, Mr. Hart's motion for relief from prior orders is denied. The Bradford defendants' motion for summary judgment is granted. Counsel for the Bradford Defendants shall submit a form of judgment on behalf of all Defendants. V.R.C.P. 58(d).

SO ORDERED this 14th day of February, 2022



Robert A. Mello
Superior Judge