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Subject: Activity in Case 1:19-cv-00460-WES-PAS Ursini v. Town of Bristol et al Order on Motion for Summary Judgment

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U.S. District Court

District of Rhode Island

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Case Name: Ursini v. Town of Bristol et al
Case Number: 1:19-cv-00460-WES-PAS
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Docket Text:
TEXT ORDER granting [24] Motion for Summary Judgment. As required, the Court views all facts in the light most favorable to Plaintiff, making all reasonable inferences in her favor. Air-Con, Inc. v. Daikin Applied Latin Am., LLC, 21 F.4th 168, 175 (1st Cir. 2021). Defendants Motion for Summary Judgment is granted as to Counts I (Tortious Interference with Contract) and II (Wrongful Termination) because, without an employment contract, no reasonable jury could find that Plaintiff was not an at-will employee. And without an express or implied employment contract, there can be no tortious interference with contract or wrongful termination. See Day v. City of Providence, 338 F. Supp. 2d 310, 320 (D.R.I. 2004) (It is well settled that Rhode Island law does not permit an at-will employee to bring a claim for wrongful termination.). Plaintiffs alternative theory that Defendant Steven Contente tortiously interfered with a relationship between her and the grantors of a federal grant is not alleged in her Complaint, and therefore is not considered now. See Miranda-Rivera v. Toledo-Davila, 813 F.3d 64, 76 (1st Cir. 2016) (quoting Calvi v. Knox Cty., 470 F.3d 422, 431 (1st Cir. 2006) (Plaintiffs may not raise new and unadvertised theories of liability for the first time in opposition to a motion for summary judgment.). Defendants Motion as to Count III (Intentional Infliction of Emotional Distress) is granted. Plaintiffs medical records present sufficient physical symptomatology to create a fact issue on severe emotional distress. Defendants point to no case law requiring therapy or medication to establish the same; in fact, the case law suggests otherwise. See Perrotti v. Gonicberg, 877 A.2d 631, 638 (R.I. 2005) (describing the courts more relaxed standard for physical symptomatology... recognized in cases involving the intentional infliction of

emotional distress); see also id. (citing Adams v. Uno Restaurants, Inc., 794 A.2d 489, 492-93 (R.I. 2002)) (summarizing holding that plaintiff found to have established physical symptomatology based on his own testimony about emotional distress and humiliation despite the absence of a medical expert). However, based on the Courts disposition of the other counts, no reasonable jury could conclude that Defendants conduct was extreme and outrageous. See Doe v. Brown University, No. 20-2023, 2022 WL 3095288, at *9 (1st Cir. Aug. 4, 2022) (describing very high standard for extreme and outrageous conduct); Swerdlick v. Koch, 721 A.2d 849, 863 (R.I. 1998). Nothing about the parties relationship made Plaintiff particularly susceptible, see Doe, 2022 WL 3095288, at *10, and Plaintiff correctly admitted at argument that this claim is derivative of her others, see Soto-Lebron v. Fed. Express Corp., 538 F.3d 45, 58 (1st Cir. 2008) (Such a claim cannot be brought in the guise of an IIED claim, which would divorce it from the well developed law of defamation with its attendant privileges and defenses.). As to Count IV (Violation of First Amendment, through § 1983), Plaintiff failed to address it in her opposition to summary judgment. While Plaintiff addressed it briefly at oral argument, she did so only in response to the Courts questions. Her failure to respond to Defendants Motion requires dismissal. See Short v. Brown Univ., 320 F. Supp. 3d 363, 368 n.4 (D.R.I. 2018) (failure to substantively respond operates as a waiver or forfeiture of the claim and an abandonment of any argument against dismissing the claim). But even if it didnt, on the merits, Plaintiffs three claims fail for distinct reasons. Her first claim alleging retaliatory prosecution requires her to prove the absence of probable cause. See Hartman v. Moore, 547 U.S. 250, 263 (2006); see also Nieves v. Bartlett, 139 S. Ct. 1715, 1728 (2019) (holding that a claim of retaliatory arrest fails as a matter of law if there was probable cause to arrest). Because the Court determines that there was such probable cause, the claim cannot survive. Her second claim alleging Defendants defamed her in retaliation fails because the Court concludes that Defendants did not, as a matter of law, defame Plaintiff. Plaintiffs third claim - that Defendant Contente terminated her in retaliation for her exercising her free speech rights fails even assuming Plaintiff could establish a trial-worthy factual dispute because Contente is shielded by qualified immunity. Plaintiff disputes that she is a public employee, but qualified immunity applies in either case. If Plaintiff is a public employee, the Pickering v. Board of Education, 391 U.S. 563 (1968), standard applies, balancing the employees First Amendment interests against the governments interests in avoiding disruption. See Diaz-Bigio v. Santini, 652 F.3d 45, 51 (1st Cir. 2011). Under that standard, the outcome of that balance of interests is not so clear as to put all reasonable officials on notice that firing [Plaintiff] would violate the law. See id. at 53 (noting that only in the extraordinary case will it have been clearly established that a public employees speech merited constitutional protection (quoting Jordan v. Carter, 428 F.3d 67, 75 (1st Cir. 2005)). Here, reasonable officials could believe that there was no First Amendment violation where, although Plaintiff brought seniors to a Town Council meeting to protest proposed budget cuts, there were concerns about time misappropriation and lack of oversight of Plaintiffs position. See id. at 52 (citing long line of cases in this circuit granting qualified immunity, holding that reasonable officials would not believe a First Amendment violation occurred where there was another basis for the adverse employment action). If Plaintiff is not a public employee, the Court has uncovered no analogous case suggesting Contente violated a clearly established right (and neither has Plaintiff pointed to one). See Pearson v. Callahan, 555 U.S. 223, 227 (2009). The Court understands that Plaintiff brings this final claim against only Defendant Contente; if Plaintiff does allege it against the Town, it fails because Plaintiff does not allege the actions were taken pursuant to an official policy. See Monell v. Dept of Soc. Servs., 436 U.S. 658, 694 (1978).Taking Counts V (False Arrest, through § 1983) and VI (Malicious Prosecution) together, these counts fail unless Defendants lacked probable cause to arrest and initiate criminal proceedings against Plaintiff. Questions of probable cause ordinarily [are] amenable to summary judgment if the material facts are not in dispute. Acosta v. Ames Department Stores, 386 F.3d 5, 9 (1st Cir. 2004);

Horton v. Portsmouth Police Department, 22 A.3d 1115, 1123 (R.I. 2011). Here, Plaintiff was arrested pursuant to a warrant issued by a Rhode Island District Court Judge. Plaintiff challenges Defendant Steven St. Pierres investigation and complains that he misunderstood her work schedule as well as her grant date. But, even so, the Court concludes that Plaintiff has failed to meet her heavy burden of showing that the warrant was issued on less than probable cause. Horton, 22 A.3d at 1124(quoting Henshaw v. Doherty, 881 A.2d 909, 915 (R.I. 2005)). Making all reasonable inferences in Plaintiffs favor, none of the alleged falsehoods vitiate probable cause, and neither does Plaintiff provide clear proof of a lack of probable cause. Id. at 1129. Officers are not required to investigate every facet of a case before making a probable cause determination. See Acosta, 386 F.3d at 11 ([W]e... have disclaimed any unflagging duty on the part of law enforcement officers to investigate fully before making a probable cause determination... [A]n officer normally may terminate her investigation when she accumulates facts that demonstrate sufficient probable cause. (internal citations omitted)). And the benefit of the doubt should go to the authorities who have obtained a warrant from a neutral judicial officer before making the arrest. Horton, 22 A.3d at 1124 (quoting Henshaw, 881 A.2d at 914). Having reviewed the Affidavit in light of Plaintiffs complaints, the Court concludes that there was probable cause to arrest and to initiate proceedings against Plaintiff. The Court thus dismisses Counts V and VI.On Count VII (Defamation), Plaintiffs defamation claim against Contente is barred by the one-year statute of limitations, and the continuing tort doctrine does not apply. See R.I. Gen. Laws § 9-1-14(a); AAA Wholesalers Distribution, LLC v. Tropical Cheese Indus., Inc., No. CV 18-542 WES, 2020 WL 563376, at *2 (D.R.I. Feb. 5, 2020) (declining to apply continuing tort doctrine and citing cases holding that the doctrine does not apply to discrete acts like defamation). Plaintiff alleges summarily that Contente repeated these statements, but points to no evidence from which a factfinder could conclude that he made those statements within the statute of limitations. Further, her claim that these statements morphed into the press release belie the record, which reveals that the press release was created after the investigation. As for the press release, the Court has no trouble concluding that Plaintiff is a public official. See Rosenblatt v. Baer, 383 U.S. 75, 85 (1966) (holding that public officials are, at the very least, those government employees with what the public perceives to be substantial responsibility); Henry v. Media Gen. Operations, Inc., 254 A.3d 822, 837 (R.I. 2021) (finding then-lieutenant in the Cranston Police Department to be a public official). With that designation, the actual malice standard applies. See Henry, 254 A.3d at 838. After reviewing the record, the Court concludes that no reasonable jury could conclude by clear and convincing evidence that Defendants acted with actual malice; none of the alleged deficiencies if false at all, but assuming so in Plaintiffs favor could lead a reasonable jury to conclude that the press release was made with knowledge of its falsity or reckless disregard of the same. See New York Times Co. v. Sullivan, 376 U.S. 254, 279-80 (1964); see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 254 (1986) (requiring evidence on which the jury could reasonably find for the plaintiff). For example, Defendants reference to Plaintiff as an employee of the Town, even if Plaintiff disagrees with the characterization, is not the sort of falsehood evincing actual malice. Further, Defendants summary of Plaintiffs criminal matter substantially mirrors that included in the letter drafted by her own counsel. Even taking all facts in the light most favorable to Plaintiff, there is simply no evidence of actual malice in this record, let alone clear and convincing evidence. Count VII is therefore dismissed.And last, Plaintiffs request for leave to amend to add a false light claim is denied as untimely, prejudicial, and futile. First, although here there was a scheduling order, that order did not give a deadline for moving to amend; the stricter standard under Federal Rule of Civil Procedure 16(b) therefore does not apply. In any event, Plaintiff has given no reason for her delay in moving to amend, Acosta-Mestre v. Hilton Intl of Puerto Rico, Inc., 156 F.3d 49, 52 (1st Cir. 1998) (requiring the movant to show some reason for neglect and delay in moving to amend), and adding this claim would require

reopening discovery, Hatch v. Dept for Children, Youth, and Their Families, 274 F.3d 12, 19 (1st Cir. 2001) (If a plaintiff waits until after discovery and summary judgment, then amendment is properly classified as futile unless the allegations of the proposed amended complaint are supported by substantial evidence.). Plaintiff fails this substantial evidence standard because the Rhode Island Supreme Court held that one may not breathe life into an otherwise doomed defamation claim by re-baptizing it as a different cause of action. Henry v. Media Gen. Operations, Inc., 254 A.3d 822, 847 (R.I. 2021) (quoting Trainor v. The Standard Times, 924 A.2d 766, 769 n.1 (R.I. 2007)). Defendants Motion is therefore granted in full.. So Ordered by District Judge William E. Smith on 8/11/2022. (Potter, Carrie)

1:19-cv-00460-WES-PAS Notice has been electronically mailed to:

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