

STATE OF MAINE  
ANDROSCOGGIN, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. CV-2014-125

DANIEL A. OUELLETTE,  
Plaintiff

RECEIVED & FILED

JUN 29 2015

ANDROSCOGGIN  
SUPERIOR COURT

ORDER

v.

MAINE PRETRIAL SERVICES,  
TORI SMART, WENDY ROY and  
DARCY WILCOX

Defendants

### INTRODUCTION

This matter is before the court on (1) the Defendant's motion to dismiss pursuant to M.R.Civ.P. 12(b)(6) and (2) the Plaintiff's motion to join the Androscoggin County Superior Court and the District Attorney's Office as party-Defendants in this action.

This action was commenced by the filing of a hand-written complaint by Daniel A. Ouellette, acting *pro se*, on July 31, 2014 against Maine Pretrial Services. The Plaintiff's request to proceed without payment of the required filing fee and the cost of service was granted on August 19, 2014. The court's file indicates that the three named employees of Maine Pretrial Services were served on September 16 and 22, 2014, although it does not appear that Maine Pretrial Services itself was ever served. Nevertheless, the matter has proceeded with Maine Pretrial Services being identified as a defendant in the caption of the case. The Defendants file their Answer on October 6, 2014.

On February 10, 2015 the Plaintiff moved to “enjoin” the Androscoggin County Superior Court as a “co-defendant and co-conspirator,” along with the District Attorney’s Office of Prosecutorial District Three.

In an order dated May 13, 2015 this case, along with others relating to this Plaintiff, was specially assigned to the undersigned Justice.

### THE COMPLAINT

The Plaintiff’s complaint alleges that he appeared in the Superior Court on May 8, 2014 on a probation revocation petition, at which time he was denied personal recognizance bail. As a condition of his release, a Superior Court Justice required a supervision contract with Maine Pretrial Services. The complaint alleges that one of the employees of Maine Pretrial Services came to the jail to meet with the Plaintiff on May 20, 2014 to “screen” him for a supervision contract for both the probation violation as well as other pending criminal charges. It is further claimed that the Plaintiff agreed to participate in an in-patient treatment program at the York County Shelter in Alfred, “but would not agree to any condition that would restrict my civil liberties or interfere with treatment.”

The complaint alleges that the Plaintiff was informed by his court appointed attorney that he was not accepted by Maine Pretrial Services for a supervision contract because he would not agree to any restriction on his civil liberties. The Plaintiff asserts that as a result of the Defendants’ refusal to accept him for supervision, he was denied the enjoyment of his civil liberties and constitutional rights. He claims that as a result of this he has been, in effect, unlawfully sentenced without due process of law.

The complaint further maintains that in March 2014 Maine Pretrial Services, or one of its employees, accepted another pre-trial detainee for a supervision

contract who falsely provided the Plaintiff's address as her own. The Plaintiff complains that this pre-trial detainee was released from custody and then burglarized his apartment and stole his personal property. The Plaintiff's complaint alleges that the negligence of Maine Pretrial Services, and its employees, caused him the loss of his property.

In his motion to "enjoin" the Androscoggin County Superior Court as a co-defendant, the Plaintiff has alleged that the court was a co-conspirator with Maine Pretrial Services in his detention by requiring a supervision contract. Additionally, the Plaintiff blames the court, the State of Maine and Maine Pretrial Services for the burglary and theft committed against him by another individual and claims that he was subjected to discrimination. Finally, the Plaintiff has also sought to include the District Attorney's Office as a co-defendant, although there are no specific allegations against that office.

The Plaintiff's complaint is brought under the "Maine Civil Rights Act," 5 M.R.S. §4685. Specifically, the Plaintiff has brought his complaint pursuant to 5 M.R.S. §4682.

### THE MOTION TO DISMISS

The Defendants have moved to dismiss the complaint pursuant to M.R.Civ.P. 12(b)(6). For purposes of such a motion, all well-pleaded facts are taken as admitted and are construed in the light most favorable to the non-moving party to determine whether the complaint sets forth the elements of a cause of action or alleges facts that would entitle the Plaintiff to relief on some legal theory. *Ramsey v. Baxter Title Co.*, 2012 ME. 113, ¶6, 54 A.3d 710. A claim is "properly dismissed when it is beyond doubt that the plaintiff is entitled to no relief under any set of facts that might be proved in support of the claim." *Richardson v.*

*Winthrop School Dept.*, 2009 ME. 109, ¶5, 983 A.2d 400. See also *Bisson v. Hannaford Bros. Co. Inc.*, 2006 ME. 131, ¶2, 909 A.2d 1010. The Plaintiff must allege facts with sufficient particularity that would allow the court to determine whether, if true, such facts state a claim. Conclusory assertions are insufficient and cannot substitute for an articulation of specific facts. *Ramsey v. Baxter Title Co.*, 2012 ME. 113, ¶6, 54 A.3d 710 *citing* *Fortin v. Roman Catholic Bishop of Portland*, 2005 ME. 57, ¶30, 870 A.2d 1208. See also *Bryan R. v. Watchtower Bible & Tract Society of N.Y. Inc.*, 1999 ME. 144, ¶22, 738 A.2d 839.

Viewed in this light, it is clear that the Plaintiff has failed to allege facts that, if true, would allow the court to determine that he has set forth the elements of a cause of action. Therefore, the Defendant's motion to dismiss pursuant to M.R.Civ.P. 12(b)(6) must be granted.

Title 5 M.R.S. §4682 (1-A) provides for a private cause of action,

“[w]henever any person, whether or not acting under color of law, intentionally interferes or attempts to intentionally interfere by physical force or violence against a person, damage or destruction of property or trespass on property or by the threat of physical force or violence against a person, damage or destruction of property or trespass on property with the exercise or enjoyment by any other person of rights secured by the United States Constitution or the laws of the United States or of rights secured by the Constitution of Maine or laws of the State....”

The Maine Civil Rights Act is designed to provide a cause of action when there has been an intentional interference or an attempt to interfere by “threat, intimidation or coercion” with the exercise or enjoyment of any constitutional or statutory rights. *Gerber v. Peters*, 584 A.2d 605, 608 (ME. 1990).

Here, the only facts alleged by the Plaintiff are that his bail included a requirement that he be supervised pursuant to a Maine Pretrial Services contract

and that he was denied acceptance by Maine Pretrial Services because, he alleges, he refused to agree to any restriction on his civil liberties. Beyond that, there are no facts of any kind that support a claim that anyone used physical force or violence or the threat thereof to interfere with the Plaintiff's constitutional or statutory rights. The Plaintiff's complaint contains conclusory accusations of a conspiracy, but no specific assertions of fact.

Even when viewed in the light most favorable to the Plaintiff and even assuming the truth of all factual assertions, the complaint fails to state a claim upon which relief may be granted under the Maine Civil Rights Act. 5 M.R.S. §4682 (1-A). Accordingly, the Defendant's motion to dismiss pursuant to M.R.Civ.P. 12(b)(6) is granted.

For the same reason, and for the additional reason that the Androscoggin County Superior Court is entitled to judicial immunity, and the District Attorney's Office is entitled to prosecutorial immunity, the Plaintiff's motion to join those parties as co-defendants is denied.

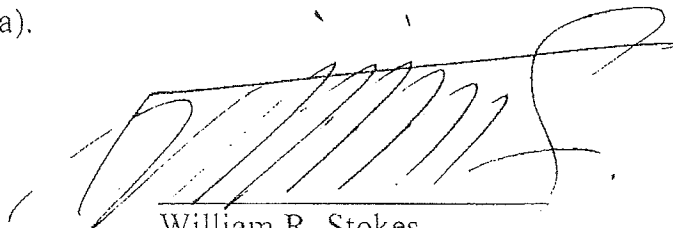
The entry is:

Defendant's motion to dismiss is granted.

Plaintiff's motion to join the Androscoggin County Superior Court and Prosecutorial District Three as party-defendants is denied.

The clerk is directed to incorporate this Order by reference in the docket in accordance with M.R. Civ. P. 79(a).

DATED: June 29, 2015



William R. Stokes  
Justice, Superior Court