IP 04-1568-C T/K Quick v Madison Cty Sheriff
Judge John D. Tinder Signed on 7/15/05

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

AUTUMN M. QUICK,	)	
	)	
Plaintiff,	)	
vs.	)	NO. 1:04-cv-01568-JDT-TAB
	)	
MADISON COUNTY SHERIFF'S	)	
DEPARTMENT,	)	
MADISON COUNTY COMMISSIONERS,	)	
JOHN DOE OFFICER,	)	
JACK DOE OFFICER,	)	
	)	
Defendants.	)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
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AUTUMN QUICK,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	1:04-cv-1568-JDT-TAB
	)	
MADISON COUNTY SHERIFF'S DEPARTMENT and JOHN and JACK DOE OFFICERS,	)	
	)	
Defendants.	)	

ENTRY ON PLAINTIFF'S MOTION TO AMEND (DKT. NO. 33)[1]

This entry concerns Plaintiff Autumn Quick's May 11, 2005, motion to amend her complaint pursuant to Federal Rule of Civil Procedure 15(c). The Plaintiff is seeking to add as named defendants police officers allegedly implicated in her 42 U.S.C. § 1983 action against Defendants Madison County Sheriff's Department, and John and Jack Doe officers.

I.

Plaintiff Autumn Quick filed a complaint on September 23, 2004, alleging federal 42 U.S.C. § 1983 claims, in addition to state tort claims against the Defendants Madison

[1] This Entry is a matter of public record and may be made available to the public on the court's web site, but it is not intended for commercial publication either electronically or in paper form. Although the ruling or rulings in this Entry will govern the case presently before this court, this court does not consider the discussion in this Entry to be sufficiently novel or instructive to justify commercial publication or the subsequent citation of it in other proceedings.

County Sheriff's Department, Madison County Commissioners[2], and John and Jack Doe officers. The Plaintiff has already amended her complaint twice. Her first amendment of December 22, 2004, was filed before any responsive pleading and added an allegation that the Defendants intentionally or recklessly inflicted severe emotional distress by interfering with her civil rights and questioning her about her sexual history. (Am. Compl. ¶ 4.) Shortly thereafter, on January 5, 2005, the court granted the Plaintiff leave to amend her complaint in order to maintain her action against the Madison County Sheriff's Department.[3] The Plaintiff now moves to amend her complaint under Rule 15(c) to add as defendants police officers David Morgan and Darwin Dwiggins, and detective Stephen Holtzleiter. She moves to add these defendants to replace the unknown police officers named in the original complaint. The Defendants argue that the motion should be denied because it is barred by the two-year statute of limitations applicable to both her claims under 42 U.S.C. § 1983 and her state law claims. For the reasons stated below the court will deny the Plaintiff's motion to amend.

II.

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[2] The Madison County Commissioners were later dismissed from the case with prejudice pursuant to a January 5, 2005, order by Magistrate Judge Baker. The Plaintiff's second amended complaint of that same date also drops them as Defendants.

[3] The Plaintiff amended her complaint to allege that the Madison County Sheriff's Department has a custom or policy of violating citizens' constitutional rights as required under *Monell v. New York City Department of Social Services*, 436 U.S. 658 (1978), to maintain a 42 U.S.C. § 1983 action against a government entity.

42 U.S.C. § 1983 does not have its own statute of limitations. Thus, federal courts adopt the statute of limitations of the forum state for personal injury cases. *Johnson v. Rivera*, 272 F.3d 519, 521 (7th Cir. 2001). Indiana has a two-year statute of limitations for personal injury claims. Ind. Code § 34-11-2-4; *Jones v. Merchants Nat'l Bank & Trust Co.*, 42 F.3d 1054, 1057 (7th Cir. 1994). The Plaintiff filed her original complaint against the Defendants on September 23, 2004, regarding an incident that allegedly occurred on or about September 25, 2002. Thus the Plaintiff's third motion to amend her complaint of May 11, 2005, was filed almost eight months after the expiration of the statute of limitations.

Even so, Federal Rule of Civil Procedure 15(c) allows plaintiffs to amend their complaints to add additional defendants after the statute of limitations has run if the proposed amendment relates back to the original pleading.

> Rule 15(c)(3) now provides that an amendment changing a party or the naming of a party relates back to the original filing date only if it arises out of the conduct, transaction, or occurrence described in the original pleading and if, within the period provided by Rule 4(m) for service of the summons and complaint, the party to be brought in by the amendment: (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

Delgado-Brunet v. Clark, 93 F.3d 339, 343 (7th Cir. 1996).

However, the foregoing provision does not apply to situations where a plaintiff discovers the identity of a defendant after the statute has run, and then attempts to amend the complaint to add that previously unknown party. *Baskin v. City of Des*

Plaines provides that the rule governing relation back of amendments "does not permit relation back where there is lack of knowledge of the proper party." 138 F.3d 701, 704 (7th Cir. 1998) (quotation omitted). In that case the plaintiff, as here, moved after the statute of limitations had expired to amend his complaint to add named defendant police officers to replace the unknown police officers named in his original complaint. *Id*. The *Baskin* court affirmed the district court's denial of the plaintiff's motion because it failed under Rule 15(c) to relate back to the original complaint. *Id*.

Therefore, when a plaintiff in his or her original complaint names unknown police officers as defendants for lack of knowledge of the identity of the proper defendants, that plaintiff's amended complaint to add those defendants as named police officers cannot relate back to the original complaint. As stated by the court in *Wudtke v. Davel*: "it is pointless to include lists of anonymous defendants in federal court; this type of placeholder does not open the door to relation back under Fed. R. Civ. P. 15." 128 F.3d 1057, 1060 (7th Cir. 1997) (citations omitted); *See also Delgado-Brunet*, 93 F.3d at 344 (holding that an amended complaint naming two prison officers as new parties did not relate back to the filing of the original claim, and thus was barred by the statute of limitations); *Worthington*, 8 F.3d at 1256 (holding that an amendment naming police officers did not relate back to date that original complaint was filed); *Wood v. Worachek*, 618 F.2d 1225, 1230 (7th Cir. 1980) (holding that the district court abused its discretion in permitting the plaintiff to amend his complaint by substituting a named police officer as a party defendant in place of unidentified police officers). Thus, under this authority the Plaintiff's motion to amend must fail.

Irrespective of the above controlling authority, the Plaintiff's arguments in support of her motion are without merit. The Plaintiff, while failing to cite the above controlling authority, cites cases such as *Serrano v. Gonzales* to develop a theory of notice under the first prong of Rule 15(c)(3) based on identity of interest. 909 F.2d 8, 12-13 (1st Cir. 1990).[4] While the Plaintiff's argument regarding notice may be creative, the Seventh Circuit has gone so far as to articulate that Rule 15(c) contains a separate "mistake" requirement. "Thus, in the absence of a mistake in the identification of the proper party, it is irrelevant for the purposes of Rule 15(c)(2) [current Rule 15(c)(3)] whether or not the purported substitute party knew or should have known that the action would have been brought against him." *Worthington*, 8 F.3d at 1256. For this reason, the Plaintiff's further arguments regarding notice are irrelevant. *See Baskin*, 138 F.3d at 704.

III.

For the foregoing reasons, the Plaintiff's third Motion to Amend (Dkt. No. 33) is **DENIED.**

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[4] The identity of interest doctrine suggests that "parties are so closely related in their business operations or other activities that the institution of an action against one serves to provide notice of litigation to another." 6A Charles A. Wright et al., *Federal Practice and Procedure* § 1499, at 146 (2nd ed. 1990).

ALL OF WHICH IS ORDERED this 15th day of July 2005.

John Daniel Tinder, Judge
United States District Court

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