

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

GERALDINE MILLS, M.D., :  
Plaintiff, :  
v. : CA 03-457L  
DEBORAH CINQUEGRANA and :  
BRIAN CINQUEGRANA, :  
Defendants. :

**REPORT AND RECOMMENDATION**

David L. Martin, United States Magistrate Judge

Before the court are two motions filed by Defendants Deborah Cinquegrana and Brian Cinquegrana ("Defendants"): Motion to Dismiss Brought Pursuant to Federal Rules of Civil Procedure 12(b)(1) ("Motion to Dismiss") (Document #3) and Motion for Sanctions Pursuant to Federal Rules of Civil Procedure Rule 11 ("Motion for Sanctions") (Document #2). These matters have been referred to me for preliminary review, findings, and recommended disposition pursuant to 28 U.S.C. § 636(b)(1)(B) and D.R.I. Local R. 32(a). A hearing was held on March 8, 2004. For the reasons stated below, I recommend that the Motion to Dismiss be granted and that the Motion for Sanctions be denied.

**Motion to Dismiss**

At the hearing, Plaintiff Geraldine Mills, M.D. ("Plaintiff"), conceded that the Complaint which she had filed did not comply with Fed. R. Civ. P. 8 and indicated that she was seeking to file an amended complaint. Plaintiff's acknowledgment of non-compliance with Rule 8 is appropriate as the Complaint does not contain: 1) a short and plain statement of the grounds upon which the Court's jurisdiction depends and 2) a short and plain statement of the claim showing that she is entitled to relief. See Fed. R. Civ. P. 8(a). As this Magistrate Judge has

also concluded that the court lacks subject matter jurisdiction over Plaintiff's claims and that those claims are barred because Defendants are not state actors and are protected by absolute immunity, see Memorandum and Order of 4/21/04 (denying Motion to Amend), I recommend that the Motion to Dismiss be granted and that this action be dismissed.

#### **Motion for Sanctions**

Fed. R. Civ. P. 11(b) provides in relevant part:

(b) Representations to Court. **By presenting to the court** (whether by signing, filing, submitting, or later advocating) **a pleading**, written motion, or other paper, **an attorney or unrepresented party is certifying that** to the best of the person's knowledge, information, and belief, formed **after an inquiry reasonable** under the circumstances,-

....

(2) **the claims, defenses, and other legal contentions therein are warranted by existing law** or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

Id. (bold added); see also Nyer v. Winterthur Int'l, 290 F.3d 456, 460-62 (1<sup>st</sup> Cir. 2002)(upholding sanctions against attorney where claim he filed was "totally frivolous").

Applying the above stated law to the instant case, the question is whether Plaintiff should have been able to determine after reasonable inquiry that subject matter jurisdiction does not exist in this court for her claims or that they are barred because Defendants did not act under color of state law or because Defendants are protected by absolute immunity. After considering each of these three grounds (which form the basis for the court's denial of Plaintiff's Motion to Amend, see Memorandum and Order of 4/21/04 at 6-16), the court concludes that the answer is no.

The Rooker-Feldman doctrine, see id. at 6-10, which bars

this court from exercising jurisdiction, while well known to most lawyers who practice in federal court, is unfamiliar to virtually all lay persons. The court is not confident that a lay person would necessarily encounter the doctrine even after making reasonable inquiry. The court declines to hold that Plaintiff's failure to understand how that doctrine prevents this court from exercising jurisdiction over her claims is a sanctionable occurrence.

A somewhat closer question is whether Plaintiff should have recognized the requirement that Defendants must have acted under color of state law in order for her to plead a valid civil rights complaint pursuant to 42 U.S.C. § 1983. See Memorandum and Order of 4/21/04 at 10-14 (discussing the requirement). While this prerequisite is better known than the Rooker-Feldman doctrine, the court still has doubts that Plaintiff, making reasonable inquiry, would necessarily encounter it, or, if she did encounter it, would understand that Defendants' actions in filing a complaint and testifying before the Rhode Island Board of Medical Licensure and Discipline (the "Board") did not constitute state action. See id. at 12-14. Accordingly, the court gives Plaintiff the benefit of these doubts and finds that her failure to realize Defendants are not state actors does not warrant the imposition of sanctions.

Lastly, although this Magistrate Judge has concluded that Plaintiff's claims against Defendants are barred by absolute immunity, see id. at 14-15, Plaintiff may have believed that she could sue Defendants because the Rhode Island statute granting immunity to witnesses who file complaints and testify before the Board appears to be limited to statements made by such witnesses "in good faith," R.I. Gen. Laws § 5-37-1.5 (1999 Reenactment), and Plaintiff contends that Defendants' statements were not so made. Even if Plaintiff were aware that federal, and not state law, determines the scope of the immunity afforded to defendants

in a § 1983 action, see id. at 15 n.7, Plaintiff may have believed that she could make a good faith argument for reversal or modification of that rule in this case. Either belief, in this Magistrate Judge's view, would preclude a Rule 11 violation. Accordingly, the Motion for Sanctions should be denied.

#### **Conclusion**

For the reasons stated above, I recommend that the Motion to Dismiss be granted and that the Motion for Sanctions be denied. Any objections to this Report and Recommendation must be specific and must be filed with the Clerk of Court within ten (10) days of its receipt. See Fed R. Civ. P. 72(b); D.R.I. Local R. 32. Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district court and of the right to appeal the district court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1<sup>st</sup> Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1<sup>st</sup> Cir. 1980).

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David L. Martin  
United States Magistrate Judge  
April 21, 2004