

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THERESA A. LOGAN, f/k/a Theresa A. Odejimi,

Plaintiff,

3:18-CV-0593
(GTS/DEP)

v.

TOWN OF WINDSOR; MR. ROBERT BRINKS,
Driver, Snow Plow Truck for the Town of Windsor;
MR. GREGG STORY, Snow Plow Truck Wingman
for the Town of Windsor; and NEW YORK MUN.
INS. RECIPROCAL, Ins. Co. for the Town of Windsor,

Defendants.

APPEARANCES:

THERESA A. LOGAN
Plaintiff, *Pro Se*
50 Williams Road
Windsor, New York 13865

GLENN T. SUDDABY, Chief United States District Judge

DECISION and ORDER

Currently before the Court, in this *pro se* civil rights action filed by Theresa A. Logan (“Plaintiff”) against the Town of Windsor, two of its employees, and its insurance carrier (“Defendants”), is United States Magistrate Judge David E. Peebles’ Report-Recommendation of September 28, 2018, recommending that Plaintiff’s Second Amended Complaint be dismissed with prejudice. (Dkt. No. 8.) In response to the Report-Recommendation, Plaintiff has filed a motion to appoint counsel, a one-page “Objection” to the Report-Recommendation, and what purports to be an “Amended Complaint.” (Dkt. Nos. 10, 12, 13.)

Because Magistrate Judge Peebles' Report-Recommendation is ready for decision without the need for further briefing from Plaintiff, the Court will review the Report-Recommendation before addressing Plaintiff's motion to appoint counsel.

The Court prefaces its review of the Report-Recommendation by noting that, because the "Amended Complaint" that Plaintiff filed in response to the Report-Recommendation (which was, in fact, her *Third* Amended Complaint) required but did not have prior leave of the Court, that document is a nullity. Fed. R. Civ. P. 15(a)(2). In any event, the Court notes that Plaintiff's Third Amended Complaint is only 13 pages in length and lacks any exhibits, as compared to her Second Amended Complaint, which is 21 pages in length and has 98 pages of exhibits. As a result, it is unclear to the Court how Plaintiff's Third Amended Complaint could likely cure the pleading defects identified in the Report-Recommendation. Indeed, a cursory review of the Third Amended Complaint reveals that, indeed, it does not do so.

Also worthy of a prefatory note is the fact that Plaintiff's one-page "Objection" contains no specific challenge to the Report-Recommendation. (Dkt. No. 12.) When a *specific* challenge is made to a portion of a magistrate judge's report-recommendation, the Court subjects that portion of the report-recommendation to a *de novo* review. Fed. R. Civ. P. 72(b)(2); 28 U.S.C. § 636(b)(1)(C). To be "specific," the challenge must, with particularity, "identify [1] the portions of the proposed findings, recommendations, or report to which it has an objection and [2] the basis for the objection." N.D.N.Y. L.R. 72.1(c).¹ However, when only a *general* challenge is

¹ See also *Mario v. P&C Food Markets, Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Although Mario filed objections to the magistrate's report and recommendation, the statement with respect to his Title VII claim was not specific enough to preserve this claim for review. The only reference made to the Title VII claim was one sentence on the last page of his objections, where he stated that it was error to deny his motion on the Title VII claim '[f]or the reasons set

made to a portion of a magistrate judge's report-recommendation, the Court subjects that portion of the report-recommendation to only a *clear error* review. Fed. R. Civ. P. 72(b)(2),(3); Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition; *see also Brown v. Peters*, 95-CV-1641, 1997 WL 599355, at *2-3 (N.D.N.Y. Sept. 22, 1997) (Pooler, J.) [collecting cases], *aff'd without opinion*, 175 F.3d 1007 (2d Cir. 1999).

With these preliminary thoughts in mind, the Court will now turn to a review of the Report-Recommendation. After carefully reviewing the relevant papers herein, including Magistrate Judge Peebles' thorough Report-Recommendation, the Court can find no clear-error in the Report-Recommendation.² Magistrate Judge Peebles employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons set forth therein; Plaintiff's Second Amended Complaint is dismissed; and Plaintiff's motion to appoint counsel is denied as a moot.

The Court would add only that, even if it were to address the merits of Plaintiff's motion to appoint counsel, it would deny that motion as unsupported by a showing of cause, based on (1) Plaintiff's ability to effectively litigate this action *pro se* thus far, (2) the fact that, at this

forth in Plaintiff's Memorandum of Law in Support of Motion for Partial Summary Judgment.' This bare statement, devoid of any reference to specific findings or recommendations to which he objected and why, and unsupported by legal authority, was not sufficient to preserve the Title VII claim.'").

² When performing a "clear error" review, "the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition; *see also Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at *1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) ("I am permitted to adopt those sections of [a magistrate judge's] report to which no specific objection is made, so long as those sections are not facially erroneous.") (internal quotation marks omitted).

point, the case does not appear to present issues that are novel or more complex than those raised in most civil rights actions, (3) the fact that there do not appear to be any special reasons that appointment of counsel at this time would be more likely to lead to a just determination of this litigation that the lack of such appointment.

ACCORDINGLY, it is

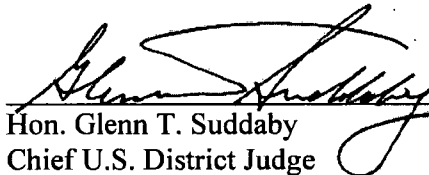
ORDERED that Magistrate Judge Peebles' Report-Recommendation (Dkt. No. 8) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

ORDERED that Plaintiff's motion to appoint counsel (Dkt. No. 10) is **DENIED**; and it is further

ORDERED that Plaintiff's Second Amended Complaint (Dkt. No. 7) is **DISMISSED** with prejudice.

The Court certifies that an appeal from this Decision and Order would not be taken in good faith pursuant 28 U.S.C. § 1915(a)(3).

Dated: December 17, 2018
Syracuse, New York


Hon. Glenn T. Suddaby
Chief U.S. District Judge

N.D.N.Y.
18-cv-593
Suddaby, C.J.
Peebles, M.J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 26th day of April, two thousand nineteen.

Present:

Amalya L. Kearse,
Rosemary S. Pooler,
Richard C. Wesley,
Circuit Judges.

Theresa A. Logan, FKA Theresa A. Odejimi,

Plaintiff-Appellant,

v.

19-143


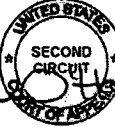
Town of Windsor, et al.,

Defendants-Appellees.

Appellant, pro se, moves for appointment of counsel. The Court also construes the motion to seek leave to proceed in forma pauperis. Upon due consideration, it is hereby ORDERED that the motion is DENIED and the appeal is DISMISSED because it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also* 28 U.S.C. § 1915(e).

FOR THE COURT:

Catherine O’Hagan Wolfe, Clerk of Court

**Additional material
from this filing is
available in the
Clerk's Office.**

MANDATE

N.D.N.Y.
18-cv-593
Suddaby, C.J.
Peebles, M.J.

United States Court of Appeals

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Theresa A. Logan, FKA Theresa A. Odejimi,

Plaintiff-Appellant,

v.

19-143

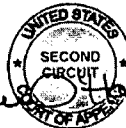
Town of Windsor, et al.,

Defendants-Appellees.

Appellant, pro se, moves for appointment of counsel. The Court also construes the motion to seek leave to proceed in forma pauperis. Upon due consideration, it is hereby ORDERED that the motion is DENIED and the appeal is DISMISSED because it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also* 28 U.S.C. § 1915(e).

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court



A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

Catherine O'Hagan Wolfe

MANDATE ISSUED ON 06/05/2019



Supreme Court

State of New York

Ferris D. Lebous
Justice

Broome County
Courthouse
P.O. Box 1766
Binghamton, N.Y.
13902

Phone: 607-240-5807
Fax: 607-240-5936

December 18, 2015

Theresa Odejimi
50 Williams Road
Windsor, NY 13865

James P. O'Brien, Esq.
Coughlin & Gerhart, LLP
P.O. Box 2039
Binghamton, NY 13902

RE: Odejimi vs. Town of Windsor
Index No. 2011-2394; RJI No. 2015-0073

Ms. Odejimi and counselor:

The court acknowledges receipt of the letter from Eric Logan on behalf of plaintiff dated December 15, 2015 and Mr. O'Brien's letter dated December 17, 2015 in response thereto.

Ms. Odejimi should be aware that litigation by its very nature is often a lengthy process. This case is no older than many other matters on the court's docket. Given the court's trial calendar, the court is unavailable to schedule even a conference until February or March 2016.

As such, the parties should continue discussions with the aim of resolving this matter without further court intervention. The court will request that the parties each provide a written status report regarding negotiations to the court by letter on or before January 29, 2016. In the event that the matter is not resolved by that time, the court will thereafter schedule a conference.

Very truly yours,

HON. FERRIS D. LEBOUS
Justice, Supreme Court



Supreme Court
State of New York

Ferris D. Lebous
Justice

Broome County Courthouse
P.O. Box 1766
Binghamton, N.Y. 13902
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August 31, 2016

James P. O'Brien, Esq.
Coughlin & Gerhart, LLP
P.O. Box 2039
Binghamton, NY 13902

Theresa Odejimi
50 Williams Road
Windsor, NY 13865

RE: Theresa Odejimi vs. Town of Windsor
Index No. CA2011-2394; RJ1 No. 2015-0073

Counselor and Ms. Odejimi:

This letter will acknowledge the filing by defendant Town of Windsor of a motion scheduled for September 16, 2016. Please be advised that the motion will be determined on submission only. Personal appearances are not permitted.

Opposing papers and reply papers, if any, should be filed in the Broome County Clerk's Office in accordance with CPLR §2214 (b) and the time provisions set forth in the Notice of Motion. The court will issue a written decision on the motion within sixty days of the return date.

Very truly yours,

HON. FERRIS D. LEBOUS
JUSTICE, SUPREME COURT



Ferris D. Lebous
Justice

Supreme Court
State of New York

Broome County Courthouse
P.O. Box 1766
Binghamton, N.Y. 13902
Telephone: 607-240-5807
Fax: 607-240-5936

October 26, 2016

Theresa Logan Odejimi
50 Williams Road
Windsor, NY 13865

RE: Odejimi vs. Town of Windsor
Index No. 2011-2394; RJI No. 2015-0073

Dear Ms. Odejimi:

The court acknowledges receipt of your "Notice of Motion to Settle Record in Supreme Court" sworn to October 17, 2016.

Please be advised that this court's Decision & Order dated October 4, 2016 addressed the issues of settlement of the record. Accordingly, the court will not revisit the matter.

In any event, the court has been notified that on October 6, 2016 the Third Department issued a Decision and Order on Motion dismissing your appeal of this court's Decision & Order dated May 25, 2016. As such, there is no longer any action pending before this or the appellate court and your case has been marked closed.

Very truly yours,

HON. FERRIS D. LEBOUS
JUSTICE, SUPREME COURT

cc: James P. O'Brien, Esq.

State of New York

Court of Appeals

*Decided and Entered on the
eighth day of June, 2017*

Present, Hon. Janet DiFiore, *Chief Judge, presiding.*

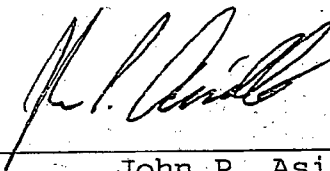
Mo. No. 2017-432
Theresa Odejimi,
Appellant,
v.
Town of Windsor,
Respondent.

Appellant having moved for leave to appeal to the Court of Appeals and for poor person relief in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, that the motion for leave to appeal is dismissed upon the ground that this Court does not have jurisdiction to entertain it (see NY Const, art VI, § 3[b]; CPLR 5602); and it is further

ORDERED, that the motion for poor person relief is dismissed as academic.



John P. Asiello
Clerk of the Court

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: November 17, 2016

523549

THERESA ODEJIMI,
Appellant,

v

TOWN OF WINDSOR,
Respondent.

DECISION AND ORDER
ON MOTION

PRESS
#2

Motion to vacate and for further relief.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED the motion is denied, without costs.

McCarthy, J.P., Garry, Rose, and Aarons, JJ., concur.

ENTER:

Robert D Mayberger

Robert D. Mayberger
Clerk of the Court

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 29th day of May, two thousand nineteen.

Present: Amalya L. Kearse,
Rosemary S. Pooler,
Richard C. Wesley,
Circuit Judges.

Theresa A. Logan, FKA Theresa A. Odejimi,

Plaintiff - Appellant,

ORDER
Docket No. 19-143

v.

Town of Windsor, Mr. Robert Brinks, Driver, Snow
Plow Truck for the Town of Windsor, Mr. Gregg Story,
Snow Plow Truck Wingman for the Town of Windsor,
New York Municipal Insurance Reciprocal, Insurance
Company for the Town of Windsor,

Defendants - Appellees.

Appellant Theresa A. Logan, filed a motion for reconsideration and the panel that determined the motion has considered the request.

IT IS HEREBY ORDERED, that the motion is denied.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court

The block contains a handwritten signature, "Catherine O'Hagan Wolfe", written in dark ink. The signature is positioned over a circular official seal of the United States Court of Appeals for the Second Circuit. The seal features the words "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS" around its perimeter.