

Filing # 104495030 E-Filed 03/06/2020 03:41:42
PM

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL
CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA

MARIE HENRY, CASE NO.: 2018-CA-5281-O

Plaintiffs,

vs.

THE FLORIDA BAR, et. al.,

Defendants.

I

**ORDER ON FLORIDA BAR DEFENDANTS'
MOTION TO DISMISS**

THIS CAUSE comes before the Court on Defendants', THE FLORIDA BAR; JOSHUA DOYLE, Executive Director, in his official and individual capacities; KEVIN JOHNSON, in his individual capacity; JOHN HARKNESS, JR., Executive Director, in his official and individual capacities; CLAYTON SIMMONS, in his official and individual capacities; ADRIA QUINTELA, in her official and individual capacities; JAN WICHROWSKI, in her official and individual capacities; KENNETH LAWRENCE. MARVIN, in his official and individual capacities (hereinafter "The Florida Bar Defendants"), "Motion to

Dismiss" filed May 24, 2019. "Plaintiffs Motion to Strike for Fraud on the Court" was filed September 9, 2019. The Court has considered the Motion to Dismiss, the Motion to Strike, heard oral argument January 22, 2020, reviewed the court file, is otherwise fully advised in the premises, and finds as follows:

When ruling on a motion to dismiss for failure to state a cause of action, the Court must "draw all inferences in favor of the pleader, and accept as true all well-pleaded allegations." *Huet v. Mike Shad Ford, Inc.*, 915 So. 2d 723, 725 (Fla. 5th DCA 2005); see also *Siegle v. Progressive Consumers Ins. Co.*, 819 So. 2d 732, 734-35 (Fla. 2002). The Court must determine "whether, assuming all the allegations in the complaint to be true, the plaintiff would be entitled to the relief requested." *Huet*, 915 So. 2d. at 725 (*citing Fox v. Professional Wrecker Operators of Florida, Inc.*, 801 So. 2d. 175 (Fla. 5th DCA 2001)); see also *Santiago v. Mauna Loa Investments, LLC*, 189 So. 3d 752, 755 (Fla. 2016) (the standard is "[w]hether, if the factual allegations of the complaint are established by proof or otherwise, the plaintiff will be legally or equitably entitled to the claimed relief against the defendant.") A motion to dismiss tests whether the Plaintiff has stated a cause of action, not whether the Plaintiff will prevail at trial. See *Lonestar Alternative Solution, Inc. v. Leview - Boymelgreen Developers, LLC*, 10 So. 3d 1169 (Fla. 3rd DCA 2009).

Plaintiff has brought suit in eighteen (18) counts. Counts I through 8 have been dismissed with prejudice in federal court. Counts 9 through 18 survive and name at least one of the Florida Bar

Defendants. Count 17-Battery, names only
Defendant CLAYTON SIMMONS.

As an official arm of the Supreme Court of Florida, the Florida Bar and its duly authorized agents are accorded immunity from suit while acting in their official capacities. *Cole Owens*, 776 So. 2d 287 (Fla. 4th DCA 2000); *Mueller v. The Florida Bar*, 390 So. 2d, 449 (Fla. 4th DCA 1980). Plaintiff has named employees of the Florida Bar in their official as well as their individual capacities, however Plaintiff's "Complaint and Jury Demand" filed May 22, 2018 does not allege facts sufficient to maintain a claim of actionable conduct that falls outside of each person's official duties.¹

Count 17 Battery against Judge Simmons, is sufficiently pleaded. "Battery consists of the infliction of a harmful or offensive contact upon another with the intent to cause such contact or

¹ Florida Rule of Civil Procedure 1.110(f) provides that "[e]ach claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense when a separation facilitates the presentation of the matter set forth." Fla. R. Civ. P. 1.110(f).

the apprehension that such contact is imminent." *Paul v. Holbrook*, 696 So.2d 1311 (Fla. 5thDCA 1997).

Based on the foregoing, it is **ORDERED**
AND ADJUDGED:

Plaintiff's Complaint is hereby **DISMISSED** with **prejudice** as to all Florida Bar Defendants acting in their official capacities.

Plaintiff's Complaint is hereby **DISMISSED** without **prejudice** as to all Florida Bar Defendants acting in their individual capacities.

Plaintiff has **twenty (20) days to amend the Complaint** to comport with the Florida Rules of Civil Procedure, Florida Statutes, substantive Florida law, and this order.

Defendant Simmons's Motion to Dismiss is hereby **DENIED** as to Count 17.

DONE AND ORDERED on this 6 th day of March, 2020, at Orlando, Orange County, Florida.



KEVIN B. WEISS
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy hereof has been furnished e-file porta. ~~and by U.S. Mail~~ to the following this 6th day of March, 2020.

Marie Henry,
In *Pro Se Plaintiff*,
P.O. Box 953521
Lake Mary, FL 32795-3521(704) 737-1935
Libertyjustice2012@gmail.com

Rachel E. Fugate, Esquire
*Counsel for Defendants Orlando Sentinel
Communications Co., LLC*
Ashley Moody, Attorney General
Brittany Quinlan, Assistant Attorney General
Counsel for Florida Dept. of Juv. Justice and John
Tomasino, Florida Supreme Court Clerk

Hope Keating, Esquire Michael H. Moody, Esquire
Barry Richard, Esquire Karusha Y. Sharpe,
Esquire Greenberg Trauig, P.A. Counsel for the
Florida Bar,
Joshua Doyle, John Harkness, Jr., Kevin Johnson,
Kenneth L. Marvin, Judge Clayton Simmons, Adria
Quintela, and Jan Wichrowski

/S/Jill Gay
Jill Gay,
Judicial Assistant

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME
EXPIRES TO FILE
MOTION FOR
REHEARING AND
DISPOSITION THEREOF
IF FILED

MARIE HENRY,

Appellant,

v.

Case No. 5D20-994

- 1) I read transcripts, petitions, pleadings orders and opinions. I also read your -- let's see how we characterized this. Your response Iturralde's response that was filed on your behalf.

Appellees.

/

Decision filed June 22, 2021

Appeal from the Circuit Court
for Orange County,
Kevin B. Weiss, Judge.

Marie Henry, pro se, Lake Mary.

M. Hope Keating and Karusha Y.
Sharpe, of Greenberg Trauig, P.A.,
Tallahassee, for Appellee, The
Florida Bar.

Ashley Moody, Attorney General,
Tallahassee, and Brittany Quinlan,
Assistant Attorney General, Tampa,
for Appellees, The Florida
Department of Juvenile Justice and
John Tomasino,
Florida Supreme Court Clerk.

No Appearance for other Appellees.

PER CURIAM.

AFFIRMED.

WALLIS, LAMBERT and NARDELLA, JJ., concur.

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FIFTH DISTRICT

CASE NO. 5D20-994
LT CASE NO. 2018-CA-5281-O
MARIE HENRY,

Appellant,

v.

THE FLORIDA BAR, JOSHUA DOYLE,
IN HIS OFFICIAL CAPACITY, KEVIN
JOHNSON, IN HIS OFFICIAL CAPACITY,
JOHN HARKNESS, JR., IN HIS OFFICIAL
CAPACITY, CLAYTON SIMMONS,
IN HIS OFFICIAL CAPACITY, ET AL.,

Appellees.

DATE: July 20, 2021

BY ORDER OF THE COURT:

ORDERED that Appellant's Motion for
Rehearing and Written Opinion, filed July 6, 2021, is
denied.

*I hereby certify that the foregoing is
(a true copy of) the original Court order.*



Sandra B. Williams

SANDRA B. WILLIAMS, CLERK

Panel: Judges Lambert, Wallis, and Nardella

cc:

Brittany Quinlan
Office of the Attorney General

Karusha Y. Sharpe

Rachel Fugate

Mary Hope Keating

Marie Henry