

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

JATIN PATEL	:	
	:	
v.	:	Civ. Action No.
	:	3:99CV1230 (SRU)
KEVIN SEARLES and	:	
DEBRA SWANSON	:	

RULING ON DEFENDANTS’ MOTION FOR JUDGMENT ON THE PLEADINGS

Jatin Patel (“Patel”) filed this action claiming that two police officers, Kevin Searles and Debra Swanson (the “Officers”), acted improperly in investigating the homicides of Patel’s mother and sister. The Officers have filed a Motion for Judgment on the Pleadings pursuant to Federal Rule of Civil Procedure 12(c), arguing that Patel “cannot establish the deprivation of any federal constitutional or statutory right,” that the Officers are entitled to qualified immunity for Patel’s constitutional claims, and that “there exists no basis for liability as to [Patel’s] supplemental state law claims.” (Pl’s Motion at 1.) Patel opposes the Officers’ motion and argues that he has properly set forth claims for the Officers’ alleged violation of his constitutional rights and for violations of state common law. Patel further argues that the Officers are not entitled to qualified immunity from his constitutional claims.

For the following reasons, Patel has stated a cognizable claim for violation of his constitutional right to intimate association with his family and the Officers are not entitled to qualified immunity from that claim. In addition, the Officers are not entitled to judgment on the pleadings with respect to Patel’s state law claims because the Officers rely solely on matters outside the pleadings to attack those claims.

I. STANDARD FOR RULE 12(C) MOTION¹

“The test for evaluating a 12(c) motion is the same as that applicable to a motion to dismiss under Fed. R. Civ. Proc. 12(b)(6).” Irish Lesbian & Gay Org. v. Giuliani, 143 F.3d 638, 644 (2d Cir. 1998). The court must therefore accept the allegations of the complaint as true, and draw all reasonable inferences in the plaintiff’s favor. Id. Dismissal is appropriate only if “it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” Id. (internal quotations omitted). “The standard is applied with particular strictness where the plaintiff complains of a civil rights violation.” Id. (internal quotations and citations omitted).

II. DISCUSSION

A. Patel has pled a violation of his constitutional right to intimate association.

The Officers first argue that the complaint fails to state a cognizable federal claim. The Officers concede that the federal courts recognize a constitutional right to family integrity, but argue that that constitutional right protects only relationships with cohabitating family members. The Officers argue that Patel has therefore failed to state a federal claim because, instead of limiting his claim to immediate, cohabitating, family members, he expansively alleges that he has been improperly “ostracized from the majority of his family and friends.” (Pl’s Memo. at 5.)

There can be no serious dispute that Patel has alleged that the Officers interfered with his relations with his family. Patel alleges that the Officers engaged in a wrongful campaign to

¹ The Officers urge the consideration of matters outside the pleadings and the treatment of their motion as one filed under Rule 56 of the Federal Rules of Civil Procedure. The court declines their invitation for the reasons stated in its January 6, 2000 Ruling on the Defendant’s Motion to Stay Discovery.

“create hostility and mistrust among family members that would ultimately lead to false accusations against the plaintiff” (Compl. ¶ 8),² and that the Officers’ campaign resulted “in a division in the plaintiff’s family, with the consequence that the plaintiff was and remains ostracized from the majority of his family and friends.”³ (Id. ¶ 53.) More specifically, Patel claims that the Officers mailed fictitious confession letters to his father, circulated a defamatory memorandum naming him as a suspect in the homicides to various members of his family, and sent a defamatory and disparaging letter to his wife. (Id. ¶¶ 9-13.)

Patel’s claims are not deficient simply because he has not alleged that he cohabitated with the family members from whom he is now ostracized. Although cohabitation with one’s relatives is one factor used to determine whether a particular familial relationship will be afforded constitutional protection, so too are marriage, childbirth, and the raising and education of children. Roberts v. U.S. Jaycees, 468 U.S. 609, 620 (1984). In fact, beyond even traditional nuclear family relations “lies a broad range of human relationships that may make greater or lesser claims to constitutional protection from particular incursions by the State.” Id. The Officers’ attempt to limit Patel’s constitutional right to association with his cohabitating relatives is thus

² All citations to the complaint refer to the May 18, 2000 Amended Complaint. Although the present motion was filed before the amendment of the complaint, the court will treat the motion as if it were directed at the latest version of the complaint.

³ Although Patel alleges that the Officers’ conduct caused him to become ostracized from his friends as well as his family, it is clear from a reading of the complaint and Patel’s memorandum of law in opposition to the Officers’ motion, that he claims only a violation of the constitutional right to intimate association with his family, not the violation of any purported right to intimate association with his friends. (See, e.g., Pl’s Memo. at 8 (“The actions of the defendants destroyed the plaintiff’s family associations and were directly aimed at interfering with his marital relationship.”)) The court therefore does not decide where Patel’s alleged friendships would fall on the spectrum of intimate associations outlined in Roberts or, therefore, whether the Officers would be entitled to qualified immunity for a claimed interference with his friendships.

misplaced. See also Sanitation & Recycling Indus. Inc. v. City of New York, 107 F.3d 985, 996 (2d Cir. 1997) (statute did not improperly infringe associational rights where, *inter alia*, it was “not intended to prohibit family associations or social contacts...” unrelated to prohibited conduct); Griffin v. Strong, 983 F.2d 1544, 1549 n.5 (10th Cir. 1993) (Lying to one spouse during child abuse investigation “weighs on the side of an infringement of [the plaintiff]’s associational rights” where it could “impact the marital relationship.”).

The Officers further argue that Patel has failed to state a cognizable federal claim because he has not alleged that he was completely deprived of the ability to associate with his family. Rather, the Officers argue, he has merely alleged that relations with his family have been impaired. While some courts have held that state interference is actionable only if it results in permanent physical separation, that requirement has not been adopted in this Circuit. Dusenbury v. City of New York, No. 97 CIV. 5215 (HB), 1999 WL 199072 at *2 (S.D.N.Y. Apr. 9, 1999). Even if, that were the rule in this Circuit, however, the Officers’ argument fails. Patel has alleged that the Officers’ conduct caused “a division in the plaintiff’s family, with the consequence that [he] was and remains ostracized from the majority of his family and friends.” (Compl. ¶ 53). This allegation is sufficient to permit proof that Patel has been completely separated from certain family members.

Finally, the Officers argue that Patel’s constitutional claim is deficient because it does not contain an allegation that the Officers intended their improper conduct to affect Patel’s family relationships. The court assumes, without deciding, that Patel must demonstrate that the Officers intended their conduct to affect his right to intimate association. See, e.g., Adler v. Pataki, 185 F.3d 35, 43-44 (2d Cir. 1999) (noting, without deciding, that “[s]ometimes court opinions suggest

that an intimate association right is not violated unless the challenged action has the likely effect of ending the protected relationship, or unless affecting the relationship was the purpose of the challenged regulation ... [but] other cases ... consider whether the challenged action ...is arbitrary or an undue intrusion by the state....”) (citations omitted). The Officers’ argument fails nonetheless because Patel has sufficiently alleged that the Officers’ actions were directed at his family. For example, Patel alleges that the Officers engaged in a concerted “effort to create hostility and mistrust among [Patel’s] family members that would ultimately lead to false accusations against [Patel].” (Compl. ¶ 8.) The complaint also alleges that the defamatory memorandum that names Patel as a murder suspect was “prepared specifically with the understanding and intention that it would be published and distributed to various members of [Patel’s] family....” (Id. ¶ 10.) Patel has therefore stated a cognizable claim for violation of his constitutional right to intimate association with his family.

B. The Officers are not entitled to qualified immunity from Patel’s constitutional claim.

The Officers argue that they are entitled to qualified immunity from Patel’s claim of interference with his right to associate with his family because that right was not clearly established in this Circuit at the time of the alleged violation. “In order to determine whether a particular right was clearly established at the time a defendant acted, a court should consider: (1) whether the right in question was defined with ‘reasonable specificity’; (2) whether the decisional law of the Supreme Court and the applicable circuit court support the existence of the right in question; and (3) whether under preexisting law a reasonable defendant official would have understood that his or her acts were unlawful.” Frank v. Relin, 1 F.3d 1317, 1328 (2d Cir. 1993), *cert. denied*, 503 U.S. 962 (1992).

The right to intimate association has been defined with specificity at least since 1984, when the Supreme Court issued the Roberts decision. That decision not only establishes “a spectrum from the most intimate to the most attenuated of personal attachments,” and provides a set of factors for placing specific relations along the spectrum (i.e., size, purpose, policies, selectivity, and congeniality), but also unequivocally places family relationships at the polar extreme of the most intimate and therefore most protected relations. Roberts v. U.S. Jaycees, 468 U.S. at 622. Thus, with respect to Patel’s allegations concerning interference with his family relationships, the right at issue was clearly defined with reasonable specificity at the time of the Officer’s investigation.

The Officers alternatively argue that, even if the right was clearly established, it was objectively reasonable for them to believe that their actions did not violate Patel’s federal rights. Public officials, such as the Officers, seeking to establish qualified immunity must show that “reasonable persons in their position would not have understood that their conduct was within the scope of the established prohibition.” Williams v. Greifinger, 97 F.3d 699, 703 (2d Cir. 1996). The Officers simply can not, without the court considering matters outside the pleadings, demonstrate that a reasonable police officer would not have known that mailing fictitious confession letters to Patel’s father, circulating a defamatory memorandum naming Patel as a suspect to members of his family, and sending a defamatory and disparaging letter to Patel’s wife, would improperly interfere with Patel’s constitutional right to intimate association with his family.

C. Patel’s state law claims are not deficient on their face.

The Officers argue that Patel’s libel claim is barred by the two-year limitations period provided in Connecticut General Statutes section 52-597. They also argue that the alleged

statements in the memorandum naming Patel as a suspect in the homicides were non-defamatory and non-actionable because the statements either were true or were defendant Searles' opinions. Finally, the Officers argue that Patel's invasion of privacy claim is based solely on the alleged defamatory statements and therefore must fail for the same reasons that his libel claim fails.

In support of their arguments, the Officers rely on the Affidavit of Debra Swanson and the allegedly defamatory memorandum. In its January 6, 2000 Ruling on the Defendant's Motion to Stay Discovery the court excluded matters outside the pleadings from consideration of the Officers' present motion pursuant to Rule 12(c). The Officers' attack on Patel's state law claims thus fails because it is based solely on matters outside the pleadings.

III. CONCLUSION

For the foregoing reasons, the Officer's Motion for Judgment on the Pleadings (**doc. #15**) is denied.

It is so ordered.

Dated at Bridgeport this ____ day of November 2000.

Stefan R. Underhill
United States District Judge