

Eli Dalton-Webb
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Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCHISE

Eli Dalton-Webb, Plaintiff v. CITY OF SIERRA VISTA, a municipal corporation in Arizona, OFFICER E. SLUSSER, R. Hertman, OFFICER S. McHunting, M. Partidge, peace officers of the Sierra Vista Police Department, Defendants	Case No. CV202400628 Assigned to: Hon. David Thorn Civil Rights Violations; Article 2 § 5 of the Arizona Constitution, etc. <u>RE: Motion For Reconsideration ORDER</u>
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MOTION FOR RECONSIDERATION ————— **RULE 4.1(K) MOTION**

FOR ALTERNATIVE MEANS OF SERVICE²⁵. Plaintiff has repetitively asked this Court for Alternative Means of Service, pursuant to Rule 4.1(k), as secondarily requested relief (with the primary requested relief being that the Defendant Officers be deemed in default).²⁶ Plaintiff also understands that this Court, on the 7 February 2025 order dismissing this case dismissed this case, primarily focused on the timeliness issue, where the Court appears to be alleging that the Plaintiff commenced his action on 9 October 2024, and the Court ruled the entire civil action to be time-barred, making the Rule 4.1(k) motions moot.

—————²⁷. All Defendants — the City and the 4 officers — were all served with the

same papers on 24 October 2024, with the exception that the appropriate names were printed on the civil summons. All 5 Defendants have the same Defense Counsel, and as we see, the Defense Counsel is trying to represent them but not represent them in this action. The Defense Counsel is trying to represent them when it benefits the Defense, but not represent the Defendants when it doesn't benefit his clients. It is completely unimaginable that the Defendants are unaware of this lawsuit, and it is unimaginable that the Defendants don't have the document necessary to defend this action.²⁸ All Defendants have had the documents since 24 October 2024, and have had 113 days as of 14 February 2025 to prepare a defense. They should have absolutely the least amount of time to respond to this civil action. The defense is not prejudiced by a granted Rule 4.1(k) motion for alternative means of service. If anyone is prejudiced, it is the Plaintiff, not the defense.²⁹ Plaintiff asserts that this civil action is not time-barred, and that the Rule 4.1(k) motions are not moot. Plaintiff apologizes for being repetitive, but hereby adds to the record and advocates for the Plaintiff's position, and asks this Court to not forget about the underlying Rule 4.1(k) motions, and hereby requests this Court to reconsider its position on denying the Plaintiff's Rule 4.1(k) motions for alternative means of service.⁰³ The Plaintiff will file a separate Motion For Reconsideration, regarding the Defendant Officers being in default. The Rule 4.1(k) motion for alternative means of service remains secondarily requested relief, with the primarily requested relief being that the Defendant Officers be deemed in default. order from this Court mean that the Court agreed with the Defendant on the point that there is no stated claim for which relief may be provided,

Plaintiff hereby moves that this Court reconsider this position. Plaintiff asserts that there is a minimum of one claim on which relief could be granted, that there was at least one fact that was stated leading to a claim, and that the government does not have immunity from violating the Arizona Constitution.——4. Should the 7 February 20224. Additionally, monetary relief is not the only requested relief. Declaratory and injunctive relief was requested in both Initial Complaint and First Amended Complaint. Even if the Defendant City successfully argues that Plaintiff is not entitled to monetary relief for the constitutional violations, they must survive the other relief requested, including the injunctive and declaratory relief requested by Plaintiff.²³ The only way for a Rule 12(b)(6) to be granted is if the defendant municipal corporation and its peace officers were above the law and the constitution didn't apply to them. This would be in direct violation of Article 2 § 32, which states “The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise.”²² Either (1) the Initial Complaint must have been missing key facts that the proposed First Amended Complaint would have fixed, in which case this Court should have granted the Motion for Leave to Amend Complaint pursuant to Rule 15(a)(2); or (2) the Initial Complaint had sufficient facts and that the amendment was futile, in which case, the facts were sufficient and a Rule 12(b)(6) would be denied.²¹——A. In ¶ 7 and ¶ 18, that “the park” is a government-owned park.²⁰ Plaintiff asserts that there was at least one stated claim upon which relief could be granted contained in his Complaint. The police clearly violated Plaintiff's rights under Article 2 § 5 of the Arizona Constitution, and this

Court is required to “assume the truth of all well-pleaded factual allegations and indulge all reasonable inferences from those facts” (Coleman v. City of Mesa, 230 Ariz. 352).¹⁹ ALLEGED FAILURE TO STATE A CLAIM allowing the Plaintiff to applicably file a response to the Motion to Dismiss, and allowing the Plaintiff to applicably file a reply to the response, and giving it a hearing ismiss or response, Dotion to M, allowing the Defendant to file another mean that the Court agreed with the Defendant on the point that there is no private cause of action, Plaintiff hereby moves that this Court reconsider this position. Plaintiff asserts that there is a private cause of action, and that this issue was addressed in the proposed First Amended Complaint (which was incorrectly prohibited from being filed, and the Motion to Dismiss was incorrectly not deemed moot). This court should at least seriously consider the merits of both the Plaintiff and Defendant by granting the Motion for Leave to Amend Complaint⁷ February 2024 order from this Court. Should the 18 of this Motion for Reconsideration.¹³ Under the assumption that “First Amendment” was a colloquial term for “free speech rights” and liberally construed to include Article 2 § 5 claims, Plaintiff hereby reincorporates the above-stated from paragraph 17. Under the assumption that it was a way to partially dismiss the claims against the Defendant, Plaintiff asserts that the First Amendment was not the only asserted claim, there was, among other claims, an Article 2 § 5 Arizona Constitution claim.¹⁶ Plaintiff reasserts, as asserted in the proposed First Amended Complaint on Page 16, paragraph 74, that the First Amendment to the US Constitution is reincorporated by the Arizona Constitution in Article 2 Section 3 of

~~the Arizona Constitution... Under the assumption that it was a misdirection campaign, that “the Arizona Constitution does not authorize a private cause of action under the First Amendment”¹⁵. On 4 October 2024, the Plaintiff filed his Initial Complaint, which included a First Amendment to the US Constitution (“federal free speech” amendment) claim. On 22 December 2024, Plaintiff and Defendant filed a stipulated motion to strike the First Amendment Complaint, in order to keep this action out of federal court, which was granted. The strike order was filed on 3 December 2024, the same day the Defendant City filed the Motion to Dismiss. However, the Article 2 § 5 state constitution claim (among other things) remained in the complaint this whole time. Plaintiff is unsure if the Defendant City said “the Arizona Constitution does not authorize a private cause of action under the First Amendment” in the Motion to Dismiss was (1) a misdirection campaign, (2) a way to partially dismiss the claims against Defendant under the assumption that the strike wasn’t granted, or (3) if “First Amendment” was a colloquial term for “free speech rights” and to be liberally construed to include Article 2 § 5 of the Arizona Constitution.¹⁴ On Pages 8 through 16 from Amended Complaint, Plaintiff asserted the right of private action, citing *Diaz v. Arizona*, in which the federal court had acknowledged that the issue was “unresolved”, that the cases that Defendants cited were federal court decisions NOT state court decisions and have no binding authority over this court since the issues in this case are of state law; that the legislature regulates the “manner” and “in what courts”, but not “for what” or “why” a suit may be brought against the state; Article 2 Sections 1, 2, and 32 give the right to the Plaintiff to sue the Defendant in this action;~~

analogously citing Bell v. Hood, giving authority of the Plaintiff to sue a sovereign government for constitutional violations; Plaintiff asserted the Defendant City does not enjoy the sovereign protections that the state does; among other things.¹³

“Amended Complaint” shall refer to the proposed First Amended Complaint from the 13 December 2024 filing.¹³ As stated above, Plaintiff filed a “Motion for Leave to Amend Complaint” on 13 December 2024, which this Court incorrectly denied, which prejudiced the Plaintiff. The correct outcome in this case is to have granted the Motion for Leave to Amend Complaint, and deem the Motion to Dismiss moot, as the proposed First Amended Complaint would have addressed the issue of the alleged no private cause of action against the Defendant.² 1ALLEGED NO PRIVATE

CAUSE OF ACTIONthis Court order. Plaintiff reads ¹ dismissing this case heavily relies on the statute of limitations issue. It is unclear if this Court agrees with the Defendant City on some or all other issues with the Defendant City, not excluding (1) the alleged no private cause of action; and (2) failure to state a claim for which relief may be provided issues. It appears that this Court disregarded both Plaintiff’s and Defendant’s arguments as both moot, due to the alleged statute of limitations issue, but this is unclear. this order. It is appears that⁰ 1CLARIFYING OTHER ISSUES ⁷

February 2024 court order. Plaintiff hereby moves this Court to reconsider its position, as stated on the⁹. And from Defendant City’s Motion to Dismiss, filed 3 December 2024, on page 4 footnote 6, Defendant City stated “Plaintiff pointed to the date stamped by the Court on his Complaint was October 4, 2024.”⁸———. Plaintiff asserts that within the meaning of Rule 3 combined with the requirements of Article 2

~~Section 13 of the Arizona Constitution, Plaintiff commenced his action on 4 October 2024, and is within the statute of limitations of A.R.S. § 12-821.2. Article 2 Section 13 of the Arizona Constitution has been used several times in favor of indigent litigants. A person having \$268 to give the clerk of the court and having a “FILED” stamp immediately given and a person not having \$268 and having the “FILED” stamp given several days later when a judge agrees to the fee application, and using the “FILED” date for statute of limitations purposes would set two deadlines: a later deadline for plaintiffs with money, and an earlier deadline for plaintiffs without money. That would violate Article 2 Section 13 of the Arizona Constitution.¹ Rule 3 simply states: “A civil action is commenced by filing a complaint with the court.”. Plaintiff properly commenced his action by filing his complaint with the Court on 4 October 2024.⁰ Plaintiff did not have the \$268 filing fee at the time of filing on 4 October 2024, and the initial Complaint accompanied a fee deferral application, which the duty judge of the Superior Court approved.⁹ Plaintiff filed the initial Complaint on 4 October 2024 (see the lower left corner of the first page of the initial Complaint) with the clerk of this Court.⁸ As stated in Plaintiff’s “Motion for Leave to Amend Complaint”, Filed 13 December 2024 (and renumbered):⁷~~

~~—— **TIMELINESS OF THIS ACTION**⁶, under the reason of it being futile. Plaintiff hereby requests this Court to reconsider this position. Plaintiff properly commenced this action on 4 October 2024, which was within the statute of limitation, and that was addressed in the Motion for Leave to Amend the Initial Complaint, which this Court should have granted (pursuant to Rule 15(a)(2), which requires~~

~~“Leave to amend must be freely given when justice requires”) would render Defendant City’s Motion to Dismiss moot. Plaintiff hereby asserts this Court erred in denying the Motion for Leave to Amend Complaint, which caused the Motion to Dismiss to not be moot, and the Plaintiff to be severely prejudiced in this action., Plaintiff assumes. The judge denied this Motion for Leave to Amend the Initial Complaint⁵ which was within the statute of limitations. This is the correct interpretation, pursuant to Rule 3 of the Arizona Rules of Civil Procedure, the requirement of Article 2 Section 13 of the Arizona Constitution to give indigent litigants access to the courts, and is within the statute of limitations under A.R.S. § 12-821.,. On page 7 and 8 of the proposed first amended complaint from the “Motion for Leave to Amend Complaint” filed by Plaintiff on 13 December 2024, it addressed the statute of limitations issue. It explained to this Court that the Plaintiff filed the initial complaint with a fee deferral application, and that the Plaintiff filed his initial complaint on 4 October 2024⁴. On page 4 footnote 6 of the motion to dismiss, Defendant City stated “Plaintiff pointed to the date stamped by the Court on his Complaint was October 4, 2024.”³. Defendant City of Sierra Vista filed a motion to dismiss on 3 December 2024, stating one of the reasons that the civil action is time-barred by the one-year statute of limitations under A.R.S. § 12-821.2 — **DENIED** **LEAVE TO AMEND COMPLAINT**¹. This court filed an order on 7 February 2025, stating, among other things, “The case is DISMISSED with prejudice.” Plaintiff hereby moves this Court to reconsider this order.Plaintiff, having his fees deferred in this civil action, presenting his request to skip April 2025’s payment, and~~

financial hardship for this month, and for good cause showing:

_____ ~~B. In ¶ 13, that two peace officers detained Plaintiff and instructed him not to petition in a vaguely defined area of the park. (violating Article 2 § 5)~~

_____ ~~C. In ¶ 19, that the same two peace officers set a vague standard for Plaintiff's right to petition being violated, and refused to clarify the boundaries of Plaintiff's right to petition.~~

_____ ~~D. In ¶ 25 and ¶ 26, that not petitioning was the reason for detaining Plaintiff.~~

_____ ~~E. In ¶ 26 that Plaintiff was detained by Officer Hertman.~~

_____ ~~F. In ¶ 27 that Officer Slusser violated Plaintiff's Article 2 § 5 rights by threatening to arrest him if he continued to petition in vaguely defined areas of the park.~~

_____ ~~G. In ¶ 28 that Officer Slusser instructed Plaintiff not to petition anyone leaving the event, violating Plaintiff's freedom of assembly under Article 2 § 5 of the Arizona Constitution.~~

~~. From the Proposed First Amended Complaint, the following facts were alleged, among other facts and conclusions:~~

~~-as disregarding both Plaintiff's and Defendant's arguments regarding issues other than statute of limitations. Notwithstanding, in an abundance of caution, under the alternative assumption that the Court ruled against Plaintiff on the other issues, Plaintiff hereby (1) disagrees with this Court on the alleged no private cause of action issue; and (2) disagrees with this Court on the alleged failure to state a claim for which relief may be provided issue, and hereby moves this Court to reconsider these positions.~~

_____ ~~1~~
~~, that implied that this Court believed the commencing of this action was on 9 October 2024, and to reconsider the determination of the date of the commencing of~~

this action. Plaintiff asserts that the correct date of the commencing of this action is 4 October 2024.

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. Plaintiff hereby moves this Court to reconsider its position in denying the Plaintiff's "Motion for Leave to Amend Complaint" filed on 13 December 2024.

IT IS ORDERED, Plaintiff may skip April 2025's payment, notwithstanding the

deferred fee payment plan. ~~A Copy of this will be sent to:~~

~~DGraffious@JSHFIRM.COM~~

~~CTevis@JSHFIRM.COM~~

~~EWong@jshfirm.com~~

~~MMolinario@Jshfirm.com~~

~~lbegnoche@courts.az.gov~~

Signed: _____

This day, _____.