UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

GLENDA Q. MAHANEY,

Plaintiff,

-vs- Case No. 5:04-cv-9-Oc-10GRJ

SUMTER ELECTRIC COOPERATIVE, INC., a Florida rural electric cooperative,

Defendant.

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**ORDER**

This case is before the Court for consideration of the Defendant's motion to dismiss (Doc. 4). The *pro se* Plaintiff has responded to the Defendant's motion and seeks leave to amend the complaint if the Defendant's motion is granted (Doc. 5).

**Background**

The facts, as set forth in the Plaintiff's complaint (Doc. 1), are as follows. The Defendant is a rural electric cooperative, which is a nonprofit, membership corporation organized under § 425.01 *et seq.*, Fla. Stat., "for the purpose of supplying electric energy and promoting and extending the use thereof in rural areas." The Plaintiff, a citizen of Lake County, Florida, is a user of electric energy furnished by the Defendant and, therefore, is a "member" of the cooperative (Doc. 1, paragraph 4).

This action arises from the Plaintiff's dissatisfaction with the service provided by the Defendant for one or more of the Plaintiff's real properties and structures located on those

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properties.[1] In an effort to discern any possible claims against the Defendant, the Plaintiff's allegations are separated into three time periods: pre-January 9, 2000, January 9, 2000, and post-January 9, 2000. The date, January 9, 2000, is significant for two reasons: it is the date of a fire on several of the Plaintiff's properties and the Plaintiff's complaint was filed on January 8, 2004, almost four years after the date of the fire.

The Plaintiff's pre-January 9, 2000 allegations include the following: (1) in the 1970s the Defendant refused to provide service to a commercial building located on one of the Plaintiff's properties; (2) in or about 1980, at the request of the Plaintiff, the Defendant relocated a utility pole located on the Plaintiff's property, but charged the Plaintiff for the relocation of the pole despite the Plaintiff's belief that the pole did not belong to the Defendant; (3) in or about 1992 the Defendant and Lake County violated the Plaintiff's Fourteenth Amendment equal protection rights when the Defendant ran a power line across the Plaintiff's property, without a County permit, in order to provide electrical service to a neighboring commercial property; (4) in 1996 the Defendant and Lake County violated the Plaintiff's Thirteenth Amendment and Fourteenth Amendment rights when they required the Plaintiff to move or adjust a service mast and meter boxes that were attached to

[1] The Plaintiff refers to her real properties as Property A, Property B, etc., and structures located on those corresponding properties as Structure A, Structure B, etc.

Structure A;[2] and, (5) in an alleged effort to harass, or retaliate against, the Plaintiff, the Defendant refused to trim trees obstructing its power lines.

On January 9, 2000 a fire, which began in Structure A, caused extensive damage to the Plaintiff's properties and structures. The Plaintiff alleges that the fire could have been prevented, or at least that the damage would have been less extensive, if the Defendant had trimmed the trees at the Plaintiff's request, maintained its equipment, and arrived timely at the scene of the fire to disconnect the electrical power flowing to the properties. The Plaintiff alleges that these failures of the Defendant deprived her of her constitutionally protected life, liberty, and property interests.

The Plaintiff alleges that sometime after January 9, 2000 the Defendant entered her property, without her consent, for the purpose of servicing, removing, and replacing equipment damaged by the fire. Lake County Sheriff's deputies arrived at the Plaintiff's property and the Plaintiff informed them that the Defendant's employees were trespassing. The Plaintiff alleges that the deputies stated, in the presence of the Defendant's employees, that the Defendant could "go anywhere on her property they chose" and that they would "see to it" that the Defendant's employees were allowed to do so. The Plaintiff further alleges that the deputies ordered the Plaintiff to "go into her house or be subjected

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[2] The Plaintiff asserts that the Defendant threatened to terminate her electrical service and that the County threatened condemnation if the adjustments were not made. The Plaintiff specifically alleges that by making the adjustments she was forced to "involuntarily serve the will of Sumter and/or the County, in violation of her 13th Amendment rights." (Doc. 1, paragraph 68). The Court notes that there is no reading of the Thirteenth Amendment which would support such a claim against the Defendant.

to arrest." The Plaintiff contends that the Defendant then "seized all poles and equipment allegedly belonging to Sumter," and "unnecessarily removed a transformer, lines and poles, serving Plaintiff's jointly owned Property E." In addition, the Plaintiff states that poles and equipment added on Property E "interfere with ingress and egress to certain areas of Plaintiff's property, which causes inconvenience to Plaintiff and could conceivably cause injury to Plaintiff."[3]

The Plaintiff's post-January 9, 2000 allegations are as follows: (1) "the actions of Sumter's employees, under color of law, constitute an illegal search and/or seizure of Plaintiff's property and/or items under the control of the Plaintiff;" (2) the "trespass constituted an illegal seizure of evidence and/or property that Plaintiff was in possession of, without due process of law, thereby violating Plaintiff's rights under the 4th Amendment;" (3) the Defendant violated the Plaintiff's right to liberty under the Fourteenth Amendment because the Lake County Sheriff's deputies ordered her "to go into her house or be subjected to arrest;" and (4) the Defendant continues to violate the Plaintiff's Fourteenth Amendment right to equal protection by providing "illegal" electrical service to her neighbor.

The Plaintiff seeks redress for these alleged constitutional deprivations under 42 U.S.C. § 1983, 18 U.S.C. § 241, and 18 U.S.C. § 245. The Defendant moves to dismiss all of the Plaintiff's claims.

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[3] It is unclear whether the Plaintiff seeks to assert a Fifth Amendment claim based on these allegations or whether she included them to "show a pattern of reckless and callous acts." In any event, the Court will address this grievance as a Fifth Amendment claim *infra*.

**Motion to Dismiss Standard**

In passing on a motion to dismiss under Rule 12(b)(6), the Court is mindful that "[d]ismissal of a claim on the basis of barebones pleadings is a precarious disposition with a high mortality rate."[4] Thus, if a complaint "shows that the Plaintiff is entitled to any relief that the Court can grant, regardless of whether it asks for the proper relief," it is sufficiently pled.[5] As the Supreme Court declared in Conley v. Gibson, a complaint should not be dismissed for failure to state a claim unless it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief."[6] The Federal Rules of Civil Procedure "do not require a claimant to set out in detail the facts upon which he bases his claim."[7] Instead, all that is required is that the claimant set forth a "short and plain statement of the claim" sufficient to give the defendant "fair notice of what the plaintiff's claim is and the grounds upon which it rests."[8] However, "while notice pleading may not require that the pleader allege a 'specific fact' to cover each element of a claim,

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[4] Int'l Erectors, Inc. v. Wilhoit Steel Erectors Rental Serv. 400 F.2d 465, 471 (5th Cir. 1968).

[5] Dotschay v. Nat. Mut. Ins. Co., 246 F.2d 221 (5th Cir. 1957).

[6] Conley v. Gibson, 355 U.S. 41, 45-46 (1957). See also Cook & Nichol, Inc. v. The Plimsoll Club, 451 F.2d 505 (5th Cir. 1971).

[7] Conley, 355 U.S. at 47.

[8] Id.

it is still necessary that a complaint contain either direct or inferential allegations respecting all the material elements necessary to sustain a recovery under some viable legal theory."[9]

**Discussion**

As a preliminary matter, the Court notes that neither 18 U.S.C. § 241 nor 18 U.S.C. § 245 create a private civil action for civil rights violations; the Plaintiff's reliance on these provisions of the United States Code is, therefore, without merit.

A. Section 1983

In order to state a claim for relief under 42 U.S.C. § 1983 the Plaintiff must establish that she was "deprived of a right secured by the Constitution or laws of the United States, and that the alleged deprivation was committed under color of state law."[10] The "under-color-of-state-law element of § 1983 excludes from its reach merely private conduct, no matter how discriminatory or wrongful."[11]

The Supreme Court has recognized that the acts of a private utility company do not amount to state action for purposes of the "under color of state law" analysis merely because the business is subject to state regulation, is the sole provider of services to a

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[9] Roe v. Aware Woman Center for Choice, Inc., 253 F.3d 678, 683 (11th Cir. 2001) (quotations omitted).

[10] Focus on the Family v. Pinellas Suncoast Transit Authority, 344 F.3d 1263, 1276-1277 (11th Cir. 2003).

[11] Id.

particular area, or because it provides an essential public service.[12] Thus, in order for the Plaintiff to show that the alleged deprivations committed by the Defendant were done while it was acting under the color of state law, she must establish that "there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself."[13] The Eleventh Circuit has further explained that "private conduct is fairly attributable to [state action] only when the state has had some affirmative role, albeit one of encouragement short of compulsion, in the particular conduct underlying a claimant's civil rights grievance."[14]

In this action, the Plaintiff cannot show that the Defendant enjoyed the required symbiotic relationship with a government body with respect to the following civil rights grievances: (1) the pre-January 9, 2000 claims, (2) the January 9, 2000 claims, and (3) the post-January 9, 2000 claim that the Defendant deprived, or is depriving, the Plaintiff of her Fourteenth Amendment right to equal protection by providing service to her neighbor. The complaint reveals that the wrongful conduct allegedly committed by the Defendant with

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[12] Jackson v. Metropolitan Edison Company, 419 U.S. 345 (1974). See, e.g., Cobb v. Georgia Power Company, 757 F.2d 1248, 1251 (11th Cir. 1985). The Court notes that the Section 1983 "under color of law" requirement is considered *in pari materia* with the Fourteenth Amendment's state action requirement. Focus on the Family, 344 F.3d at 1276 n.4.

[13] Jackson, 419 U.S. at 453.

[14] Rayburn v. Hogue, 241 F.3d 1341, 1348-1349 (11th Cir. 2001) (quoting NBC, Inc., v. Communications Workers of America, 860 F.2d 1022, 1025 (11th Cir. 1998)).

regard to these claims was done without the direct, or even indirect, aid or assistance of a governmental body. These claims are therefore due to be dismissed with prejudice.[15]

The Plaintiff's post-January 9, 2000 allegation that she was deprived of her right to liberty because the Lake County Sheriff's deputies ordered her "to go into her house or be subject to arrest" is also due to be dismissed with prejudice; there is no legal basis to impute liability to the Defendant for the acts of the Lake County Sheriff's deputies.

With respect to the Plaintiff's remaining allegations – namely, the Defendant's removal of poles and equipment and the Defendant's placement of equipment – the Court cannot say at this stage in the proceedings that a symbiotic relationship between the Defendant and Lake County did not exist. The presence of, and the purported threats by, the Sheriff's deputies may have enabled the Defendant to carry out its work on the Plaintiff's property. However, because the Court concludes that the Plaintiff cannot state a constitutional claim with regard to any of the activities carried out on the Defendant's property after January 9, 2000, the Defendant's motion to dismiss is due to be granted.

First, the Plaintiff's claims alleged under the Fourth, Fifth, and Fourteenth Amendments, for the Defendant's "seizure" of utility poles and electrical equipment, fail as

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[15] The Court also notes that the Plaintiff's claims for civil rights grievances committed on or before January 7, 2004 are time-barred. City of Hialeah v. Rojas, 311 F.3d 1096, 1103 n.2 (11th Cir. 2002) (noting that Section 1983 claims are governed by Florida's residual personal injury statute of limitations, which is four years).

a matter of law because the Plaintiff cannot state a property interest in those items.[16] There is no legal basis to support the Plaintiff's assertions that she has a protected property interest in the location of the utility poles because she had previously paid the Defendant to move one of them or that she has a property interest in the electrical equipment because it may serve as evidence to the fire. Accordingly, these claims are due to be dismissed with prejudice.

Second, the Plaintiff's claim alleged under the Fourth Amendment, that the Defendant's presence on her property constitutes an "illegal search," fails as a matter of law because the Plaintiff could not have had any reasonable expectation of privacy with regard to the Defendant's employees entering her property to maintain, service, or remove electrical poles or equipment that were damaged during a fire on her property.[17] Indeed, a review of the complaint reveals that the Defendant had provided the Plaintiff with electrical service for several years, that the Defendant had maintained electrical equipment

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[16] Soldal v. Cook County, 506 U.S. 56 (1992) (stating that a seizure of property "occurs [under the Fourth Amendment] when there is some meaningful interference with an individual's possessory interests in that property"). Ward v. Downtown Development Authority, 786 F.2d 1526, 1528 (11th Cir. 1986) (recognizing that in order to stat a Fifth Amendment claim the plaintiff must enjoy a protected property interest in the property taken). Cypress Insurance Company v. Clark, 114 F.2d 1435, 1436 (11th Cir. 1998) (recognizing that in order to state a due process claim under the Fourteenth Amendment the plaintiff must show a deprivation of a protected property interest).

[17] Soldal, 506 U.S. at 63 (stating that "a search occurs when an expectation of privacy that society is prepared to consider reasonable is infringed"). See, e.g., Perez v. Autoridad, 741 F. Supp. 23, 26-27 (D. Puerto Rico 1990) (stating that the Plaintiff could not have had a reasonable expectation of privacy with regard to her electrical company conducting a routine check of equipment on her property).

on the Plaintiff's property for several years, and that the Plaintiff was aware that the electrical equipment was damaged and in need of repair. Accordingly, this Fourth Amendment claim is also due to be dismissed with prejudice.

Third, to the extent that the Plaintiff attempts to allege a claim under the Fifth Amendment with respect to the placement of poles and equipment on her jointly owned Property E, the Court concludes that such a claim is due to be dismissed without prejudice because the Plaintiff has not plead facts sufficient to show a taking of property without just compensation. Specifically, the Plaintiff does not allege that she has sought compensation through the state judicial process for the damages allegedly caused by the Defendant's placement of the poles and equipment on her property.[18]

B. State Claims

Because the Plaintiff's Section 1983 claims are due to be dismissed, the Court declines to exercise supplemental jurisdiction under 28 U.S.C. § 1367 over the Plaintiff's State law claims. Accordingly, the Plaintiff's State law claims are due to be dismissed.[19]

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[18] Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City, 473 U.S. 172, 195 (1985) (stating that "if a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Just Compensation Clause until it has used the procedure and been denied just compensation); Anthony v. Franklin County, 799 F.2d 681, 684 (11th Cir. 1986) (stating that until state procedures are utilized to seek compensation for a deprivation of, or impairment to, property, a Fifth Amendment claim is premature).

[19] The Plaintiff attempts to assert claims for tortious interference with her business, intentional infliction of emotional distress, negligence, and trespass.

C. Motion to Amend

Because all but one of the Plaintiff's alleged civil rights grievances are due to be dismissed with prejudice, and because the Plaintiff must first pursue state court remedies with respect to her possible Fifth Amendment claim, leave to amend the complaint would be futile at this time. Accordingly, the Plaintiff's motion to amend is due to be denied.

**Conclusion**

Upon due consideration, and for the foregoing reasons, it is ordered that:

(1) the Defendant's motion to dismiss (Doc. 4) is GRANTED, and the Plaintiff's claims against the Defendant are DISMISSED as set forth in this Order;

(2) the Plaintiff's motion for leave to amend (Doc. 5) is DENIED; and,

(3) the Clerk is directed to enter judgment accordingly and close the file.

IT IS SO ORDERED.

DONE and ORDERED at Ocala, Florida this 10th day of May, 2004.

UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record
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FILE COPY

Date Printed: 05/10/2004

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