UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

EDWARD A. CANIGLIA, Plaintiff	:	
v.	:	C.A. No. 15-525
ROBERT F. STROM as the Finance Director of THE CITY OF CRANSTON, et al. Defendants	:	

PLAINTIFF'S MEMORANDUM IN SUPPORT
OF HIS MOTION TO AMEND THE COMPLAINT

Pursuant to F.R.Civ.P. 15(a)(2), (b) and (c), Plaintiff Edward Caniglia hereby moves to amend the complaint to clarify that his claims for violation of his rights under the Fourth Amendment and Art. 1, Sec. 6 of the Rhode Island Constitution, (Count III), include that Defendants required him to submit to a psychological evaluation without a court order. Plaintiff seeks to amend his Prayer for Relief, as well. Specifically, Plaintiff seeks to add a single clause to Paragraph 78 of his Amended Complaint and to make corresponding changes to the Prayer for Relief.

FACTUAL ASSERTIONS AND PROCEDURAL HISTORY[1]

In 2015, Defendants came to Plaintiff Edward Caniglia's ("Ed") house in response to a telephone call by Plaintiff's wife, Kim Caniglia ("Kim"). (SUF # 58-63). Kim was concerned because Ed and she had had an argument the prior evening involving an unloaded handgun, Kim had left the house, Ed did not answer her phone call, and she feared he may have committed suicide. (Id.). When four Cranston Police Department ("CPD") officers responded, she said she wanted an officer to accompany her to the house to check on Ed. (SUF # 64-68). Instead,

[1] Plaintiff cites to his Statement of Undisputed Facts filed on December 19, 2018, e.g. (SUF # __). (ECF Doc. # 44).

Defendants told Kim to accompany them to the house and to wait in her car while they talked to Ed. (Id.). Ed explained to them that he was not suicidal. (SUF # 69-82). Nonetheless, Defendants determined that they would send Ed to the Kent Hospital emergency room for a psychological evaluation. (SUF # 83-85). Ed agreed only because the CPD officers said they would seize his firearms unless he agreed. (Id.). Despite Ed's agreement, the CPD officers still seized his firearms. (SUF # 86-87, 113).

Mr. Caniglia filed suit in December 2015. The original complaint alleged that: "Upon arrival at Plaintiff's home, the police officers informed Plaintiff that in these circumstances Plaintiff's firearms would be confiscated without a warrant if Plaintiff refused to submit to a mental health evaluation at the hospital." (Complaint, ¶ 14).[2] In April 2017, Plaintiff amended his complaint to allege that Defendants had violated his rights under the Fourth Amendment and Art. 1, Sec. 6 of the Rhode Island Constitution by seizing his firearms, (Count III), and that Defendants had violated his rights under the Rhode Island Mental Health Law by requiring him to submit to a psychological evaluation without a court order. (Count VI). That complaint, however, inadvertently failed to allege that Defendants also violated the Fourth Amendment by requiring the psychological evaluation.

Nonetheless, it is clear that taking a person into custody because of concerns that the person's mental health creates a likelihood of serious harm is a seizure protected by the Fourth Amendment. Ahern v. O'Donnell, 109 F.3d 809, 817 (1st Cir. 1997) (per curiam); see also, Cantrell v. City of Murphy, 666 F.3d 911, 923 & n. 8 (5th Cir. 2012); Roberts v. Speilman, 643 F.3d 899, 905 (11th Cir. 2011); Bailey v. Kennedy, 349 F.3d 731, 739 (4th Cir. 2003); Mondavy

[2] The Court stayed the case from January 2016 to April 2017 pending a decision on plaintiff's motion for partial summary judgment in Richer v. Parmelee, C.A. 15-162, and settlement discussions.

v. Ouellette, 118 f.3d 1099, 1102 (6th Cir. 1997); Pino v. Higgs, 75 F.3d 1461, 1467-68 (10th Cir. 1996); Sherman v. Four City Counselling Center, 987 F.2d 397, 401 (7th Cir. 1993); Glass v. Mayas, 984 F.2d 55, 58 (2nd Cir. 1993); Maag v. Wessler, 960 F.2d 773, 775-76 (9th Cir. 1991) (per curiam). In Ahern, the First Circuit addressed the circumstances upon which a police officer could seize a person and cause him to be admitted involuntarily to a mental hospital. The court said that "[i]t is well-settled that the Fourth Amendment's protections against unreasonable searches and seizures apply to the involuntary hospitalization of persons for psychiatric reasons." 109 F.3d at 815. Further, when a police officer, not an independent expert, makes the decision to seize the person for psychiatric reasons he must have probable cause. Id. at 817.

In 2017 and 2018, the parties conducted extensive discovery on whether Defendants required Ed to submit to a psychological evaluation and their authority to do so, among other issues. The CPD produced its General Order respecting "Public Mental Health" (Exhibit 1), as well as other orders, and training materials on mental health. (See, SUF # 34, Exhibits I, J, K). Defendants responded to interrogatories, including the basis of their decision to require Plaintiff to submit to a mental health examination at Kent Hospital. (See, e.g., Defendant Mastrati's Answer to Interrogatory No. 21, attached as Exhibit 2). Defendants' counsel questioned Ed about the psychological evaluation, including whether Defendants required it, (see excerpts of Plaintiff's deposition, attached as Exhibit 3, pp. 40-45, 83-86), and what occurred during the evaluation. (Id. pp. 45-57). Defendants' counsel questioned Kim about the psychological evaluation (and have cited her testimony in Defendants' motion for summary judgment). (ECF Doc. 45-1, e.g., pp. 2-5, 33).

Plaintiff's counsel questioned Defendants and other witnesses about whether they required Plaintiff to have a psychological evaluation and their factual and legal basis, if any, for

requiring such an evaluation. Col. Winquist, the chief of the CPD, testified that when he was in the Rhode Island State Police, he was told that "if someone was in imminent danger of harming themselves or someone else, then we could take them either voluntarily or involuntarily to the local emergency room at a hospital for the purpose of a mental health evaluation." (Winquist depo., pp. 18-19, Exhibit 4).[3] Plaintiff served the report of his expert psychologist, Dr. Lanny Berman, who has opined to a reasonable degree of scientific certainty, *inter alia*, that Mr. Caniglia was not at imminent or acute risk of suicide at the time of the required psychological evaluation and that Defendants did not use appropriate criteria in determining that they would send Mr. Caniglia for a psychological evaluation as they had been trained to do. (Exhibit 7). Accordingly, Mr. Caniglia has an viable claim under the Fourth Amendment and the corresponding provisions of Art. 1, Sec. 6 of the Rhode Island Constitution that his rights against an unreasonable seizure were violated when Defendants required him to submit to a psychological evaluation.

Mr. Caniglia has filed a Motion for Partial Summary Judgment in which he argues, *inter alia*, that Defendants violated his rights under the Fourth Amendment and Art. 1, Sec. 6 of the Rhode Island Constitution by seizing his firearms and requiring him to have a psychological evaluation. (ECF Doc. #43). Defendants have moved for summary judgment on the Fourth Amendment claim arguing that it is barred either by the applicable statute of limitations or the community caretaking function, which function is one of the same grounds on which

[3] Plaintiff also attaches relevant excerpts of the depositions of Capt. Russell Henry, who made the decision to seize Mr. Caniglia's firearms, and Sgt. Brendan Barth who was the senior officer at the Caniglia house, as Exhibits 5 and 6, respectively. Plaintiff deposed all the individual defendants on these issues but attaches only these three excerpts as examples. Plaintiff can provide excerpts from all the individual Defendants' depositions, if necessary.

Defendants' justify the psychological evaluation. Defendant have also moved for summary judgment on the claim that alleges violation of the Mental Health Law. (ECF Doc. #45).

ARGUMENT

Under Rule 15(a)(2), a party may amend its pleadings with the court's leave and "[t]he court should freely give leave when justice so requires." F.R.Civ.P. 15(a)(2). In the First Circuit, the district court may grant a motion to amend when discovery has closed and the opposing party has moved for summary judgment where plaintiff has demonstrated that the "proposed amendments were supported by substantial and convincing evidence." Blumer v. Acu-Gen Biolabs, Inc., 638 F.Supp.2d 81, 85 (D.Mass. 2009), quoting Adorno v Crowley Towing and Transportation Co., 443 F.3d 122, 126 (1st Cir. 2006) (granting motion to amend); Arrow Intern. Inc. v. Spire Biomedical, Inc., 635 F.Supp.2d 46, 61 (D.Mass. 2009) (granting motion to amend where the proposed counterclaim "has significant evidentiary support to warrant a finding on the merits, and in the interests of justice and the absence of any significant prejudice to [the opposing party]").

Here, Plaintiff has submitted a substantial Statement of Undisputed Facts setting forth the factual basis upon which he alleges Defendants violated his rights by requiring him to submit to a psychological evaluation. (ECF Doc. #44, ¶¶ 2-7, 9-10, 12-14, 17-19, 20, 25, 28-38, 50-51, 58-85, 93, 96-99, 101-07, 113-14). Further, Plaintiff has filed a Motion for Partial Summary Judgment arguing the legal basis for a claim that Defendants violated his rights under the Fourth Amendment and Art. 1, Sec. 6 of the Rhode Island Constitution. (ECF Doc. #43, pp. 9-27). Plaintiff argues that the community caretaking function does not justify these actions. (Id. pp. 33-44). Accordingly, Plaintiff has shown substantial and convincing evidence and a legal basis for the amendment.

Moreover, under Rule 15(b), the Court can authorize amendments to the pleadings to conform to the evidence: "When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move—at any time, even after judgment—to amend the pleadings to conform them to the evidence and to raise an unpleaded issue." F.R.Civ.P. 15(b)(2). The only issue is whether the opposing party will be prejudiced by the amendment. Commonwealth Land Title Ins. Co. v. IDC Properties, Inc., 524 F.Supp.2d 155, 166 (D.R.I. 2007) (Torres, J.) ("Commonwealth"), quoting Brandon v. Holt, 469 U.S. 464, 471 n. 19 (1985); Foskey v. United States, 490 F.Supp. 1042, 1059 (D.R.I. 1980) (Pettine, J.) (applying Rule 15(b) and rejecting defendant's argument that the issues as tried did not conform to plaintiff's administrative claim); Murray v. Blatchford, 307 F.Supp. 1038, 1043 n. 7 (D.R.I. 1969) (Pettine, J.) (granting plaintiff's post-trial motion to amend the pleadings to conform to the evidence).[4]

In Commonwealth, a title insurer brought a declaratory judgment action respecting coverage for loss of development rights. The developer counterclaimed seeking a declaration that the policy did provide coverage and seeking damages. At the close of the evidence at trial, the developer argued that even if the court held in the title insurer's favor, its relief should be limited to the relief specifically request in the prayer for relief in its complaint, not the relief requested at trial. The title insurer responded by moving to amend its complaint pursuant to Rule 15(b). Judge Torres said:

> Prejudice in this context refers to whether the opposing party '"had a fair opportunity to defend and whether he would offer any additional evidence if the case were retried on a different theory.'" [citations omitted]. Conversely, "courts have refused to grant such motions if amendment would prejudice one of the

[4] See also, Sherwin-Williams Co. v. JB Collision Services, Inc., 186 F.Supp.3d 1087, 1097-98 (S.D.Cal. 2016) (granting motion under Rule 15(b)(2); Norfolk Southern Ry. Co. v. Pittsburgh & West Virginia RR., 153 F.Supp.3d 778, 810 (W.D.Penn. 2015) (same).

> parties by requiring the presentation of additional evidence." [citation omitted]. A "claim of surprise that is not borne out by the fact or an objection to a mere technical addition to the theory of the claim for relief" is not sufficient to avert a motion to amend. [citation omitted].

524 F.Supp.2d at 165-66. Judge Torres said the developer was on notice that the full scope of coverage was at issue based on the factual allegations of the complaint. The developer had "ample opportunity to present evidence on the issue." He concluded:

> [T]his is not a case in which, at trial, [the developer], unexpectedly was confronted with a claim entirely different from the claims raised by the pleadings and was deprived of a fair opportunity to challenge the evidence presented in support of that claim. [The insurer's] complaint specifically alleged that the policy was void and [the developer] had ever opportunity to present evidence to the contrary.

Id. at 166. Judge Torres granted the motion to amend. Id.

The Court can also imply consent. "Implied consent exist where a party has actual knowledge of an unpleaded issue and has been given an adequate opportunity to cure any surprise resulting from a change in the pleadings." American Family Mut. Ins. Co. v. Hollander, 705 F.3d 334, 348 (8th Cir. 2013) (granting motion to amend under Rule 15(b)(2)).

Here, Plaintiff alleged in his complaint that Defendants compelled him to submit to a psychological evaluation. He specifically alleged that Defendants' action violated the Rhode Island Mental Health Law. He asserted a claim under the Fourth Amendment for seizure of his firearms but did not specifically allege that the psychological evaluation violated the Fourth Amendment. The parties conducted extensive discovery on whether Defendants compelled Plaintiff to have a psychological evaluation and the factual and legal grounds for doing so. Col. Winquist, the chief of the CPD, specifically cited the community caretaking function as the legal grounds both for the seizure of the firearms and for the psychological evaluation. Plaintiff has served the expert report of Dr. Berman. Thus, the relevant facts have been discovered.

Plaintiff has filed a Statement of Undisputed Facts that sets forth the factual bases of his claim that Defendants violated his rights under the Fourth Amendment, under Art. 1, Sec. 6 of the Rhode Island Constitution, and under the Mental Health Law by requiring him to have a psychological evaluation. Defendants have moved for summary judgment arguing that Defendant has no claim under the Mental Health Law. Defendants have also argued that Plaintiff's claim that they violated the Fourth Amendment and Art. 1, Sec. 6 by seizing his firearms is barred by the statute of limitations and the community caretaking function. If necessary, Plaintiff will obviously stipulate that Defendants can supplement their motion to address the new claim in Count III. Accordingly, Defendants are not prejudiced.

CONCLUSION

The Court should grant Plaintiff's motion to amend the complaint as set forth in the proposed complaint attached to the Motion.

EDWARD CANIGLIA
By his attorneys,

/s/ Thomas W. Lyons
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CERTIFICATION

I hereby certify that on January 29, 2019, a copy of the foregoing was filed and served electronically on all registered CM/ECF users through the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF system.

/s/ Thomas W. Lyons