

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)

JANE DOE,)	
)	
Plaintiff,)	
)	
v.)	
)	Civil Action No. 1:19-cv-00917
FAIRFAX COUNTY SCHOOL BOARD, <i>et</i>)	
<i>al.</i>)	
)	
Defendants.)	
)	

"INDIVIDUAL SCHOOL DEFENDANTS'" OBJECTION TO MOTION TO SEAL

Defendants Sybil Terry, August Frattali, Philip A. Hudson, Tamara B. Ballou, Brenda Humphrey, Monique Patwary-Faruque, Megan Carr, Francis Tarrant, and Joanne Fraundorfer (collectively, the "Individual School Defendants"), by their counsel and pursuant to Local Civil Rule 5(C), object to the second Motion to Seal (ECF 78-1) filed in support of the belated request to proceed under a pseudonym.

Introduction

It is now 8 months since an anonymous complaint was filed to initiate this action. Since then, all of the defendants have moved to dismiss based on the anonymous pleader's failure to obtain leave of Court to proceed pseudonymously. In reaction to those motions, the unnamed litigant filed a belated request to proceed under a pseudonym, together with an amended complaint for which leave was required but was not requested. In support of the belated motion to proceed pseudonymously, the anonymous plaintiff's lawyer filed an Affidavit purporting to provide plaintiff's "true identity", as well as an Affidavit of someone purporting to be a parent of the anonymous plaintiff. (ECF 38-4) Plaintiff's counsel has now filed another Affidavit in

support of the belated request to proceed under a pseudonym, and requests to seal documents attached to that Affidavit. To date, however, no one has directly identified herself as the plaintiff in this case and no one has come forward to ratify the allegations or arguments supposedly made on her behalf.

The Court need not decide this latest motion to seal if it grants the various defendants' motions to dismiss. If the Court reaches the requests to seal and to proceed under a pseudonym, however, the Motion to Seal should be denied.

I. The Individual School Defendants restate and incorporate their objections to the first Motion to Seal.

Counsel for Plaintiff previously filed a Motion to Seal (ECF 39), to which the Individual School Defendants have objected (ECF 50). The Individual School Defendants restate here their previous objections. The second Motion to Seal, apparently filed in support of further briefing on a request for Plaintiff to proceed pseudonymously, cannot overcome the initial failure to invoke this Court's jurisdiction either by naming the plaintiff as required by Rule 10(a) or by asking permission to proceed under a pseudonym. The second Motion to Seal, purporting to provide information identifying the anonymous plaintiff, is too late to revive time-barred claims.

II. The documents requested to be sealed do not overcome either the public's right of access or the substantial unfairness to the Individual School Defendants.

The Motion to Seal asserts that the "Affidavit of Thomas Sweeney and its accompanying Exhibits sets forth the identity of Plaintiff to ensure that her proceeding under a pseudonym poses no risk of unfairness to opposing parties." (ECF 78-1 at 3.) The third-party identification of the purported plaintiff does nothing to reduce, much less to overcome, the unfairness to the Individual School Defendants.

The plaintiff cannot allege in good faith that any of the Individual School Defendants had any knowledge of the alleged rapes and sexual assaults on which the claims are based. While asserting in the Motion to Seal that "[t]his case involves rapes and Defendants' humiliating mistreatment of Plaintiff in the aftermath" (ECF 78-1 at 3), there is no allegation, either in the complaint or in the unauthorized amended complaint, that any of the Individual School Defendants were aware that the unnamed plaintiff had been raped until after she was no longer attending Rachel Carson Middle School.¹ Yet the claims depend upon an implication of such knowledge because there would be no conceivable claim against the Individual School Defendants if they did not know that a student was being raped and did nothing to help.

The Individual School Defendants have been identified by name and they must defend their good names and reputations against the slanderous implications made against them. The Individual School Defendants state again that they do not know of any individual who could allege, while complying with the requirements of Rule 11 of the Federal Rules of Civil Procedure, that they had anything to do with, or any knowledge of, any alleged sexual assault. The plaintiff's own credibility is thus at issue in this case. But in the 8 months since this case was initiated, the plaintiff has not identified herself directly or ratified the allegations or endorsed the arguments purportedly made on her behalf. In the absence of the actual plaintiff directly identifying herself, even under seal, the purported identification by third parties rather raises

¹ Alone among the Individual School Defendants, only Principal Frattali is alleged to have been informed of any alleged rape at all, and that information was provided by a police detective after the student's parents had removed her from school. (ECF 1 at ¶ 181, ECF 37 at ¶ 244.) Similarly, although the anonymous plaintiff alleges that "FCPS punished Jane Doe for reporting the harassment and rape to Fairfax police" (ECF 1 at ¶ 185, ECF 37 at 248), there is no allegation that any of the Individual School Defendants somehow "punished" Jane Doe for making a police report. Significantly, the pleadings are also silent as to the result of the police investigation.

more questions about the identity of the actual pleader and the unsubstantiated and improbable facts alleged in this case, and the anonymous pleader's intention in making them.

The subjective importance of anonymity to an individual litigant is not a matter of jurisdictional import. The Individual School Defendants object to the second Motion to Seal as an attempt to buttress the belated request to proceed pseudonymously in the guise of addressing the policy considerations that the Court requested.

CONCLUSION

The Court should dismiss the anonymous Complaint for lack of jurisdiction, strike the unauthorized Amended Complaint, and deny the belated Motions to Seal as moot.

Respectfully submitted,

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A. HUDSON, TAMARA B. BALLOU, BRENDA
HUMPHREY, MONIQUE PATWARY-
FARUQUE, MEGAN CARR, FRANCIS
TARRANT, and JOANNE FRAUNDORFER

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