

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN A. WOLF, and STEPHEN	:	CIVIL ACTION
WOLF, a minor	:	
	:	
v.	:	
	:	
THE SCHOOL DISTRICT OF	:	
PHILADELPHIA, et. al	:	NO. 01-1183

MEMORANDUM AND FINAL JUDGMENT

HUTTON, J.

June 19, 2002

Presently before this Court is Defendant School District of Philadelphia and Defendant Wendy Shapiro's Motion for Summary Judgment (Docket No. 11). For the foregoing reasons, Defendants' Motion is **GRANTED**.

I. BACKGROUND

Plaintiffs' Complaint alleges the following facts. As of January 2001, Plaintiff's John A. Wolf and Stephen Wolf were students at George Washington High School in Philadelphia. See Pl.'s Compl. at ¶9. John A. Wolf was a senior at the High School and was a ranger in the Army National Guard. Id. at ¶10. John A. Wolf maintained a close cropped hair style and wore military-style clothing and military t-shirts. Id. at ¶11. On or about January 8, 2001, Plaintiff John A. Wolf alleges that a group of African-American males attacked him in the lunchroom of the

George Washington High School in the mistaken belief that he was a member of a racist organization. Id. at ¶12. This attack allegedly included kicks and blows to the head resulting in a broken nose and a concussion. Id. at ¶13. John A. Wolf was taken from the high school for medical treatment and subsequently suspended as a result of the attack. Id. at ¶14. John A. Wolf alleges that Samuel Karlin, principal of George Washington High School, informed John A. Wolf's father that Wolf hangs around with "skinheads and freaks" at school. Id. at ¶15. Information regarding John A. Wolf being a "skinhead or freak" was allegedly conveyed to parents of high school students causing the cluster leader, Defendant Wendy Shapiro, to call a meeting of concerned parents on January 18, 2001. Id. at ¶16.

Plaintiff alleges that, at the January 18, 2001 meeting, Defendant Shapiro called Plaintiff a skin head and a nazi and stated that he wears SS bracelets and yells racial statements. Id. at ¶17. Plaintiff alleges that Defendant Shapiro stated that anyone who wears black boots and black flight jackets is a skinhead. Id. Plaintiff further alleges that the comments made by Defendant Shapiro were made with the explicit authorization and support of the School District but against the advice of Plaintiff's school principal. Id. at ¶18. Plaintiff John A. Wolf

asserts that he is not affiliated with any Nazis, skinheads or any other hate group. Id. at ¶19.

Plaintiff alleges that, as a result of the alleged statements by Defendant Shapiro, Plaintiff's entire family has been besieged by threatening and harassing phone calls. Id. at ¶20. Plaintiff Stephen Wolf alleges that he has been unable to attend school due to physical threats and fears of violence. Id. at ¶21. Plaintiff John A. Wolf was transferred to the Chelcross Disciplinary School, but decided not to attend that school and pursue a GED instead. Id. at ¶22-23.

Plaintiff's Complaint makes the following claims: Count I) denial of Procedural Due Process; Count II) First Amendment infringement in violation of 42 U.S.C. §1983; Count III) failure to train school security guards in violation of 42 U.S.C. §1983.

The Plaintiffs filed their Complaint on March 13, 2001. Defendants filed their Answer with Affirmative Defenses on May 8, 2001. Defendants filed the instant Motion for Summary Judgment on November 29, 2001. The Plaintiffs have not responded to the Defendants' Motion, in spite of this Court's Order of January 7, 2002, which required Plaintiff's to respond to the instant Motion. The Court now considers the Defendants' Motion pursuant to Rule 56(c) of the Federal Rules of Civil Procedure.

II. LEGAL STANDARD

A. Summary Judgment Standard

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment is appropriate if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 106 S. Ct. 2548 (1986). The party moving for summary judgment "bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." Celotex, 477 U.S. at 323. When the moving party does not bear the burden of persuasion at trial, as is the case here, its burden "may be discharged by 'showing'--that is, pointing out to the district court--that there is an absence of evidence to support the nonmoving party's case." Id. at 325.

Once the moving party has filed a properly supported motion, the burden shifts to the nonmoving party to "set forth specific facts showing that there is a genuine issue for trial." Fed. R.

Civ. P. 56(e). The nonmoving party "may not rest upon the mere allegations or denials of the [nonmoving] party's pleading," id., but must support its response with affidavits, depositions, answers to interrogatories, or admissions on file. See Celotex, 477 U.S. at 324; Schoch v. First Fidelity Bancorporation, 912 F.2d 654, 657 (3d Cir. 1990).

To determine whether summary judgment is appropriate, the Court must determine whether any genuine issue of material fact exists. An issue is "material" only if the dispute "might affect the outcome of the suit under the governing law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505 (1986). An issue is "genuine" only "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id. If the evidence favoring the nonmoving party is "merely colorable," "not significantly probative," or amounts to only a "scintilla," summary judgment may be granted. See id. at 249-50, 252; see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586, 106 S. Ct. 1348 (1986) ("When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." (footnote omitted)). Of course, "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury

functions, not those of a judge." Anderson, 477 U.S. at 255; see also Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992). Moreover, the "evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." Anderson, 477 U.S. at 255; see also Big Apple BMW, 974 F.2d at 1363. Thus, the Court's inquiry at the summary judgment stage is only the "threshold inquiry of determining whether there is the need for a trial," that is, "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Anderson, 477 U.S. at 250-52.

III. DISCUSSION

Defendants the School District of Philadelphia and Wendy Shapiro argue the following grounds in their Motion For Summary Judgment: 1) Plaintiff's fail to state a claim for damage to their reputations; 2) the school district had no constitutional duty to protect the life or liberty of a citizen from deprivations by private actors; 3) Defendant Wendy Shapiro is entitled to qualified immunity; 4) the claims of Plaintiff Stephen Wolf are legally insufficient; 5) Plaintiffs were not denied due process; 6) neither the school district nor Wendy Shapiro can be held liable under the theory of respondeat

superior; and 7) Plaintiff fails to set forth an actionable claim for failure to train.

Under Rule 56(c), Defendants' burden "may be discharged by 'showing'--that is, pointing out to the district court--that there is an absence of evidence to support the nonmoving party's case." Celotex, 477 U.S. at 325. The following showings have been made by the Defendants.

A. Defendants' assert that Plaintiffs fail to state a claim for damage to their reputations

Plaintiffs' Complaint alleges that Wendy Shapiro damaged John A. Wolf's reputation in violation of his constitutional rights, and this alleged constitutional violation should be imputed to Defendant Philadelphia School District because Defendant Shapiro is employed with them. However, as the Defendants point out, reputation is not a protected liberty interest under the Fourteenth Amendment, see Paul v. Davis, 424 U.S. 693, 712 (1976), nor does it rise to the level of a constitutional deprivation. See Siegert v. Gilley, 500 U.S. 226, 234-235 (1991). Moreover, John Wolf was assigned to another school on January 24, 2001, and the Wolf family has been invited to move Stephen Wolf to another neighborhood school upon the family's request. See Def.'s Exh. D. Defendants contend, therefore, that Plaintiffs' claims are legally insufficient.

B. Defendants' assert that Philadelphia School District and Wendy Shapiro have no constitutional duty to protect the life or liberty of its students.

Defendants assert that public agencies and their staff do not have imposed upon them a constitutional duty to protect the life or liberty of a citizen from deprivations by private actors, absent the existence of a special relationship. Defendants cite DeShaney v. Winnebago Co. Dept. of Soc. Serv., 489 U.S. 189 (1989) in support of their argument, and Defendants further argue that no special relationship exists in this case. Defendants contend, therefore, that Plaintiffs' constitutional claims must fail.

C. Defendants' assert that Wendy Shapiro is entitled to qualified immunity.

Defendants assert that Defendant Wendy Shapiro is entitled to qualified immunity as defined by the Supreme Court in Harlow v. Fitzgerald, 457 U.S. 800 (1982), and Davis v. Scherer, 468 U.S. 183 (1984), which held that public officials are immune from civil liability where their conduct does not violate clearly established constitutional rights. See also Sherwood v. Mulvihill, 113 F.3d 396, 398-99 (3d Cir. 1997). As Defendants argue above, alleged damage to one's reputation does not amount to a constitutional violation. Therefore, Defendants argue that Wendy Shapiro could not have acted in a way that violated clearly established constitutional rights.

D. Defendants' assert that the claims of Stephen Wolf are legally insufficient.

Paragraphs 20 and 27 of the Plaintiffs' Complaint assert that the alleged defamatory remarks by Defendant Wendy Shapiro subjected the family to threats from unidentified sources, which prevented Stephen Wolf from attending school. The Defendants, however, repeat their argument above, citing DeShaney, that the Defendants are not liable for the actions of private actors. Moreover, Defendants argue that Plaintiff Stephen Wolf does not state a cognizable constitutional claim simply by asserting that he fears returning to Washington High School. Defendants cite Doe v. Bagan, 41 F.3d 571, 575-76 (10th Cir. 1994), as standing for the proposition that the denial of the right to attend a particular school does not amount to a constitutional deprivation. Defendants assert that they have advised the Plaintiffs that the Philadelphia School District would facilitate and accommodate the Plaintiffs in relocating to another school.

E. Defendants' assert that the Plaintiffs were not denied Due Process.

Defendants have attached the transcript of the January 18, 2001 school meeting where the Plaintiffs allege that Wendy Shapiro made disparaging remarks about the Plaintiffs. See Def.'s Exh. B. Defendants argue that nothing contained in this

transcript supports the Plaintiffs' contentions that Plaintiff's constitutional or statutory rights were violated. The Plaintiff has not pointed to any specific comments contained in the transcript that would amount to a constitutional or statutory violation.

F. Defendants' assert that Plaintiff fails to state a claim for Failure to Train.

Paragraph 39 of Plaintiffs' Complaint alleges that Defendants failed to adequately train security guards to protect Plaintiff and, as a result, Defendants are liable under 42 U.S.C. §1983. Defendants argue that Plaintiff has not specified any area of training not provided by the Defendants. Moreover, Defendants cite to Canton v. Harris, 489 U.S. 378 (1989), which discusses the standard for Section 1983 actions based on inadequacy of police training. This case held that a municipality can be liable under Section 1983 only where its policies are the "moving force" behind the constitutional violation. See Canton, 489 U.S. 378, 388-89. Defendants then point to the deposition of John Wolf, attached to Defendants' Motion as "Exhibit F," where Wolf acknowledged that security has been quick to respond to fights in prior occasions. See Wolf Dep. at p. 22, attached to Def.'s Mot. at Exh. F. Therefore, Plaintiffs' failure to train claim is without merit.

G. Plaintiffs have failed to carry their burden under Rule 56(c)

When the moving party does not bear the burden of persuasion at trial, as is the case here, its burden "may be discharged by 'showing'--that is, pointing out to the district court--that there is an absence of evidence to support the nonmoving party's case." Celotex, 477 U.S. at 325. Once the moving party has filed a properly supported motion, the burden shifts to the nonmoving party to "set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). The nonmoving party "may not rest upon the mere allegations or denials of the [nonmoving] party's pleading," id., but must support its response with affidavits, depositions, answers to interrogatories, or admissions on file. See Celotex, 477 U.S. at 324; Schoch v. First Fidelity Bancorporation, 912 F.2d 654, 657 (3d Cir. 1990).

In the instant case, the Plaintiffs have failed to respond to the Defendants' Motion for Summary Judgment. This failure to respond is in spite of this Court's Order dated January 7, 2002, which ordered the Plaintiffs to respond to the Defendants' Motion within twenty days of the date of the Order. No response has been forthcoming from the Plaintiffs. The Plaintiffs, therefore, have failed to meet their burden under Fed. R. Civ. P. 56(c).

Accordingly, the Defendants' Motion for Summary Judgment is granted.

IV. CONCLUSION

Based on the Defendants having made an adequate showing of an absence of evidence to support the Plaintiffs' case, and the Plaintiffs' failure to meet their burden under Fed. R. Civ. P. 56(c), this Court grants the Defendants' Motion for Summary Judgment.

This Court's Final Judgment follows.

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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WOLF, a minor : :
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THE SCHOOL DISTRICT OF : :
PHILADELPHIA, et. al : NO. 01-1183

FINAL JUDGMENT

AND NOW, this 19th day of June, 2002, upon
consideration of Defendants The School District of Philadelphia
and Wendy Shapiro's Motion for Summary Judgment (Docket No. 11),
IT IS HEREBY ORDERED that Defendant's Motion is **GRANTED**.

IT IS FURTHER ORDERED that Summary Judgment is entered in
favor of all Defendants and against all Plaintiffs.

BY THE COURT:

HERBERT J. HUTTON, J.