

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

SHELIAH WASHINGTON : CIVIL ACTION
v. :
CITY OF PHILADELPHIA, et al. : NO. 95-4737

MEMORANDUM AND FINAL JUDGMENT

HUTTON, J.

September 8, 1997

Presently before this Court is the unopposed Motion of Defendants City of Philadelphia, Captain John McGinnis, Warden Thomas A. Shields, Police Officer Daniel Wilson, and Police Officer Edward Baldini for Partial Summary Judgment (Docket No. 30).

I. BACKGROUND

On August 1, 1995, the plaintiff initiated a lawsuit against the following parties: (1) the City of Philadelphia; (2) the Philadelphia Industrial Correctional Center ("PICC"); (3) Commissioner Neal, the Chief of Police of the City of Philadelphia; (4) Warden Thomas A. Shields, individually and as the supervisor in charge of PICC; (5) any and all medical staff and personnel of PICC both individually and as employees; (6) Captain John McGinnis, individually and as the commanding officer of the 18th Police District; (7) Officer Edward Baldini, individually and as one of two arresting officers; (8) Officer Daniel Wilson, individually and as the other arresting officer; and (9) Officers John and Jane Doe of the Philadelphia Police Department, individually and as other

officers involved in these events for which plaintiff is yet unable to ascertain identities. In an order dated April 29, 1996, this Court dismissed all claims against defendant PICC and defendant Neal and required the plaintiff to file an amended complaint. See Washington v. City of Philadelphia, No. 15 Civ. 95-4737 (E.D. Pa. April 29, 1996). In her amended complaint, the plaintiff asserts numerous causes of action that can be divided into two categories: (1) violations of civil rights pursuant to 42 U.S.C. § 1983; and (2) various pendant state law tort claims.\¹

II. DISCUSSION

A. Summary Judgment Standard

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). The party moving for summary judgment has the initial burden of showing the basis for its motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through

^{1/} The plaintiff has asserted claims for Assault and Battery (Count V), Intentional Infliction of Emotional Distress (Counts VII through X), Negligence (Counts XI through XII), Malicious Abuse of Process (Count XIII), False Arrest (Count XIII), False Imprisonment (Count XIII), and Denial of Medical Treatment (Count XIV).

affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. Id. at 324. A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the nonmovant. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992), cert. denied, 507 U.S. 912 (1993). Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. Id. Nonetheless, a party opposing summary judgment must do more than rest upon mere allegations, general denials, or vague statements. Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992).

Furthermore, a court may grant an unopposed motion for summary judgment where it is "appropriate." Fed. R. Civ. Pro. 56(e). This determination has been described as follows:

Where the moving party has the burden of proof on the relevant issues, . . . the district court must determine that the facts specified in or in connection with the motion entitle the moving party to judgment as a matter of law. Where the moving party does not have the burden of proof on the relevant issues, . . . the district court must determine that the deficiencies in the opponent's evidence designated in or in connection with the motion

entitle the moving party to judgment as a matter of law.

Anchorage Assocs. v. Virgin Islands Bd. of Tax Review, 922 F.2d 168, 175 (3d Cir. 1990).

B. Analysis of Defendants' Motions for Summary Judgment

1. Section 1983 Civil Rights Claims

42 U.S.C. § 1983 was originally enacted as part of the Civil Rights Act of 1871. Wilson v. Garcia, 471 U.S. 261, 276 (1985). The statute was passed as a response to "the campaign of violence and deception in the South, fomented by the Ku Klux Klan, which was denying decent citizens their civil and political rights." Id. In addition to halting the persecution of decent citizens by the Ku Klux Klan,

[i]t is abundantly clear that one reason the legislation was passed was to afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance or otherwise, state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges, and immunities guaranteed by the Fourteenth Amendment might be denied by the state agencies.

Monroe v. Pape, 365 U.S. 167, 180 (1961), overruled by, Monell v. Department of Soc. Servs., 436 U.S. 658 (1978). As such, a plaintiff may bring a § 1983 action if she alleges that a person acting under color of state law deprived her of rights, privileges, or immunities secured by the Constitution or laws of the United

States.\² 42 U.S.C. § 1983 (1994); West v. Atkins, 487 U.S. 42, 48-49 (1988); Groman v. Township of Manalapan, 47 F.3d 628, 633 (3d Cir. 1995).

a. Claims Against Defendant City of Philadelphia

The United States Supreme Court has determined that a local governmental entity, such as a municipality, may be a "person" for purposes of § 1983. Monell, 436 U.S. at 690. Although a local government may not be held liable based strictly on a theory of respondeat superior, it may be held liable where a governmental policy, practice, or custom causes the claimed injury. Id. at 690-94. Furthermore,

[p]roof of a single incident of unconstitutional activity is not sufficient to impose liability under Monell, unless proof of the incident includes proof that it was caused by an existing, unconstitutional municipal policy, which policy can be attributed to a municipal policy maker. Otherwise the existence of the unconstitutional policy, and its origin, must be separately proved. But where the policy relied upon is not itself unconstitutional, considerably more proof than the single incident will be necessary in every case to establish both the requisite fault on the part of the municipality, and the casual connection between the "policy" and the constitutional deprivation.

^{2/} This section provides as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1983 (1994).

City of Oklahoma City v. Tuttle, 471 U.S. 808, 823-24 (1985) (footnotes omitted). In other words, if a plaintiff alleges unconstitutional behavior, she must demonstrate an "affirmative link" between the alleged police misconduct and the municipality's policy or custom. Rizzo v. Goode, 423 U.S. 362, 371 (1976).

Moreover, "[i]f the alleged policy, practice or custom is a failure by the municipality to adequately train its police officers, [the] plaintiff must show that the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact." Cooper v. City of Chester, 810 F. Supp. 618, 623 (E.D. Pa. 1992) (citing City of Canton v. Harris, 489 U.S. 378 (1989)). If the alleged violations concern a failure to provide adequate medical treatment, the plaintiff must show that the acts evidence deliberate and intentional indifference to serious medical needs, rising beyond mere negligence or malpractice. Hampton v. Holmesburg Prison Officials, 546 F.2d 1077, 1081 (3d Cir. 1976).

In this case, the plaintiff alleges that defendant City of Philadelphia is liable under § 1983, because the city: (1) employed police officers and prison staff that committed constitutional violations; (2) encouraged and authorized these violations; (3) authorized certain police officers to "cover up the use of excessive force despite the lack of probable cause to arrest;" and (4) authorized police officers and PICC staff to deny adequate

medical treatment to those in their care. Defendant City of Philadelphia denies these allegations, argues that no constitutional violations occurred, and asserts that the plaintiff has failed to show any custom or policy of the city of Philadelphia authorizing or condoning any alleged violations. To further this argument, the defendant points to the plaintiff's deposition, where the plaintiff explains that she sued the city only because she felt it should be liable for its employees' conduct. Pl.'s Dep. at 134, lines 2-10. Based on these assertions, the defendant City of Philadelphia argues that the plaintiff's claims against it are not actionable.

In the present case, the plaintiff has failed to put forth any affirmative evidence concerning the city of Philadelphia's customs or policies to substantiate her allegations. The defendant City of Philadelphia points to this deficiency and argues that no such custom or policy exists. The plaintiff, not the defendant City of Philadelphia, has the burden of proof on these issues. The deficiency in the plaintiff's evidence entitles the City of Philadelphia to judgment as a matter of law. Thus, it is appropriate to grant the defendant City of Philadelphia's uncontested motion for summary judgment. See Anchorage Assocs., 922 F.2d at 175.

b. Claims Against Defendants Shields and McGinnis

To prevail in a civil rights suit against a supervisory official, a plaintiff may not predicate the defendants' liability solely on a theory of respondeat superior. Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988) (citing Parratt v. Taylor, 451 U.S. 527, 537 n.3 (1981)), overruled on other grounds by, Daniels v. Williams, 474 U.S. 327 (1986); Hampton, 546 F.2d at 1082. Instead, she must demonstrate that the supervising defendants had personal involvement in the alleged wrongs. Andrews v. City of Philadelphia, 895 F.2d 1469, 1478 (3d Cir. 1990) (citing Rizzo, 423 U.S. at 377); Rode, 845 F.2d at 1207 (citations omitted). This "necessary involvement can be shown in two ways, either 'through allegations of personal direction or of actual knowledge and acquiescence,' or through proof of direct [action] by the supervisor. The existence of an order or acquiescence leading to [the violation] must be pled and proven with appropriate specificity." Andrews, 895 F.2d at 1478 (quoting Rode, 845 F.2d at 1207). Moreover, the plaintiff may not premise the defendants' liability upon negligence. Daniels, 474 U.S. at 328.

In this case, the plaintiff claims that defendants McGinnis and Shields deliberately and intentionally failed to provide her with proper medical treatment. Further, the plaintiff asserts that defendant McGinnis' failure to train, supervise, or control the

Philadelphia police officers under his supervision constitutes a violation of the plaintiff's constitutional rights.

Defendants McGinnis and Shields deny these accusations and assert that neither had personal knowledge that the plaintiff was suffering any alleged constitutional violations. In his affidavit, defendant Shields denies any knowledge of the plaintiff's incarceration at PICC, of her alleged false imprisonment and false arrest, or of the plaintiff's complaints concerning medical care at PICC. Shields Aff. ¶¶ 2, 3, & 5. Moreover, defendant Shields states that medical care at PICC is provided by an independent contractor. Shields Aff. ¶ 6. Defendant McGinnis also denies any knowledge of the plaintiff's alleged false imprisonment and false arrest in his affidavit. McGinnis Aff. ¶¶ 4, 5. Further, defendant McGinnis denies any supervisory responsibility over the arresting officers, because those officers were assigned to a different district. McGinnis Aff. ¶ 6.

A review of the record suggests that the plaintiff cannot demonstrate that either defendant McGinnis or Shields had personal involvement in the events alleged to have occurred between August 1, 1993, and September 29, 1993. Despite having the burden of proof on these issues, the plaintiff has failed to put forth any evidence to prove any direct action by defendants McGinnis or Shields resulting in any improper conduct. In fact, it appears that the plaintiff relies on a respondeat superior theory to impose

liability, which is clearly not actionable.

The deficiency in the plaintiff's evidence, along with the evidence offered by the defendants, entitles defendants Shields and McGinnis to judgment as a matter of law. Thus, because this Court finds that there is no genuine issue of material fact that either defendant McGinnis or Shields directly caused, knew of, or acquiesced to these alleged violations, this Court grants defendants Shields' and McGinnis' uncontested motion for summary judgment. See Anchorage Assocs., 922 F.2d at 175.

c. Claims Against Defendants Wilson and Baldini

(1) False Arrest Claim

To establish a claim under § 1983, the plaintiff must show that the defendants, acting under color of law, deprived her of a right or privilege secured by the Constitution or laws of the United States. Williams v. Borough of West Chester, Pa., 891 F.2d 458, 464 (3d Cir. 1989). Police officers have the power to arrest an individual without a warrant where they have probable cause to believe that individual has committed a crime. U.S. v. Watson, 423 U.S. 411, 424 (1976). When a claim of false arrest is alleged, the proper inquiry is whether the arresting officers had probable cause to believe the person arrested had committed the offense, not whether the person arrested in fact committed the offense. Dowling v. City of Philadelphia, 855 F.2d 136, 141 (3d Cir. 1988).

This Court finds that the facts involved in this matter are sufficient to establish that there was probable cause to arrest the plaintiff. Initially, the Court notes that the arresting officers responded to a radio broadcast "that the resident of 142 N. Wanamaker Street, an African-American female dressed in a green short set, armed with a baseball bat, apparently assaulted another female, who required medical attention as a result of the assault." Wilson Aff. ¶ 2. Upon arrival at that location, the officers were met by the complainant, who stated that the plaintiff had hit her with a baseball bat. Wilson Aff. ¶ 4. Officer Wilson observed that the complainant suffered from visible head wounds. Wilson Aff. ¶ 3. The officers found a woman matching the police description inside the residence at 142 N. Wanamaker Street. Furthermore, after the officers entered the plaintiff's premises, they found a baseball bat. Wilson Aff. ¶ 6. The plaintiff was then arrested for assault. Wilson Aff. ¶ 6.

"Probable cause exists 'where the facts and circumstances within . . . [the officers'] knowledge, and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed." Brinegar v. United States, 338 U.S. 160, 175-76 (1949) (quoting Carroll v. United States, 267 U.S. 132, 162 (1925)). This Court finds that the officers had probable cause to arrest the plaintiff. Therefore,

finding that no reasonable jury could find an absence of probable cause, this Court finds that no genuine issue of material fact exists as to the claim of false arrest.

(2) False Imprisonment

A § 1983 claim alleging false imprisonment is founded on the Fourteenth Amendment protection from deprivations of liberty without due process of law. Groman, 47 F.3d at 636 (citing Baker v. McCollan, 443 U.S. 137, 142 (1979)). However, “[t]he Court in Baker made it clear an arrest based on probable cause could not become the source of a claim for false imprisonment.” Groman, 47 F.3d at 636 (citing Baker, 443 U.S. at 143-44). Thus, because this Court found probable cause for the plaintiff’s arrest in the previous section, the plaintiff’s claim for false imprisonment under § 1983 must fail.

(3) Excessive Force

The plaintiff next claims that the arresting officers used excessive force. Claims of excessive force are analyzed under a standard of reasonableness. Graham v. Connor, 490 U.S. 386, 388 (1989). In such an analysis, the facts and circumstances of each case must be carefully scrutinized. Id.

In the instant matter, defendants Wilson and Baldini argue that the plaintiff fails to substantiate her claims of excessive

force with any affirmative evidence. In response, the plaintiff has merely relied on her pleadings. A party opposing summary judgment must do more than rest upon her allegations. Trap Rock Indus., Inc., 982 F.2d at 890. Furthermore, "where the moving party does not have the burden of proof on the relevant issues," as is the case here, "the district court must determine [whether] the deficiencies in the opponent's evidence designated in or in connection with the motion entitle the moving party to judgment as a matter of law." Anchorage Assocs., 922 F.2d at 175. Given the plaintiff's complete lack of affirmative proof, that standard is clearly met. Accordingly, summary judgment is granted in favor of the defendants and against the plaintiff on this claim.³

d. Pendent State Law Tort Claims

Under the Pennsylvania Political Subdivision Tort Claim Act ("PSTCA"), a local government and its employees are generally immune from civil liability for state law tort claims. 42 Pa. Cons. Stat. Ann. §§ 8541, 8545, & 8556 (West 1982). This grant of immunity, however, is not absolute because the PSTCA provides exceptions to the general rules of immunity. 42 Pa. Cons. Stat. Ann. §§ 8542 & 8550 (West 1982). Section 8542 of the PSTCA permits

3. The plaintiff also alleges Cruel and Unusual Punishment under the Eighth Amendment. This Court dismisses this claim on grounds that the Eighth Amendment protections do not attach until after conviction and sentence. See Ingraham v. Wright, 430 U.S. 651, 671, n.40 (1977) ("Eighth Amendment scrutiny is appropriate only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions.")

recovery against a local government agency or employee for negligent acts if their acts fall into one of eight enumerated categories: (1) vehicle liability; (2) care, custody, or control of personal property; (3) real property; (4) trees, traffic controls, and street lighting; (5) utility service facilities; (6) streets; (7) sidewalks; or (8) care, custody, or control of animals. 42 Pa. Cons. Stat. Ann. § 8542. Similarly, Section 8550 of the PSTCA permits recovery for intentional torts in actions where a governmental employee "caused the injury and that such act constituted a crime, actual fraud, actual malice or willful misconduct" 42 Pa. Cons. Stat. Ann. § 8550. Under this provision, the immunity of the governmental employee that caused the injury is eliminated. See, e.g., Cooper, 810 F. Supp. at 626 n.8 (citations omitted) ("Section 8550 denies immunity to employees of local agencies for their intentional torts").

The plaintiff claims that various city employees committed the following torts against her: assault and battery, intentional infliction of emotional distress, negligence, malicious abuse of process, false arrest, false imprisonment, and denial of medical treatment. Defendants Baldini and Wilson argue that any actions on their part were justified and lawful, because they were properly performing their duties as police officers. Defendants Shields and McGinnis produced affidavits claiming that they did not have knowledge of the plaintiff or her allegations.

In a memorandum and order dated April 29, 1996, this Court dismissed all negligence claims against the various city employees because these employees were immune from such claims under § 8545 of the PSTCA. See Washington v. City of Philadelphia, No. 15 Civ. 95-4737 (E.D. Pa. April 29, 1996). However, this Court refused to dismiss the intentional tort claims because the plaintiff alleged that these were performed with "actual malice . . . and with willful and wanton indifference to and deliberate disregard for human life," Pl.'s Am. Compl. ¶¶ 48, 53, 57, thus allowing the possibility that these employees would be stripped of their immunity under § 8550 of the PSTCA.

Although the plaintiff's pleadings were sufficient to overcome the defendant's earlier motion to dismiss, the plaintiff has failed to respond to the defendants' motion for summary judgment with affirmative evidence. Instead, the plaintiff has merely relied on her pleadings. Although the plaintiff alleges that the defendants acted with willful misconduct, the plaintiff has failed to put forth affirmative proof that the defendants committed these torts or committed them with willful misconduct. Once the defendant adequately supported its motion, the plaintiff, in opposing summary judgment, was required to do more than rest upon her allegations. Trap Rock Indus., Inc., 982 F.2d at 890. Accordingly, summary judgment is granted in favor of defendants Baldini, Wilson, Shields and McGinnis against the plaintiff on these claims.

III. CONCLUSION

Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. Celotex Corp., 477 U.S. at 324. Where the motion is uncontested and "the moving party does not have the burden of proof on the relevant issues," to grant the motion, "the district court must determine that the deficiencies in the opponent's evidence designated in or in connection with the motion entitle the moving party to judgment as a matter of law." Anchorage Assocs., 922 F.2d at 175. In this case, the defendants refute all of the plaintiff's allegations, showing deficiencies in the plaintiff's evidence and offering evidence of their own entitling the defendants to judgment as a matter of law. The plaintiff merely relies on her allegations, general denials, and vague statements in her initial complaint. Consequently, this Court grants the motion for summary judgment by defendants City of Philadelphia, Captain John McGinnis, Warden Thomas A. Shields, Police Officer Daniel Wilson, and Police Officer Edward Baldini (Docket No. 30).

An appropriate Order follows.

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O R D E R

AND NOW, this 8th day of September, 1997, upon consideration of Defendants' Unopposed Motion for Partial Summary Judgment (Docket No. 30), IT IS HEREBY ORDERED that Defendants' Motion is **GRANTED**.

It is FURTHER ORDERED that:

(1) all claims against Defendant City of Philadelphia are dismissed with prejudice;

(2) all claims against Defendant McGinnis are dismissed with prejudice;

(3) all claims against Defendant Shields are dismissed with prejudice;

(4) all claims of false arrest, false imprisonment, and use of excessive force against Defendants Wilson and Baldini are dismissed with prejudice; and

(5) Counts V, VI, VII, VIII, IX, X, XI, XII, XIII, and XIV of the Plaintiff's Second Amended Complaint are dismissed only as they relate to Defendants McGinnis, Shields, Wilson, and Baldini.

BY THE COURT:

HERBERT J. HUTTON, J.