

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

<b>WILLIE FOXWORTH, a minor,</b>	:	<b>CIVIL ACTION</b>
<b>by his parent and natural guardian</b>	:	
<b>MURIEL COLLINS,</b>	:	
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>CHICHESTER SCHOOL DISTRICT, et al.,</b>	:	
	:	
<b>Defendants.</b>	:	<b>NO. 96-6039</b>

**MEMORANDUM**

**Reed, J.**

**February 22, 1999**

Currently before the Court is the motion of defendant Upper Chichester Township (“Township”) for summary judgment (Document No. 65) and the response of plaintiff Willie Foxworth (“Foxworth”) thereto. Foxworth alleges the Township violated his Fourteenth Amendment Due Process and Equal Protection rights. I will grant the motion for the following reasons.

**I. PROCEDURAL HISTORY**

The procedural history of this case is well known by now. I will only summarize the relevant history. Muriel Collins is the natural guardian and mother of plaintiff Willie Foxworth (“Foxworth”), a minor. Originally both Collins and Foxworth filed a complaint against Chichester School District, Chichester School Board, Philip Voshell (Principal), Salvatore Illuzzi (Superintendent), Samuel Ferrante (Assistant Superintendent), and Cynthia Bottomley (Teacher) (collectively referred to as “School Defendants”) as well as Upper Chichester Township and Meadow Wood Hospital. In an Order dated June 29, 1998, this Court granted the motion of the

School Defendants to dismiss the second amended complaint. This Court also dismissed all claims by Muriel Collins in her own right and ordered that all references to “Muriel Collins, Individually and in Her Own Right” be removed from the caption. Defendants Upper Chichester Township and Meadow Wood Hospital did not join in the motion to dismiss.

Defendant Meadow Wood Hospital moved for summary judgment with respect to the defamation claim against it. In an Order dated February 17, 1999, this Court granted the motion, dismissing the claim against Meadow Wood. The claim against the Township is therefore the only remaining claim in this lawsuit.

The facts of this case, while not complex, are especially lamentable. Foxworth is a young African-American male student who appears to be experiencing significant, if not severe, behavioral and academic problems in his school, with teachers, with classmates, and with classes. While Foxworth may be in need of help, his remedy, however, does not lie in the federal justice system.

## **II. FACTUAL BACKGROUND**

On November 18, 1996, Foxworth was found guilty of indecent assault for exposing himself and inappropriately touching a female classmate on a school trip. The incident occurred on September 26, 1994. A parent of one of the students called the Upper Chichester Township Police Department to report the incident. The Chief of Police assigned the case to Corporal Pasquale Mignogna for investigation. Mignogna contacted the complaining parent, who reported that “there was a boy that was grabbing one of the girls and exposing himself” on the class trip. (Mignogna Dep., App. Exh. I at 13-14). Mignogna, after conducting an investigation, filed

juvenile charges against Foxworth.

Foxworth claims his due process rights were violated because Mignogna improperly investigated the incident. Foxworth argues that Mignogna exaggerated the gravity of the alleged offenses to ensure that Foxworth would be prosecuted. Foxworth further argues that misleading statements undoubtedly led to the juvenile adjudication against him. Foxworth also argues that his right to Equal Protection was violated because the investigation was tainted by impermissible racial considerations. In short, Foxworth argues that because Foxworth is black and the victim was white, Mignogna decided Foxworth was guilty and did not conduct a proper investigation.

Specifically, Foxworth asserts that the information contained in the “Petition” and the Crime Report was false and misleading. According to Foxworth, the false information in the Petition included: that the alleged “delinquent acts” occurred from 8:00 AM to 4:00 PM, leaving the false impression that the inappropriate sexual conduct occurred for eight hours; that the Petition does not specify how many times the alleged touching occurred; and, that the Petition does not contain specific times as to when the witnesses saw each alleged improper touching. The false information in the Crime Report, according to Foxworth, includes: the number of alleged victims was listed as “three” when in fact there was only one victim; the time of the alleged offenses covers eight hours without an explanation that the alleged conduct was intermittent; in a box marked “weapons,” Mignogna wrote in “hands/penis.”

In addition, Foxworth argues that the investigation was carried out in an arbitrary and capricious manner and was wholly inadequate. For instance, Mignogna relied upon anonymous statements by students, at least some of whom were Learning Support students, as to what they heard or saw on the bus. Mignogna did not interview any of the teachers who were on the bus.

Mignogna did not interview Foxworth or get his side of the story. Mignogna did not use a tape recorder to tape his interviews. Mignogna interviewed the only black witness without his parents present. Mignogna attended a meeting between Foxworth and the Principal in which the Principal told Foxworth that he knew Foxworth “did it.” At no time during the meeting did Mignogna inform Foxworth of his Miranda rights.<sup>1</sup> Mignogna told Foxworth’s father that Foxworth was not under arrest, although at the time the crime report was completed and Foxworth was technically under arrest. Finally, Foxworth contends that Mignogna gave total credibility to the white witnesses because of they were white and the alleged perpetrator was black, while ignoring Foxworth’s version of the events because he was black.

### **III. LEGAL STANDARD**

Rule 56(c) of the Federal Rules of Civil Procedure provides that "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" then a motion for summary judgment may be granted.

The moving party has the initial burden of illustrating for the court the absence of a genuine issue of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986); Adickes v. S.H. Kress & Co., 398 U.S. 144, 159-161 (1970). The movant can satisfy this burden by “pointing out to the district court that there is an absence of evidence to support the nonmoving party’s case;” the movant is not required to produce affidavits or other evidence to establish that

---

<sup>1</sup>At the meeting, Foxworth did not make any incriminating statements. On the contrary, Foxworth denied the allegations.

there are no genuine issues of material fact. Celotex, 477 U.S. at 323-25.

Once the moving party has made a proper motion for summary judgment, the burden switches to the nonmoving party. Under Rule 56(e),

[w]hen a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

The court is to take all of the evidence of the nonmoving party as true and to draw all reasonable inferences in his favor in determining if there is a genuine issue of material fact. See Adickes, 398 U.S. at 158-59. In order to establish that an issue is genuine, the nonmoving party must proffer evidence such that a reasonable jury could return a verdict in his favor. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49 (1986). A proper motion for summary judgment will not be defeated by merely colorable or insignificantly probative evidence. See id. at 249-50.

#### **IV. DISCUSSION**

The claims against the Township are predicated on investigation conducted by Corporal Pasquale Mignogna and the juvenile charges filed by Mignogna. Even if the conduct of Mignogna violated Foxworth's constitutional rights, in an action against the Township, Foxworth must establish that the Township is liable for the conduct of Corporal Mignogna.

A municipality is not liable under 42 U.S.C. § 1983 ("Section 1983") for the actions of its employees on a theory of respondeat superior. Monell v. Dept. of Social Serv., 436 U.S. 658, 694 (1978). "Rather, a municipality is subject to direct liability only where 'execution of a

government’s policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflict the injury that the government as an entity is responsible.” Parkway Garage, Inc. v. City of Philadelphia, 5 F.3d 685, 692 (3d Cir. 1993) (quoting Monell, 436 U.S. at 694). Where a Section 1983 plaintiff seeks to impose liability on a municipality for allegedly causing an injury inflicted by an employee “rigorous standards of culpability and causation must be applied to ensure that the municipality is not held liable solely for the actions of its employee.” Bd. of County Comm’rs of Bryan County, Okl. v. Brown, 117 S. Ct. 1382, 1394 (1997).

In determining whose acts represent official policy, the court must be mindful that “the authority to make municipal policy is necessarily the authority to make final policy. When an official’s discretionary decisions are constrained by policies not of that official’s making, those policies, rather than the subordinate’s departures from them, are the act of the municipality.” City of St. Louis v. Praprotnik, 485 U.S. 112, 127 (1988) (citations omitted). Where official policy delegates discretion to a subordinate official, a municipal body “is not liable for the mere failure to investigate by the final policy-maker.” San Filippo v. Bongiovanni, 30 F.3d 424, 446 (3d cir. 1994).

Foxworth’s claim fails because there is no evidence that the Township either had a practice, policy or custom of violating the Fourteenth Amendment Due Process or Equal Protection rights of juvenile criminal suspects.<sup>2</sup> Foxworth argues that because the case was assigned to Mignogna by Chief of Police Robinson and because there is no evidence that Mignogna was not working directly under the auspices of Chief of Police Robinson, Mignogna’s

---

<sup>2</sup>Nor does the Complaint allege that such a custom, practice or policy exists.

conduct during the course of his investigation is therefore the custom and practice of the Township. This argument is without merit.

First, Foxworth misconceives his burden at summary judgment. He must present some evidence from which a fact finder can reasonably find that a municipal officer with requisite policy making authority intentionally or with deliberate indifference established or acquiesced in a practice, policy or custom which deprived Foxworth of a constitutional right. Leatherbury v. City of Philadelphia, 1998 WL 47355, at \*4 (E.D. Pa. Feb. 4, 1998) (citing Monell, 436 U.S. at 690-91). He cannot rely on assertions that there is no evidence to the contrary. Id. (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)) (“The non-movant must come forward with competent evidence sufficient to establish the existence of each element he must prove to sustain his claim.”). Second, assuming Chief Robinson has policy making authority, there is no evidence that he established a policy, custom or practice of violating the Fourteenth Amendment Due Process or Equal Protection rights of juvenile criminal suspects. Third, “[s]imply going along with discretionary decisions made by subordinates is not delegation to them of authority to make policy.” Praprotnik, 485 U.S. at 927. Fourth, there is no evidence of other incidents in which Mignogna conducted investigations inappropriately or in which he abused his discretion such that it could be inferred that Chief Robinson acquiesced to a “custom or usage” of which he must have been aware. Simmons v. City of Philadelphia, 947 F.2d 1042, 1064 n.20 (3d Cir. 1991) (proof of deliberate indifference requires scienter-like evidence), cert. denied, 503 U.S. 985 (1992). In sum, Foxworth has produced no evidence of a policy and cited no other incident that would indicate that Chief Robinson, Corporal Mignogna or any other official had established a custom or practice of violating or tolerating violations of the Due Process or Equal Protection

rights of juvenile criminal suspects.

Foxworth argues in the alternative that because there is no evidence that the Township considered the investigation by Mignogna improper, the Township adopted a policy which allowed Mignogna to make policy. This argument is also without merit. As noted above, delegating discretionary authority is not synonymous with delegating policy making authority. Praprotnik, 485 U.S. at 927. Moreover, “a municipality is not liable merely because the official who inflicted the constitutional injury had the final authority to act on its behalf; rather, the official in question must possess ‘final authority to establish municipal policy with respect to the [challenged] action.’” Id. at 932 (Brennan, J., concurring) (quoting Pembaur v. City of Cincinnati, 475 U.S. 469, 481). Although Mignogna was the fourth highest ranking officer, there is no evidence that Corporal Mignogna was a “policy maker.” Brady v. Cheltenham Township, 1998 WL 164994, at \*3 (E.D. Pa. April 9, 1998) (no evidence that deputy chief was policy maker).

## V. CONCLUSION<sup>3</sup>

For the foregoing reasons, I will grant the motion of Upper Chichester Township. An appropriate Order follows.

---

<sup>3</sup>The Court need not analyze whether Foxworth’s Section 1983 claim for violation of his due process rights is foreclosed by the cognizability doctrine set forth in Heck v. Humphrey, 512 U.S. 477, 489 (1994), because even assuming he does have a claim, the Township is entitled to judgment as a matter of law on both Section 1983 claims.

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

<b>WILLIE FOXWORTH, a minor,</b>	:	<b>CIVIL ACTION</b>
<b>by his parent and natural guardian</b>	:	
<b>MURIEL COLLINS,</b>	:	
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>CHICHESTER SCHOOL DISTRICT, et al.,</b>	:	
	:	
<b>Defendants.</b>	:	<b>NO. 96-6039</b>

**ORDER**

**AND NOW**, on this 22nd day of February, 1999, upon consideration of the motion of defendant Upper Chichester Township for summary judgment (Document No. 65), response of plaintiff Willie Foxworth thereto, as well as pleadings, depositions, and affidavits submitted by the parties, and for the reasons stated in the attached memorandum of law, it is hereby

**ORDERED** that the motion is **GRANTED**.

**IT IS FURTHER ORDERED** that judgment is hereby entered in favor of Upper Chichester Township and against plaintiff Willie Foxworth.

This is a final Order.<sup>1</sup>

---

**LOWELL A. REED, JR., J.**

---

<sup>1</sup> The claims against all other defendants have been dismissed in prior decisions.