

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

FRANCIS M. MCMAHON, JR.	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 98-3919
WESTTOWN-EAST GOSHEN POLICE	:	
DEPARTMENT, DETECTIVE DUANE	:	
MINSHALL, WESTTOWN TOWNSHIP,	:	
and EAST GOSHEN TOWNSHIP	:	

MEMORANDUM

YOHN, J. April , 1999

Plaintiff, Francis M. McMahon, Jr., has sued defendants Westtown-East Goshen Police Department, Detective Duane Minshall, Westtown Township, and East Goshen Township for claims stemming from his arrest on August 13, 1996, on four counts of forgery. Plaintiff has brought a federal claim pursuant to 42 U.S.C § 1983 in which he asserts violations of his Fourth and Fourteenth amendment rights. He also asserts state law claims of intentional infliction of emotional distress and negligent infliction of emotional distress. Pending before the court is defendants' motion for summary judgment. For the reasons stated below, the court will grant defendants' motion on all counts as to all defendants.

Factual Background

The following facts relating to plaintiff's arrest on forgery charges are uncontested except where indicated. On July 26, 1996, Kathleen Pritchard, the mother of plaintiff's estranged wife contacted Detective Duane Minshall of the Westtown-East Goshen Police Department. See Brief in Supp. of Defs.' Mot. for Summ. J., Exhibit B, Affidavit of Detective Duane Minshall ("Minshall Affidavit") ¶ 3. She informed the detective that plaintiff, Francis McMahon, had

accessed and retrieved mail from her daughter's post office box No.568 at the Westtown Post Office without authorization. See id. ¶¶ 4-5. Patricia McMahon, Pritchard's daughter, was incarcerated at the time. See id. ¶ 7. Prior to her incarceration, Mrs. McMahon had lived at 1239 Surrey Road, Thornbury Township with the McMahons' three children.¹ See Brief in Supp. of Defs.' Mot. for Summ. J., Exhibit F, Deposition of Francis McMahon ("McMahon Dep.") at 26. When Patricia McMahon originally opened the post office box, she did so in her own name and requested that mail addressed to the Surrey Road address be forwarded to box No. 568.² According to Pritchard, her daughter had given her the only key to the box for the duration of Mrs. McMahon's confinement. See Minshall Affidavit ¶ 7. Pritchard also claimed that the key had recently been stolen out of her car. See id. ¶ 8.

On August 1, 1996, Minshall spoke to Laura Harris, an employee of the Westtown Post Office. See id. ¶ 10. Harris confirmed that box No. 568 was rented to Patricia McMahon and that the only other person authorized to enter the box was Pritchard. Id. ¶ 12. During his conversation with Harris, Minshall learned that McMahon had been in the post office on a number of occasions requesting his wife's mail and that each time his request was refused. See id. ¶ 13. Harris also informed Minshall that she had received a change of address form in the mail on July 31, 1996. See id. ¶ 11. The form requested that mail from box No. 568 be

¹The Surrey Road home had been the marital residence, but due to the estrangement and ongoing divorce proceedings, plaintiff was then living elsewhere. See id. 26-27.

²Although not included in the record, the fact that all mail addressed to 1239 Surrey Road was now being delivered to the post office box was disclosed during a hearing held on March 16, 1999.

delivered to 1239 Surrey Road.³ See id. ¶ 16. On the change of address form, plaintiff had checked the box designating the change of address as being for the “Entire Family” and had also written the names “Francis and Patricia McMahon” on the card. Id. ¶ 16; Exhibit C. Only plaintiff, however, had signed the form. See id., Exhibit C. Harris gave Minshall other change of address forms submitted by plaintiff in the names of plaintiff’s sons. See id. ¶ 17.

Minshall then contacted Patricia McMahon. See id. ¶ 21. Mrs. McMahon confirmed that plaintiff “did not have permission to gain entry to post office box #568, to receive mail from the post office box, or permission to forward mail from the box.” Id. ¶ 23. Plaintiff’s wife also denied ever having completed change of address forms for the box. See id. ¶ 22.

That same day, following his discussions with Harris and Patricia McMahon, Minshall spoke with U.S. Postal Inspector Dougherty who informed the detective that because the box was in his wife’s name, it was not plaintiff’s right to redirect the incoming mail to a different address. See id. ¶ 25. Minshall also telephoned plaintiff informing him that the police had been contacted about plaintiff’s unauthorized attempts to retrieve mail from his wife’s post office box. See id. ¶ 27. According to Minshall, plaintiff stated that the Post Master at the Media Post Office had told him to submit a change of address form. See id. ¶ 28. Plaintiff claims that Minshall never gave him an opportunity to explain the change of address forms. See McMahon Affidavit ¶ 5. Had he been given the opportunity, plaintiff states that he would have explained that he was only trying to obtain the bills for the Surrey Road residence and college application information being

³After his wife’s incarceration, plaintiff took custody of their three children and was given temporary possession of this house. See McMahon Dep. at 26.

sent to one of his sons.⁴ See id. ¶ 10.

Based on the information obtained during his investigation, Minshall prepared an affidavit of probable cause for a search warrant for plaintiff's residence at 1239 Surrey Road and an affidavit of probable cause for plaintiff's arrest on four counts of forgery relating to the change of address forms. See Minshall Affidavit ¶¶ 30, 33. Minshall discussed the above events with Assistant District Attorney Elizabeth Pitts who approved both the search warrant and arrest warrant. See id. ¶ 31-32. Minshall then took both affidavits to District Justice Chester F. Darlington who also approved both warrants. See id., Exhibits D (criminal complaint), E (search warrant).

Detective Minshall, Officer McBride, and Postal Inspector Dougherty proceeded to plaintiff's home to execute the search warrant. See id. ¶ 36. Finding no one at home, the three popped the latch on a window, entered the house, and completed their search finding no evidence of the stolen post office box key or Patricia McMahon's mail. See id. ¶¶ 37-42. Plaintiff contends that in the process of opening the window, the officers caused \$2500 worth of damage. See Complaint ¶ 15; McMahon Dep. at 112-113. Minshall claims that the officers caused no damage to the window other than leaving a pry mark. Minshall Affidavit ¶ 39.

Later that day, Minshall again contacted plaintiff and asked him to come to the police station on an unrelated matter. See id. ¶ 44. Plaintiff's attorney called Minshall back and after being informed that a warrant had been issued for plaintiff's arrest, told the detective that plaintiff would turn himself in the next day. See id. ¶ 47. The parties later agreed that plaintiff

⁴ Note that Minshall stated in the affidavit of probable cause for the arrest that McMahon's purported reason for submitting the forms was to obtain mail that he was expecting. See Criminal Complaint.

would turn himself in after his vacation to South Carolina. See id. ¶ 48. McMahon turned himself in on August 13, 1996, at which time he was neither handcuffed nor incarcerated. See id. ¶ 49-50. At a preliminary hearing on October 10, 1996, District Justice J. Peter Winther found that the Commonwealth had presented a prima facie case on one count of forgery and held the plaintiff over for trial. See id. ¶¶ 51-53. On February 22, 1997, the Honorable Howard J. Riley of the Chester County Court of Common Pleas granted plaintiff's petition for habeas corpus and the charges against plaintiff were dropped. See Complaint ¶ 10 and attached order. On July 28, 1998, plaintiff initiated the suit presently before the court.

Summary Judgment Standard

Summary judgment is to be granted “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 judgment as a matter of law.” Fed. R. Civ. P. 56 (c). The court should not resolve disputed factual issues, but rather, should determine whether there are factual issues which require a trial. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). If no factual issues exist and the only issues before the court are legal, then summary judgment is appropriate. See Sempier v. Johnson & Higgins, 45 F.3d 724, 727 (3d Cir.), cert. denied, 515 U.S. 1159 (1995). If, after giving the nonmoving party the “benefit of all reasonable inferences,” id. at 727, the record taken as a whole “could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial,’” Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986), and the motion for summary judgment should be granted.

Discussion

Claims Against the Police Department and Townships

McMahon has brought his federal claims against the defendants pursuant to 42 U.S.C. § 1983, which provides in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . 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

42 U.S.C. § 1983. The Supreme Court has held that “municipalities and other local governmental bodies are ‘persons’ within the meaning of § 1983.” Board of County Commissioners of Bryan County v. Brown, 117 S. Ct. 1382, 1387-88 (1997). Branches or sub-units of municipalities, such as police departments, are not proper parties to § 1983 suits where the municipalities also have been sued, however, because they are mere extensions of the municipalities and not separate entities. See Johnson v. City of Erie, 834 F. Supp. 873, 878-79 (W.D. Pa. 1993) (dismissing Erie Police Department as defendant because was sub-unit of municipality and therefore improper and unnecessary party); Agresta v. City of Philadelphia, 694 F. Supp. 117, 119 (E.D. Pa. 1988) (dismissing Philadelphia Police Department as defendant because it did not have corporate existence separate from city). Therefore, as plaintiff acknowledged at oral argument held on March 16, 1999, the Westtown-East Goshen Police Department is an improper party and must be dismissed from the suit.

With regard to the defendant townships, the Supreme Court has declared that § 1983 “cannot be easily read to impose liability vicariously on governing bodies solely on the basis of the existence of an employer-employee relationship with a tortfeasor.” Brown, 117 S. Ct. at

1388 (quoting Monell v. New York City Dep't of Social Servs., 436 U.S. 658, 692 (1978)). The Court has determined that “a plaintiff seeking to impose liability on a municipality under § 1983 [must] identify a municipal ‘policy’ or ‘custom’ that caused the plaintiff’s injury.” Id. at 1388. The record contains no evidence of such a policy or custom, and indeed plaintiff’s counsel conceded as much at the March 16 hearing. Consequently, the § 1983 claims against Westtown Township and East Goshen Township fail as a matter of law.

Plaintiff’s state law claims against the townships also fail. Under Pennsylvania law, local governments cannot be held liable in suits for damages brought “on account of an injury to a person or property caused by any act of the local agency or employee thereof,” 42 Pa. Cons. Stat. Ann. § 8541 (West 1998), except in certain limited circumstances for which the state has waived this immunity. See 42 Pa. Cons. Stat. Ann. § 8542 (West 1998) (describing governmental immunity and exceptions). As plaintiff’s counsel also conceded at the recent hearing, however, the record contains no evidence that the circumstances alleged in this case meet any of the exceptions to immunity delineated in the statute. As a result, plaintiff’s state law claims against both townships have been dismissed.

Claims Against Detective Minshall

Detective Minshall has asserted a defense of qualified immunity. Under this doctrine, “government officials performing discretionary functions [such as police officers], generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” Orsatti v. New Jersey State Police, 71 F.3d 480, 483 (3d Cir. 1995) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). In this case, as in most false arrest situations, plaintiff’s

constitutional “right to be free from arrest except on probable cause was clearly established.” Id. Even where probable cause is found not to have existed, however, a police officer may still enjoy qualified immunity from suit if he “reasonably but mistakenly conclude[d] that probable cause existed” when the arrest was made. Id.

The standard applied in these situations is one of objective reasonableness. Malley v. Briggs, 475 U.S. 335, 344-45 (1986). In Malley, the Supreme Court considered the question of qualified immunity with regard to a defendant police officer who was sued under 42 U.S.C. § 1983 for allegedly “caus[ing] plaintiffs to be unconstitutionally arrested by presenting a judge with a complaint and a supporting affidavit which failed to establish probable cause” -- a situation very similar to the case at bar. Id. at 337. The Court framed the question for qualified immunity analysis as asking “whether a reasonably well-trained officer in petitioner’s position would have known that his affidavit failed to establish probable cause and that he should not have applied for the warrant.” Id. Stated another way, police officers who seek search warrants are entitled to qualified immunity for any resulting arrest unless the warrant application “is so lacking in indicia of probable cause as to render official belief in its existence unreasonable.” Id. at 344-45.

Assuming, arguendo, that probable cause to arrest plaintiff did not in fact exist,⁵ the court nevertheless finds that Minshall’s affidavit was not “so lacking in indicia of probable cause as to

⁵At oral argument, plaintiff’s counsel conceded that probable cause to search plaintiff’s house did exist and that Minshall acted lawfully pursuant to the search warrant. At his deposition, plaintiff acknowledged the same. See Brief in Supp. of Defs.’ Mot. for Summ. J., Exhibit F, at 111. Therefore, the court need not address the propriety of the search further.

render official belief in its existence unreasonable.”⁶ To the contrary, plaintiff argues that defendant’s investigation was a “witch hunt” and that given the rancorous relationship between Francis and Patricia McMahon, Minshall’s reliance on “speculative information” from plaintiff’s estranged wife’s mother was unwarranted. It is clear from the criminal complaint and Minshall’s affidavit, however, that Minshall relied on more than the statements of Pritchard available to him at the time that he sought an arrest warrant. Minshall had the four change-of-address cards signed and submitted by plaintiff in the names of other individuals. On the criminal complaint form, Minshall provided the information received from Kathleen Pritchard, Patricia McMahon, Laura Harris, and Francis McMahon. See Defs.’ Brief, Exhibit D. Minshall also received the approval of the affidavit by both an assistant district attorney and a district justice.⁷ Based on this

⁶In Pennsylvania, the crime of forgery is defined as follows:

A person is guilty of forgery if, with intent to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, the actor:

- (1) alters any writing of another without his authority;
- (2) makes, completes, executes, authenticates, issues or transfers any writing so that it purports to be the act of another who did not authorize that act, or to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed; or
- (3) utters any writing which he knows to be forged in a manner specified in paragraphs (1) or (2) of this subsection.

18 Pa. Cons. Stat. Ann. § 4101 (West 1983). The court has serious reservations about whether probable cause to arrest McMahon on charges of forgery actually existed. That issue, however, need not be decided as the record clearly demonstrates that Minshall could reasonably have believed that the facts available to him were sufficient to form probable cause.

⁷ While the mere fact that the ADA and district justice approved the probable cause affidavit does not establish, per se, the objective reasonableness of the warrant application, see Malley, 475 U.S. at 345, this fact does provide support for granting qualified immunity where a reasonably well trained officer could have believed that probable cause existed. See Goldey v. Commonwealth of Pennsylvania, No. 92-6932, 1994 WL 396471, at *4 n.1 (E.D. Pa. June 20, 1994) (noting that where “reasonably well-trained officer” could have reasonably believed that probable cause existed, fact that neutral and detached magistrate issued warrant “militate[d] in

information, the court finds it was objectively reasonable for a police officer to believe that a crime had been committed based upon the information at Minshall's disposal. Because Minshall is entitled to qualified immunity, the court has granted summary judgment with regard to plaintiff's § 1983 claims.

Defendant Minshall has also been granted summary judgment as to plaintiff's state law claims against him. As an employee of a local agency, Minshall enjoys state law immunity for actions taken within the scope of his employment to the same extent that the municipalities enjoy such immunity. Title 42, § 8545. If, however, Minshall acted with malice or engaged in "willful misconduct," or if plaintiff's injury resulted from one of the enumerated exceptions in § 8542, then he would not be entitled to such immunity. Title 42, § 8550. Plaintiff's claim of negligent infliction of emotional distress fails as a matter of law because it neither fits within the exceptions nor alleges conduct rising to the level of willful misconduct. See Irvin v. Borough of Darby, 937 F. Supp. 446, 452 (E.D. Pa. 1996) (dismissing pendant state law claim against police officers where only negligent or reckless conduct alleged).

With regard to plaintiff's claim for intentional infliction of emotional distress, even assuming McMahon could demonstrate the necessary willful intent to defeat state law immunity and establish the intent element of the cause of action,⁸ his claim nevertheless fails. The

favor of a finding of objective reasonableness").

Moreover, at the preliminary hearing, a second district justice ruled that the state had established a prima facie case of forgery. Clearly, reasonable minds could differ on the issue of whether probable cause existed in this case.

⁸ McMahon's only support for his contention that Minshall acted with malice or willful intent is that this present incident was one of a string of interactions between plaintiff and the Westtown-East Goshen Police Department in which plaintiff felt he was mistreated. Plaintiff, however, provides no admissible evidence which would demonstrate that Minshall was involved

Pennsylvania Supreme Court, while not specifically adopting this tort, has set forth the minimum elements that would be necessary to establish a claim of intentional infliction of emotional distress. Those elements include the fact of emotional distress which “ must be supported by competent medical evidence.” Kazatsky v. King David Memorial Park, Inc., 527 A.2d 988, 995 (Pa. 1987). Plaintiff has offered no such medical evidence, and therefore, cannot defeat defendants’ motion for summary judgment. See Silver v. Mendel, 894 F.2d 598, 607 n.19 (3d Cir. 1990) (quoting Williams v. Guzzardi, 875 F.2d 46, 51 (3d Cir. 1989)) (surviving summary judgment, requires that plaintiff “present ‘competent medical evidence of causation and severity’ of his emotional distress”).

For the foregoing reasons, defendants’ motion for summary judgment has been granted. An appropriate order has already been issued.

William H. Yohn, Jr., J.

April 22, 1999

in any of these prior incidents. Moreover, plaintiff has provided no other basis on which a jury could find that defendant’s actions constituted willful misconduct.

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

FRANCIS M. MCMAHON, JR.	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 98-3919
WESTTOWN-EAST GOSHEN POLICE	:	
DEPARTMENT, DETECTIVE DUANE	:	
MINSHALL, WESTTOWN TOWNSHIP,	:	
and EAST GOSHEN TOWNSHIP	:	

ORDER

AND NOW, this day of April, 1999, upon consideration of defendants' motion for summary judgment, plaintiff's response thereto, and after oral argument, IT IS HEREBY ORDERED that the motion for summary judgment is GRANTED and judgment is entered in favor of defendants and against plaintiff..

A memorandum will follow.

William H. Yohn, Jr., J.