

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

CLAUDIUS ATKINSON, et al.,	:	CIVIL ACTION
	:	
Plaintiffs,	:	
	:	
v.	:	NO. 99-1541
	:	
CITY OF PHILADELPHIA, et al.,	:	
	:	
Defendants.	:	

MEMORANDUM

R.F. KELLY, J.

MARCH 20, 2000

Plaintiffs Claudius Atkinson ("Mr. Atkinson") and Cymbal Atkinson ("Mrs. Atkinson") bring this action against the City of Philadelphia, the Philadelphia Police Department, the Philadelphia District Attorney's Office, Philadelphia Police Detective Charles Meissler ("Meissler"), and Philadelphia Police Officer Floyd Stepney ("Stepney") alleging false arrest, false imprisonment, intentional infliction of emotional distress, malicious prosecution, and violation of their Fourth, Eighth and Fourteenth Amendment rights protected under 42 U.S.C. sections 1983 and 1988. 42 U.S.C. §§ 1983, 1988. Presently before this Court is the Motion for Summary Judgment of Defendants City of Philadelphia and Philadelphia Police Department, to which Plaintiffs' counsel has advised this Court, by letter dated March 15, 2000, that Plaintiffs do not intend to respond. For the

reasons that follow, the motion is granted.

BACKGROUND

On or about May 30, 1997, Meissler, a Philadelphia Police Detective, submitted an Affidavit of Probable Cause ("the Affidavit") for the arrest of Mr. Atkinson to the Honorable Amanda Cooperman of the Philadelphia Court of Common Pleas. The Affidavit stated that Meissler had observed Mr. Atkinson at approximately 6:00 p.m. on May 12, 1997 selling a packet of marijuana to a Sharon Jones at 4610 Woodland Avenue in Philadelphia, Pennsylvania. The Affidavit also stated that Stepney, a Philadelphia Police Officer, had purchased a packet of marijuana from Mr. Atkinson at approximately 6:00 p.m. on May 12, 1997 at 4610 Woodland Avenue. The Affidavit also stated that Meissler observed Mr. Atkinson talking to an unknown male at 4610 Woodland Avenue at approximately 6:15 on May 13, 1997, and that Meissler then observed Mr. Atkinson drive away.

Plaintiffs claim that at the time Meissler produced the Affidavit to Judge Cooperman, both Meissler and Stepney knew the statements in the Affidavit were false, or that they had made them in reckless disregard for their truth or falsity. Moreover, Plaintiffs claim Mr. Atkinson was not at or about 4610 Woodland Avenue at the time he was allegedly observed selling marijuana.

Pursuant to the Affidavit, a warrant was issued for Mr. Atkinson's arrest. Between May 30, 1997 and June 2, 1997, police

officers entered the residence at 1010 Serrill Avenue in Yeadon, Pennsylvania, which is owned by both Plaintiffs, to search for Mr. Atkinson.¹ Mrs. Atkinson and her children were present at 1010 Serrill Avenue when the police officers entered. Plaintiffs claim that the police officers entered the residence with "force and intimidation" and that they "totally disrupted the lives of Plaintiff Cymbal Atkinson and her children, terrified them and inflicted severe emotional pain and suffering upon them." Compl. at ¶ 30.

On June 2, 1997, after being informed that the police were looking for him, Mr. Atkinson voluntarily turned himself in at the Philadelphia District Attorney's Office and was subsequently arrested pursuant to the warrant. He was charged with Possession of a Controlled Substance, Possession of a Controlled Substance with Intent to Deliver, and Conspiracy. After a two-day trial before the Honorable Felice R. Stack of the Philadelphia Municipal Court, Mr. Atkinson was found not guilty of the charges. Subsequently, on March 29, 1999, the Atkinsons filed the instant action.

DISCUSSION

Federal Rule of Civil Procedure 56 provides that the court may only grant the moving party's motion for summary

¹ Although Mrs. Atkinson and her children lived at this residence, Mr. Atkinson resided at 6070 Upland Street in Philadelphia, Pennsylvania.

judgment "if appropriate," even where, as here, the non-moving party fails to oppose or answer the motion. Bardaji v. Flexible Flyer Co., NO.CIV.A. 95-CV-0521, 1995 WL 568483, at *2 (E.D.Pa. Sept. 25, 1995). A grant of summary judgment is appropriate 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.

Id. (quoting Anchorage Assoc. v. Virgin Islands Bd. of Tax Review, 922 F.2d 168, 175 (3d Cir. 1990)). In other words, the motion may be granted only if the moving party is entitled to judgment as a matter of law. Id. Further, where a plaintiff has failed to respond to a defendant's summary judgment motion, "the court need only examine the pleadings, including the complaint and the evidence attached to the defendant's motion." Id. (citations omitted).

I. Claims Against the Philadelphia Police Department.

The Philadelphia Police Department is entitled to judgment as a matter of law on all of Plaintiffs' claims, since the Police Department is not a separate legal entity that can be sued apart from the City of Philadelphia. Brown v. City of Philadelphia, NO.CIV.A. 97-4737, 1998 WL 372549, at *4 (E.D.Pa.

May 20, 1998); Regalbuto v. City of Philadelphia, 937 F. Supp. 374, 377 (E.D.Pa. 1995); Baldi v. City of Philadelphia, 609 F. Supp. 162, 168 (E.D.Pa. 1985); City of Philadelphia v. Glim, 613 A.2d 613, 616 (Pa.Commw.Ct. 1992). "Because all suits, including those brought under Section 1983, growing out of activities of a department of the City of Philadelphia must be brought in the name of the City of Philadelphia, an action against the Police Department of Philadelphia cannot be maintained." Zamichieli v. Stott, NO.CIV.A. 96-0254, 1999 WL 447311, at *3 (E.D.Pa. July 1, 1999). Therefore, summary judgment is granted in favor of the Philadelphia Police Department as to all claims.

II. Claims against the City of Philadelphia.

A. State Law Claims.

Plaintiffs assert claims against the City of Philadelphia for the following torts: false arrest, false imprisonment, intentional infliction of emotional distress and malicious prosecution. "Causes of action brought in tort against political subdivisions in Pennsylvania, such as the city of Philadelphia, are subject to the Political Subdivision Tort Claims Act, Act of October 5, 1980, P.L. 693, No. 142 § 221 (1), Subchapter C, as amended, 42 Pa.C.S. §§ 8541-8564." Ellis v. Philadelphia Police Dep't, NO.CIV.A. 96-6403, 1996 WL 683868, at *3 (E.D.Pa. Nov. 25, 1996). Section 8541 of the Political Subdivision Tort Claims Act (the "PSTCA") provides that "except

as otherwise provided in this subchapter, no local agency shall be liable for any damages on account of any injury to a person or property caused by the act of the local agency or any employee thereof or any other persons." 42 Pa.C.S.A. § 8541. The PSTCA contains the following exceptions to this grant of general immunity, whereby liability may be imposed on a local agency for the negligent acts of the local agency or its employees acting within the scope of their office or duties: (1) vehicle liability; (2) the care, custody and control of personal property; (3) the care, custody and control of real property; (4) trees, traffic controls and street lighting; (5) utility service facilities; (6) streets; (7) sidewalks; and (8) the care, custody and control of animals. 42 Pa.C.S.A. § 8542. The PSTCA also provides that the City may not be held liable where the actions complained of are employee acts which constitute a "crime, actual fraud, actual malice, or willful misconduct." 42 Pa.C.S.A. § 8550.

In the instant case, the City of Philadelphia may not be held liable for Plaintiffs' tort law claims. Plaintiffs' claims for false arrest, false imprisonment, intentional infliction of emotional distress and malicious prosecution are intentional torts which constitute "willful misconduct" or "actual malice" under section 8542 (a)(2). 42 Pa.C.S.A. § 8542; Gonzalez v. City of Bethlehem, NO.CIV.A. 93-1445, 1993 WL 276977,

at *3 (E.D.Pa. July 13, 1993)(holding that intentional torts such as false arrest, false imprisonment, malicious prosecution, assault, battery and abuse of process constitute willful misconduct or actual malice); Agesta v. City of Philadelphia, 694 F. Supp. 117, 123-34 (E.D.Pa. 1988)(holding that intentional torts such as false imprisonment and assault constitute willful misconduct or malice); Perez v. City of Bethlehem, NO.Civ.A. 96-1632, 1996 WL 377124, at *3 (E.D.Pa. July 5, 1996)(holding section 8542 precludes liability for county for claims of intentional infliction of emotional distress and false imprisonment). Accordingly, summary judgment is granted in favor of the City of Philadelphia as to all of Plaintiffs' state law claims.

B. 42 U.S.C. §1983 Claim.

Plaintiffs claim that the City of Philadelphia is liable under 42 U.S.C. section 1983 because "as a result of the acquiescence, tacit approval, and encouragement of Defendant[] City of Philadelphia . . . , there exists within the Philadelphia Police Department an ongoing de facto governmental policy and/or custom of permitting police officers to submit to judicial officers Affidavits of Probable Cause for Arrest Warrants which contain statements said police officers know to be false or contain statements they have made with reckless disregard for whether they are true." Compl. at ¶ 46. Plaintiffs further

assert that "[t]he failure of Defendant[] City of Philadelphia . . . , to curb the practice of Philadelphia police officers, through training, supervision, investigation and discipline, from submitting Affidavits of Probable Cause which contain information known to be false or in reckless disregard of whether the information is true or false is a cause of ongoing risk of harm to Plaintiff and other individuals." Compl. at ¶ 47.²

In Monell v. Department of Soc. Servs. of the City of New York, 436 U.S. 658, 691 (1978), the United States Supreme Court held that

[l]ocal governing bodies . . . can be sued under § 1983 . . . [in those situations where] the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted or promulgated by that body's officers. Moreover, . . . local governments . . . may be sued for constitutional deprivations visited pursuant to governmental "custom" even though such custom has not received formal approval through the body's official decisionmaking channels.

Monell, 436 U.S. at 690-691. A municipality may not be held

² Mr. Atkinson alleges that "Defendants deprived the Plaintiff of his rights to freedom from unreasonable arrest; search and seizure; freedom from warrantless arrest; freedom from arrest without probable cause; freedom from the use of unreasonable force by police officers; freedom from malicious prosecution; and due process of law. All these rights are secured to the Plaintiff by the provisions of the First, Fourth, Eighth and Fourteenth Amendments to the United States Constitution and by Title 42 U.S.C. Sections 1983 and 1988." Compl. at ¶ 44.

Mrs. Atkinson alleges that "Defendants . . . deprived [her] of rights secured . . . by the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution, Title 42 U.S.C. Sections 1983 and 1988, and Article I, Section 26 of the Pennsylvania Constitution. . . ." Compl. at ¶ 57.

liable for the conduct of its employees based on the theory of respondeat superior. Id. at 690-691; Beck v. City of Pittsburgh, 89 F.3d 966, 971 (3d Cir. 1996), cert. denied, 519 U.S. 1151 (1997); Abney v. City of Philadelphia, NO.Civ.A. 96-08111, 1999 WL 360202, at *4 (E.D.Pa. May 26, 1999). Rather, it is the plaintiff's burden to show the existence of a policy, and that a policymaker is responsible for the policy or has acquiesced to the custom. Gallo v. City of Philadelphia, NO.CIV.A. 96-3909, 1999 WL 1212194 (E.D.Pa. Dec. 17, 1999). "A failure to train employees may be sufficient [to impose municipal liability], but only if that 'failure amounts to deliberate indifference to the rights of persons with whom the police come into contact.'" Faust v. Powell, NO.CIV.A. 99-4080, 2000 WL 193501, at *1 (E.D.Pa. Feb. 18, 2000)(quoting Montgomery v. DeSimone, 159 F.3d 120, 126-27 (3d Cir. 1998)). Moreover, a failure to train police officers can only form the basis for a 1983 claim if the plaintiff shows "contemporaneous knowledge of a prior pattern of similar incidents and circumstances under which the supervisor's actions or inaction could be found to have communicated a message of approval to the offending subordinate." Id.

Here, the Complaint fails to aver that any supervisor in the police department had contemporaneous, conscious knowledge of the incident giving rise to the Complaint, or of any prior similar incidents. In fact, the Complaint makes no reference to

any named supervisors; the only police employees even mentioned in the Complaint are Meissler and Stepney, and Plaintiffs have failed to establish that these officers are policymakers whose actions or inactions are capable of creating liability on the part of the City. Further, the Complaint does not describe any prior incidents of falsified or recklessly reported information in Affidavits of Probable Cause submitted to judicial officials which would support a finding of "deliberate indifference" to such practices, other than a blanket statement that such practices are "an ongoing pattern and practice . . ." Compl. at ¶ 49. Moreover, Plaintiffs do not allege any action or inaction by any identifiable policymakers which could be interpreted as encouraging falsified affidavits. Accordingly, summary judgment is granted in favor of the City of Philadelphia as to Plaintiffs' 42 U.S.C. section 1983 claim.

An appropriate Order follows.