

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

BARRIE JO MOYER : CIVIL ACTION  
 :  
 v. :  
 :  
BOROUGH OF NORTH WALES, et al. : NO. 00-CV-1092

**MEMORANDUM**

**Padova, J.** **January , 2001**

Before the Court is Defendants’ Motion for Summary Judgment. The matter has been fully briefed and is ripe for decision. For the following reasons, the Court grants Defendants’ Motion.

**I. BACKGROUND**

Plaintiff Barrie Jo Moyer (“Moyer”) claims that Timothy Conley sexually assaulted her on March 4, 1998. After the alleged sexual assault, Moyer went to North Penn Hospital for treatment for physical injuries sustained during the assault. Police officers from the Borough of North Wales (“Borough”) were called. Barry Hackert (“Officer Hackert”), a Borough police officer, conducted an investigation. After conferring with Kenneth Veit (“Chief Veit”), the Borough’s chief of police, Hackert brought disorderly conduct charges against both Moyer and Timothy Conley. A jury acquitted Moyer of the charges while Timothy Conley pled guilty.

**II. LEGAL STANDARD**

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with 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). An issue is “genuine” if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is “material” if it might affect the outcome of the case under governing law. Id.

A party seeking summary judgment always bears the initial responsibility for informing the district court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the movant’s initial Celotex burden can be met simply by “pointing out to the district court that there is an absence of evidence to support the non-moving party’s case.” Id. at 325. After the moving party has met its initial burden, “the adverse party’s response, by affidavits or otherwise as provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” Fed. R. Civ. P. 56(e). That is, summary judgment is appropriate if the non-moving party fails to rebut by making a factual showing “sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” Celotex, 477 U.S. at 322. Under Rule 56, the Court must view the evidence presented on the motion in the light most favorable to the opposing party. Anderson, 477 U.S. at 255. “[I]f the opponent [of summary judgment] has exceeded the ‘mere scintilla’ [of evidence] threshold and has offered a genuine issue of material fact, then the court cannot credit the movant’s version of events against the opponent, even if the quantity of the movant’s evidence far outweighs that of its opponent. Big Apple BMW, Inc. v. BMW of North America, Inc., 974 F.2d 1358, 1363 (3d Cir. 1992).

### **III. DISCUSSION**

Plaintiff filed the instant action against Defendants Borough, Chief Veit, Officer Hackert,

Timothy Conley (“Conley”) and his parents, William, and Therese Conley (collectively “Conley Family”) on March 1, 2000. The Court subsequently granted the Conley Family’s Motion to Dismiss Plaintiff’s Complaint on June 22, 2000. Plaintiff thereafter filed an Amended Complaint and entered a stipulation dismissing all claims against the Conley Family. On July 24, 2000, Defendants sought dismissal of the Amended Complaint. On November 6, 2000, the Court granted Defendants’ motion in part. As a result, the following constitutional claims remain in the suit: conspiracy to deprive Moyer of her Fourth Amendment right against false arrest against Chief Veit and Officer Hackert pursuant to 42 U.S.C. § 1983 (Count One); deprivation of Fourth Amendment right against false arrest against Chief Veit and Officer Hackert pursuant to § 1983 (Count Two); maintenance of an unconstitutional policy pursuant to § 1983 against Borough and Chief Veit (Count Three); failure to train police officers in the proper handling of sexual assault claims against Borough pursuant to § 1983 (Count Four); and conspiracy to deprive Plaintiff of equal protection of the laws on the basis of her alleged false arrest pursuant to § 1985(3) against Chief Veit and Officer Hackert (Count Five). Moyer’s various state law claims stated in Count Six for malicious prosecution, official oppression, false arrest, assault and battery, obstruction of justice, intentional infliction of emotional distress, abuse of process, negligence, and gross negligence against Chief Veit and Officer Hackert also remained viable.

On December 8, 2000, Defendants filed a Motion for Summary Judgment. Defendants argue that no issues of material fact exist for trial, and reassert qualified immunity. Because the Court concludes that Defendants are entitled to summary judgment on all of the federal claims, the Court will not address the arguments regarding qualified immunity.

A. Counts One and Two: False Arrest

Counts One and Two are brought pursuant to 42 U.S.C. § 1983. Section 1983 provides a remedy against “any person” who, under the color of law, deprives another of his constitutional rights. Id. To establish a claim under § 1983, a plaintiff must allege (1) a deprivation of a federally protected right, and (2) commission of the deprivation by one acting under color of state law. Lake v. Arnold, 112 F.3d 682, 689 (3d Cir. 1997). In both Counts One and Two, Plaintiff alleges deprivation of her Fourth Amendment right against false arrest.

To prevail on a claim for false arrest pursuant to § 1983, a plaintiff must prove that the police arrested her without probable cause. Groman v. Township of Manalapan, 47 F.3d 628, 634 (3d Cir. 1995) (citing Dowling v. City of Philadelphia, 855 F.2d 136, 141 (3d Cir. 1988)). An arrest requires some seizure of the person through application of physical force or, where that is absent, submission to the assertion of authority. California v. Hodari, 499 U.S. 621, 624 (1991). “A person is seized for Fourth Amendment purposes only if he is detained by means intentionally applied to terminate his freedom of movement.” Berg v. County of Allegheny, 219 F.3d 261, 268 (3d Cir. 2000). Plaintiff fails to adduce any evidence indicating that Defendants arrested, seized, placed her into physical detention, or forcibly imposed any restrictions on her freedom of movement. Defendants submit evidence that Officer Hackert never took Plaintiff into custody, but rather mailed Plaintiff a written citation for disorderly conduct. (Def. Ex. C (“Moyer Dep.”) at 228; Def. Ex. D (“Hackert Dep.”) at 31.) Issuance of a written citation is insufficient to constitute an arrest or seizure of the person required under the Fourth Amendment to sustain a claim for false arrest. See Johnson v. Barker, 799 F.2d 1396, 1399 (9th Cir. 1986). The Court, therefore, grants summary judgment on Counts One and Two in favor of Officer Hackert and Chief Veit.

B. Count Five - Section 1985(3)

Count Five alleges that Officer Hackert and Chief Veit conspired to deprive Plaintiff of equal protection of the laws or a right or privilege granted to citizens of the United States pursuant to 42 U.S.C. § 1985(3). To establish a claim under § 1985(3), Plaintiff must plead the following elements: (1) a conspiracy; (2) for the purpose of depriving any person or class of person of equal protection of the laws or equal privileges and immunities; and (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States. United Bhd. of Carpenters and Joiners of Am., Local 610, AFL-CIO v. Scott, 463 U.S. 825, 828-29 (1983); Hankins v. City of Philadelphia, No. 98-1327, 1999 WL 624602, at \*15 (3d Cir. Aug. 18, 1999). Plaintiff fails to identify any evidence in the record indicating that Officer Hackert or Chief Veit acted with such an intent. In contrast, the record indicates that Chief Veit told Officer Hackert to charge Plaintiff with disorderly conduct based on her lies to Officer Hackert regarding the identity of the alleged assailant. (Pl. Ex. B (“Veit Dep.”) at 8, 14; Hackert Dep. at 26.) Since there is no genuine issue of material fact as to the second element of a cause of action under § 1985(3), the Court grants summary judgment on Count Five in favor of Officer Hackert and Chief Veit.<sup>1</sup>

C. Section 1983 - Municipal Liability

Count Three alleges that Borough and Chief Veit maintained an unconstitutional policy that permitted officers to deprive Moyer of her constitutional rights. Count Four claims that the Borough

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<sup>1</sup>To the extent that Plaintiff grounds Count Five on the police’s failure to file sexual assault charges against Timothy Conley, she lacks standing to assert such a claim. Private citizens lack a judicially cognizable interest in the criminal prosecution of another. See Linda R.S. v. Richard D., 410 U.S. 614, 619 (1973); Brown v. Grabowski, 922 F.2d 1097, 1104 (3d Cir. 1991).

failed to train its officers in the proper method for investigating sexual assault claims by women. Because Plaintiff fails to submit evidence supporting either claim, the Court grants summary judgment in favor of Borough on Counts Three and Four and Chief Veit on Count Three.

Municipalities may be held liable in § 1983 actions only in limited circumstances. Monell v. Dep't of Social Serv., 436 U.S. 658, 688-89 (1978). One situation is when the alleged unconstitutional action implements a municipal policy or practice, or a decision that is officially adopted or promulgated by those whose acts may fairly be said to represent official policy. Reitz v. County of Bucks, 125 F.3d 139, 144 (3d Cir. 1997) (citing Monell, 436 U.S. at 690-91 (1978)). To sustain a § 1983 claim for a municipal policy, the plaintiff must prove: (1) existence of a municipal custom or policy; and (2) violation of her constitutional rights by an officer acting pursuant to the municipal policy. Beck v. City of Pittsburg, 89 F.3d 966, 972 (3d Cir. 1996) (quoting Bielevicz v. Dubinon, 915 F.2d 845, 851 (3d Cir. 1990)). Critical to a successful claim is proof of proximate cause: "A sufficiently close causal link between . . . a known but uncorrected custom or usage and a specific violation is established if occurrence of the specific violation was made reasonably probable by permitted continuation of the custom." Bielevicz, 915 F.2d at 851. Since Plaintiff fails to demonstrate a predicate constitutional violation under either Counts One or Two, she may not sustain a claim for municipal liability based on a policy. Furthermore, Plaintiff points to no evidence establishing the existence of any municipal custom or policy.

Alternatively, a municipality may be held liable if it fails to properly train its employees, such that the failure amounts to deliberate indifference to the rights of persons with whom its employees come into contact. Id. at 145 (citing City of Canton v. Harris, 489 U.S. 378, 388 (1989)).

Failure to properly train employees and officers may form a basis for § 1983 liability only where it

amounts to “deliberate indifference” to the rights of persons whom the employees encounter. Reitz, 125 F.3d at 145 (citing Canton, 489 U.S. at 388). The plaintiff must further demonstrate that the municipality through its deliberate conduct was the moving force behind the alleged injury. Id. (citing Board of County Comm’rs of Bryan County v. Brown, 520 U.S. 397 (1997)). The focal inquiry is on the adequacy of the municipality’s training program in relation to the tasks the particular officers must perform and the connection between the identified deficiency in the municipality’s training program and the ultimate injury. Id. Where a plaintiff alleges that a municipality indirectly caused an employee to inflict an injury, “stringent standards of culpability and causation must be applied to ensure that the municipality in a § 1983 suit is not held liable solely for the conduct of its employee.” Id. Similarly, Plaintiff may not maintain this claim because she has failed to establish an underlying constitutional violation. Although the evidence indicates that neither Chief Veit nor Officer Hackert had specific training related to the investigation of sex crimes outside of the context of child sexual abuse and homicide cases or interviewing adult victims of sex crimes, Plaintiff fails to adduce evidence indicating that specialized training is necessary given the officer’s lengthy experience and training regarding the investigation of other types of crimes. (Veit Dep. at 4-6; Hackert Dep. at 4-6.)

D. Count Six: Assorted State Law Claims

Having granted summary judgment in favor of the movants on all of the federal claims, the Court declines to exercise supplemental jurisdiction over Plaintiff’s state law claims against Officer Hackert and Chief Veit pursuant to 28 U.S.C. § 1367(c)(3).<sup>2</sup>

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<sup>2</sup>Defendants mistakenly believe that the Court previously dismissed Count Six against all Defendants. In its Order dated November 6, 2000, the Court only dismissed Count Six against the Borough; the Court specifically stated that Count Six could proceed against Officer Hackert

#### **IV. CONCLUSION**

The Court grants summary judgment in favor of Chief Veit on Counts One, Two, Three, and Five, in favor of the Borough on Counts Three and Four, and in favor of Officer Hackert on Counts One, Two, and Five. The Court declines supplemental jurisdiction over the state law torts stated in Count VI. An appropriate Order follows.

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and Chief Veit.