

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

GLEN EHLY, <u>ET AL.</u>	:	CIVIL ACTION
	:	
Plaintiffs,	:	03-3634
	:	
v.	:	
	:	
CITY OF PHILADELPHIA, <u>ET AL.</u> ,	:	
	:	
Defendants.	:	

MEMORANDUM AND ORDER

JOYNER, J.

November 17, 2004

Plaintiffs bring this civil rights action against the City of Philadelphia, Police Officers Peter Luca, Charles English, Robert Williams, and others, alleging that Plaintiff Gregory Ehly's constitutional rights were violated when he was arrested on September 17, 2001 following an altercation with off-duty Officer Luca. Defendants City of Philadelphia, Officer English, and Officer Williams now move for summary judgment. For the reasons that follow, Defendants' motion shall be granted in part and denied in part.

Summary Judgment Standard

The purpose of summary judgment under Federal Rule of Civil Procedure 56(c) is to avoid a trial in situations where it is unnecessary and would only cause delay and expense. Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3rd Cir. 1976). A court may properly grant a motion for summary judgment only where all of the evidence before it demonstrates that there is no genuine

issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). A genuine issue of material fact is found to exist where "a reasonable jury could return a verdict for the non-moving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

On a motion for summary judgment, the moving party bears the initial burden of identifying portions of the record demonstrating the absence of issues of material fact. Celotex, 477 U.S. at 323. The party opposing the motion may not rest upon the bare allegations of the pleadings, but must set forth "specific facts" showing that there is a genuine issue for trial. Fed. R. Civ. P. 56(e); Celotex, 477 U.S. at 324. However, all facts must be viewed and all reasonable inferences must be drawn in favor of the non-moving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

Count I: § 1983 Excessive Force

The determination of whether a police officer charged under § 1983 with use of excessive force is entitled to qualified immunity is a two-part inquiry. First, the court must determine whether the facts, taken in the light most favorable to the plaintiff, show that the officer's conduct violated a constitutional right. Saucier v. Katz, 533 U.S. 194, 201 (2001). If so, the court must examine the law in question (here, the

Fourth Amendment's prohibition on unreasonable search and seizure) to determine whether the law put the officer on notice that his conduct was unlawful. Id. at 202. Only if a reasonable officer would recognize that the degree of force he used in a given situation was "clearly unlawful" will he not be entitled to qualified immunity. Id. at 202-07. In other words, the doctrine of qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." Id. at 202 (quoting Malley v. Briggs, 475 U.S. 335, 341 (1986)).

Plaintiffs here claim that Officer English, who weighed in excess of 250 pounds, used excessive force in restraining 15-year old Plaintiff Gregory Ehly when he bent Plaintiff over his police car as Officer Luca allegedly slammed Plaintiff's face into the hood of the car. Plaintiffs have presented unsworn testimony from a witness who observed that Plaintiff was already handcuffed at the time this incident occurred. While the doctrine of qualified immunity generally offers broad protection, a jury could find, viewing the facts of this case in the light most favorable to Plaintiff, that a reasonable police officer should have recognized the unlawfulness of using any force against an adolescent suspect in handcuffs. Given the fact-sensitive nature of any inquiry into the mindset of a "reasonable police officer," this Court cannot determine that, as a matter of law, Officer English is entitled to qualified immunity from Plaintiff's

excessive force claim. As such, Defendants' motion for summary judgment on this claim must be denied.

Count III: § 1983 Interference with Family Relations

The Due Process Clause only protects against deliberate violations of a parent's fundamental rights. McCurdy v. Dodd, 352 F.3d 820, 827-28 (3rd Cir. 2003). It has never been held to protect against government actions that affect the parental relationship only incidentally, as where a police officer kills a child whose parent claims a Fourteenth Amendment liberty interest in the child's companionship. Id. at 828. As Plaintiffs here allege the same sort of incidental injury, we must grant Defendants' motion for summary judgment with respect to Plaintiffs' claim of interference with family relations.

Count IV: § 1983 Municipal Liability

In determining a municipality's liability under § 1983, a court must determine, first, whether the plaintiff's harm was caused by a constitutional violation. Collins v. City of Harker Heights, 503 U.S. 115, 120 (1992). If a constitutional violation is found, the municipality will be liable only if it was the "moving force" behind the violation, evidenced by a deliberate and direct causal link between a municipal policy or custom and the alleged constitutional violation. Id. at 120; Board of County Comm'rs of Bryan County v. Brown, 520 U.S. 397, 403-05 (1997). Custom sufficient to support a finding of municipal

liability may be shown where there is evidence that a policy-maker had notice that a specific constitutional violation was likely to occur, and acted with deliberate indifference to this risk. Maiale v. Youse, No. 03-5450, 2004 US Dist. LEXIS 17442 at 24, 2004 WL 1925004 (E.D. Pa. 2004).

Plaintiffs allege that a causal link can be found between the constitutional violations suffered by Plaintiff Gregory Ehly and the City of Philadelphia's failure to train its officers and enforce disciplinary policies regarding off-duty conduct and the use of force. Specifically, Plaintiffs cite a March 2001 report by the Police Department's Integrity and Accountability Office (IAO), which cited concerns regarding "institutional resistance" to disciplinary enforcement, inconsistencies in the application of disciplinary policies and penalties, and poor documentation surrounding disciplinary enforcement. A November 2001 report by the Mayor's Task Force on Police Discipline and a December 2003 follow-up report by the IAO highlighted similar concerns. Plaintiffs allege that these reports are evidence of a citywide policy of "failure to discipline" which inevitably invites and tacitly condones the unconstitutional use of excessive force. Plaintiffs also highlight two prior complaints involving Officer Luca that they allege should have placed the City on notice regarding Officer Luca's conduct. The first incident occurred in July 2001, when Officer Luca, while off-duty, came to the

assistance of an on-duty uniformed officer who he observed chasing a suspect outside Officer Luca's home. An investigation found that Officer Luca was in compliance with the Police Department's off-duty policy, and he received "positive discipline" advising him to be aware of the Department's off-duty policy and use caution during off-duty incidents. The second incident involved an August 2001 complaint alleging violation of a Department directive that injured prisoners be transported to the nearest hospital before being taken to a detaining unit. No disciplinary action was taken against Officer Luca in connection with this incident.

These allegations, even viewed in the light most favorable to Plaintiffs, do not support a cause of action for municipal liability under § 1983. In Maiale v. Youse, 2004 US Dist. LEXIS 17442, this Court rejected similar allegations as insufficient to withstand a motion for summary judgment because they did not show causation of the particular constitutional violation at issue. In Maiale, the plaintiff presented an IAO report criticizing the disciplinary process within the Philadelphia Police Department as excessively lenient, arguing that the custom of lax discipline "sent a message to [Defendants] that such unlawful behavior would be tolerated, thereby facilitating their unlawful actions against Plaintiff." Id. at 25-26. This Court held that the IAO report did not provide sufficient evidence of a causal nexus between the

City's inadequate disciplinary processes in general and the alleged unlawful treatment of the plaintiff at issue in that particular case. Id. at 26.

This Court also recognized that municipal liability may arise where a police department has failed to discipline an officer after "multiple complaints" against him, "particularly where the prior conduct which the officer engaged in is similar to the conduct which forms the basis for the suit." Id. at 26-27 (citing Beck v. City of Pittsburgh, 89 F.3d 966, 973 (3rd Cir. 1996)). However, this Court ultimately found that the evidence before it, including multiple internal investigation reports filed against the defendants (including two allegations of physical abuse), all either dismissed as unfounded or not sustained, was not sufficient to create a genuine issue of fact as to whether the City was deliberately indifferent to the risk of constitutional violations by the defendants. Maiale, 2004 U.S. Dist. LEXIS 17442 at 27-30.

We likewise find that the IAO reports and internal investigation reports presented by Plaintiffs in this case are legally insufficient to support a finding of municipal liability under § 1983. No reasonable jury could find that the City of Philadelphia's lenient policies regarding police discipline were the "moving force" that directly caused Officer Luca and English's allegedly unconstitutional conduct. We will grant

Defendants' motion for summary judgment on the § 1983 municipal liability claim.

Counts VII and VIII: Assault and Intentional Infliction of Emotional Distress

The City of Philadelphia and its employees enjoy absolute immunity from tort liability under the Political Subdivision Tort Claims Act, subject to two major exceptions. 42 Pa. C.S.A. 8541. First, tort recovery may be permitted for negligent acts falling within one of the eight enumerated categories in 42 Pa. C.S.A. 8542.¹ The second exception, at issue here, permits recovery where an employee's act causes injury and the act constitutes a crime, actual fraud, actual malice, or "willful misconduct." 42 Pa. C.S.A. 8550.

For the purposes of governmental immunity under the Tort Claims Act generally, the term "willful misconduct" has been found to be synonymous with the term "intentional tort." King v. Breach, 540 A.2d 976, 981 (Pa. Commw. Ct. 1988). However, the Pennsylvania Supreme Court's decision in Renk v. City of Pittsburgh, 641 A.2d. 289, 293 (Pa. 1994) established that "willful misconduct" does not have the same meaning in tort actions against police officers. Where the allegedly tortious

¹ 42 Pa. C.S.A. 8542(b) permits tort recovery against a municipality, agency, or its employees where a negligent act relates to one of the following: vehicle liability; care, custody, or control of personal property; real property; trees, traffic controls, or street lighting; utility service facilities; streets; sidewalks; or care, custody, or control of animals. None of these are at issue in this case.

conduct at issue is that of a police officer, "willful misconduct" is any misconduct "which the perpetrator recognized as misconduct and which was carried out with the intention of achieving exactly that wrongful purpose." Owens v. City of Philadelphia, 6 F. Supp. 2d 373, 394-95 (E.D. Pa. 1998); Enhaili v. City of Philadelphia, No. 03-3331, 2004 U.S. Dist. LEXIS 18544 at 26, 2004 WL 2039860 (E.D. Pa. 2004); Africa v. City of Philadelphia, 938 F. Supp. 1278, 1289 (E.D. Pa. 1996); but see Duvall v. Oxford, No. 90-0629, 1992 U.S. Dist. LEXIS 3630 at 20, 1992 WL 59163 (E.D. Pa. 1992) (finding that defendant police officers had no immunity from claims of assault and intentional infliction of emotional distress because they are intentional torts and therefore willful misconduct). Mere negligence or deliberate indifference is not sufficient to break through governmental immunity on the grounds of "willful misconduct." Owens, 6 F. Supp. 2d at 395; Smith v. County of Bucks, No. 03-6238, 2004 US Dist LEXIS 7199 at 18-19, 2004 WL 868278 (E.D. Pa. 2004).

Plaintiffs' Amended Complaint alleges that the assault of Plaintiff Gregory Ehly by Officers Luca and English was malicious, wanton, outrageous and intentional. The allegations of intentional infliction of emotional distress claim that the physical attack on Plaintiff "maliciously and intentionally" placed him in a mental state of shock.

Initially, Defendant's motion for summary judgment must be granted with respect to the intentional infliction of emotional distress claim against the Defendants who were not present at the scene of the alleged assault. Even viewing the facts and pleadings in the light most favorable to Plaintiff, there is no evidence to support a finding that these Defendants attacked Plaintiff with the intent of causing him mental distress.

As to the claims against Officer English, however, Defendants, in moving for summary judgment, have identified no evidence tending to show that an issue of material fact exists with respect to the willfulness of Officer English's conduct. A reasonable jury could find that Officer English intended to commit assault and intended to cause Plaintiff emotional distress when he restrained the handcuffed adolescent against a police car as his head was being slammed down by Officer Luca. Because Officer English is not entitled to immunity under the Tort Claims Act as a matter of law, Defendant's motion for summary judgment with respect to these two claims must be denied with respect to Officer English.

An appropriate Order follows.

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ORDER

AND NOW, this 17th day of November, 2004, upon consideration of the Motion for Summary Judgment of Defendants City of Philadelphia, Police Officer Charles English, and Police Officer Robert Williams (Docs. No. 38, 39) and all responses thereto (Docs. No. 49, 55), it is hereby ORDERED that the Motion is GRANTED in part and DENIED in part, as follows:

(1) The Motion is DENIED with respect to Counts I (excess force) and VII (assault/battery);

(2) The Motion is DENIED with respect to Count VIII (intentional infliction of emotional distress) as against Officers English and Luca, but GRANTED as against the remaining Defendants;

(3) The Motion is GRANTED with respect to Count III (interference with family relations) and Count IV (municipal liability);

(4) The Motion is DENIED as MOOT with respect to Counts II (unlawful arrest), V (malicious prosecution), and VI (false arrest), in light of this Court's Memorandum and Order dated

November 15, 2004 (Doc. No. 61), dismissing these counts.

BY THE COURT:

s/J. Curtis Joyner
J. CURTIS JOYNER, J.