

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

ROSELYN CACCIATORE : CIVIL ACTION
: :
v. : :
: :
CITY OF PHILADELPHIA : NO. 04-5596

JOHN JOSEPH POMARICI : CIVIL ACTION
: :
v. : :
: :
CITY OF PHILADELPHIA : NO. 04-5597

MEMORANDUM

Bartle, J.

September 1, 2005

Plaintiffs Roselyn Cacciatore ("Ms. Cacciatore"), in her own right and as Executrix of the Estate of Roselyn Cacciatore, and John Joseph Pomarici bring these actions against defendant City of Philadelphia ("City") under 42 U.S.C. § 1983.¹ They allege violations of the Fourth and Fourteenth Amendments to the United States Constitution for failure properly to train and supervise its police officers and/or its SWAT Team and to implement adequate operational procedures, policies, or customs with regard to verifying addresses listed on search warrants. Before the court is the motion of defendant for summary judgment

1. The plaintiffs have also sued the "City of Philadelphia Police Department." This is not a separate legal entity. 57 Pa. Stat. Ann. § 16257; Regalbuto v. City of Philadelphia, 937 F. Supp. 374, 377 (E.D. Pa. 1995), aff'd 91 F.3d 125 (3d Cir. 1996), cert. denied 519 U.S. 982 (1996).

against plaintiffs under Rule 56(c) of the Federal Rules of Civil Procedure.

Rule 56(c) of the Federal Rules of Civil Procedure provides that a motion for summary judgment should 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." The moving party has the burden of demonstrating the absence of a genuine issue of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). "A factual dispute is material if it bears on an essential element of the plaintiff's claim, and is genuine if a reasonable jury could find in favor of the nonmoving party." Fakete v. Aetna, Inc., 308 F.3d 335, 337 (3d Cir. 2002) (citations omitted). "Summary judgment against a party who bears the burden of proof at trial ... is proper if after adequate time for discovery and upon motion, a party fails to make a 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." Anderson v. Consol. Rail Corp., 297 F.3d 242, 247 (3d Cir. 2002). For the present purpose of deciding this summary judgment motion, we view the facts in the light most favorable to plaintiff. Fakete, 308 F.3d at 337.

On Saturday, January 11, 2004, plaintiff Roselyn Cacciatore, owner of a residence at 2628 South 11th Street, was in her home with her elderly mother, also named Roselyn

Cacciatore, now deceased, and friend John Pomarici. At approximately 8:15 a.m., a woman in her twenties appeared at Ms. Cacciatore's home and pleaded to be allowed inside, saying someone was trying to kill her. Mr. Pomarici called the police and waited for them on the front porch. In the meantime, Ms. Cacciatore was on the back porch with the woman. A man named "Sal," whom Ms. Cacciatore recognized as a neighbor who resided 2622 South 11th Street, jumped over plaintiff's cinder block wall and threatened Ms. Cacciatore, stating "I'm your f----- neighbor, don't you dare help her." Mr. Pomarici ran into the kitchen and told Sal that the police were on their way. While waiting for the police, the woman told plaintiffs that Sal had raped her and that she had jumped out a second story window.

The police arrived and took a report from both Ms. Cacciatore and Mr. Pomarici. The police escorted the woman to the front of 2628 South 11th Street. They then went to 2622 South 11th Street, but no one answered the door.

Around 11:00 p.m. that night, plaintiffs all retired. Ms. Cacciatore slept in the living room with her 88-year-old mother, who was ill and had to sleep on the first floor. At approximately 12:30 a.m., after having obtained a search warrant, members of the Philadelphia Police Department SWAT Team, brandishing guns, rammed open the front door at 2628 South 11th Street. They proceeded upstairs and awoke Mr. Pomarici at gunpoint. Upon their entry, Ms. Cacciatore told the police that

she had called them, and they were at the wrong house. Needless to say, it was a frightful experience for plaintiffs.

Police investigation reports and records had properly listed the residence of Salvatore Pirollo, "Sal," as 2622 South 11th Street. However, the search warrant, which the police had obtained, mistakenly identified the owner, occupant, or possessor of 2628 South 11th Street as Pirollo. The principal officer who initiated and handled the investigation, including the circumstances surrounding the application and execution of the arrest warrant, is now deceased and was not named in this action. The City is the only defendant.

In order to prevail against the City of Philadelphia under § 1983, plaintiffs must prove that their rights were violated as a result of municipal policy or custom of deliberate indifference to the rights of its citizens. Simmons v. City of Phila., 947 F.2d 1042, 1064 (3d Cir. 1991). In Monell v. Dep't of Soc. Sec. Servs. of City of N.Y., 436 U.S. 658, 690, 694 (1978), the Supreme Court concluded that while a municipality may be held liable under § 1983, it "may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom ... inflicts the injury that the government as an entity is responsible under § 1983." Thus, § 1983 does not provide for respondeat superior liability.

A municipality's failure to train its police officers must amount to deliberate indifference to be actionable under

§ 1983. Grazier v. City of Phila., 328 F.3d 120, 124 (3d Cir. 2003) (internal citations omitted). The scope of an action for failure to train is narrow and cannot be proven by showing that a different training program would have been more effective. Id. at 125. The city's decisions must be the "moving force" behind the actual constitutional violation. Id. at 124-25. Liability against a municipality under § 1983 can only be found where "the alleged constitutional transgression implements or executes a policy, regulation, or decision officially adopted by the governing body or informally adopted by custom." Beck v. City of Pittsburgh, 89 F.3d 966, 971 (3d Cir. 1996).

Plaintiffs' failure to supervise claim carries a similarly high burden. Plaintiffs must show that "a reasonable municipal policymaker had contemporaneous knowledge of the offending occurrence or knowledge of a pattern of prior incidents or knowledge of similar violations of constitutional rights and failed to take adequate measures to ensure the particular right in question or otherwise communicated a message of approval to the offending subordinates." Garcia v. County of Bucks, 155 F. Supp. 2d 259, 268 (E.D. Pa. 2001).

Plaintiffs cite Solis v. City of Columbus, 319 F. Supp. 2d 797 (S.D. Ohio 2004) in support of their opposition to defendant's motion for summary judgment. In Solis, police entered the wrong home pursuant to a "no-knock" search warrant that indicated the wrong address, which had been provided by a confidential informant. Plaintiffs sued the city, the mayor, the

Department of Public Safety, the Safety Director, the police department, and the Chief of Police. In denying a motion for summary judgment against the City, the court held that the City's policy with respect to the accuracy of the information for "no-knock" warrants was inadequate. It explained that a jury could find a causal connection between this inadequate policy and the incident in issue.

Solis is not controlling. In the present case, the City of Philadelphia has a written policy on search warrants which details what must and should be included in a search warrant and outlines exceptions to the knock and announce rule. Plaintiffs have not pointed to any deficiency in the City's policies or procedures which has any causal connection to the grievous events in question. Indeed, the plaintiffs acknowledge that under the City's procedures for obtaining a search warrant, "sworn personnel must consult with his highest-ranking supervisor." The City's procedures also require that "sworn personnel serving the warrant will thoroughly review it for accuracy, specifically concentrating on the exact location and description of property to be searched." At most, plaintiffs can show negligence or other misconduct on the part of an individual police officer or officers. However, an error by a police officer in inserting the wrong name or address on a search warrant or in failing to follow proper procedures, without more, does not make the City liable under § 1983. See Beck, 89 F.3d at 971. In sum, plaintiffs have come forth with no evidence that

the City was deliberately indifferent by failing to train or supervise any of its police officers. While the incident that occurred was most unfortunate, plaintiffs have sued the wrong defendant.

Accordingly, we will grant the motions of the City of Philadelphia for summary judgment.

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ORDER

AND NOW, this 1st day of September, 2005, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that:

(1) the City of Philadelphia Police Department is DISMISSED as a defendant in both actions since it is not a legal entity;

(2) the motions of defendant City of Philadelphia for summary judgment against plaintiffs Roselyn Cacciatore, in her own right and as Executrix of the Estate of Roselyn Cacciatore, Dec'd (Doc. #6) and John Joseph Pomarici (Doc. #7) are GRANTED;

(3) judgment is entered in favor of defendant City of Philadelphia and against plaintiff Roselyn Cacciatore, in her own right and as Executrix of the Estate of Roselyn Cacciatore, Dec'd; and

(4) judgment is entered in favor of defendant City of Philadelphia and against plaintiff John Joseph Pomarici.

BY THE COURT:

/s/ Harvey Bartle III J.