Millspaugh v. Cobb County

United States District Court for the Northern District of Georgia, Atlanta Division

December 16, 2021, Decided; December 16, 2021, Filed

CIVIL ACTION NO. 1:20-cv-03314-WMR

Reporter

2021 U.S. Dist. LEXIS 251431 *

SCOTT MILLSPAUGH, Plaintiff, v. COBB COUNTY, GEORGIA, RANDY CRIDER, in his individual capacity, and KEVIN GROSS, in his individual capacity, Defendants.

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Judges: WILLIAM M. RAY, II, UNITED STATES DISTRICT JUDGE.

Opinion by: WILLIAM M. RAY, II

Opinion

ORDER

This matter is before the Court on Defendants' Motion for [*2] Summary Judgment. [Doc. 59]. Upon consideration of the arguments presented, the applicable law, and all appropriate matters of record, the Court **GRANTS** the Motion for the reasons set forth below.

I. FACTUAL BACKGROUND

The following facts are undisputed. On February 2, 1996, Plaintiff Scott Millspaugh ("Plaintiff") began working as a firefighter for the Cobb County Fire Department. [Doc. 64-3 at ¶ 3]. The territory covered by the Cobb County Fire Department is comprised of two Fire Districts. [Pl. Dep. at pp. 55:1-8 (*see also* Dep. Ex. D-5); Graham Dep. 16:8-14; Crider Decl. at ¶ 7; Gross Decl. at ¶ 7]. During the relevant time period, each Fire District had a District Chief who supervised the daily operations and reported to Deputy Chief Kevin Gross ("Defendant Gross"). [Doc. 59-3 at 373; Crider Decl. at ¶

7; Gross Decl. at ¶ 7]. Each Fire District is comprised of multiple Battalions, each of which includes several Fire Stations. [Crider Dep. at pp. 25:8-26:7; Pl. Dep. at pp. 55:1-10, 66:22-67:25, 69:21-70:5 (and Dep. Ex. D-5); Crider Decl. at ¶¶ 7-8; Gross Decl. at ¶¶ 7-8]. Each Battalion is managed by three Battalion Chiefs, one for each twenty-four hour shift. [Pl. Dep. at pp. 43:5-11, [*3] 55:1-10, 66:22-67:25; Crider Decl. at ¶¶ 7-8; Gross Decl. at ¶¶ 7-8]. Battalion Chiefs supervise the twenty-four hour shift operations at his or her assigned Battalion. [Pl. Dep. at p. 43:5-11; Crider Decl. at ¶¶ 7-8; Gross Decl. at ¶¶ 7-8]. They are also responsible for making sure there are enough firefighters staffed at their respective stations and to ensure that there are a sufficient number of fire support vehicles at those stations. [Crider Decl. ¶ 7; Gross Decl. ¶ 7].

On the morning of May 2, 2019, Plaintiff reported to work as a FFIII assigned to Battalion 4 [Doc. 64 at 5; Doc. 59-1 at 9]. In his capacity as FFIII, Plaintiff "was essentially a deputy to the Fourth Battalion Chief, John Graham ("BC Graham"). [Doc. 7 at 4 ¶ 18]. As a *de facto* deputy to BC Graham, Plaintiff was tasked with "lead[ing] and coordinat[ing] daily work activities of assigned crew or co-workers...[and] assist[ing] with scheduling of staff..." [Doc. 59-3 at 369]. These general duties encompassed fielding communications from fire personnel working in Battalion Four about their work availability, coordinating staffing and coverage for shifts as necessary; and making shift swaps between fire personnel. [Pl. [*4] Dep. at pp. 51-52; Graham Dep. at pp. 140-144]. In other words, BC Graham and Plaintiff would work together to meet the day-to-day staffing needs of Battalion 4. [Graham Dep. at p. 102:3-8]. Performing this role required Plaintiff to frequently monitor a digital "status board" that showed all vehicles, incidents, personnel, and other related matters at the fire station in real time. [Graham Dep. at pp. 53:9-54:11, 86:20-88:15, 128:6-134:23; Crider Dep. at pp. 90:14-23; Pl's Dep. at pp, 122:19-123:12 (*see also* Dep. Ex. D-14); Crider Decl. at ¶ 9; Gross Decl. at ¶ 9].

At around 7:00 a.m. on the morning of May 2, 2019, Plaintiff and BC Graham noted that several firefighters had "called out" of work unexpectedly while others were on duty but attending training. [Graham Dep. at pp. 51, 61-62, 68-69]. Plaintiff and BC Graham then spent some time reviewing the status board and discussing their staffing and equipment needs. [Graham Dep. at pp. 68-70]. In light of the firefighter call outs, BC Graham directed certain personnel to move from one location to another to address the needs of the respective stations. [Graham Dep. at pp. 59, 61-62]. Plaintiff himself was moved to a different fire station, [*5] Station 24. [Id.]

Sometime after arriving at Station 24, Plaintiff called the office of Cobb County Commissioner Keli Gambrill and left a voicemail for her assistant, Ryan Williams. [Doc. 64-2 at 44 ¶ 105]. In that voicemail, Plaintiff stated: "*Hey Ryan, this is Scott. If you can give me a call back at [Plaintiff's cell phone number], I was wanting to know if you guys knew why there was five fire trucks not operational today in district one? Thank you very much*." [Doc. 64-2 at 44-45 ¶ 106]. Before making the call, Plaintiff did not inform BC Graham or anyone else in his chain of command that he had planned on calling the Commissioner's office. [Pl. Dep. 120:23-121:18; Crider Decl. at ¶ 10; Gross Decl. at ¶ 10].

Upon receiving the voicemail, Williams emailed Defendant Crider relaying the recording's contents. [Crider Dep. at pp. 36-37, 44-45; Crider Decl. at ¶ 10]. Defendant Crider, Defendant Gross, District Chief White, and BC Graham then met to discuss Plaintiff's conduct and learned that Plaintiff had not informed anyone in his chain of command regarding the voicemail. [Graham Dep. at pp. 63-67; Crider Decl. at ¶ 10; Gross Decl. at ¶ 10]. The officials later called a meeting with Plaintiff, [*6] at which time they played the

voicemail recording for Plaintiff and asked why he had called Commissioner Gambrill's office. [Graham Dep. at pp. 66-67; Crider Decl. at ¶ 10; Gross Decl. at ¶ 10]. After a tense exchange during which he accused Plaintiff of "violat[ing] trust," Defendant Crider informed Plaintiff that he would investigate the incident further and determine what should be done. [Graham Dep. at p. 67; Crider Decl. at ¶ 10; Gross Decl. at ¶ 10].

Thereafter, Defendant Crider had several conversations with BC Graham to discuss Plaintiff's act of going outside the chain of command. [Graham Dep. at pp. 72-73; Crider Decl. at ¶ 12]. On July 19, 2019, Defendant Crider, Defendant Gross, BC Graham, and Plaintiff met in Defendant Crider's office. [Pl. Dep. at pp. 188:3-4, 190; Graham Dep. at pp. 78-81; Crider Decl. at ¶ 13; Gross Decl. at ¶ 13]. During that meeting, Defendant Crider gave Plaintiff a letter of disciplinary action which demoted Plaintiff to the position of Firefighter II, effectively immediately. [Graham Dep. at pp. 78-81; Crider Decl. at ¶ 13; Gross Decl. at ¶ 13].

Plaintiff alleges that this demotion resulted in a ten percent reduction in Plaintiff's pay. [Doc. 7 at [*7] 9 ¶ 40]. Plaintiff also alleges that, because of his act of leaving the voicemail, his end-of-year performance evaluation was lowered, which would affect his annual pay raise. [Doc. 7 at 11-12 ¶¶ 52-56]. On August 20, 2020, Plaintiff filed his Amended Complaint against Defendants asserting claims for First Amendment retaliation (Count I) and violation of the Georgia Whistleblower Act (Count II). Defendants now move for summary judgment as to both claims.

II. LEGAL STANDARD

To succeed on a motion for summary judgment, the moving party must show that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). There is a "genuine dispute" if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). On deciding a motion for summary judgment, the Court will draw inferences from the evidence in the light most favorable to the nonmoving party. *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 158-59, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970). Once the moving party satisfies the initial burden by showing "that there are no genuine issues of material fact that should be decided at trial," the burden shifts to the nonmovant "to demonstrate that there is indeed a material issue of fact that precludes summary judgment." [*8] *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991).

III. DISCUSSION

A. First Amendment Claim

In Count I, Plaintiff alleges that each of the Defendants engaged in actions that "constitute unlawful retaliation in violation of the First Amendment." [Doc. 7 at 13 ¶¶ 63-64]. Plaintiff's First Amendment retaliation claim is governed by a four-stage analysis. *Moss v. City of Pembroke Pines*, 782 F.3d 613, 617 (11th Cir. 2015) (citing *Carter v. City of Melborne, Fla.*, 731 F.3d 1161, 1168 (11th Cir. 2013)). The first and second stages of the analysis address whether a plaintiff's speech is in fact constitutionally protected. *Id. at 618*. If Plaintiff's speech is not protected under the First Amendment, the Court need not address stages three and four, which relate solely to causation. *Id.*

The first stage of the analysis requires this Court to consider whether Plaintiff "spoke as a citizen on a matter of public concern." *Garcetti v. Ceballos*, 547 U.S. 410, 418, 126 S. Ct. 1951, 164 L. Ed. 2d 689 (2006) (citing *Pickering v. Bd. of Educ. of Township High Sch.*

Dist. 205, Will Cty., Ill., 391 U.S. 563, 568, 88 S. Ct. 1731, 20 L. Ed. 2d 811 (1968)). If this threshold question is answered negatively, "the employee [Plaintiff] has no First Amendment cause of action based on his...employer's reaction to the speech." *Id.* If it is answered affirmatively, however, the Court must then determine whether Defendants "had an adequate justification for treating the employee differently from any other member of the general public." *Id.* The above two issues are questions of law for the Court to resolve. *Alves v. Bd. of Regents of the U. System of Ga.*, 804 F.3d 1149, 1159 (citations omitted).

Defendants argue that Plaintiff's First Amendment claim fails because Plaintiff's speech [*9] is not protected by the First Amendment. Specifically, Defendants contend that (1) Plaintiff spoke as a county employee and (2) Defendants' interests in the efficient operation of the county outweigh Plaintiff's interest in his speech. In the alternative, both Defendant Crider and Defendant Gross (collectively, the "individual Defendants") argue they are entitled to qualified immunity on this claim. Each argument is addressed below.

1. Context of Plaintiff's Speech

As a threshold matter, a public employee's speech is constitutionally protected only if that employee spoke (1) as a citizen and (2) on a matter of public concern. *Alves*, 804 F.3d at 1160 (citations omitted). Unless both requirements are satisfied, the claim fails. Defendants have conceded that Plaintiff's speech constitutes a "matter of public concern." [Doc. 67 at 2]. The question, then, is whether Plaintiff "spoke as a citizen" when he called the County Commissioner's Office and left the voicemail at issue.

In considering whether a plaintiff's speech was made in his capacity as a citizen, rather than as a public employee, the proper inquiry is a practical one that focuses on "whether the speech at issue 'owes its existence to' the employee's professional responsibilities." [*10] *Moss*, 782 F.3d at 618 (quoting *Garcetti*, 547 U.S. at 421). The Eleventh Circuit has identified certain factors which, though not dispositive, may guide this Court's analysis. These factors include, among other things, the employee's job description, whether the speech occurred at the workplace, whether the speech concerned the subject matter of the employee's job, and whether the employee harnessed workplace resources. *Id.; Fernandez v. Sch. Bd. of Miami-Dade Cty., Fla.*, 898 F.3d 1324, 1332 (11th Cir. 2018).

Here, Plaintiff called Commissioner Gambrill's office while on duty at his workplace. [Pl. Dep. at pp. 99-100, 111-113]. He called within hours of discussing general staffing difficulties with BC Graham. [Graham Dep. at 61-62, 68-70]. Furthermore, the record suggests that the call was made in direct response to information Plaintiff acquired while performing one of his ordinary duties as FFIII—monitoring the digital status board to assist BC Graham with staffing the fire stations in Battalion 4. [Pl. Dep. at pp. 127-130]. While none alone are dispositive, each of these facts supports a finding that Plaintiff was speaking "pursuant to his official duties," rather than as a citizen.

Plaintiff attempts to artificially distinguish his official responsibilities from his inquiry into the availability of fully staffed [*11] firetrucks in District One by pointing out that he lacked authority to increase personnel and by emphasizing that his authority was limited to the inter-battalion assignment of existing personnel. [Doc. 64-2 at 49 ¶ 113 ("*Plaintiff's job duties [did not include] increasing staff for his battalion on a permanent basis or changing compensation policies to retain more firefighters. . . . Plaintiff's job duties only involved assigning available personnel to stations every shift based on who was working or asking to borrow*

firefighters from another battalion to staff vehicles.")]. However, as the Eleventh Circuit made clear in *Alves*, when an employee engages in speech "in the course of performing—or, more accurately, in the course of trying to perform—their ordinary [job activities]," such speech cannot "reasonably be divorced from those responsibilities." *Alves*, 804 F.3d at 1164-65 (holding that because the employees drafted and submitted a memorandum in order to correct conduct that interfered with the performance of their official duties, the memorandum was drafted and submitted in course of carrying out their professional responsibilities); *see also Winder v. Erste*, 566 F.3d 209, 215, 386 U.S. App. D.C. 26 (D.C. Cir. 2009) ("[Employee's speech] was an attempt to ensure proper implementation [*12] of [his duties] and was therefore offered pursuant to his job duties"). Thus, Plaintiff's attempt to remedy long-term staffing shortages is an issue that directly interfered with Plaintiff's ordinary duties of overseeing day-to-day staffing, which only bolsters a finding that the voicemail was left in furtherance of those duties. Furthermore, the record supports the conclusion that the Plaintiff's speech involved the subject matter of his job because Plaintiff admits that "[h]e contacted his commissioner after he and Graham had extensively discussed the staffing shortages internally through the chain of command prior to May 2, 2019 without success." [Doc. 64-2 at 50 ¶ 115].

Because the Court finds that Plaintiff's speech was made in furtherance of his official duties, Plaintiff's speech is not entitled to First Amendment protection and his retaliation claim must fail.

2. County's Efficiency Interests Outweigh Plaintiff's Speech Interests

Even if it had been determined that Plaintiff spoke "as a citizen on a matter of public concern," his claim still fails under the balancing test set forth in *Pickering*. Under this balancing test, the Court must weigh the Plaintiff's interest in his speech against Defendants' [*13] interest in "promoting the efficiency of the public services it performs through its employees." *Pickering*, 391 U.S. at 568. *See also Anderson v. Burke Cty., Ga.*, 239 F.3d 1216, 1220 (11th Cir. 2001) (citing *Pickering*, 391 U.S. at 568 (1968)). In making its determination, the Court must consider the "manner, time and place" of the employee's speech and the "context" in which it arose. *Moss*, 782 F.3d at 621 (quoting *Rankin v. McPherson*, 483 U.S. 378, 388, 107 S. Ct. 2891, 97 L. Ed. 2d 315 (1987)). "Other pertinent considerations are whether the statement impairs discipline by superiors or harmony among co-workers, has a detrimental impact on close working relationships for which personal loyalty and confidence are necessary, or impedes the performance of the speaker's duties or interferes with the regular operation of the enterprise." *Id.* (quoting *Rankin*, 483 U.S. at 388).

In weighing these considerations, "[t]he government's legitimate interest in avoiding disruption does not require proof of actual disruption." *Moss*, 782 F.3d at 622 (citing *Anderson*, 239 F.3d at 1220-21). Instead, a "[r]easonable possibility of adverse harm is all that is required." *Id.*

Viewing the facts most favorably for Plaintiff, this Court finds the *Pickering* balance weighs in favor of Defendants. Plaintiff alleges that he called Commissioner Gambrill's office to inform her "that the Fire Department was not maintaining minimum readily available staff and equipment sufficient to make emergency fire services available [*14] to Cobb County citizens twenty-four hours per day, 365 days per year." [Doc. 7 at 13 ¶ 60]. While Plaintiff may have had a strong interest in speaking on this matter of public concern, the fact that Plaintiff circumvented the chain of command by voicing this concern directly to the County

Commissioner's Office weighs heavily in Defendants' favor. *See Moss*, 782 F.3d at 621 (recognizing a "heightened need for order, loyalty, and harmony in a quasi-military organization such as a police or fire department").

Here, the record shows that Plaintiff's conduct undermined the loyalty and trust that existed within the fire department. For example, Defendant Crider believed that Plaintiff had committed a "violation of trust" by contacting Commissioner Gambrill without first raising his concerns through the chain of command. [Crider Decl. at ¶ 10). Defendant Crider further testified that he was "[v]ery disappointed" by Plaintiff's voicemail. [Crider Dep. at p. 130:3]. Similarly, BC Graham testified that going outside of the chain of command was a "violation of trust" and that he "felt undermined" by Plaintiff's conduct. [Graham Dep. at pp. 66:5, 73:1-6].

Plaintiff himself admits that trust between employees within a [*15] fire department is particularly important in the context of providing emergency fire services to the public. [Pl. Dep. at p. 16:3-19]. The record contains expert testimony that underscores the disfunction that may reasonably result when the chain of command within a fire department is violated. Two experts testified that violating the chain of command adversely affects the ability of fire departments to provide services to the public. [Milligan Dep. at pp. 12:7-22; Henderson Dep. 42:23-46:6]. Therefore, it is not unreasonable for Defendants to fear that Plaintiff's conduct would undermine their ability to provide such services.

Plaintiff's role as FFIII to BC Graham also weighs in Defendants' favor. As a FFIII, Plaintiff served as a de facto "deputy" to BC Graham. Defendants' interests in the "efficient operation" of its services require them to maintain a functioning hierarchy within the fire department. This can only be achieved where officers are able to rely on the good judgment of their inferior officers. Here, the record shows the chain of command should only be circumvented in the face of a life-threatening situation, a circumstance not present under the facts of this case. [Milligan [*16] Dep. at p. 24:11-25; Henderson Dep. at p. 64:2-9; Pl. Dep. at pp. 163:5-164:9; Doc. 64-2 at 22-23 ¶ 43]. As a result of Plaintiff's conduct, Defendants lost confidence in Plaintiff's ability to exercise sound judgment. [Crider Decl. at ¶ 13]. It was not unreasonable for Defendants to believe that Plaintiff's conduct would degrade close working relationships within the fire department and cause disruptions.

Additionally, the fact that Plaintiff appears to have purposefully circumvented the chain of command weighs in Defendants's favor. Plaintiff argues that he contacted Commissioner Gambrill's office so she "could direct concerns to the appropriate channels, including the county manager, other commissioners who were examining compensation policies already, or to [Defendant] Crider to find out more information." [Doc. 64-2 at 20]. Thus, Plaintiff hoped his concerns would trickle back down to Defendant Crider after the concerns were presented to others outside Plaintiff's chain of command. It is not unreasonable for Defendants to believe that Plaintiff's conduct would encourage others to circumvent the chain of command in order to push closely-held concerns up the ranks.

This Court finds [*17] the County's interests in the efficient provision of emergency fire services, particularly at a time when staffing shortages were already straining the department, clearly outweigh Plaintiff's interest in his speech.

As Plaintiff's First Amendment retaliation claim fails to survive the first two stages of the four-stage analysis, Plaintiff's speech, as a matter of law, is not constitutionally protected. Thus, summary judgment for Defendants on Count I would be warranted for this

reason alone.

3. Qualified Immunity

Additionally, the individual Defendants Crider and Gross are entitled to qualified immunity. "Qualified immunity shields public officials from liability for civil damages when their conduct does not violate a constitutional right that was clearly established at the time of the challenged action." *Echols v. Lawton*, 913 F.3d 1313, 1319 (11th Cir. 2019) (citation omitted). To receive qualified immunity, an official must first demonstrate that he was acting within the scope of his discretionary authority when the allegedly wrongful acts occurred. *Id.* Here, it is not disputed that the individual Defendants were exercising their discretionary authority. Therefore, Plaintiff "bears the burden of proving that [the individual Defendants are] not entitled [*18] to qualified immunity." *Williams v. Aguirre*, 965 F.3d 1147, 1156-57 (11th Cir. 2020).

To defeat qualified immunity, Plaintiff must demonstrate that (1) the individual Defendants "violate[d] a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was "clearly established at the time." *Williams*, 965 F.3d at 1156. "Both elements of this test must be present for an official to lose qualified immunity, and this two-pronged analysis may be done in whatever order is deemed most appropriate for the case." *Avery v. Davis*, 700 Fed. Appx. 949, 951-52 (11th Cir. 2017) (citation omitted).

As discussed above, Plaintiff's speech is not protected under the First Amendment. Because Plaintiff cannot demonstrate that the individual Defendants violated Plaintiff's constitutional rights, the Court finds that Defendants Crider and Gross are entitled to qualified immunity.

B. VIOLATION OF O.C.G.A § 45-1-4 ("Georgia Whistleblower Act")

In Count II, Plaintiff alleges that Defendant Cobb County violated the Georgia Whistleblower Act by retaliating against him for making a protected disclosure. Under the Whistleblower Act, a public employer may not "retaliate against a public employee for disclosing a violation of or noncompliance with a law, rule, or regulation to either a supervisor or a government agency[.]" O.C.G.A. § 45-1-4(d)(2). In Georgia, courts apply the *McDonnell-Douglas [*19]* burden-shifting analysis to claims brought under the Whistleblower Act. *Forrester v. Ga. Dep't of Human Servs.*, 308 Ga. App. 716, 721-22, 708 S.E.2d 660 (2011). Under this framework, (1) a plaintiff must establish a prima facie case of retaliation by a preponderance of the evidence; (2) if the plaintiff does so, the employer must articulate a legitimate, non-retaliatory reason for the adverse employment action taken; and (3) then, the plaintiff must demonstrate that the stated reason for the employer's adverse action is pretextual. *Harris v. City of Atlanta*, 345 Ga. App. 375, 377, 813 S.E.2d 420 (2018). See also *Adams v. City of Montgomery*, 569 Fed. Appx. 769, 772 (11th Cir. 2014).

The four elements of a prima face case of retaliation under the Whistleblower Act are as follows: (1) the employer is a public employer; (2) the employee disclosed a violation of or noncompliance with a law, rule, or regulation to a supervisor or government agency, (3) the employee experienced retaliation, and (4) there is a causal relation between the disclosure and the adverse employment decision. *Forrester*, 308 Ga. App. at 722.

It is undisputed that Cobb County qualifies as a public employer under the Whistleblower Act. See O.C.G.A. § 45-1-4(a)(4). However, because Plaintiff fails to establish the second element of a prima facie case of

retaliation, his claim must fail.

Here, Plaintiff did not disclose a "violation of or noncompliance with a law, rule, or regulation" to Commissioner [*20] Gambrill. Under the Whistleblower Act, a "'law, rule, or regulation' includes any federal, state, or local statute or ordinance or any rule or regulation adopted according to any federal, state, or local statute or ordinance." O.C.G.A. § 45-1-4(a)(2). Plaintiff made no mention of any law, rule, or regulation in his voicemail message. Instead, his voicemail concerned the unavailability of fully staffed firetrucks within District 1. However, there is no "law, rule, or regulation" that regulates the number of fire trucks needed in a particular Fire District on a particular date. [Pl. Dep. at pp. 211-215, 217-218, 221-222 (*see also* Dep. Ex.'s D-20, D-21, D-22); Henderson Dep. at pp. 24-26, 30-31, 36-37]. The fact that Plaintiff may have reasonably believed the limited availability of fully staffed firetrucks represented a public safety concern does not bring his voicemail message within the protection of the Whistleblower Act. *See Coward v. MCG Health, Inc.*, 342 Ga. App. 316, 802 S.E.2d 396 (2017) (finding employee's concerns about internal staffing standards do not qualify for protection under the Whistleblower Act).

Because Plaintiff is unable to establish the second element of a *prima facie* retaliation claim under the Whistleblower Act, this Court need not address elements [*21] three and four, and Defendant Cobb County is entitled to summary judgment on Count II.

IV. CONCLUSION

For the above reasons, IT IS HEREBY ORDERED that Defendants' Motion for Summary Judgment [Doc. 59] is **GRANTED**. The Clerk is directed to close this case.

IT IS SO ORDERED, this 16th day of December, 2021.

/s/ William M. Ray, II

WILLIAM M. RAY, II

UNITED STATES DISTRICT JUDGE

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