

Bailey v. Henry Cnty.

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

September 27, 2022, Decided; September 27, 2022, Filed

CIVIL ACTION NO. 1:19-cv-03504-LMM-RDC

Reporter

2022 U.S. Dist. LEXIS 182396 *

ROBERT BAILEY, Plaintiff, v. HENRY COUNTY et al.,
Defendants.

Counsel: [*1] For Cheri-Hobson Matthews Watts, Individually and in Official Capacity as Henry County County Manager, Defendant: Timothy J. Buckley III, LEAD ATTORNEY, Buckley Christopher P.C., Atlanta, GA; Eva N. Hill, LEAD ATTORNEY, Buckley Christopher P.C., Atlanta, GA.

For Henry County, Defendant: Timothy J. Buckley III, LEAD ATTORNEY, Buckley Christopher P.C., Atlanta, GA; Eva N. Hill, LEAD ATTORNEY, Buckley Christopher P.C., Atlanta, GA.

For Cheri-Hobson Matthews Watts, in her Individual Capacity, Defendant: Eva N. Hill, LEAD ATTORNEY, Buckley Christopher P.C., Atlanta, GA; Timothy J. Buckley III, LEAD ATTORNEY, Buckley Christopher P.C., Atlanta, GA.

For Robert Bailey, Plaintiff: Jordan Alexander Johnson, LEAD ATTORNEY, Bernard & Johnson LLC, Atlanta, GA.

Judges: Leigh Martin May, United States District Judge.

Opinion by: Leigh Martin May

Opinion

ORDER

This case comes before the Court on Defendants' Motion for Summary Judgment [55]. The Magistrate Judge issued a Report and Recommendation (R&R) recommending that this Court grant Defendants' Motion. Dkt. No. [62]. Plaintiff filed objections to the R&R. Dkt. No. [64]. Defendants responded to Plaintiff's objections. Dkt. No. [65]. There are no objections to the facts and procedural [*2] history of this case as set forth in the R&R [62], so they are fully incorporated herein by reference. After due consideration, the Court enters the

following Order.

I. LEGAL STANDARD

Under 28 U.S.C. § 636(b)(1), the Court reviews the Magistrate Judge's Report and Recommendations for clear error if no objections are filed. 28 U.S.C. § 636(b)(1). If a party files objections, however, the district court must review *de novo* any part of the Magistrate Judge's disposition that is the subject of a proper objection. *Id.* As Plaintiff filed objections to the Magistrate Judge's findings, the Court reviews the challenged findings and recommendations on a *de novo* basis.

II. DISCUSSION

This civil rights lawsuit concerns Plaintiff's termination from his public employment with the fire department of Henry County. Plaintiff was terminated after he was involved in a single-car accident and charged with various offenses.¹ Plaintiff had a pre-termination meeting with the fire chief and deputy chief as well as a post-termination hearing administered by county manager and hearing officer Defendant Hobson-Matthews. Plaintiff claimed that both the pre-termination meeting and post-termination hearing violated his procedural due process rights.

Plaintiff [*3] reiterates the reasons why he believes his firing was unlawful. As to the pre-termination meeting, he argues that Deputy Chief Sherwood abruptly recommended Plaintiff's termination after his car accident, that Plaintiff lacked a meaningful opportunity to contest that decision because the officials had already made up their minds, and that his decision to exercise his Fifth Amendment right to silence and Garrity rights may have been inappropriately used against him. Plaintiff then argues that his post-

¹ After he was fired, Plaintiff was ultimately acquitted of those charges.

termination hearing was similarly flawed because Defendant Hobson-Matthews had predetermined that Plaintiff should have been terminated before the hearing took place, such that nothing he said or did could have affected the final outcome.

As to Defendant Hobson-Matthews, the Magistrate Judge found that the pre-termination process may have violated Plaintiff's procedural due process rights by not giving him an explanation of the evidence against him. But the Magistrate Judge found that Plaintiff had no valid claim against Defendant Hobson-Matthews because she was not involved in this process. As to the post-termination hearing, the Magistrate Judge found that Plaintiff had no clearly established right [*4] to receive a post-termination hearing in front of a neutral arbiter and without presentation of hearsay evidence.

Further, the Magistrate Judge determined that Plaintiff's claims against Henry County were barred by the doctrine of qualified immunity because Plaintiff did not come forward with evidence showing that any alleged violation of his rights related to any custom or policy of the County.

Plaintiff made three objections to the R&R. Dkt. No. [64]. The Court will address the objections in turn.

A. Defendant Hobson-Matthews's Liability

Plaintiff first objects to the Magistrate Judge's finding that Defendant Hobson-Matthews cannot be held liable for any violation of Plaintiff's procedural due process rights. While Defendant Hobson-Matthews only personally administered the post-termination hearing, Plaintiff argues that she effectively finalized and ratified the initial pre-termination process by not reversing the fire chief's decision to terminate him.

As a threshold matter, Plaintiff has not objected to the Magistrate Judge's finding that Plaintiff failed to show that there was clearly established law for the principle that he was entitled to the kind of post-termination hearing he [*5] argues he should have received. The Magistrate Judge found that Plaintiff's reliance on a single case of the Georgia Court of Appeals, Neal v. Augusta-Richmond County Personnel Board, 695 S.E.2d 318 (Ga. Ct. App. 2010), could not satisfy his burden to show that his rights were clearly established.

Indeed, for a right to be clearly established for § 1983, the plaintiff must come forward with controlling law "as interpreted at the time by the United States Supreme

Court, the Eleventh Circuit, or the [relevant State Supreme Court]." Gaines v. Wardynski, 871 F.3d 1203, 1208 (11th Cir. 2017) (quoting Terrell v. Smith, 668 F.3d 1244, 1255-56 (11th Cir. 2012)). Plaintiff has not argued in his objection that the law was clearly established by any means other than controlling precedent. Cf. id. (describing the three ways a plaintiff can show that conduct violated clearly established rights). Accordingly, the Court agrees with the Magistrate Judge that Plaintiff failed to show his claims related to the post-termination process were clearly established. Consequent to that, Plaintiff's claims against Defendant Hobson-Matthews for her involvement in the post-termination process necessarily fail.

Having eliminated any portion of the claim related to the post-termination process, the Magistrate Judge found that Plaintiff's claim against Defendant Hobson-Matthews could only succeed if she were liable [*6] for the pre-termination proceedings conducted by fire department employees, namely Chief Willis and Deputy Chief Sherwood. The Magistrate Judge found that Defendant Hobson-Matthews was not liable for their conduct through her role as county manager and hearing officer.

Plaintiff's objection does not point to any evidence that would establish supervisory liability against Defendant Hobson-Matthews for other officials' actions before Plaintiff's termination. "It is well established in this Circuit that supervisory officials are not liable under § 1983 for the unconstitutional acts of their subordinates on the basis of respondeat superior or vicarious liability." Cottone v. Jenne, 326 F.3d 1352, 1360 (11th Cir. 2003), abrogated in part on other grounds by Randall v. Scott, 610 F.3d 701 (11th Cir. 2010). "Instead, to hold a supervisor liable a plaintiff must show that the supervisor either directly participated in the unconstitutional conduct or that a causal connection exists between the supervisor's actions and the alleged constitutional violation." Keith v. Dekalb Cnty., 749 F.3d 1034, 1047-48 (11th Cir. 2014) (citing Cottone, 326 F.3d at 1360).

Plaintiff has not brought forward evidence—and the record reflects none—that Defendant Hobson-Matthews was at all involved in Plaintiff's pre-termination process or the events leading to his termination. Plaintiff did not argue in his [*7] objections that Defendant Hobson-Matthews was even aware or in any way directed the pre-termination process that the Magistrate Judge found was potentially unlawful. Specifically, the Magistrate Judge noted Plaintiff's own testimony that he did not

believe that Defendant Hobson-Matthews knew who he was and had not met him before the appeal hearing. Dkt. No. [62] at 21.

In addition to not showing that Defendant Hobson-Matthews was involved in the unconstitutional conduct, there is also no evidence to support a causal connection between Defendant Hobson-Matthews's actions and the constitutional violation because her involvement only began after his termination. While Plaintiff argues that Defendant Hobson-Matthews could have reversed the decision terminating him, he has failed to show that she violated any clearly established constitutional requirements.

Plaintiff has also not alleged that there was a "history of widespread abuse" so as to put Defendant Hobson-Matthews "on notice of the need to correct the alleged deprivation" or that the constitutional violations at issue were the result of Defendant Hobson-Matthews's own custom or policy. Keith, 749 F.3d at 1048. "The standard by which a supervisor is held [*8] liable in [her] individual capacity for the actions of a subordinate is extremely rigorous" and Plaintiff has not met that standard. Cottone, 326 F.3d at 1360.

For the reasons stated above, this objection is **OVERRULED**.

B. Hearsay Evidence

Next, Plaintiff briefly argues that Georgia law has clearly established that hearsay evidence cannot be used in an administrative action to deprive a person of their public employment and that hearsay evidence from a police report was used to support his firing. It is not clear which hearing Plaintiff alleges was tainted by this hearsay. In support of this objection, Plaintiff relies on Neal v. Augusta-Richmond County Personnel Board, 695 S.E.2d at 318, but cites no authority from the Georgia Supreme Court, the Eleventh Circuit, or the Supreme Court of the United States. As discussed above, that is insufficient to show that the law against use of hearsay evidence in an employment proceeding was clearly established. Gaines, 871 F.3d at 1208. Accordingly, the Court agrees with the Magistrate Judge that any use of hearsay evidence was not a violation of Plaintiff's clearly established rights.

For those reasons, Plaintiff's second objection is **OVERRULED**.

C. Custom or Policy

Plaintiff's final objection is that neither Defendant Henry County nor Defendant Hobson-Matthews [*9] should be granted qualified immunity because the facts of this case revealed that there was an actual custom or policy of violating procedural due process rights within the County. Plaintiff argues that both Defendants caused and ratified the deprivation of his rights through his termination with insufficient process. As to Defendant Hobson-Matthews, Plaintiff argues that she was responsible for the acts of the fire chief but failed to reprimand him for violating Plaintiff's rights and instead ratified his decision to terminate Plaintiff. As to Defendant Henry County, Plaintiff does not point to any custom or policy in the record but instead argues that the facts and circumstances of his case indicate a custom or policy in-fact to violate due process rights against individuals who exercise their right to remain silent.

As discussed in Plaintiff's first objection, the Court agrees with the Magistrate Judge that Defendant Hobson-Matthews is not liable in a supervisory capacity for any pre-termination process and that Plaintiff did not show a clearly established right to his desired post-termination process. That analysis stands and forecloses Plaintiff's claim against Defendant Hobson-Matthews [*10] under this objection as well.

As to Defendant Henry County, section 1983 does not "impose liability vicariously on governing bodies," such as municipalities, "solely on the basis of the existence of an employer-employee relationship with a tortfeasor." Monell v. Dep't of Soc. Servs., 436 U.S. 658, 692 (1978). In other words, "municipalities may not be held liable for constitutional deprivations on the theory of *respondeat superior*." Doe v. Sch. Bd. of Broward Cnty., 604 F.3d 1248, 1263 (11th Cir. 2010). "Instead, municipal liability is limited to action for which the municipality is actually responsible." Id. Accordingly, a municipality such as Henry County "may be held liable only if such constitutional torts result from an official government policy, the actions of an official fairly deemed to represent government policy, or a custom or practice so pervasive and well-settled that it assumes the force of law." Id. Further, "a plaintiff alleging municipal liability under § 1983 must show that the municipal action was taken with the requisite degree of culpability, i.e., that the municipal action was taken with deliberate indifference to its known or obvious consequences." Id.; see also McDowell v. Brown, 392 F.3d 1283, 1289 (11th Cir. 2004) ("[T]o impose § 1983

liability on a municipality, a plaintiff must show: (1) that his constitutional rights were violated; (2) that the municipality [*11] had a custom or policy that constituted deliberate indifference to that constitutional right; and (3) that the policy or custom caused the violation.").

The Magistrate Judge found that Henry County's disciplinary policies were entirely compatible with Plaintiff's Loudermill rights, which provide that an employee with a priority interest in their employment "is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story' before a state or state agency may terminate an employee." McKinney v. Pate, 20 F.3d 1550, 1561 (11th Cir. 1994) (quoting Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 546 (1985)). The Court agrees that nothing in Defendant Henry County's formal policies or customs interfered with Plaintiff's Loudermill rights. The policies dictate that a department head personally meet with the employee, provide notice of the charge and proposed disciplinary action, and afford the employee an opportunity to respond before the employee is suspended without pay or dismissed. Dkt. No. [62] at 25 (citing Dkt. No. [55-5] at 2).

At this stage, Plaintiff has not identified any formal policy or custom that supports his claims against Henry County. Instead, Plaintiff argues that the facts and circumstances of his case show [*12] that there was an actual custom or policy to violate procedural due process rights. But Plaintiff has not come forward in his objections with evidence of any other incidents of due process violations. "Proof of a single incident of unconstitutional activity is not sufficient to impose liability under Monell, unless proof of the incident includes proof that it was caused by an existing, unconstitutional municipal policy, which policy can be attributed to a municipal policymaker." City of Okla. v. Tuttle, 471 U.S. 808, 823-24 (1985). Without necessary additional evidence, Plaintiff cannot succeed in arguing that Henry County had a custom, policy, or practice giving rise to liability for Plaintiff's claim. Grech v. Clayton Cnty., 335 F.3d 1326, 1330 n.6 (11th Cir. 2003) ("A single incident would not be so pervasive as to be a custom or practice.").

For those reasons, Plaintiff's third objection is **OVERRULED**.

III. CONCLUSION

In accordance with the foregoing, the Plaintiff's objections are overruled. The Court **ADOPTS** the R&R [62]. Defendant's Motion for Summary Judgment [55] is **GRANTED**. The Clerk is **DIRECTED** to **CLOSE** this case.

IT IS SO ORDERED this 27th day of September, 2022.

/s/ Leigh Martin May

Leigh Martin May

United States District Judge

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