



## Dew v. Tallulah Water Co et al

2022 | Cited 0 times | W.D. Louisiana | April 19, 2022

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION BILLY RAY DEW, JR. CASE NO. 3:19-CV-01489 VERSUS JUDGE TERRY A. DOUGHTY TALLULAH WATER CO., ET AL. MAG. JUDGE PEREZ-MONTES

MEMORANDUM RULING Before the Court is a Motion for Summary Judgment [Doc. No. 149] filed by the only remaining Defendant in this case, pro se Opposition [Doc. No. A Reply [Doc. No. 154] was filed by Tallulah on April 12, 2022.

GRANTED.

### I. BACKGROUND

Sometime in late November 2018 <sup>1</sup>

, Dew, who was angry about the disconnection of his water service by Tallulah Water Service, went to the home of Tallulah Mayor Gloria Hayden to discuss the situation. According to the Affidavit of Latoya Owens <sup>2</sup>

, this occurred after normal business hours. Owens received a telephone call from her niece, who was under the age of thirteen years old, who told Owens there was a man at the door of their home who wanted to see Mayor Hayden, who was not home at this time. Owens instructed her niece to call her via FaceTime in order for her to see who was trying to enter the home. Through the use of FaceTime, Owens identified the man as Dew.

<sup>1 2</sup> [Doc. No. 149-3].

Even though Mayor Hayden was not at home, Dew let himself in the house. Owens insisted Dew leave the house, but Dew refused to do so. Owens then contacted the Tallulah Officer to the scene. Officer Robinson also requested Dew leave the house, <sup>3</sup>

but he refused to do so. Officer Robinson then arrested Dew.

This incident was confirmed by Mayor Hayden <sup>4</sup>



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, who later requested the criminal charges be dropped.

alleged factual allegations were verified 5 nor his Proposed Amended Complaint [Doc. No. 41], were verified or supported by Affidavits.

On November 19, 2019, Dew filed a Complaint against Tallulah Water Company and/or Tallulah Water Service, Tallulah Police Department, Tallulah City Hall, Madison Journal, and the City of Tallulah. All other Defendants have previously been dismissed, and the sole remaining Defendant is the City of Tallulah. In his Complaint, Dew alleged the Defendant violated his civil rights, alleging an equal protection violation, right to government services, right to use public facilities, discrimination, freedom of the press, unlawful imprisonment, and punishment without due process.

On December 17, 2020, Dew filed an Amended Petition for Damages 6

, which was filed without the consent of Defendants. This issue was briefed, and on April 23, 2021, United States

3 Affidavit of Oliver Robinson [Doc. No. 149-5]. 4 Affidavit of Gloria Hayden [Doc. No. 149-4]. 5 [Doc. No. 153]. 6 [Doc. No. 41]. Magistrate Judge Joseph H. L. Perez-Montes issued a Memorandum Order 7

, which granted-in- part and denied-in-part , the Court denied /Correct Complaint to add claims for overcharging or misbilling and for banning Dew from the Water Service; the Court granted his Motion to Amend/Correct Complaint as to his claims for false arrest/imprisonment; the Court denied his Motion to Amend/Correct Complaint to add a § 1983 and state law claims for excessive force by Officer Skinner; and the Court granted his Motion to Amend/Correct Complaint to add a § 1983 claim for denial of due process.

In its pending Motion for Summary Judgment, Tallulah seeks to dismiss all claims by Dew. II. LAW AND ANALYSIS

A. Standard of Review no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of

FED. R. CIV. P. ence or nonexistence would affect the outcome of the lawsuit under applicable law in the case. Anderson v. Liberty Lobby, Inc., such that a reasonable fact finder could render a verdict for the nonmoving party. Id.

pleadings, depositions, answers to interrogatories, and admissions on file, together with the

7 [Doc. No. 51]. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986) (quoting Anderson, 477 U.S. at 247) moving party may meet its burden to demonstrate the absence of a genuine issue of material fact



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by pointing out that the record contains no support for the non- Stahl v. Novartis Pharm. Corp., 283 F.3d 254, 263 (5th Cir. 2002). Thereafter, if the non-movant is unable to identify anything in the record to support its claim, summary judgment is appropriate. Id. FED. R. CIV. P. 56(c)(3). permissible inferences in favor of the non- Total E & P USA Inc. v. Kerr McGee Oil and Gas Corp., 719 F.3d 424, 434 (5th Cir. 2013) (citations omitted). While courts

Little v. Liquid Air.

Corp., 37 F.3d 1069, 1075 (5th Cir. 1994). To rebut a properly supported motion for summary

issue of material fact exists. Hamilton v. Segue Software, Inc., 232 F.3d 473, 477 (5th Cir. Cutting Underwater Tech. USA, Inc. v. Eni U.S. Operating

Co., 671 F.3d 512, 517 (5th Cir. 2012) (quoting Anderson, 477 U.S. at 248).

make a showing sufficient to establish the existence of an element essential to that Celotex Corp., 477 U.S. at 322- Id. at 323.

B. Improper Summary Judgment Opposition Evidence Although Dew filed an Opposition [Doc. No. 153] Judgment consisting of several pages of facts and/or alleged material facts, the Opposition was not verified nor made under declaration. Additionally, no opposing affidavits were filed. Although Courts can construe pleadings filed by pro se plaintiffs liberally 8

, this Court declines to construe the Opposition as a declaration or opposing affidavit. Basically, the Court simply construes this as argument of Dew, but it is not a proper motion for summary judgment opposing evidence. That means the facts as set out by Tallulah are not contested by Dew in proper form 9

ations are conclusory statements, which are not proper summary judgment evidence 10

. C. False Arrest/False Imprisonment The right to be free from false arrest is protected under the Fourteenth Amendment 11

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warrant a prudent person, or one of reasonable caution, in believing, in the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense. An objective standard is used, which means probable cause exists if the officer were aware of facts justifying a

8 Dellamore v. Stenros, 886 F.Supp. 349 (S.D. N.Y. 1995). 9 Kaliannen v. Liang, 2 F.4th 727 (8th Cir. 2021). 10 Howard v. Sun Oil Co., 404 F.2d 596 (5th Cir. 1968). 11 Eugene v. Alief Indep. Sch. Dist., 65



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F.3d 1299, 1305 (5th Cir. 1995). reasonable belief that an offense was being committed. Club Retro, LLC. V. Hilton, 568 F.3d 181, 204 (5th Cir. 2004). Without question, Officer Robinson had probable cause to arrest Dew for the charge of unauthorized entry into an inhabited dwelling pursuant to Louisiana Revised Statute Section 14:62.3. The Affidavit of Owens [Doc. No. 149-2] and the Affidavit of Officer Robinson [Doc. No. 149- The house was inhabited and was the home of Mayor Hayden 12

. Because the Court has found that there was probable cause to arrest Dew, his false imprisonment claim also fails. To establish false imprisonment, an individual shall be restrained of his liberty under the probable imminence of force without any legal cause or justification therefor. Nesmith v. Alford, 318 F.2d 110 (5th Cir. 1963). Louisiana Revised Statute Section 14:46 defines false imprisonment in Louisiana as the legal Because Officer Robinson had probable cause to arrest Dew, his false imprisonment claim is without merit, and Tallulah is entitled to summary judgment.

D. Procedural Due Process The only remaining claim Dew has against Tallulah is his procedural due process claim. Dew maintains he has been banned from various places in Madison Parish. Because the claim is against Tallulah, the Court has construed that Dew is maintaining Tallulah is preventing him from utilizing public services. However, Dew has provided no evidence that he was banned from any place by Tallulah.

12 [Doc. No. 149-4 and Doc. No. 149-2]. The Affidavits of Mary Williams [Doc. 149-6], City Clerk Gerald Odom [Doc. No. 149- 7], Carmen Ramshur [Doc. No. 149-8], and Chief of Police Buster McCoy [Doc. No. 149-9] prevents Dew from legally being in a public place.

This is a claim for municipal liability under Title 42 U.S.C. §1983, which requires proof Clark v. Lafayette Police Dep t., 2018

WL 3602974 (W.D. La. July 11, 2018). Additionally, Dew is required to specify the policy in place that is alleged to be in violation of his constitutional rights. Spiller v. City of Tex. City, Police Dept., 130 F.3d 162, 167, (5th Cir. 1997). The Court finds that Dew has not satisfied this requirement. Instead, Dew has made vague allegations and not specified or proven the existence of such a policy. Accordingly, Tallulah is also entitled to summary judgment on the claim of violation of procedural due process. III. CONCLUSION For the reasons set forth herein, the Motion for Summary Judgment [Doc. No. 149] filed by the City of Tallulah is GRANTED. Monroe, Louisiana this 19 th

day of April 2022.

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TERRY A. DOUGHTY UNITED STATES DISTRICT  
JUDGE

