



Gomez et al v. HARRIS COUNTY et al

2023 | Cited 0 times | S.D. Texas | July 17, 2023

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

LIZ GOMEZ, et al., Plaintiffs, VS.

§ § § § § § § § § CIVIL ACTION NO. 4:21-CV-01698 HARRIS COUNTY, et al., Defendants.

MEMORANDUM OPINION AND ORDER I. INTRODUCTION

dismiss is

brought under Federal Rule of Civil Procedure 12(b)(6), and asserts that the plaintiffs have failed to state triable claims under which relief may be granted and, in particular, under 42 U.S.C. § 1983, alleging violations of

II. PROCEDURAL AND FACTUAL BACKGROUND

On May 24, 2021, the plaintiffs filed their complaint against the defendants, Harris County, Texas, Constable Alan Rosen and officers Chris Gore and Shane Rigdon, alleging violations of 42 nt to the federal Constitution. Subsequently, the plaintiffs amended their complaint adding additional United States District Court

Southern District of Texas

ENTERED July 17, 2023 Nathan Ochsner, Clerk t the claims asserted did not support either individual liability or policy maker liability claims under Section 1983. However, the Court a right to relief

their claims against Gore and Rigdon, leaving Harris County as the sole defendant. On June 21,

2022, Harris County filed its motion for judgment on the pleadings, precipitating a move by the plaintiffs, to again, amend their suit. (Doc. #86). The motion to amend was granted, permitting a second amended complaint. Harris County responded, filing the motions currently under review.



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motions to dismiss. III. THE CONTENTIONS OF THE PARTIES

A. Creation of the Juvenile Human Trafficking Unit In a significantly thorough complaint, the plaintiffs describe how they were persuaded into

Rehabilit County. Because HCSR mission required law enforcement oversight, Precinct One Constable

law enforcement positions in the operation. Hence, Constable Rosen and officers and deputies in Precinct One -active operation to combat juvenile human trafficking.

In support of this effort, the federal government and the state of Texas provided special funding for the operation. Harris County adopted a budget that specifically designated and allocated to Constable Rosen and Precinct One the necessary funds. This move placed Constable Rosen in charge of the law enforcement arm of the program, the expenditure of the funds, and the supervision of the officers he selected to oversee and manage the program and allocated funds.

B. The plaintiffs assert that, instead of operating the JHT Unit in the manner intended, investigating and arresting juvenile sex offenders and protecting juvenile victims, Constable Rosen He and his supervising officers selected female deputies to pose as prostitutes to entice men to

solicit sexual favors and use them for personal enjoyment. The plaintiffs contend that Harris County endorsed the Sting Operation The plaintiff also asserts that when Harris County adopted the JHT Unit budget, it placed all of the

funds under the authority of Constable Rosen and Precinct One. In doing so, they assert, Constable were to be expended. Moreover, the plaintiffs argue, Harri

Constable Rosen would represent all of Harris County, not simply Precinct One, in setting the rules of operation and enforcing policy for the JHT Unit, particularly the Sting Operations. Hence, Constable Rosen answered to no one he was the final authority.

The plaintiffs assert that the Sting Operation exposed them to: sexual harassment, by their colleagues, being treated differently than the male officers involved in the operation, unwelcome sexual abuse, denigrations, and exploitation. They claim that they were battered and forced to engage in intentional touching; to suffer offensive and harmful application of force against their bodies by fellow male deputies and ordered to permit sexual assaults against themselves when or if needed. Lastly, they allegedly suffered the loss of bodily integrity, suffered the invasion of their bodily integrity to the point of injury, and when they attempted to report it, were retaliated against by Constable Rosen, his supervising offi



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C.

is not a Harris County policymaker. And, since the Court has already found that Constable Rosen was not a policymaker, no viable cause of action remains. Therefore,

also fails for lack of proof as does the separate retaliation claim against deputy Alutto. Therefore,

Harris County relies on Federal Rule 12(b)(6) and *Monnell v. New York City Dept. of Soc. Svcs.*, 436 U.S. 658 (1978). The Court is of the opinion that neither the case law that addresses Rule 12(b)(6) nor *Monnell* 1

IV. STANDARD OF REVIEW

A. Federal Rules Civil Procedure 12(b)(6) Federal Rule of Civil Procedure authorizes a defendant to move to dismiss a case for

1 While the Court does not directly establishing the elements of their retaliation claims. light m *Oppenheimer v. Prudential Sec., Inc.*, 94 F.3d 189, 194 (5th Cir. 1996) (citing *Mitchell v. McBryde*, 944 F.2d 229, 230 (5th Cir. 1991)). Dismissal is appropriate not] enough to raise a right to relief above the speculative level, on the assumption that all the

Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007).

therefore, limited to the allegations in

that the documents are referred to in the complaint and are central to the claims. *Causey v. Sewell*

Cadillac-Chevrolet, Inc., 394 F.3d 285, 288 (5th Cir. 2004). Harris County for retaliation that satisfies Rule 8(a)(2). Nevertheless, the question to be resolved

is whether Ha *Monell* principles. 436 U.S. 658 (1978). B. The *Monell* Factors Municipal Liability

Under *Monell*, a governmental entity, such as Harris County, may be sued and subjected to monetary damages when a policy or practices adopted or tolerated, by an entity violates an wn, 520 U.S. 397, 403 (1997); *Monell*, 436 U.S. at 694. [*Monell* permits an individual to sue a municipality regulation, custom, or usage of same forms the basis of the violation]; *Doe v. Taylor Independent School Dist.*, 15 F.3d 443, 453 (5th Cir. 2002).

C. The Agency of Constable Rosen

rgues that an agency relationship between Harris County and Constable Rosen existed whereby



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Constable Rosen had actual or apparent authority to do as he is accused of doing and, hence, his acts were later ratified by Harris County. See *Spring Garden 79U, Inc. v. Stewart Title Company*, 874 S.W. 2d 945, 948 (Tex. App.-Houston [1 st

Dist.] 1994; see also *Curry v. Lone Star Steel Co.*, 676 SW 2d 205, 209 (Tex. App Fort Worth 1984, no writ). *Spring Gardens* teaches that actual authority, which includes both express and implied authority, usually denotes that [the] authority [of] the principal was: (1) intentionally confer[red] upon [the] agent; (2) [that the principal] intentionally allowed the agent to believe that he possess[ed the authority]; or, (3) allowed the agent to believe that he possesses [the authority] due to a want of due diligence on the part of the principal [internal citations omitted].

Here, the plaintiffs do not claim that Harris County vicariously conferred authority on Constable Rosen to violate them, to retaliate against them or, for that matter, violate state and/or federal laws. Instead, the plaintiffs assert that Harris County, learning of the alleged violations, failed to come to their aid, and that, having failed to do so when it learn conduct, failed to correct their wrongful acts.

The plaintiffs argue that Harris County ignored their claims, suppressed their claims and, , these therefore, may raise a jury question. See *Karl Rove & Co. v. Thornburgh*, 39 F.3d 1273, 1297 (5th Cir. 1994). The Court will address these issues in the V. THE ANALYSIS AND DISCUSSION The plaintiffs assert a retaliation claim against Harris County based on the exercise of their free speech rights and their right to bodily integrity. To establish a retaliation claim under § 1983, a plaintiff must establish that they suffered an adverse employment decision as she sought to expose a matter of public concern; suffered a violation of the First Amendment right to free speech as a result of commenting on a matter exercise of free speech. See *Heilman v. City of Beaumont*, 638 Fed. Appx. 363, 366 (5th Cir.

2016).

A cause of action under 42 U.S.C. § 1983, for retaliation occurs when a municipality permits an operation, designed to combat juvenile human trafficking to go off the rails and, when illegal conduct is reported, the policymakers, District Attorney, and Constable Rosen seek to stifle the voices of those complaining by terminating them, humiliating them and/or transferring them out of the JHT Unit to lesser prestigious work. Such pleading, if believed by a jury may constitute a callous disregard by Harris County for those impacted by the alleged illegal conduct of Constable Rosen. The facts presented, if believed, may constitute deliberate indifference on the part of Harris County toward the plaintiffs. See *Brown v. Callahan*, 623 F.3d 249, 255 (5th Cir. 2010); see also *Doe*, 15 F.3d at 453-54.

Operation and how it impacted them is not a matter of public concern. The Court disagrees. When lish the basis for a claim under the federal constitution and § 1983. Whether the speech or outcry becomes a matter of constitutional proportions is determined by the content, form and context in



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which the statements are given. See *Connick v. Myers*, 461 U.S. 183, 147-48 (1983). Although employers are given employers are not permitted to punish or endorse punishment by a supervisor where that supervisor

is the source of misconduct and claims. See *Ayoud v. Texas A&M University*, 927 F.2d 834, 837 (5th Cir. 1991).

employee(s) violates federal constitutional law, begins with an examination of whether the

objective of the speech was a matter of public concern or strictly of a personal nature. Id. See *Thompson v. City of Starkville, Miss.*, 901 F.2d 456, 463 (5th Cir. 1990).

The pleadings reveal that the plaintiffs were at the mercy of Constable Rosen and his supervisory officers. Their pleadings substantiate, in detail, alleged violations of both state and federal law, as well as alleged acts of retaliation against them when they spoke up. Hence, their pleadings present triable facts that Constable Rosen and his supervisory officers acted under the n conduct that deprived the plaintiffs of dignity without rebuff disciplined them for reporting the alleged conduct. See *Monroe v. Pape*, 365 U.S. 167, 183 (1961), (overruled in part on other grounds).

The Court finds and holds that the plaintiffs have sufficiently pled a § 1983 cause of action for retaliation against Harris County that overcomes the Monnell immunity asserted by Harris

for the Sting Operation and, therefore, provided no protection for the female officers selected for that operation. The pleadings further show that Harris County may have delegated full and complete authority to Constable Rosen concerning policies, procedures and training for the nothing. Hence, it may have adopted the conduct of Constable Rosen and his supervisory officers

rincipal is liable for the acts of its agents when the agent has actual or apparent authority to do those acts or when the principal ratifies Spring Garden 79U, 874 S.W.2d at 948 (internal citations omitted). See also *Shillingford v. Holmes*, 634 F.2d 263, 265 (5th Cir. 1981). IV. CONCLUSION unconstitutional conduct toward the plaintiffs when they attempted to speak out on a matter of

public concern. Without doubt, the facts, as alleged, are matters of public concern. See *Thompson*,

It is so Ordered. SIGNED on July 17, 2023, at Houston, Texas.

_____ Kenneth M. Hoyt United States District Judge

