



Metzler v. Kenner City et al

2016 | Cited 0 times | E.D. Louisiana | October 11, 2016

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF LOUISIANA JOSEPH METZLER,
Plaintiff

CIVIL ACTION

VERSUS NO. 15-910 KENNER CITY, ET AL. Defendants

ORDER AND REASONS The issue before the Court is whether the Defendants Mike Yenni and the City of Kenner are entitled to summary judgment on claims under 42 U.S.C. § 1983 for violations of First and Fourteenth Amendment rights.

, 2016 Order dismissed with prejud under 42 U.S.C. § 1983 against Defendants Aimee Vallot, Richard Walther, and former

Mayor Mike Yenni in their official capacities. 1

vicarious liability under 42 U.S.C. § 1983. 2

The only claims remaining are those against Mayor Yenni in his individual capacity for alleged violations of the Plainti Fourteenth Amendment rights, and those against the City of Kenner.

Defendants filed a motion to dismiss pursuant to Rule 12(b)(6) and, alternatively, a motion for summary judgment. 3

Because both parties presented matters outside the

1 R. Doc. 67. There are no remaining claims against Defendants Aimee Vallot and Richard Walther, as they were sued in their official capacities only. R. Doc. 61. Defendant Mayor Yenni, however, was sued in both 2 R. Doc. 67. 3 R. Doc. 43. Pursuant to t , the Plaintiff was granted leave to amend his complaint. R. Doc. 61. Thereafter, the Defendants reurged their motions. R. Doc. 62. pleadings, the Court considers this motion as a motion for summary judgment. 4

Plaintiff Joseph Metzler opposes the motion. 5

For the reasons stated herein, the motion for summary judgment is GRANTED.



Metzler v. Kenner City et al

2016 | Cited 0 times | E.D. Louisiana | October 11, 2016

FACTUAL & PROCEDURAL BACKGROUND P 2016, alleging claims arising under 42 U.S.C. § 1983. 6

Plaintiff is a classified employee who works as an electrical i ns and Code Enforcement. 7

On December 2, 2007, Plaintiff was hired as an lectrical Inspector II, working 30 hours per week at an hourly rate of \$23. 8

Plaintiff alleges on March 24, 2014, he was wrongfully terminated by Aimee Vallot, Director of Inspections and Code Enforcement for the City of Kenner. 9

Plaintiff alleges his termination was in retaliation for exercising his First Amendment rights. 10

Plaintiff also alleges his termination was in violation of his right to due process under the Fourteenth Amendment 11

The parties agree that in October of 2011, the contract for the 33 rd

Street lift station project in Kenner was nearing completion. 12

When the Plaintiff inspected the contrac work, he refused to approve the project because the electrical panels were below base

4 Fed R. Civ. P. 12(d). The Plaintiff argues the Defendants waived their right to file a motion to dismiss by filing an answer, R. Doc. 9, dismiss. R. Doc. 43. The Plaintiff, however, filed an additional amended complaint after the filing of the R. Doc. 61, negating this argument. In any event, the Court has considered the , rendering the filing of an answer irrelevant. 5 R. Doc. 64. 6 R. Doc. 61. 7 R. Doc. 43-30 at 1, ¶ 1; R. Doc. 51-39 at 1, ¶ 1. 8 R. Doc. 61. 9 Id. 10 Id. at 24. 12 R. Doc. 43-30 at 1, ¶ 2 3; R. Doc. 51-39 at 1, ¶ 2 3. flood elevation. 13

After his refusal, the Plaintiff contends he was called into a meeting with Mayor Yenni and Michael Quigley, Chief Administrative Officer for the City of Kenner, when he was pressured to approve the lift station contrary to his professional opinion. 14 It is undisputed that the Plaintiff then contacted Jack Zewe , a Kenner documenting and revealing issues of public concern to alert him to the deficiencies in the lift station. 15

It is undisputed that Zewe, an electrical engineer, contacted Pratt Ready, Director of Public Works for the City of Kenner, requesting that the manufacturer install specific labels on the lift station equipment. 16

The parties agree that the deficiencies in the lift station were a matter of public concern, as



Metzler v. Kenner City et al

2016 | Cited 0 times | E.D. Louisiana | October 11, 2016

evidenced by the publication of an editorial in The Times- Picayune newspaper. 17

Approximately two years later, Plaintiff alerted Zewe that an employee of the Code Enforcement Department, Anna Gautreaux , did not disclose a felony conviction on her job application and had been mishandling cash payments. 18

Zewe then wrote two letters to Mayor Yenni. 19

a letter from Councilman Gregory Carroll regarding the alleged mishandling of cash

payments by Gautreaux, Mayor Yenni instructed the Kenner Police Department to conduct an investigation. 20

The parties agree Zewe informed Kenner Police Detective David Stromeyer that the Plaintiff might have information pertinent to the

13 R. Doc. 43-30 at 1, ¶ 2 3; R. Doc. 51-39 at 1, ¶ 2 3. 14 R. Doc. 61 at 5 6, ¶¶ 12 14. 15 R. Doc. 56-38; R. Doc. 71. 16 R. Doc. 56-38 at 2, ¶ 2; R. Doc. 71 at 1, ¶ 2; R. Doc. 56-5. 17 R. Doc. 56-38 at 2, ¶ 6; R. Doc. 71 at 2, ¶ 6; R. Doc. 56-7. 18 R. Doc. 43-30 at 1, ¶¶ 4 5; R. Doc. 51-39 at 1, ¶¶ 4 5; R. Doc. 43-3; R. Doc. 59-8. 19 R. Doc. 59-8; R. Doc. 43-3. 20 R. Doc. 43-30 at 1 2, ¶¶ 5 9; R. Doc. 51-39 at 1 2, ¶¶ 5 9; R. Doc. 43-4; R. Doc. 43-5; R. Doc. 43-6. investigation. 21

When Detective Stromeyer contacted the Plaintiff, it is undisputed that have any knowledge of any criminal activity within the Code Enforcement Office[,] . . . he did not want to get involved in any investigation[.]

22 The Plaintiff alleges he refused to provide information to Detective 23

The parties agree the Kenner Police Department concluded its investigation of Gautreaux and found no evidence of mishandling of cash payments. 24

s regarding Gautreaux were sent to Mayor Yenni, the parties agree that Keith Conley, Interim Director of Code Enforcement, retained an investigative agency to conduct surveillance on four city employees, including the Plaintiff. 25

It is undisputed that Conley opted to purchase only the surveillance report prepared with respect to the Plaintiff. 26

only report, however, is disputed. The Plaintiff argues the purchase of his surveillance report

demonstrates a retaliatory motive for his termination, but the Defendants contend the decision was



Metzler v. Kenner City et al

2016 | Cited 0 times | E.D. Louisiana | October 11, 2016

made because only the Metzler 27

On September 19, 2013, Robert Miles , appeared before the Kenner City Council and asserted that the Plaintiff was a victim of retaliation because of his refusal to approve the 33 rd

Street lift station project and his allegations that

21 R. Doc. 43-30 at 2, ¶ 12; R. Doc. 51-39 at 2, ¶ 12; R. Doc. 43-6. 22 R. Doc. 43-30 at 2, ¶ 12; R. Doc. 51-39 at 2, ¶ 12; R. Doc. 43-6. 23 R. Doc. 61 at 8, ¶ 19. 24 R. Doc. 43-30 at 4, ¶ 29 30; R. Doc. 51-39 at 4, ¶ 29 30. 25 R. Doc. 56-38 at 3, ¶ 7; R. Doc. 71 at 2, ¶ 7. 26 R. Doc. 56-38 at 3, ¶ 7; R. Doc. 71 at 2, ¶ 7; R. Doc. 59-9. 27 R. Doc. 71 at 2, ¶ 7. Gautreaux did not disclose she was a convicted felon on her employment application and that she was mishandling cash payments. 28

After Miles appeared before the City Council, the Plaintiff was sent a Notice of Charge and Disciplinary Conference, alleging the Plaintiff policies, rules, and directives by reporting illegal or violative conduct

of a City employee, but thereafter refusing to cooperate with the law enforcement officials investigating the matter. 29

Throughout his tenure as an electrical inspector for the City, the Plaintiff was the subject of numerous driving complaints. It is undisputed that as of September 13, 2013, nine complaints had been lodged against him, seven of which were made by anonymous reporters. 30

In each instance, the parties agree Richard Chauvin, Safety Inspector for the Code Enforcement Department, investigated the complaint. 31

It is disputed, however, job description allowed him only to investigate the facts of each complaint and report his findings to his supervisor, or whether he was able to render conclusions with regard to whether disciplinary action against an employee is warranted. 32

After each complaint, Chauvin spoke with the Plaintiff, advised him to drive more carefully, and reported his findings to the Director of Code Enforcement or the Assistant Director of Code Enforcement. 33

On September 26, 2013, Gloria Allen , a school crossing guard, filed a driving complaint with the Ma 28

R. Doc. 61 at 9. 29 R. Doc. 59-10. 30 R. Doc. 56-38 at 3, ¶ 12; R. Doc. 71 at 3, ¶ 12. 31 R. Doc. 56-38 at 3, ¶ 13; R. Doc. 71 at 3, ¶ 13. 32 R. Doc. 56-38 at 3, ¶ 13; R. Doc. 71 at 3, ¶ 13. 33 See R. Docs. 59-14, 59-15, 59-16, 59-17, 59-18, 59-19, 59-20, 59-21. 34



Metzler v. Kenner City et al

2016 | Cited 0 times | E.D. Louisiana | October 11, 2016

It is undisputed that Richard Chauvin investigated the matter, and after interviewing Allen, determined the incident could have been prevented and that both parties contributed to the incident. 35

At the time of this incident, Tamitha Shaw, then- Code Enforcement Department Director, was in the final days of employment, and was replaced on an interim basis by City Attorney Keith Conley. 36

On October 30, 2013, Conley issued a Notice of Charge and Disciplinary Hearing to the Plaintiff, alleging the Plaintiff violated City of Kenner Employee Handbook rules and the City of Kenner Employee Safety Manual regarding the September 26, 2013 incident, and Conley conducted a hearing on these charges on November 5, 2013. 37

At the November 5 hearing, the Plaintiff and Allen gave differing reports of the September 26 event. 38

Interim Director Conley subsequently issued another Notice Charge and Disciplinary Hearing to the Plaintiff on December 29, 2013, alleging the Plaintiff was untruthful at the hearing about his involvement in the September 26 incident, which was a violation of the City of Kenner 39

On January 7, 2014, Aimee Vallot, the newly hired Director of Code Enforcement, conducted . 40

In February 2014, Richard Walther became Assistant Director of Code Enforcement, and Vallot assigned him to further investigate the September 26 incident

34 R. Doc. 43-30 at 2, ¶ 15; R. Doc. 51-39 at 2, ¶ 15. 35 R. Doc. 43-30 at 3, ¶ 18; R. Doc. 51-39 at 3, ¶ 18. 36 R. Doc. 43-30 at 3, ¶ 19 22; R. Doc. 51-39 at 3, ¶ 19 22. 37 R. Doc. 43-30 at 3, ¶ 24 26; R. Doc. 51-39 at 4, ¶ 24 26. 38 R. Doc. 56-38 at 4, ¶ 19; R. Doc. 71 at 4, ¶ 19. 39 R. Doc. 56-38 at 4, ¶ 19; R. Doc. 71 at 4, ¶ 19; R. Doc. 59-24. 40 R. Doc. 56-38 at 5, ¶ 21; R. Doc. 71 at 5, ¶ 21. involving the Plaintiff. 41

Vallot testified she ordered a new investigation to give the case a 42 It is disputed whether the investigation was completed at the or whether the investigation remained open. 43

As part of his investigation, of driving complaints with Richard Chauvin. 44

When his investigation was complete, Walther wrote a report dated February 27, 2014, which prompted Vallot to issue a second Notice of Charge and Disciplinary Conference. 45

A hearing on these charges was held on March 21, 2014. 46



Metzler v. Kenner City et al

2016 | Cited 0 times | E.D. Louisiana | October 11, 2016

At the March 21 hearing, the Plaintiff brought no witnesses and produced no evidence. 47

It is undisputed that Vallot terminated the Plaintiff. 48

The Plaintiff received a letter of termination on March 25, 2014 signed by Walther because Vallot was out of town. 49

The letter stated the Plaintiff was terminated because of violations of the City of Kenner Handbook and Safety Manual arising from the September 26, 2016 incident and the multitude of driving complaints against him. 50

It is disputed, however, whether Vallot made the decision to terminate the Plaintiff based on the facts presented at the hearing, the result of Vallot, Walther, and Mayor Yenni against the Plaintiff.

41 R. Doc. 43-30 at 5, ¶ 36 38; R. Doc. 51-39 at 5, ¶ 36 38. 42 R. Doc. 43-18 at 3. 43 R. Doc. 43-30 at 5, ¶ 37; R. Doc. 51-39 at 5, ¶ 37. 44 R. Doc. 43-30 at 5, ¶ 40 41; R. Doc. 51-39 at 5, ¶ 40 41. 45 R. Doc. 43-30 at 5, ¶ 43; R. Doc. 51-39 at 5, ¶ 43; R. Doc. 43-12. The notice was issued on March 17, 2014 and set a hearing date of March 21, 2014. R. Doc. 59-25. 46 R. Doc. 43-30 at 5, ¶ 45; R. Doc. 51-39 at 5, ¶ 45. 47 R. Doc. 43-30 at 5, ¶ 45; R. Doc. 51-39 at 5, ¶ 45. The Plaintiff attempted to present his attorney as a witness, but was informed that attorneys were not allowed at the hearing to leave the hearing. 48 R. Doc. 43-30 at 6, ¶ 54; R. Doc. 51-39 at 6, ¶ 54. 49 R. Doc. 43-30 at 6, ¶ 55; R. Doc. 51-39 at 6, ¶ 55. 50 R. Doc. 43-16.

The Plaintiff appealed his termination to the Kenner Civil Service Board. 51

Walther, Vallot, Yenni, and the Plaintiff testified at the hearing. Both Walther and Vallot testified . 52

Mayor Yenni testified he did not have any conversations with Vallot or Walther about terminating the Plaintiff, decision. 53

The Board the Plaintiff on October 20, 2014. 54

The Board reasoned and evidence presented, as well as the entire hearing record, . . . the City has not borne its burden of proof and that disciplinary action [against the Plaintiff] was arbitrary and further, was undertaken 55

The Plaintiff subsequently filed a Complaint in this Court on March 24, 2015. 56 Pursuant to 42 U.S.C. § 1983, the Plaintiff seeks damages for alleged violations of his First and Fourteenth Amendment rights. 57

On June 23, 2016, the Defendants filed a motion to dismiss for failure to state a claim, or in the



Metzler v. Kenner City et al

2016 | Cited 0 times | E.D. Louisiana | October 11, 2016

alternative, a motion for summary judgment. 58

damages against complaint. 59

On August 25, 2016, t against Mayor Yenni, Aimee Vallot, and Richard Walther in their official capacities and

claims against the City of Kenner based on its vicarious liability for the actions

51 R. Doc. 43-30 at 6, ¶ 56; R. Doc. 51-39 at 6, ¶ 56. 52 R. Doc. 43-30 at 6, ¶ 57 58; R. Doc. 51-39 at 6, ¶ 57 58; R. Doc. 43-17; R. Doc. 43-19. 53 R. Doc. 43-24. 54 R. Doc. 43-30 at 10, ¶ 84; R. Doc. 51-39 at 9, ¶ 84. 55 R. Doc. 59-35. 56 R. Doc. 1. 57 R. Doc. 61 at 21 24. 58 R. Doc. 43. 59 R. Doc. 60. The Plaintiff filed his Third Amended Complaint on July 29, 2016. R. Doc. 61. of Aimee Vallot, Richard Walther, and Mayor Yenni. 60

The Section 1983 claims for rights remain against Mayor Yenni in his individual capacity and the City of Kenner.

The Defendants filed a motion to dismiss for failure to state a claim, and in the alternative, a Rule 56 motion for summary judgment. 61

Both the Plaintiff in his oppositions and Defendants contested facts attached summary judgment evidence. As a result, the Court considers the

motion as one for summary judgment.

SUMMARY JUDGMENT STANDARD Summary judgment is appropriate genuine dispute as to any material fact and the movant is entitled to judgment as a matter

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63 evidence in the record but refrains from making credibility determinations or weighing

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All reasonable inferences are drawn in favor of the nonmoving party. 65 There is no genuine issue of material fact if, even viewing the evidence in the light most

60 R. Doc. 67. 61 R. Doc. 43-1. 62 FED. R. CIV. P. 56; see also Celotex Corp. v. Catrett, 477 U.S. 317, 322 23 (1986). 63 DIRECTV Inc. v. Robson, 420 F.3d 532, 536 (5th Cir. 2005). 64 Delta & Pine Land Co. v. Nationwide Agribusiness Ins. Co., 530 F.3d 395, 398 (5th Cir. 2008); see also Reeves v. Sanderson



Metzler v. Kenner City et al

2016 | Cited 0 times | E.D. Louisiana | October 11, 2016

Plumbing Prods., Inc., 530 U.S. 133, 150 51 (2000). 65 Little v. Liquid Air Corp., 37 F.3d 1069, 1075 (5th Cir. 1994). favorable to the nonmoving party, no reasonable trier of fact could find for the nonmoving party, thus entitling the moving party to judgment as a matter of law. 66 If the dispositive issue is one on which the moving party will bear the burden of 67

If the moving party fails to carry this burden, the motion must be denied. If the moving party successfully carries this burden, the burden of production then shifts to the nonmoving her evidence in the record setting forth specific facts sufficient to establish that a genuine issue of material fact does indeed exist. 68 If the dispositive issue is one on which the nonmoving party will bear the burden of persuasion at trial, the moving party may satisfy its burden of production by either (1) submitting affirmative evidence that negates an essential element of the non claim, or (2) demonstrating there is no evidence in the record to establish an essential

element of the non 69

When proceeding under the first option, if the nonmoving party cannot muster sufficient evidence to that there are no disputed facts, a trial would be useless, and the moving party is entitled

66 Smith v. Amedisys, Inc., 298 F.3d 434, 440 (5th Cir. 2002). 67 , 939 F.2d 1257, 1263 64 (5th Cir. 1991) (quoting Golden Rule Ins. Co. v. Lease, 755 F. Supp. 948, 951 (D. Colo. 1991)). 68 Celotex, 477 U.S. at 322 24. 69 Id. at 331 32 (Brennan, J., dissenting); see also St. Amant v. Benoit, 806 F.2d 1294, 1297 (5th Cir. 1987) (Celotex Corp. v. Catrett, 477 U.S. 317, 322 24 (1986), and requiring the movants to submit affirmative evidence to negate an essential to establish an essential element); , 806 F.2d 1262, 126 Celotex on summary judgment); 10A CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE -to-four decision, the majority and dissent both agreed as to how the summary-judgment burden of proof operates; they disagreed as to (internal citations omitted)). to summary judgment as a matter of law. 70

When, however, the movant is proceeding under the second option and is seeking summary judgment on the ground that the nonmovant has no evidence to establish an essential element of the claim, the nonmoving party may supporting evidence already in the record that was overlooked or ignored by the moving

71

Under either scenario, the burden then shifts back to the movant to demonstrate the inadequacy of the evidence relied upon by the nonmovant. 72

If the movant meets this burden [back again] to the nonmoving party, who must additional evidence showing the existence of a genuine issue for trial as provided in Rule



Metzler v. Kenner City et al

2016 | Cited 0 times | E.D. Louisiana | October 11, 2016

56(e), or (3) submit an affidavit explaining why further discovery is necessary as provided 73

Summary judgment should be granted if the nonmoving party fails to respond in one or more of these ways, or if, after the nonmoving party responds, the court determines that the moving party has met its ultimate burden of persuading the court that there is no genuine issue of material fact for trial. 74 substantiated assertions are not competent summary judgment evidence. The party opposing summary judgment is required to identify specific evidence in the record and to articulate the precise manner in which that evidence supports the claim.

70 First National Bank of Arizona v. Cities Service Co., 391 U.S. 253, 288 89 (1980); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 50 (1986). 71 Celotex, 477 U.S. at 332 33. 72 Id. 73 Celotex, 477 U.S. at 332 33, 333 n.3. 74 Id.; see also First National Bank of Arizona, 391 U.S. at 289. ot impose upon the district court a duty to sift through the record in search 75

LAW AND ANALYSIS The Plaintiff has asserted claims under 42 U.S.C. § 1983 for violations of his First and Fourteenth Amendment rights against Mayor Yenni in his individual capacity and the City of Kenner. 76

To prevail on a claim under 42 U.S.C. § 1983, a plaintiff must show: (1) that the person engaged in the conduct complained of was acting under color of state law; and (2) that the alleged conduct deprived plaintiff of rights, privileges, or immunities guaranteed under the U.S. Constitution or laws of the United States. 77

The parties agree that Mayor Yenni in his individual capacity and the City of Kenner are purposes of Section 1983, and that they were acting under color of state law. 78

As a result, solely on whether the alleged conduct of Mayor Yenni and the City of Kenner deprived Plaintiff of his rights under the U.S. Constitution or the laws of the United States.

I. Did Mayor Yenni Conduct in His Individual Capacity Deprive the Plaintiff of

a Constitutionally Protected Right?

The Plaintiff asserts claims against Mayor Yenni in his individual capacity on the ground that Mayor Yenni instructed Aimee Vallot to terminate employment in retaliation for his exercising his rights to free speech and association. 79

The Plaintiff also alleges that, upon the recommendation or approval of Mayor Yenni, Vallot and

75 Ragas v. Tenn. Gas Pipeline Co., 136 F.3d 455, 458 (5th Cir. 1998) (citing Celotex, 477 U.S. at 324; Forsyth v. Barr, 19 F.3d 1527, 1537 (5th Cir. 1994) and quoting Skotak v. Tenneco Resins, Inc., 953



Metzler v. Kenner City et al

2016 | Cited 0 times | E.D. Louisiana | October 11, 2016

F.2d 909, 915 16 & n.7 (5th Cir. 1992)). 76 R. Doc. 61. 77 Parratt v. Taylor, 451 U.S. 527, 535 (1981), overruled on other grounds by, Daniels v. Williams, 474 U.S. 327 (1986). 78 R. Doc. 43-1 at 14. 79 R. Doc. 61. 80

The Plaintiff asserts there are material facts in dispute with respect to whether the investigation was a sham and whether his termination was in retaliation for exercising his rights to free speech and association. To state a cause of action under Section 1983 against Mayor Yenni individually, however, the Plaintiff must establish that Mayor Yenni was personally involved in the constitutional violations or that Mayor Yenni conduct s. 81

sions of government officials, not the acts of subordinates, will give rise to individual liability 82

As the mayor of the City of Kenner, Mayor Yenni was undoubtedly a supervisory official. 83

Supervisory officials may be held liable in their individual capacities under Section 1983 only if they (1) affirmatively participate in the acts that cause the constitutional deprivation, or (2) implement unconstitutional policies that causally result in the constitutional injury. 84 The Defendants, as movants on summary judgment, have the burden to produce

The Defendants argue they have submitted sufficient evidence to negate an essential element personal conduct deprived the Plaintiff of

80 R. Doc. 61 at 24. 81 Jones v. Lowndes Cnty., Miss., 678 F.3d 344, 349 (5th Cir. 2012); Woods v. Edwards, 51 F.3d 577, 583 (5th Cir. 1995). 82 Oliver v. Scott, 276 F.3d 736, 742 (5th Cir. 2002) (quoting Alton v. Tex. A & M Univ., 168 F.3d 196, 200 (5th Cir. 1999)); 83 The City Charter allows the mayor -2 at 2. 84 Valentine v. Jones x 291, 294 (5th Cir. 2014) (quoting Porter v. Epps, 659 F.3d 440, 446 (5th Cir. 2011)). The Plaintiff does not allege that Mayor Yenni implemented an unconstitutional policy that caused him constitutional injury. constitutionally protected rights or that Mayor Yenni s conduct was causally connected to the alleged constitutional violations. To support their position that Mayor Yenni had no involvement in investigation or termination, the Defendants submit Board.

First, Richard Walther, Assistant Director of Code Enforcement, testified Vallot Plaintiff. 85

d

not. 86

Walther also testified that no one at any time told him he or she wanted the Plaintiff terminated. 87 Second, Aimee Vallot, Director of Code Enforcement, answered negatively when [told her] that they 88



Metzler v. Kenner City et al

2016 | Cited 0 times | E.D. Louisiana | October 11, 2016

Vallot also testified that no pressure was put on her to terminate the Plaintiff. 89

In fact, when asked who made the decision to terminate the 90

Finally, when told that

91

With respect to the Plaintiff's allegation that his Fourteenth Amendment right to due process was violated because Mayor Yenni ordered

85 R. Doc. 43-15 at 3. 86 R. Doc. 43-17 at 1 2. 87 Id. at 2. 88 R. Doc. 43-19 at 2. 89 Id. 90 R. Doc. 43-21 at 6. 91 R. Doc. 43-19 at 2. Vallot and Walther to conduct a sham hearing, the Defendants submit Vallot's testimony. When asked why she ordered Walther to conduct a new investigation, Vallot testified she was coming in . . . midstream and felt it necessary to give a fresh set of eyes on the case. 92 Third, the 93

Mayor Yenni also testified he was not notified about the termination until after it happened. 94

Finally,

95 y. At the civil service hearing, the Plaintiff was asked whether he had speculation that someone told Ms. Vallot, instructed Ms. Vallot, or enlisted Ms. Vallot in

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97 The Defendants contend, therefore, they have submitted sufficient summary judgment evidence to negate showing that Mayor Yenni did not personally participate in the investigation into the

Plaintiff's alleged violations or in the Plaintiff's termination and that his conduct was not causally connected to the alleged constitutional violations. The Court finds the Defendants met their burden as movants on summary judgment.

92 R. Doc. 43-18 at 3. 93 R. Doc. 43-24 at 1. 94 Id. at 2. 95 Id. at 3. 96 R. Doc. 43-28 at 2. 97 Id. The Plaintiff, as nonmovant on summary judgment who will bear the burden of proof at trial, has the burden of mustering sufficient summary judgment evidence to show there are disputed issues of fact with respect to whether d the Plaintiff of a constitutionally protected right. The Plaintiff attempts to show his termination was a foregone conclusion, because Mayor Yenni instructed Vallot to conduct a second, sham hearing and to ultimately terminate the Plaintiff. 98

In support of his position, the Plaintiff submits his own affidavit, in which he states he met with



Metzler v. Kenner City et al

2016 | Cited 0 times | E.D. Louisiana | October 11, 2016

Mayor Yenni in October of 2011, and the Mayor] to change [his] 99

This statement, however, fails to connect Mayor Yenni to the investigation into the Plaintiff's alleged violations or to the both of which happened nearly three years later. The Plaintiff also submits his termination letter, which details the reasons for his termination, in support of his position that City leaders conspired against him. 100

The letter was signed by Rick Walther, Assistant Director of Code Enforcement, at the direction of Vallot and copied Vallot, Director of Code Enforcement, Maria Leon, Assistant Director of Personnel, Wendy Lorenz, Director of Civil Service, and Natalie Newton, Deputy CAO. 101 as a sender or recipient. 102

The only evidence the Plaintiff submits to connect Mayor Yenni to his termination is a sworn declaration from Kent Denapolis, former city council member of the City of Kenner, in which he s termination, and Vallot 98

R. Doc. 61 at 24. 99 R. Doc. 59-5 at 2. 100

R. Doc. 59-34. 101 Id. 102

Id.

103

This evidence, however, is not competent summary judgment evidence, as the statements attributed to Aimee Vallot are inadmissible hearsay. 104

As such, the Court cannot consider this evidence on summary judgment on a claim against Mayor Yenni. 105 The Plaintiff offers no summary judgment evidence to show a disputed issue of fact with respect to whether Mayor Yenni committed any wrongful acts that were directly involved with or s of his First Amendment or Fourteenth Amendment rights. As a result, the Plaintiff has failed to meet his burden on summary judgment. There are no disputed issues of material fact, and the Defendants are entitled to judgment as a matter of law because the Plaintiff cannot establish an essential element of his claims against Mayor Yenni individually. against Mayor Yenni in his individual capacity is granted. 106

II. Is the City of Kenner Liable Under Section 1983? The Plaintiff sued the City of Kenner under 42 U.S.C. § 1983, alleging violations of his First and Fourteenth Amendment rights. 107

A plaintiff may bring a Section 1983 claim against a municipality when 103



Metzler v. Kenner City et al

2016 | Cited 0 times | E.D. Louisiana | October 11, 2016

R. Doc. 59-36. 104

See Fed. R. Civ. P. 56(e)(1); Fed. R. Evid. 801. 105

U.S. v. \$92,203.00 in U.S. Currency, 537 F.3d 504, 508 (5th Cir. 2008) (finding the district court erred was not based on personal knowledge, and, under normal summary judgment procedures, is not Jenkins v. Winter, 540 -of- court statement offered to prove the truth of the statement that is inadmissible hearsay, the statement may 106

Because conduct deprived the Plaintiff of his constitutionally protected rights, the Court need not discuss whether the Plaintiff engaged in speech protected by the First Amendment or whether he was deprived of his due process rights. Neither does the Court need to address the applicability of the qualified immunity doctrine to Mayor Yenni. 107 R. Doc. 61. 108

Ordinarily, a plaintiff must identify an official policy or custom giving rise to his constitutional claim. 109

In a case such as this one in which the Plaintiff alleges no official policy of the City, the Plaintiff may establish Section 1983 liability by showing a single decision by an official with 110

The Plaintiff alleges Mayor Yenni made two decisions, ordering the sham investigation and ordering the termination of the Plaintiff. As discussed above, the Plaintiff offers no summary judgment evidence to show that Mayor Yenni made any decisions regarding either the investigation or the termination. Even if the Plaintiff had established a disputed issue of fact with respect to whether Mayor Yenni was personally involved with or causally connected to the Plaintiff's termination, the City is still not liable, as Mayor Yenni is not the final policymaker. attaches only where the decisionmaker possesses final authority to 111

official even a policymaking official has discretion in the exercise of particular

functions does not, without more, give rise to municipal liability based on an exercise of 112

When deciding whether a single decision by an official constitutes an official policy, the Court must determine whether the official is the final policymaker, which is an issue of state law. 113

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Bennet v. Slidell, 728 F.2d 762, 766 (5th Cir. 1984) (citing Monell v. Dept. of Soc. Servs. Of City of New York 1983)). 109

Monell, 436 U.S. at 694; Canton v. Harris, 489 U.S. 378, 389 (1989). 110 Pembaur v. City of Cincinnati,



Metzler v. Kenner City et al

2016 | Cited 0 times | E.D. Louisiana | October 11, 2016

475 U.S. 469, 480 81 (1986); Jett v. Dallas Indep. Sch. Dist., 491 U.S. 701, 737 (1989). 111 Pembaur, at 481. 112 Id. at 481 82. 113 Advanced Tech. Bldg. Sols., LLC v. City of Jackson, Miss., 817 F.3d 163, 166 (5th Cir. 2016), petition for cert. filed, (U.S. Jun. 26, 2016) (No. 16-121) (citing Jett, 7 F.3d at 1245). The Plaintiff names Mayor Yenni as the final policymaker with respect to the . 114

The Defendants, however, contend that under the City of Kenner Charter, the Civil Service Board, not Mayor Yenni, is the final policymaker. 115

The parties do not dispute that the Plaintiff appealed his termination to the Kenner Civil Service Board. 116 To recover, the Plaintiff must establish that Mayor Yenni has final policymaking authority as a matter of law. 117

The City, as movant on summary judgment, seeks to negate this by pointing to the City of Kenner Charter. The City Charter -elected City officials and employees, subject to the provisions of applicable state law and [the] Charter, 118

but also provides that the s decisions are reviewable by the Kenner Civil Service Board. 119

The City Charter vests the Kenner Civil Service Board with the authority to provide for the proce-
-offs, suspension, demotion, dismissal of permanent employees. 120

authority over a particular subjec

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administrative review when

city 122

To constitute meaningful review,

114 R. Doc. 61. 115 R. Doc. 62 at 6 8. 116 R. Doc. 43-30 at 10, ¶ 84; R. Doc. 51-39 at 9, ¶ 84; R. Doc. 43-29. 117 R. Doc. 62 at 5 9. 118 R. Doc. 72-2 at 2. 119 Id. at 3 4. 120

R. Doc. 72-2 at 3. 121 *Scala v. City of Winter Park*, 116 F.3d 1396, 1401 (11th Cir. 1997). 122 *Advanced Technology Building Solutions*, 817 F.3d at 166. official. 123

The City argues that Mayor Yenni is not a final policymaker, the Kenner Civil and it is entitled to judgment as a matter of law. Supreme Court and Fifth Circuit cases have held that another political body, such as a city council or civil service board, may provide In *City of St. Louis v. Praprotnik*, a plurality of the Supreme Court procedures, there was not a complete delegation of power, and the



Metzler v. Kenner City et al

2016 | Cited 0 times | E.D. Louisiana | October 11, 2016

city therefore could

not be subject to Monell liability. 124

The Praprotnik plaintiff was a municipal employee who was transferred and subsequently laid off from his job with the City of St. Louis. 125 The plaintiff sued the municipal officers responsible for his transfer and layoff, alleging they had retaliated against him for exercising his First Amendment rights. 126

The Supreme Court held that the city did not have Monell liability, as the municipal officers who transferred the plaintiff and laid him off were not final policymakers because a civil service commission reviewed the decisions. 127

123 See Gelin v. Housing Auth. of New Orleans, 456 F.3d 525, 531 (5th Cir. 2006). The Plaintiff argues in his opposition to the motion for summary judgment that the review of his termination decision was not meaningful because the Civil Service Board denied him back pay. R. Doc. 64. The Plaintiff makes no claim for pack pay in his amended complaint. R. Doc. 61. Furthermore, the Plaintiff made a claim for back pay with the Kenner Civil Service Board, which was rejected based on the provision of the City Charter that be deducted in computing the amount of the back-pay award. R. Doc. 64-3. The Plaintiff appealed this decision to the Louisiana Fifth Circuit Court of Appeal, but his appeal was rejected because his request for See Metzler v. City of Kenner, 194 So. 3d 634 (La. Ct. App. 5 Cir. 2016). The Plaintiff, therefore, was provided meaningful review of this claim. 124

City of St. Louis v. Praprotnik, 485 U.S. 112, 128 29 (1988). 125 Id. at 114 116. 126

Id. at 115 16. 127 Id. at 129 30. A recent Fifth Circuit case, Advanced Technology Building Solutions, LLC v. City of Jackson, Mississippi, reaffirmed the Ci not 128

In Advanced Technology, the plaintiff brought an action under Section 1983 against the City of Jackson, alleging the mayor retaliated against him for exercising his First Amendment rights. 129

The court held the mayor was not the final policymaker for the purposes of decisions. 130

Consistent with this proposition, the Advanced Technology court cited Worsham v. City of Pasadena, in which the mayor was held not to be a final policymaker for the purposes of Monell liability because the city council provided meaningful review of the may 131

In Worsham, local law provided an avenue for appeal to the city council to review termination decisions. 132

Like the Plaintiff in this case, the plaintiff in Worsham appealed his termination, and was reinstated.



Metzler v. Kenner City et al

2016 | Cited 0 times | E.D. Louisiana | October 11, 2016

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The court concluded the city review by the City Council indicates that the city officials who discharged Worsham were

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Likewise, in *Trosclair v. Westwego City*, the Fifth Circuit held that the Westwego Civil Service Board, not the mayor, alderman, or chief of police, was the final policymaker for the purposes of Monell liability. 135

The civil service board in

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817 F.3d 163, 167 (5th Cir. 2016) (quoting *Bolton v. City of Dall.*, 541 F.3d 545, 550 n.4 (5th Cir. 2008)). 129

Advanced Tech. Bldg. Sols., LLC, 817 F.3d at 164 65. 130

Id. at 166. 131 881 F.2d 1336, 1340 41 (5th Cir. 1989). 132 *Id.* at 1340. 133 *Id.* at 1340 41. 134

Id. 135 77 F.3d 477 (5th Cir. 1995). *Trosclair* was authorized to make rules regarding employment and to review adverse employment decisions, just as the Kenner Civil Service Board is. 136 In this case, the Kenner Civil Service Board has the power to review adverse employment decisions affecting any civil service employee. 137

It is undisputed that the Plaintiff in this case enjoys civil service protection. 138

Indeed, the Plaintiff availed himself of this protection by appealing his termination to the Civil Service Board, and he was reinstated to his position. Even had the Plaintiff established that Mayor Yenni made the decision to terminate him, this single decision would not make Mayor Yenni a final policymaker, and would not subject the city to liability, because the Civil Service Board provides meaningful review. 139

The Court finds as a matter of law that the Kenner Civil Service Board is the final policymaker of the City of Kenner with respect to termination of employees. As a result, the City is entitled to summary judgment that it is not subject to Monell liability with respect to . ability under Section 1983

based on its liability for the actions of Mayor Yenni, Aimee Vallot, and Richard Walther is granted.



Metzler v. Kenner City et al

2016 | Cited 0 times | E.D. Louisiana | October 11, 2016

136

Id. 137 R. Doc. 72-2 at 3 4. 138

R. Doc. 43-30 at 1, ¶ 1; R. Doc. 51-39 at 1, ¶ 1. 139

See Pembaur, 475 U.S. at 483.

CONCLUSION For the foregoing reasons, IT IS ORDERED that the motion for summary judgment filed by Defendants Mayor Yenni and the City of Kenner be and hereby is GRANTED. The remaining claims of the Plaintiff are dismissed with prejudice.

New Orleans, Louisiana, this 11th day of October, 2016.

SUSIE MORGAN UNITED STATES DISTRICT JUDGE

