Shinaberry v. Town of Murfreesboro, N.C. et al

2019 | Cited 0 times | E.D. North Carolina | October 23, 2019

STATES COURT FOR EASTERN OF NORTH

DIVISION

TERRY SHINABERRY,

TOWN OF MURFREESBORO, BOBBIE

lilJMANE SOCIETY OF STATES, JOANN JONES, COUNTY SHERIFF'S

ORDER

2017,

Carolina (''Town''); ..

faw Society United States (''HSUS'');

See ft . ft 2018, HSUS,

2019, 90]

2019, IN THE UNITED DISTRICT THE DISTRICT CAROLINA

NORTHERN

No. 2:17-CV-7-D

LEE)

Plaintiff,)

v.)

N.C.,) J. BARMER, HERTFORD) COUNTY, N.C., MICHAEL P. HINTON,) REVELLE & LEE, LLP,

Shinaberry v. Town of Murfreesboro, N.C. et al

2019 | Cited 0 times | E.D. North Carolina | October 23, 2019

GUILFORD) COUNTY, N.C.,)

THE UNITED)

and HERTFORD)

OFFICE,)

Defendants.)

On October 17, Terry Lee Shinaberry (''Shinaberry'' or ''plaintiff'') filed an amended complaint against the Town of Murfreesboro, North Bobbie J. Hayden (''Hayden''), an animal control officer with the Hertford County Sheriff's office; the County of Hertford, North Carolina (''the County''); Michael P. Hinton (''Hinton''), an attorney who purportedly represented the Town; Revelle & Lee, LLP (''Firm''), a firm which employed Hinton; the Humane of the and JoAnn Jones (''Jones''; collectively, ''defendants''), an employee of the Hertford County Sheriff's office. Am. Compl. [D.E. 56] 2-9; Answer [D.E. 59] 2-9. On April 16, the court dismissed the Town, and some ofShinaberry's claims [D.E. 67]. On July 15, defendants moved for summary judgment on Shinaberry's remaining claims [D.E. and filed a statement of material facts [D.E. 91], an appendix [D.E. 92], and a memorandum in support [D.E. 93]. On July 29, Shinaberry in 2019,

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particular See Howard, Supp. responded opposition [D.E. 94]. On August 12, defendants replied [D.E. 95]. As explained below, the court grants defendants' motion for summary judgment.

I. Shinaberry lives near Murfreesboro, North Carolina, in a double-wide mobile home. [D.E. 91] 1-2; Am. Compl. [D.E. 56] 16; Shinaberry Dep. [D.E. 92-4] 52. 1

He is a long-time breeder of Australian Shepherds. [D.E. 91] l; Shinaberry Dep. [D.E. 92-4] 13-14. In March

he owned approximately 67 adult dogs and 13 puppies. 2; Shinaberry Dep. [D.E. 92- 4] 112. Hayden was an an;mal control officer in the Hertford County [D.E. 91] 3; HaydenAff. [D.E. 92-1] Hinton was an attorney. [D.E. 91] 5; HintonDep. [D.E. 92-9] 11-12; Revelle Aff. [D.E. 92-2] 5. Revelle was an attorney in the same law firm as Hinton and was the County Attorney. Revelle Aff. [D.E. 92-2] 3, 5.

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Local Civil 56.1, a party opposing a motion for summary shall submit "a separate statement including a response to each numbered paragraph in the moving party's statement [of material Local Civ. R. 56.l(a)(2). paragraph in the moving party's statement of material facts will be deemed admitted for purposes of the motion unless it is specifically controverted by a correspondingly numbered paragraph. opposing Id. ''Each statement by the movant or opponent ... must be followed by citation to evidence that would be admissible, as required by Federal Rule of Civil Procedure Local Civ. R. 56.l(a)(4).

Rule 56(c), a party disputing a material fact must support its position by "citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other or by that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the Fed. R. Civ. 56(c)(l). Merely responding that a party

amaterial fact is insufficient under Rule 56 and Local Rule 56.1. Howard v. Coll. of the Albermarle, 262 F. 3d 322, 329 n.l (E.D.N.C. aff'd, 697 F. App'x 257 (per curiam) (unpublished).

Shinaberry's response to defendants' motion for summary judgment [D.E. 94] violates Local Rule 56.1 because it does not contain a separate statement of material with numbers corresponding to defendants' statement of material facts. [D.E. 94]. Thus, to the extent that Shinaberry does not oppose any statement of material fact by citing to parts of the record or showing that defendants cannot support their positions based evidence in the record, the court deems the material fact admitted. 262

F. 3d at 329 n.1.

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question" On February 16, Hertford County Animal Control received a complaint about a puppy that Shinaberry had sold. Hayden Aff. [D.E. 92-1] 4. The complaint noted the large number of dogs at Shinaberry' s residence id. It also noted that the dogs did not receive care, that there was no shelter on Shinaberry' s property for the that the purchased puppy was in poor condition. id. On or about March went to Shinaberry' s residence and found that the dogs had terrible living conditions. id. 5. Many dogs appeared thin and malnourished, housing was inadequate, and the dogs fought over food. id. Shinaberry could not produce any certificates that the dogs had received rabies vaccinations. id. Hertford County Animal Control continued to receive more complaints about the dogs after this visit. id. 6.

On March 21, Hayden and Hinton met with Shinaberry to discuss his dogs after Shinaberry had appeared in court on criminal animal cruelty charges.· 91-2] 6; Hayden Aff. [D.E. 92-1] 8. 2

signed a Voluntary Transfer of document on the same day without consulting an attorney. [D.E. 91-2] 7; Revelle Aff. [D.E. 92-2] 5; Hinton Dep. [D.E. 92-9] 56-58; Ex. Revelle Aff. [D.E. 92-2] 6. Although Hinton stated that Hertford County might not file a civil concerning Shinaberry' s dogs if Shinaberry signed this document, neither Hinton nor Hayden discussed Shinaberry's pending charges. Hayden

. Aff. [D.E. 92-1] 8; Hayden Dep. [D.E. 94-5] 87.

OnMarch24, Hayden and the Society forthePreyention of Cruelty to

of the Triad, the of Norfolk, Virginia, and the of Virginia Beach went to Shinaberry's home to remove the dogs that Shinaberry had to. surrender. [D.E. 91]

2 OnMarch24, the Hertford County District Attorney's those charges because a veterinarian "did not render [an] opinion to [a] reasonable degree of veterinary medical certainty that the puppy in has suffered cruelty as defined by North Carolina law. Ex. 1, HowardDep. [D.E. 92-3] 3.

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there .. - ' trial." Com., 8-9; Hayden Aff. [D.E. 92-1] Although Shinaberry passed approximately ten dogs over his fence, he refused to surrender more dogs even though he had voluntarily agreed to surrender all but five of his dogs. [D.E. 91] Hayden Aff. [D.E. 92-1] 10-11. A volunteer veterinarian examined the ten dogs at the site and found what she perceived to be of infection, missing body parts, and Aff. [D.E. 92-1] 11; see Hayden Dep. [D.E. 94-3]

. 45-46, 55-56. Hayden obtained a search warrant to find neglected abused dogs at Shinaberry's home based on the poor condition of the ten dogs that Shinaberry surrendered voluntarily.

[D.E. 91] 11; HaydenAff. [D.E. 92-1] 12; Ex. D, [D.E. 92-1] 46-48.

On April 28, Hayden obtained ten warrants for Shinaberry' s arrest on charges of misdemeanor cruelty to relating to the ten dogs that Shinaberry had surrendered on March 21, [D.E. 91] 12; HaydenAff. [D.E. 92-1] 14. On September the Hertford County District Attorney's Office dismissed the charges because of insufficient evidence. [D.E. 91] 13-14; Am. Compl. [D.E. 56] 37; Ex. 4, Howard Dep. [D.E. 92-3] 37-43.

II. judgment is appropriate when, after reviewing the as a whole, the court determines that no genuine issue of material fact exists and the moving party is entitled to judgment asamatteroflaw. Fed. R. Civ. P. 56(a);Anderson v. Lobby. Inc., 242,247-48 (1986). The party seeking judgment must initially demonstrate the absence of a genuine issue of material fact or the absence of evidence to support the nonmoving case. Celotex

v. Catrett, 477 317, 325 (1986). Once the moving party has met its burden, the nonmoving party may not rest on the allegations or denials in its see Anderson. 477 at 248-49, but "must come forward with specific facts showing that is a genuine issue for

MatsushitaElec. Indus. Co. v. Zenith Radio 475 574, 587 (1986) (emphasis and

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inferences See Scott 550 lL8-. 378.(2007).

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Accordingly, Supreme See S.C., 2005). Supreme See Stahle CTS Cotp., 100 2016).

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Carolina state Supreme See (4th 2013). quotation omitted). A trial court reviewing a motion for summary judgment should determine whether a genuine issue of material fact exists for trial. 4 77 at 249. Jn making this determination, the court must view the evidence and the drawn therefrom in the light most favorable to the nonmoving party. v. Harris, 372,

A genuine issue of material fact exists if there is sufficient favoring the nonmoving party for a to return a verdict for that party. 477 249. "The mere existence of a scintilla of evidence in support of plaintiff's position [is] insufficient .... " Id. at 252; see Beale v. Hardy, 769 F.2d 213, 214 (4th Cir. 1985) nonmoving party, however, cannot create a genuine issue of material fact through mere speculation the building of one inference upon another."). Only factual disputes that affect the outcome under substantive law properly preclude summary judgment. 477 at 248.

Defendants' motion for summary judgment requires the to consider Shinaberry's state law claims, and the parties agree that North Carolina law applies to those claims. this court must predict how the Court of North Carolina would rule on any disputed state law issues. Twin City Fire Ins. Co. v. Ben Arnold-Sunbelt Beverage Co. of 433 F.3d 365, 369 (4th Cir. Jn doing so, the court must look first to opinions of the Court of North Carolina. id.; v. 817 F.3d 96, (4th Cir. If there are no governing opinions from that court, this court may consider the opinions of the North Carolina Court of Appeals, treatises, and "the practices of other states." Twin City Fire Ins. Co., 433 F.3d at 369

: (quotation omitted). 3

Jn predicting how the highest.court of a state address an issue, this court must "follow the decision of an intermediate state appellate court unless there [are] persuasive data

3 North does not have a mechanism to certify questions of law to its Court. Town ofNags Head v. Toloczko, 728 F.3d 391, 397-98 Cir.

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eJg>aiid ,.\ v. Blee. Membership Corp., 506 304, 2007)

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See, U.S. (2009); S.C. Dep't Soc. Servs., 2010); Unus F.3d 103,

,, ' 2009); Cty., 626-27 2007).

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S. 305, 308 (2015)

See U.S. that the highest court would decide differently." Toloczko, 728 F .3d at 398 (quotation omitted); see Hicks v. Feiock, 485 624, & n.3 (1988). Moreover, in predicting how the highest court of a state would address an issue, this court "should not create or a [s]tate's public policy." Time Warner Entm't-Advance/Newhouse P'ship F.3d 314 (4th Cir. (alteration and quotation omitted); see Day & Zimmerman. Inc. v. Challoner, 423 3, 4 (1975) (per curiam); Wadev. Danek Med .. Inc., 182 F.3d281, 286 (4th Cir. 1999).

A. In his first claim for relief, Shinaberry alleges that Hayden andthe County wrongfully seized his dogs without probable cause in violation of the Fourth and 42 § 1983.

Am. Compl. [D.E. 56] 47-52. Defendants move based on qualified immunity.

Qualified immunity is an affirmative defense that "protects law enforcement officers against lawsuits seeking money damages from them in their individual capacity." Bostic v. Rodriguez, 667 F. 2d 591, (E.D.N.C. In analyzing qualified immunity, the court must ask two questions. e.g., Pearson v. 555 223, 231-32 Doe ex rel. Johnson v.

of 597 F.3d 163, 169 (4th Cir. v. Kane, 565 123 & n.24 (4th Cir. Miller v. Prince George's 475 F.3d 621, (4th Cir. First, the court must determine "whether the facts that a plaintiff has •... make out a violation of a constitutional right." Pearson, 555 at 232. the court must determine "whether the right at issue was clearly established at the time of defendant's alleged misconduct." Id. (quotation omitted); see Mullenix v. Luna, 136 Ct. (per curiam). Courts have discretion to decide which prong to address first. Pearson, 555 at 236. Defendants are entitled to

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See, al-Kidd, U.S. (2011); Supp. 606.

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·kn.own." S. (2018) ·see S. 500, 503--04 (2019) S. 589-90 (2018); S. 2003, 2007: (201?)

S. (2017); S. (2017)

S. 308--09; S. 2042, 2044-45 (2015) City Cty. San S. (2015); U.S. (2014) U.S. (2012); U.S. Supreme

debate." al-Kidd, U.S. S. 590; S. 1867; S.

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S. 590

attaches· present." dismissal on qualified immunity grounds if the answer to either question is "no." v. 563 731, 741 Miller, 475 F.3d at 627; Bostic, 667 F. 2d at

immunity attaches when an official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have Kisela v. Hughes, 138 Ct 1148, 1152 (per curiam) (quotation omitted); of Escondido v. Emmons, 139 Ct. (per curiam); District of Columbia v. Wesby, 138 Ct. 577, Hernandez v. Mesa, 137 Ct. (per curiam); Ziglar v. Abbasi, 137 Ct. 1843, 1866--67 White v. Pauly, 137 Ct. 548, 551-52 (per curiam); Mullenix, 136 Ct. at Taylor v. Barkes, 135 Ct. (per curiam); & of Francisco v. 135 Ct. 1765, 1774 Carroll v. 574 13, 16-17 (per curiam); Reichle v. Howards, 566 658, 664 Pearson,) 555 at 231. The Court does "not require a case directly on point, but existing

.. precedent must have placed the statutory or constitutional question beyond 563

at 741; see Wesby, 138 Ct. at Abbasi, 137 Ct. at 137 Ct. at 551. In the Fourth Amendment context, body of relevant case law is necessary" to show that the unlawfulness of the officer's conduct placed the constitutional question beyond debate. Wesby, 138

Ct. at (quotation omitted).

Even viewing the evidence in the light most favorable to Shinaberry, no reasonable jury could find that defendants violated his Fourth Amendment rights. Defendants obtained a. search warrant that a neutral magistrate found supported by probable cause. Because defendants had probable cause and a

warrant, defendants did not violate Shinaberry's Fourth Amendment rights. Even assuming there was not probable cause, qualified immunity because Hayden ''reasonably but mistakenly concluded that probable cause was Id. at 589-91 (quotation and alterations

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. Com.pl. ft omitted). Accordingly, the court grants summary judgment to defendants on Shinaberry's first claim for relief.

B. In his second claim for relief, Shinaberry alleges that defendants violated his procedural due process rights underthe and Fourteenth Amendments in of 42 § 1983 by negotiating a plea with him without his counsel present. Am. [D.E. 56] 53-57. Defendants move for summary judgment.

Shinaberry's fails because Hayden and Hinton's meeting with him did not concern his pending criminal charges. Rather, it concerned only whether Hertford County would file a civil action against Shinaberry. Absent extraordinary circumstances, no constitutional right to counsel exists in civil cases. SeeWhisenantv. Yuam, 739F.2d 163 (4thCir.1984),abrogatedinpart on other grounds Mallard v. Dist. Court, 296 (1989); Cook v. Bounds, 518 F.2d 779, 780(4thCir.1975); Grayv.Hooks,No. 5:17-HC-2064-D,2018WL1413968,at*6 (E.D.N.C. Mar. 21, (unpublished). Moreover, thevoluntarysurrenderagreementthat Shinaberry signed was not a plea agreement. Alternatively, even assuming that had a constitutional right to counsel, Hayden is entitled to qualified immunity. v. Pitts, No. 5:18-cv-23- FDW, WL 1308138, at (W.D.N.C. Mar. 13, (unpublished). Accordingly, the court grants summary to defendants on Shinaberry's second claim for relief.

c. In his third claim for relief, Shinaberry alleges that Hayden and County ''abused criminal process when they improperly obtained arrest warrants charging with cruelty to animals'' when they ''knew or should have known by exercise of that said charges were false.'' Am. [D.E. 56] 58-62. Defendants

move for summary judgment.

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or prosecution committed." Universal Supp. 2018) Yancey Cty., 1:09cv199, 2010 317804, *5

2010) S. 106 S.E.2d 909,

used." 74N;C. 6_10, 330 S.E.2d Supp. Stanback, 200,

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104, S.E.2d 880, Cty. S.E.2d (2009);

. - Cty. 809 S.E.2d 407, 2018 710085, at*8 (N.C. 2018)

..,: . . Paquette Cty. N.C; S.E.2d (2002); Cty., 550, S.E.2d 790 (2001);

llON.C.App. 707, by City Slade V 110 S.E.2d by

North Carolina law, ''the elements of an abuse of process claim -are:. (1) a prior proceeding [] initiated by defendant to achieve an ulterior motiv:e purpose; and (2) once that proceeding was initiated, some willful act not proper in the regular of the proceeding was Underwriters Ins. Co. v. Lallier, 334_F. 3d 723, 734 (E.D.N.C.

(emphasis omitted); see Franklin v. No. WL at (W.D.N.C. Jan. 19, (unpublished); Semones v. Bell Tel. & Tel. Co., N.C. App. 334, 341, 416 913 (1992). A plaintiff satisfies the second requirement "when the plaintiff alleges that the prior action was initiated by the defendant or used by him to achieve a purpose not within the intended scope of the process Hewes v. Wolfe, App. 614, 16, 19 (1985); see Lallier, 334 F. 3d at 734; Stanback v. 297 N.C. 181, 254 . . S.E.2d611, 624 (1979), disap_provedof on other grounds 437, 446, 276 325, 331 (1981).

As for Shinaberry's abuse of process claim against the County, governmental immunity defeats the claim. ''Under the doctrine of governmental immunity, a county is immune from suit for the negligence of its employees in the exercise of governmentai functions absent waiver of

. . immunity." Meyer v. Walls, 347 N.C. 97, 489 884 (1997); see Craig ex rel. Craig v. New Hanover Bd. of Educ., 363 N.C. 334, 335-36 & n.3, 678 35 i, 353 & n.3

... Lee v. of Cumberland, WL Ct. App. Feb. 6, (unpublished table decision); v. ofDurham, 155 App. 415, 418, 573 715, 717 Archerv. Rockingham 144N.C. App. 552-53, 548 788, Messickv.CatawbaCty .. N.C., 714,431 S.E.2d489,493-94(1993),overruled on other grounds Moore v. of Creedmoor, 345 N.C. 356, 481S.E.2d14 (1997); v.

N.C. App.422, 426, 429 744, 746 (1993), overruled on other grounds Moore

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2013); U.S. 210 2017);MurrayEnergyCorp. 2017); 2017);· Wahl

.• 2009); Chenis .• Corp., 7:09-CV-105-D, 2011WL4527382, Sept 2011)

move

summary-judgment 10 v. City of Creedmoor, 345 N.C. 356, 481 S.E.2d 14 (1997); Co. v. Mecklenburg

89 N.C. App. 542, 544, 366 S.E.2d 558, (1988). The County is entitled to governmental immunity because it acted "pursuant to its governmental in exercising police powers. Evansv. HousingAuth. ofCityofRaleigh, 359N.C. 53, see Orange Cty. v. Heath, 282 N.C. 292, 294, 192 S.E.2d (1972). Moreover, the County has not waived its governmental immunity. Accordingly, the court grants summary judgment to the County on Shinaberry's abuse of process claim. 4

As for Shinaberry' s abuse of process claim against Hayden in her official capacity, Hayden is entitled to governmental immunity as a county employee. Thus, the court grants summary judgment to Hayden on Shinaberry' s abuse of process claim against her in her official capacity.

As for Shinaberry's abuse of process claim against Hayden in her capacity, even viewing the evidence in the light most favorable to Shinaberry, no reasonable jury could find that Hayden :filed criminal

charges to achieve an ulterior purpose or took some improper and wi11fu1

in the proceedings. The Hertford County District Attorney's Office's decision to dismiss the criminal charges for insufficient evidence does not raise a issue of material fact on either aspect ofShinaberry's abuse of process claim. See, e.g., Nationstar Mortgage LLC, No. 2: 19-CV-3-D, WL 4734412, at *8 (E.D.N.C. Sept. 26, (unpublished). Accordingly,

4 To the extent that Shinaberry seeks to amend his pleadings to the County for the

is well-established that parties cannot amend their complaints through briefing or oral

WalkatBroadlandsHomeowner'sAss'n.Inc. v. openBandatBroadlands.LLC, 713 F.3d 175, 184 (4th Cir. see ex rel. Carterv. Halliburton Co., 866F.3d199, n.6 (4th Cir. v.Admin. ofEnvt'lProtectionAgency, 861F.3d529,537n.5 (4th Cir. vonRosenberg v. Lawrence, 849 F.3d 163, 167 n.1 (4th Cir. v. Charleston Area Med. Ctr Inc., 562 F.3d 599, 617 (4th Cir. Hexion Specialty Inc. v. Oak-Bark

No. at *7-8 (E.D.N.C. 28, (unpublished) (collecting cases). Shinaberry did not properly to amend his complaint under the Federal Rules of Civil Procedure and cannot do so now through briefing.

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these· the court grants summary judgment to Hayden on Shinaberry's abuse of process claim against her in her individual capacity.

D. In Shinaberry's fourth claim, he alleges the and Hayden maliciously prosecuted him. Am. Compl. [D.E. 56] 63-69. Defendants move for

North Carolina law, establish malicious prosecution, a must show that the defendant (1) initiated or participated in the earlier proceeding, (2) did so maliciously, (3) without probable cause, and (4) the earlier proceeding ended in favor of the plaintiff." Tum.er v. Thomas, 369 N.C. 419, 425, 794 439, 444 (2016); see N.C. Farm Bureau Mut. Ins. Co. v. Cully's Motorcross Park. Inc., 366 N.C. 512, 742 781, (2013). ·In this context, probable cause means "the existence of such facts and circumstances, known to the defendant at the

. : .. . time, as would induce a reasonable man to commence a prosecution." Tum.er, 369 N.C. at 425, 794

at 444 (alterations, emphases, and quotation omitted); see v. Duke 33 7 N.C. 742, 448 (1994); Cook v. Lanier, 267 N.C. 166, 147 914 (1966)

As for Shinaberry's malicious prosecution claims against the County ·and Hayden in her official capacity, governmental immunity defeats Shinaberry' s claims for the· same reasons that it defeats his abuse of process claims against these defendants. Accordingly, the court grants summary judgment to the County and Hayden in her official capacity on claims.

As for Shinaberry' s malicious prosecution claim against Hayden in her individual capacity, even viewing the evidence in the light most favorable to Shinaberry, no.reasonable jury could find that Hayden acted without probable cause or with malice at the time criminal charges were brought against Shinaberry. Moreover, the fact that the criminal proceeding ultimately ended in Shinaberry' s favor does not "automatically negate the existence of probable cause at the time prosecution was

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delibei:ate commenced." Tum.er, 369 N.C. at 425, 794 S.E.2d at 445. Accordingly, the grants judgment to Hayden in her individual capacity on this claim.

E. Jn Shinaberry's fifth claim for relief, he alleges that the County is liable under 42 § 1983 and Monell v. of Servs., 436 658 (1978), and its progeny because Hayden's actions "demonstrate a custom or practice of [the] County engaging in seeking process without probable cause in violation of

individual civil rights" and that County officials failed to train or supervise her sufficiently. Am. Compl. [D.E. 56] The.County moves for summary judgment.

Supervisory officials are not vicariously liable for injuries inflicted by their subordinates. See,e.g.,Monell,436U.S.at691; Slakanv.Porter, 737F.2d368, 372(4thCir.1984). Jn certain narrow circumstances, a supervisor may be liable for failure to adequately train or supervise subordinates. Connick v. 563 51, (2011); City of Canton v. Harris, 489 378, 388-92 (1989). To establish such a claim, plaintiff must prove that (1) the subordinates actually violated the plaintiff's constitutional or statutory rights, (2) the supervisor's failure to properly train or supervise the subordinates amounts indifference" to the rights of the plaintiff, and (3) this failure to train or supervise caused.the subordinates to violate the plaintiff's rights. Connick, 563 at 489 at 388-92; see Doe v.

225 F.3d440, 456 (4th Cir. Carterv. Morris, 164F.3d215, 221 (4th Cir. 1999); v. McDaniel, 824F.2d1380, 1389--90 (4th Cir. 1987); Brown v. Frazier, No. 4:12-CV-290-D, WL 5739091, at *2-3 (E.D.N.C. Oct. 22, 2013) (unpublished); Cooper v. Brunswick Cty.

896F. 2d432, 451-53 (E.D.N.C. 2012). "Apattemofsimilarconstitutional violations by untrained employees is ordinarily necessary to demonstrate indifference for

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' Bronits],cyv. 2013 purposes of failure to 563 at 62 (quotation see Wellington v. Daniels, 717 F.2d 932, 936 (4th Cir. 1983) (collecting cases).

As for Shinaberry' s Monell claim against the County for failure to train or supervise Hayden

adequately, even viewing the evidence in the light most favorable to no rational jury could find that Shinaberry could prove that the County's failure to train or supervise amounted to deliberate indifference. Grayson v. 195 F.3d 692, 697 (4th Cir. 1999). Moreover, Shinaberry does not identify a pattern of similar alleged constitutional violations. 563

at 62--63; 717 F.2d at 936. Furthermore, Hayden's conduct did not violate the Constitution. Thus, the court grants summary judgmentto the County on Shinaberry's Monell claim.

F. Jn his seventh claim for relief, Shinaberry alleges that Hayden and the County invaded his privacy by intruding "into Mr. Shinaberry' s residence and into his private affairs and and by "arranging for news media to during the search, ''thereby causing publicity which placed Mr. Shinaberry in a false light in the public Am. Comp!. 56] Defendants move for summary judgment.

As for Shinaberry' s invasion of privacy claims against the County and Hayden in her official capacity, the doctrine of governmental immunity defeats the claims. Accordingly, the court grants summary judgment to defendants on those claims.

As for Shinaberry's claims against Hayden her individual capacity, Shinaberry does not respond to Hayden's motion for summary judgment and has therefore abandoned these claims. Carmon v. Pitt No. 5:18-CV-433-D, WL 938875, at (E.D.N.C. Feb. 26, (unpublished); Bladen Healthcare. LLC,No. 7:12-CY-147-BO, WL 5327447, at

13 •1 Sept. 20, 2013)

of See Klllgs Stores. 290 S.E.2d 2018 *6 2018)

20, S.E.2d 20, (2003)

310N.C. S.E.2d405,

See U.S. 506

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609 S.E.2d (2005) 530, McCroiy-McLellan 260 570, S.E.2d

United Serv.·. 2009 (E.D.N.C. (unpublished). Accordingly, the court grants summary judgment to Hayden on these claims.

(Alternatively, North Carolina does not recognize a cause action for invasion of privacy based on an illegal search by a private individual. Morrow v. Dep't Inc., 57 N.C. App. 13, 23, 732, 738 (1982); Shinaberryv. TownofMurfreesboro, No. 2:17-CV-7-D,

WL 1801417, at (E.D.N.C. Apr. 16, (unpublished). Likewise, North Carolina does not ''recognize a cause of action for false light in the public eye.'' Broughton v. McClatchy Newspapers. Inc., 161 N.C. App. 28-29, 588 27 (quotation omitted); seeRenwickv. News & Observer Pub. Co., 312, 322, 312 411 (1984). This court declines to create or expand North Carolina law and public policy on this issue. Day & Zimmerman Inc., 423 at 4; Time-Warner Entm't.:.Advance/Newhouse P'ship, F .3d at 314; Wade, 182 F .3d at 286. Accordingly, because these claims do not exist Carolina law, the court grants summary judgment to Hayden on these claims.

G. In his tenth claim for relief, Shinaberry alleges that Hayden ''restrained or caused Mr. Shinaberry to be restrained unlawfully without either his consent or probable cause, through use of force or coercion.'' Am. Compl. [D.E. 56] 95-98. Hayden moves for summaryjudgment.

North Carolina law, false imprisonment is ''the illegal restraint person against his will.'' Hemric v. Groce, 169 N.C. App. 69, 78, 276, 28.3 (quotation omitted); see Fowlerv. Valencourt, 334 N.C. 345, 348, 435 532 (1993); Hales v. Com., N.C. 568, 133 225, 227 (1963). To establish a false imprisonment claim, a plaintiff must prove ''(l) the illegal restraint of plaintiff by defendant; (2) by force or threat of force; and (3) against the plaintiff's will.'' Cherryv. Parcel Inc., No. 5:07-CV-403-D,

14 8641019, *12 Sept. 2009) aff'd, 402

2010) Supp. 2002), aff'd, 2004)

where Dep't Store. 702, S.E.2d (19S8). A force

702, S.E.2d 260 570, S.E.2d .• S.E.

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City Police Dep't, S.E.2d 430 (2004); 4:10-

2011WL2457793, *5-6 2011) dismissed,

2012)

judgment

,.> WL at (E.D.N.C. 28, (unpublished) (quotation omitted), F. App'x 764 (4th Cir. (per curiam)

(unpublished); Kling v. Harris Teeter Inc., 338 F. 2d 667, 679 (W.D.N.C. 86 F. App'x. 662 (4th Cir. (per curiam) (unpublished). "While actual force is not required, there must be an implied threat of force which compels a person to remain where he does not wish to remain or go he does notwish to go." West v. King's

Inc., 321 N.C. 698, 365 621, 623-24 threat of suffices when it "induce[s] a reasonable apprehension of force." Id. at 365 at 624 (quotation omitted); see Hales, N.C. at 133 at 227; Hoffman v. Clinic Hosp Inc., 213 N.C. 669, 669, 197 161, 162 (1938) (per curiam).

As for Shinaberry's false imprisonment claim against Hayden in her official capacity, the doctrine of governmental immunity defeats the claim. Thus, the court grants summary judgment to Hayden on Shinaberry' s false imprisonment claim against her in her official capacity.

As for Shinaberry's false imprisonment claim againstHaydenmherindividual capacity, even

. . . viewing the evidence in the light most favorable to Shinaberry, no jury could conclude that Hayden falsely imprisoned him on March 21, Moreover, with respect to the arrest warrants, "[p]robable cause is an absolute bar to a claim for false arrest." Williams v. of Jacksonville

165 N.C. App. 587, 596, 599 422, see Dunn v. Mosley, No. CV-28-FL, at (E.D.N.C. June 16, (unpublished), appeal 491 F. App'x 413 (4th Cir. (per curiam) (unpublished). As discussed, probable cause existed for the arrest warrants. Accordingly, the court grants summary to Hayden on Shinaberry' s false imprisonment claim against her in her individual capacity.

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Home Corp., Supp. 2016), aff'd, F.:App'x 2017)

Forrest, 281, Keyzer (200S).

affirmative Corp., (2003); S. Pineville.

.• (200S).

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See 2019 *4; 2013 *1.

capacity, See 2019 *4; Bronitsky, 2013 at*

H. In his eleventh claim for relief, Shinaberry alleges that Hayden and the County ''under color oflaw entered upon Mr. Shinaberry's property and unlawfully and permanently deprived Mr. Shinaberry of his property.'' Am. Compl. [D.E. S6] Defendants move for summary judgment.

North Carolina law, a trespass to real property claim requires a plaintiff to prove ''(1) possession of the property by the plaintiff at the ti.me of the alleged trespass; (2) unauthorized entry by the defendant; and, (3) damage to the plaintiff as a result.'' House v. Fed. Loan Mortgage

261 F. 3d 623, 63S (E.D.N.C. 699 2S9 (4th Cir. (per curiam) (unpublished); see Matthews v. 23S N.C. 283,.69 S.E.2d SS3, SSS (19S2);

v. Amerlink Ltd., 173 N.C. App. 284, 289, 618 S.E.2d 768, 772 However, a defendant ''may assert that the entry was lawful or under legal right as an defense.'' Singleton v. Haywood Blee. Membership 3S7 N.C. 623, 628, S88 S.E.2d 871, 874 Hildebrand v. Bell Tel. & Tel. Co., 216N.C. 23S, 23S, 4 S.E.2d 439, 439 (1939); CDC LLC v. UDRT ofN.C LLC., 174 N.C. App. 644, 6S2, 622 S.E.2d Sl2, Sl8

As for Shinaberry's trespass claims against the County and Hayden in her official capacity, governmental immunity defeats the claims. Alternatively, did respond to defendants' motion for summary judgment and has abandoned the claims. Carmon, WL 93887S, at

Bronitsky. WL S327447, at Accordingly, the court grants summary judgment to defendants on these claims.

As for Shinaberry' s trespass claim against Hayden in her individual Shinaberry has likewise abandoned the claim. Carmon, WL 93887S, at WL S327447,

1. Alternatively, even viewing the evidence in the light most favorable to Shinaberry, no rational

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United jury could conclude that Hayden entered Shinaberry' s real property without his consent or without legal right. Accordingly, the court grants summary judgment to Hayden on Shinaberry' s trespass to real property claim against her in her individual capacity.

I. As for the Hertford County Office, Revelle & Lee, LLP, JoAnn Jones, the court has already dismissed Shinaberry's only claims against those defendants. See 2018 WL 1801417, at *6. Although Shinaberry asserts other claims remain against these defendants, Shinaberry does not identify which claims those might be. See [D.E. 94] 4. Moreover, the court does not construe Shinaberry' s complaint to allege any other claims against these defendants, and Shinaberry cannot amend his complaint through summary judgment briefing. Accordingly, the court grants summary judgment to these defendants no pending claims remain against them.

m. In sum, the court GRANTS defendants' motion for summary judgment 90]. The clerk shall close the case.

ORDERED. This day of 2019.

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States District Judge