

Because both motions involve a narrow issue in this case, the Court will only identify those facts that relate to that issue. Plaintiff Cynthia Huffman filed her Seconded Amended Complaint in this matter on July 3, 2002. Count VI sought recovery from Defendant Abel Lormand for false imprisonment. Plaintiff alleged that she was held against her will by Defendant for two days. On March 31, 2003, Defendant Abel

Lormand filed his Motion for Summary Judgment as to Count VI of Plaintiff Huffman's Seconded Amended Complaint arguing that Huffman could not establish the essential elements for a claim of false imprisonment. On April 28, 2003, Plaintiff Cynthia Huffman filed a Motion to Strike Defendant Lormand's Motion for Summary Judgment arguing that Lormand's motion violated Local Rule 56.1(a).

II. MOTION FOR SUMMARY JUDGMENT

A moving party is entitled to summary judgment on a claim only if there is a showing that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." See generally Williams v. City of St. Louis, 783 F.2d 114, 115 (8th Cir. 1986). "[W]hile the materiality determination rests on the substantive law, it is the substantive law's identification of which facts are critical and which facts are irrelevant that governs." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); see also Get Away Club, Inc. v. Coleman, 969 F.2d 664 (8th Cir. 1992). In applying this standard, the Court must view the evidence in the light most favorable to the non-moving party, giving that party the benefit of all inferences that may be reasonably drawn from the evidence. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 588-89 (1986); Tyler v. Harper, 744 F.2d 653, 655 (8th Cir. 1984), cert. denied, 470 U.S. 1057 (1985). However, a party opposing a motion for summary judgment "may not rest upon the mere allegations or denials of the . . . pleadings, but . . . by affidavits or as otherwise provided in [Rule 56], must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e).

The Court finds that a genuine issue of material fact exists with regard to Plaintiff Huffman's claim under Count VI of her Second Amended Complaint. Therefore, the Court denies Defendant Lormand's Motion for Summary Judgment.

III. MOTION TO STRIKE

Plaintiff Huffman moves to strike Defendant Lormand's Motion for Summary Judgment pursuant to this Court's Local Rule 56.1(a) arguing that Defendant's motion

violates Local Rule 56.1(a) because the motion (1) fails to begin with a concise statement of uncontroverted material facts, (2) fails to number the material facts, (3) fails to reference to the record, and (4) incorporates material facts with argument. Local Rule 56.1(a) provides, in relevant part, that “[t]he suggestions in support of a motion for summary judgment shall begin with a concise statement of uncontroverted material facts. Each fact shall be set forth in a separately numbered paragraph. Each fact shall be supported by reference to where in the record the fact is established.” L.R. 56.1(a).

While the Court is concerned with Defendant interspersing facts with argument, the Court was able to identify those portions of Defendant’s suggestions that were fact and those that were argument. Defendant’s failure to cite to the record did not hamper the Court’s ability to locate the record that supported the facts because the issue presented in the motion was rather concise. Because the Court was able to identify the narrow issue in Defendant’s motion, locate the essential portions of the accompanying record and rule the motion, the Court denies Plaintiff’s Motion to Strike Defendant Lormand’s Motion for Summary Judgment.

IV. CONCLUSION

For the foregoing reasons, Defendant Abel Lormand’s Motion to Dismiss Count VI of Plaintiff Cynthia Huffman’s Second Amended Complaint is DENIED, and Plaintiff Cynthia Huffman’s Motion to Strike Defendant Abel Lormand’s Motion for Summary Judgment is DENIED.

IT IS SO ORDERED.

Date: July 18, 2003

/s/ Ortrie D. Smith
ORTRIE D. SMITH, JUDGE
UNITED STATES DISTRICT COURT