

1987 WL 17058

Only the Westlaw citation is currently available.
United States District Court, D. New Jersey.

Ernestine RODERIQUE, Plaintiff,

v.

Robert W. KOVAC, etc., et al., Defendants.

Civ. A. No. 85-5778 (AET). | September 14, 1987.

Attorneys and Law Firms

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defendants.

Opinion

OPINION

ANNE E. THOMPSON, District Judge.

NATURE OF ACTION

*1 This matter comes before the court on cross-motions for summary judgment filed by the plaintiff, Ernestine Roderique, and the defendants. The defendants named in the complaint are Hunterdon County, Sheriff Warren Peterson, Warden Carl Frick, and three Un-named Employees of Hunterdon County (hereafter referred to as the 'County Defendants'), and Clinton Township, Officer Robert Kovac and former Chief of Police, Lieutenant Fred Slack (hereafter referred to as the 'Township Defendants'). Ms. Roderique filed claims under 42 U.S.C. § 1983 and New Jersey state law for damages resulting from an allegedly unconstitutional strip search.

The motions presently before this court are as follows:

1. Plaintiff's motions for summary judgment against Hunterdon County; Sheriff Warren Peterson, individually and in his official capacity; and Warden Carl Frick, individually and in his official capacity.

2. Defendants' cross-motion for summary judgment on behalf of defendants Peterson, Frick, and Hunterdon County.

3. Defendants' motion to dismiss the John Doe defendants from the action.

4. Defendants' motion to dismiss plaintiff's claims for punitive damages against Clinton Township, Officer Kovac, and Lt. Fred Slack.

FACTS

During the early morning hours of December 13, 1983, Ms. Roderique was driving a van registered to Producer's Bakery, her husband's employer, eastbound on Route 22 in Clinton Township, New Jersey. With her were her husband, John Roderique, and their six-year old son. They were returning from a business trip to Pottstown, Pennsylvania, where Mr. Roderique had purchased a van load of baking pans to use in connection with his business. Ms. Roderique was driving because her husband felt ill. It was a rainy night and she was driving slowly because of her unfamiliarity with the van, the poor visibility and road conditions caused by the weather.

The van was observed by Officer Robert W. Kovac, of the Clinton Township Police Department, to be traveling at a low rate of speed on the left hand side of the road and weaving. After stopping the van, Officer Kovac asked Ms. Roderique to produce her driver's license, insurance card and vehicle registration. She did not have her driver's license with her at the time. She was issued a summons and a motor vehicle check performed at that time indicated that there was an outstanding bench warrant against her from the municipal court of Newark for unpaid parking tickets in the amount of \$75. At that time, the officer instructed Ms. Roderique to follow him to the Clinton Township Police Station.

At the police station, Ms. Roderique was told that because of the outstanding arrest warrant, she would be released if she paid the outstanding fine of \$75. The Roderiques did not have \$75 with them, but offered to leave \$45 and the load of baking pans until she could return with the balance. The officer told her that she would have to remain in custody until the Newark police came to pick her up. She was given the opportunity to telephone someone to bring her the necessary funds. After considering the late hour and poor weather conditions, she decided to wait until the Newark police came to pick her up.

*2 Because the Clinton Township Police Station did not have any facilities to detain prisoners, Ms. Roderique was taken to the Hunterdon County Jail. Ms. Roderique was not informed that she would be transferred until after she decided to wait for the Newark police, nor was she ever informed that she would be subjected to a strip search,

fingerprinting or photographing.

Upon her arrival at the county jail, Ms. Roderique was taken through the routine reception, orientation and processing procedures for all new inmates in county facilities. She was given an information questionnaire to fill out, advised to relinquish her jewelry, belongings and cash, and was fingerprinted and photographed. She was then taken by a female corrections officer to a separate room and ordered to remove all of her clothing. By way of protest, Ms. Roderique explained the nature of her detention and indicated that she was menstruating and would prefer not to disrobe. The officer persisted, explaining that it was standard procedure to strip search all new inmates, and Ms. Roderique complied with the officer's directions. She was ordered to raise her hands to her head, spread her legs and bend over in order that the corrections officer could perform a visual inspection of her anal and vaginal areas. There was no physical contact between the correction officer and Ms. Roderique during the search, and no weapons or contraband were discovered. She was then given a jail uniform and confined in a cell until sometime that afternoon, when she was transferred to the custody of the Newark police.

At Newark, Ms. Roderique paid the \$75 in fines (three \$10 parking tickets and late payment penalties of \$45), which were a result of parking tickets issued to a vehicle registered to her, but used exclusively by her husband.

On January 24, 1984, Ms. Roderique appeared at a hearing at the North Hunterdon Municipal Court where she was found guilty of the traffic offense charged by the Summons issued by Officer Kovac.

Plaintiff's Motion for Summary Judgment

Plaintiff alleges that her constitutional rights were violated as a result of the strip search she endured at the Hunterdon County jail. The Fourth Amendment to the Constitution of the United States, applied to the states through the Fourteenth Amendment, provides:

The right of the people to be secure in their persons . . . against unreasonable searches and seizures, shall not be violated and no warrants shall issue, but upon probable cause.

However, as Justice Rehnquist stated for the Supreme Court in Bell v. Wolfish, 441 U.S. 520 (1979), 'the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application.' Id. at 559. Holding that visual body cavity inspections of prison inmates after contact visits with persons from outside the prison could be conducted on less than probable cause, the court found that a test of

reasonableness

requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted.

*3 Id. The court ruled that 'the significant and legitimate security interests of the institution' in preventing the smuggling of contraband outweighed the privacy interests of the inmates. Id. at 560. The detention facility in Wolfish housed primarily pretrial detainees who were committed to the detention facility because no less drastic means could reasonably ensure their presence at trial. In addition, some convicted inmates were also housed there awaiting sentencing or transportation to federal prison. Id. at 524. The court found that such a facility is a 'unique place fraught with serious security dangers' where the 'smuggling of money, drugs, weapons, and other contraband is all too common an occurrence.' Id. at 559. Thus, a balance of interests revealed that body cavity searches were reasonable, and, therefore, did not violate the Fourth Amendment.

It follows, however, that when such a balancing indicates that the state's security interest is less compelling than an individual's privacy interest, a body cavity search may not be conducted without probable cause. Unlike the inmates in Wolfish who were incarcerated after conviction or because no other means could ensure their presence at their federal criminal trials, Ms. Roderique was detained pursuant to the nonpayment of parking tickets totaling \$75. She was strip-searched pursuant to a New Jersey regulation requiring all newly admitted inmates to county adult correctional facilities to be strip searched for weapons and contraband. N.J.A.C. 10A:31-3.12. Ms. Roderique maintains that, under Wolfish, Hunterdon County could not infer from her incarceration for parking violations a viable security threat to justify a strip search and body cavity inspection.

The Third Circuit has not ruled on the issue of whether a strip search and body cavity inspection performed pursuant to a state regulation requiring such searches without regard to the offense charged or individualized probable cause violates Fourth Amendment rights. In a recent opinion, however, this court held that a search and body cavity inspection performed under the same New Jersey regulation violated the plaintiff's constitutional rights. Davis v. City of Camden, 657 F. Supp. 396 (D.N.J. 1987). The court found that the policy of N.J.A.C. 10A:31-3.12 requiring the strip search of all arrestees, regardless of the nature of their offense, is not supportable, and thus, a search made pursuant to this

policy, where no suspicion regarding the arrestee existed, is unconstitutional. Id. at 401. The Davis court found persuasive the holdings of eight Circuit Courts of Appeals that ‘there must be a ‘reasonable suspicion’ that an arrestee is concealing weapons in order for a strip search to be constitutionally justified. Id. at 399 (and cases cited therein).

Characteristic of these holdings is the ruling of the Second Circuit that

the Fourth Amendment precludes prison officials from performing strip/body cavity searches of arrestees charged with misdemeanors or other minor offenses unless the officials have a reasonable suspicion that the arrestee is concealing weapons or other contraband based on the crime charged, the particular characteristics of the arrestee and/or the circumstances of the arrest.

*4 Weber v. Dell, 804 F.2d 796, 802 (2d Cir. 1986). Applying the balancing test enunciated in Bell v. Wolfish, supra, we concur with the Second Circuit and hold that the strip/body cavity search performed by Hunterdon County on plaintiff, and the New Jersey regulation mandating it, violate Ms. Roderique’s Fourth Amendment rights. Without a reasonable suspicion based on the nature of the crime charged, the particular characteristics of the arrestee and/or the circumstances of the arrest, the state cannot claim a threat to prison security constituting an interest sufficient to warrant an invasion of plaintiff’s personal rights. The blanket policy mandating the strip/body cavity search of all arrestees, regardless of the nature of the charges against them does not encompass the required balancing of these interests and, therefore, is unconstitutional. Here, plaintiff was detained for the nonpayment of parking fines in the amount of \$75. The minor nature of her infraction combined with her cooperative attitude during the arrest and the absence of prior criminal or violent behavior were insufficient to provide a reasonable suspicion that Ms. Roderique might be concealing weapons or contraband. Thus, the county had no reasonable basis to subject her to the humiliation of a strip search and body cavity inspection. These actions constitute an ‘unreasonable search’ in violation of the Fourth Amendment.

Liability of Hunterdon County

Plaintiff’s motion for summary judgment against Hunterdon County will, therefore, be granted. In Monell v. New York City Dept. of Social Services, 436 U.S. 658 (1978), the Supreme Court held that a local government is, for the purpose of § 1983, a ‘person’ and, therefore,

‘may be sued for constitutional deprivations visited pursuant to governmental ‘custom,’ even though such a custom has not received formal approval through the body’s official decisionmaking channels.’ Id. at 690–1. ‘A § 1983 plaintiff thus may be able to recover from a municipality without adducing evidence of an affirmative decision by policymakers if able to prove that the challenged action was pursuant to a state ‘custom or usage’.’ Pembaur v. City of Cincinnati, 54 USLW 4289, 4293 n.10 (1986), quoting Monell at 690–1. Hunterdon County argues it did not officially formulate its strip search procedures acting, instead, pursuant to a New Jersey state regulation, and the county denies Ms. Roderique’s allegation that such actions reflect official county policy. However, this court stated in Davis, supra, that

the fact that state law mandates that a municipality implement a particular policy does not render the municipality’s affirmative adoption of that policy any less of a municipal policy than when state law merely authorizes the municipality’s action, or when state law is silent.

Id. at 404. Furthermore, Warden Frick stated in his affidavit that it is his ‘duty to enforce [the state] regulations.’ By enforcing the state ‘custom or usage’ of blanket strip search procedures, Warden Frick established county policy, see Weber, 804 F.2d at 803 (where sheriff ordered strip searches, he established county jail policy). We, therefore, find the county liable under § 1983 and plaintiff’s motion shall be granted.

Liability of the Individual County Defendants

*5 Summary judgment in favor of Sheriff Warren Peterson will be granted. Sheriff Peterson did not become sheriff until after the incidents which give rise to Ms. Roderique’s complaint took place, nor was he employed by the county prior to becoming sheriff. He is not, therefore, liable to Ms. Roderique.

Summary judgment will also be granted to Hunterdon County Jail Warden Carl Frick, as we find that he is shielded by qualified immunity. The Supreme Court defined the scope of the qualified immunity defense in Harlow v. Fitzgerald, 457 U.S. 800 (1982):

. . . government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would

have known.

Id. at 818. Thus, the issue here is whether Carl Frick's conduct violated clearly established statutory or constitutional rights of which a reasonable person would have known.

The strip search policy at the Hunterdon County Jail under which Ms. Roderique was searched was mandated by N.J.A.C. 10A:31-3.12(b)(2) (1979). The regulation states in part:

All newly admitted inmates shall be thoroughly searched. Each newly admitted inmate shall be strip searched for weapons and contraband The strip search shall be conducted in private and in a manner that preserves the dignity of the inmate. Newly admitted female inmates shall be strip searched by a female staff member in an area separate from that of male inmates. Such searches shall be conducted under sanitary conditions.

Id. Though the validity of body cavity searches has been upheld by the Supreme Court, see, Bell v. Wolfish, *supra*, neither the Supreme Court nor the Third Circuit has ruled on the constitutionality of blanket strip search policies like the one required by the New Jersey regulation. Currently eight circuits have held that there must be a reasonable suspicion that an arrestee is concealing weapons or contraband in order for a strip search to be valid, Davis, 657 F. Supp. at 399, and the Davis court recently held that N.J.A.C. 10A:31-3.12 is unconstitutional. We so hold, also. Notwithstanding the present holding regarding the unconstitutionality of this type of search, we conclude that it would be unfair to deny qualified immunity to the individual defendants in the face of the state regulation. It was not unreasonable for the defendant to have relied upon a presumably valid state statute until advised otherwise. The Davis court found that:

State laws are presumptively valid; and while adherence to an unconstitutional state law mandate will not absolutely immunize a local government official, he will be excused from § 1983 liability 'for acting under a statute that he reasonably believed to be valid but that was later held unconstitutional.'

657 F. Supp. at 401, (emphasis in original), quoting, Pierson v. Ray, 386 U.S. 547, 555 (1967). In the absence of rulings by the Supreme Court, the Third Circuit and the District of New Jersey that a blanket strip search policy is

unconstitutional, it cannot be said that these defendants violated 'clearly established statutory or constitutional rights.' Thus, defendant Frick's motion for summary judgment will be granted.

*6 Hunterdon County has moved for summary judgment to dismiss the John Doe defendants named in the complaint, claiming that amending the complaint to add these defendants' real names is barred by the statute of limitations. The replacement of a 'John Doe' caption with a party's real name amounts to changing a party under FED. R. CIV. P. 15(c), Deary v. Three Un-named Police Officers, 746 F.2d 185, 198 (3d Cir. 1984), citing, Varlack v. S.W.C. Caribbean, Inc., 550 F.2d 171, 174-5 (3d Cir. 1977). Where the statute of limitations has run, relation back of such an amendment is permitted only if all the conditions of Rule 15 have been satisfied, including the requirement that the defendant have actual notice, or could be expected to have had notice of the action before the statute had run. Id. The John Doe defendants have not yet been named. There is no showing that these undiscovered defendants had or could be expected to have had actual notice of this law suit. Further, the John Doe defendants would in all likelihood be entitled to qualified immunity. Thus, the motion to dismiss the claims against the John Doe defendants is granted.

Liability of the County Defendants in their Official Capacities

Plaintiff's claims against Sheriff Peterson, Warden Frick, and the John Doe defendants in their official capacities are also dismissed. Claims against government employees 'represent only another way of pleading an action against an entity of which an officer is an agent.' Monell, 436 U.S. at 690, n.55. Law suits against officials in their official capacities are essentially suits against the government. Id. We grant summary judgment against Hunterdon County, holding it liable to Ms. Roderique for her injuries. There is no need, therefore, to retain plaintiff's claims against the individual county defendants in their official capacities. Accordingly, we will grant defendants' motion for summary judgment dismissing defendants Peterson, Frick and the John Doe defendants in their official capacities.

Punitive Damages

Ms. Roderique also seeks punitive damages against all the defendants named in her complaint. Defendants Clinton Township, Lieutenant Slack and Officer Kovac have moved for summary judgment to dismiss this damage claim.

The Supreme Court held in Newport v. Fact Concerts,

453 U.S. 247, 271 (1981), that punitive damages cannot be awarded against a municipality under § 1983. Punitive damages are intended to punish the tortfeasor who acted maliciously or intentionally, but a municipality ‘can have not malice independent of the malice of its officials.’ Id. at 266–7. Thus, the claims for punitive damages against Clinton Township are dismissed.

Furthermore, plaintiff’s claims for punitive damages against defendants Kovac and Slack will also be dismissed. The Supreme Court has held that a jury may be permitted to assess punitive damages in a § 1983 claim if the defendant’s conduct was ‘motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others.’ Smith v. Wade, 461 U.S. 30, 56 (1983). Lt. Slack, as former Chief of Police, was responsible for the policy of transporting female detainees to the county jail. Officer Kovac, who arrested plaintiff, did so courteously, and on the basis of a legally issued warrant. There is no showing that either of these two defendants acted maliciously, recklessly, or callously toward plaintiff. Accordingly, we will dismiss the plaintiff’s claims for punitive damages against defendants Kovac and Slack.

*7 The court will enter its own form of order.

ORDER

This matter having come before the court on motions by the plaintiff and defendants for summary judgment and this court having considered the arguments of counsel in support and in opposition to the motions and for good cause shown;

It is on this 14th day of September 1987,

ORDERED that plaintiff’s motion for summary judgment against defendant Hunterdon County be and hereby is granted; it is further

ORDERED that defendants’ cross motions for summary judgment in favor of defendants Peterson and Frick be and hereby are granted;

ORDERED that defendants’ motion to dismiss the claims against the John Doe defendants be and hereby is granted; and

ORDERED that plaintiff’s claims for punitive damages against defendants Clinton Township, Kovac and Slack be and hereby are dismissed.