IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

EVAN ESTES,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	No. 02-1013
	)	
RAYMOND SIMMONS, et al.,	)	
	)	
	)	
Defendants.	)	

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT
OF DEFENDANTS RAYMOND SIMMONS AND CITY OF HUMBOLDT

Plaintiff Evan Estes has filed this lawsuit pursuant to 42 U.S.C. § 1983, against the City of Humboldt, Tennessee ("City"), Raymond Simmons, chief of the Humboldt Police Department, and Officers Tony Williams and Terry Sumner. Plaintiff contends that his civil rights were violated when Officers Williams and Sumner allegedly used excessive force against him during his arrest. Defendants City and Simmons have filed a motion for summary judgment. Plaintiff has not responded to the motion.[1] For the reasons set forth below, Defendants' motion is GRANTED.

Motions for summary judgment are governed by Rule 56 of the Federal Rules of Civil Procedure. To prevail on a motion for summary judgment, the moving party has the burden

[1] Plaintiff was granted an extension of time until December 23, 2002, to file a response but has not done so.

of showing the "absence of a genuine issue of material fact as to an essential element of the nonmovant's case." Street v. J.C. Bradford & Co., 886 F.2d 1472, 1479 (6th Cir. 1989). The moving party may support the motion with affidavits or other proof or by exposing the lack of evidence on an issue for which the nonmoving party will bear the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). The opposing party may not rest upon the pleadings but, "by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e).

"If the defendant . . . moves for summary judgment . . . based on the lack of proof of a material fact, . . . [t]he mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986). The court's function is not to weigh the evidence, judge credibility, or in any way determine the truth of the matter, however. Anderson, 477 U.S. at 249. Rather, ""t]he inquiry on a summary judgment motion . . . is . . . 'whether the evidence presents a sufficient disagreement to require submission to a [trier of fact] or whether it is so one-sided that one party must prevail as a matter of law.'" Street, 886 F.2d at 1479 (quoting Anderson, 477 U.S. at 251-52). Doubts as to the existence of a genuine issue for trial are resolved against the moving party. Adickes v. S. H. Kress & Co., 398 U.S. 144, 158-59 (1970).

If a party does not respond to a motion for summary judgment, the Federal Rules of Civil Procedure provide that "summary judgment, if appropriate, shall be entered against

him." Fed. R. Civ. P. 56(e). The fact that Plaintiff did not respond does not require granting Defendants' motion. However, if the allegations of the complaint are contravened by Defendants' affidavits and Defendants are entitled to judgment as a matter of law on those facts, then summary judgment is appropriate. Wilson v. City of Zanesville, 954 F.2d 349, 351 (6th Cir. 1992).

The complaint alleges that on or about January 27, 2001, Defendant Williams stopped Plaintiff's vehicle as Plaintiff was leaving a field that was being investigated by Humboldt police officers. Defendant Sumner arrived at the scene while Plaintiff was still in his vehicle. The complaint further alleges that Plaintiff exited his vehicle when commanded to do so by Defendants. Defendant Sumner placed handcuffs on Plaintiff as he lay face-down on the ground. Defendants Williams and Sumner kicked Plaintiff as he lay on the ground, allegedly without provocation. It is undisputed that Defendant Simmons was not present at the time of Plaintiff's arrest, nor was he involved in the arrest.

Inadequate Hiring and Failure to Train and Supervise Claims

Plaintiff has alleged that Defendants City and Simmons failed to adequately train and supervise their employees.[2] In support of their motion, Defendants have attached the affidavit of Defendant Simmons which describes the training policy of the Humboldt Police Department. All officers are required to receive basic training at the law enforcement

[2] The suit against Defendant Simmons in his official capacity is tantamount to the suit against the City. See Brandon v. Holt, 469 U.S. 464, 471-72 (1985).

academy and forty hours of in-service training each subsequent year. Simmons Affidavit at para 4. Defendants Williams and Sumner received this training and were certified. Id. at para. 6. Defendant Simmons also states that the personnel files of Defendants Williams and Sumner show that both officers met the requirements of T.C.A. § 38-8-106 at the time that they were hired.[3]

The Supreme Court reviewed the history of municipality liability in Board of County Comm. Bryan Co., Okla. v. Brown, 117 S. Ct. 1382 (1997).

> We held in Monell v. New York City Dept. of Social Servs., 436 U.S. at 689, 98 S. Ct., at 2035, that municipalities and other local governmental bodies are "persons" within the meaning of § 1983. We also recognized that a

---

[3] This section provides that a full-time police officer must

> (1) Be at least eighteen (18) years of age;
> (2) Be a citizen of the United States;
> (3) Be a high school graduate or possess its equivalency which shall include a general educational development (GED) certificate or a high school equivalency degree obtained from a correspondence school accredited by the accrediting commission of the distance education and training council in Washington, D.C. and which is recognized as an equivalency degree by any institution of higher education in Tennessee;
> (4) Not have been convicted of or pleaded guilty to or entered a plea of nolo contendere to any felony charge or to any violation of any federal or state laws or city ordinances relating to force, violence, theft, dishonesty, gambling, liquor or controlled substances;
> (5) Not have been released or discharged under any other than honorable discharge from any of the armed forces of the United States;
> (6) Have such person's fingerprints on file with the Tennessee bureau of investigation;
> (7) Have passed a physical examination by a licensed physician;
> (8) Have a good moral character as determined by a thorough investigation conducted by the employing agency; and
> (9) Be free of all apparent mental disorders as described in the Diagnostic and Statistical Manual of Mental Disorders, Third Edition (DSM-III) of the American Psychiatric Association. An applicant must be certified as meeting these criteria by a qualified professional in the psychiatric or psychological field.

T.C.A. § 38-8-106.

> municipality may not be held liable under § 1983 solely because it employs a tortfeasor. Our conclusion rested partly on the language of § 1983 itself. In light of the statute's imposition of liability on one who "subjects [a person], or causes [that person] to be subjected," to a deprivation of federal rights, we concluded that it "cannot be easily read to impose liability vicariously on governing bodies solely on the basis of the existence of an employer-employee relationship with a tortfeasor." . . . We have consistently refused to hold municipalities liable under a theory of respondeat superior. . . . Instead, in Monell and subsequent cases, we have required a plaintiff seeking to impose liability on a municipality under § 1983 to identify a municipal "policy" or "custom" that caused the plaintiff's injury.

Id. at 1387-88 (citations omitted).

In Brown , an arrestee brought a § 1983 action against the county, the sheriff, and a deputy, in which she sought to recover for injuries sustained when she was forcibly removed from her automobile. The Court of Appeals for the Fifth Circuit, 67 F.3d 1174, found that the county was subject to municipal liability based on the sheriff's decision to hire the deputy after an inadequate background check. In reversing the decision of the Court of Appeals, the Supreme Court noted that:

> As our § 1983 municipal liability jurisprudence illustrates, however, it is not enough for a § 1983 plaintiff merely to identify conduct properly attributable to the municipality. The plaintiff must also demonstrate that, **through its deliberate conduct**, the municipality was the "moving force" behind the injury alleged. That is, a plaintiff must show that the municipal action was taken with the requisite degree of culpability and must demonstrate a direct causal link between the municipal action and the deprivation of federal rights.

Id. at 1388 (emphasis added). The Court then found that there was not a "direct causal link" between the sheriff's failure to conduct an adequate background check of the deputy and the

deputy's alleged use of excessive force. "Sheriff Moore's hiring decision was itself legal, and Sheriff Moore did not authorize Burns to use excessive force." Id. at 1389.

Failure to properly train city employees can create liability under § 1983. Hays v. Jefferson County, 668 F.2d 869, 874 (6th Cir.1982). In City of Canton v. Harris, 489 U.S. 378 (1989), the Court enunciated the standard for a failure to train claim as follows:

> We hold today that the inadequacy of police training may serve as the basis for § 1983 liability only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact. [Footnote omitted] This rule is most consistent with our admonition in Monell, 436 U.S., at 694, 98 S. Ct., at 2037, and Polk County v. Dodson, 454 U.S. 312, 326 (1981), that a municipality can be liable under § 1983 only where its policies are the "moving force [behind] the constitutional violation." Only where a municipality's failure to train its employees in a relevant respect evidences a "deliberate indifference" to the rights of its inhabitants can such a shortcoming be properly thought of as a city "policy or custom" that is actionable under § 1983. As Justice Brennan's opinion in Pembaur v. Cincinnati, 475 U.S. 469, 483-484 (1986) (plurality) put it: "[M]unicipal liability under § 1983 attaches where--and only where--a deliberate choice to follow a course of action is made from among various alternatives" by city policymakers. See also Oklahoma City v. Tuttle, 471 U.S., at 823 (opinion of Rehnquist, J.). Only where a failure to train reflects a "deliberate" or "conscious" choice by a municipality--a "policy" as defined by our prior cases--can a city be liable for such a failure under § 1983.

City of Canton, 489 U.S. at 388-89. Therefore, under a failure to train theory, a plaintiff must show "that the training program is inadequate to the tasks that officers must perform; that the inadequacy is the result of the city's deliberate indifference; and that the inadequacy is 'closely related to' or actually caused the plaintiff's injury." Matthews v. Jones, 35 F.3d 1046, 1049 (6th Cir.1994).

As noted in Patterson v. City of Cleveland, 1999 WL 68576 (6th Cir.), "'[d]eliberate indifference' is a stringent standard, requiring proof that the government entity disregarded a known or obvious risk." Inadequate training constitutes a municipal policy only if "the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the [municipality] can reasonably be said to have been deliberately indifferent to the need." City of Canton, 489 U.S. at 390.

> For example, city policymakers know to a moral certainty that their police officers will be required to arrest fleeing felons. The city has armed its officers with firearms, in part to allow them to accomplish this task. Thus, the need to train officers in the constitutional limitations on the use of deadly force, see Tennessee v. Garner, 471 U.S. 1 (1985), can be said to be "so obvious," that failure to do so could properly be characterized as "deliberate indifference" to constitutional rights.

489 U.S. at 390 n. 10.

Plaintiff has pointed to nothing in the record to rebut the evidence presented by Defendants City and Simmons that Defendants Williams and Sumner met the qualifications to be hired as police officers and that they were adequately trained. Plaintiff has presented no countervailing evidence that any hiring or training policies of the City were formulated with "deliberate indifference" as to their consequences or that the policies authorized the deprivation of Plaintiff's federal rights." Brown, 117 S. Ct. at 1389.

To establish a claim for improper supervision, the plaintiff must show that the police chief "encouraged the specific incident of misconduct or in some other way directly participated in it." Sova v. City of Mt. Pleasant, 42 F.3d 898, 904 (6th Cir. 1988). Here,

Defendant Simmons has refuted any allegation that he was involved in Plaintiff's arrest or that he encouraged the alleged unconstitutional conduct of Defendants Williams and Sumner.

Defendants are, therefore, entitled to summary judgment on Plaintiff's hiring, training, and supervision claims.

Policy or Custom of Allowing Excessive Force

To prove a claim under § 1983, a plaintiff must establish: (1) that he was deprived of a right secured by the Constitution or laws of the United States, and (2) that he was subjected to or caused to be subjected to this deprivation by a person acting under color of state law. Flagg Bros. v. Brooks, 436 U.S. 149, 155 (1978). A municipality may be held liable under § 1983 only if the municipality itself caused the constitutional deprivation. Monell v. Department of Social Servs., 436 U.S. 658, 690 (1978). A municipality is not liable under § 1983 for an injury inflicted solely by its employees or agents because the doctrine of respondeat superior is inapplicable under § 1983. Id. at 691-95. "It is only when the 'execution of the government's policy or custom ... inflicts the injury' that the municipality may be held liable under § 1983." City of Canton v. Harris, 489 U.S. 378, 385 (1989) (quoting Springfield v. Kibbe, 480 U.S. 257, 267 (1987) (O'Connor, J., dissenting)). The local government's policy or custom "must be 'the moving force of the constitutional violation' in order to establish the liability of a government body under § 1983." Polk County v. Dodson, 454 U.S. 312, 326 (1981) (quoting Monell, 436 U.S. at 694).

In the present case, Plaintiff has alleged in a conclusory fashion that the City and Defendant Simmons a custom or practice of allowing their officers to use excessive force. Defendants have responded with a copy of the police department's policy manual concerning the use of force. Defendants' Exhibit A. The manual clearly sets forth the limits as to when an officer should use force, including deadly force. Plaintiff has pointed to no evidence that any policy or custom of Defendants City or Simmons concerning the officers' use of excessive force "violated federal law, or directed or authorized the deprivation of [Plaintiff's] federal rights." Brown, 117 S. Ct. at 1389. Neither is there any evidence that a policy was formulated "with 'deliberate indifference' as to its known or obvious consequences." Id.

Because Plaintiff has failed to establish a causal connection between his alleged injuries and any policy or custom of Defendants City and Simmons, summary judgment is granted on this claim.

Negligence Claims

To the extent that Plaintiff has brought any state law negligence claims against Defendants City and Simmons, the court declines to exercise supplemental jurisdiction over those claims. See Maxwell v. Conn, 893 F.2d 1335, 1990 WL 2774 (6th Cir.) (While the federal claims would ordinarily confer jurisdiction over plaintiff's TGTLA claims because they arise out of the same nucleus of operative fact, the decision of the Tennessee legislature to grant original jurisdiction to state circuit courts belies plaintiff's claim that he could expect to try all his claims in the same judicial proceeding, and the district court properly declined

to exercise its discretion by extending pendent jurisdiction over the state common law negligence claims because of concerns of jury confusion.) Accord Spurlock v. Whitley, 971 F. Supp. 1166 (M.D. Tenn. 1997), *aff'd* 167 F.3d 995 (6th Cir. 1999) (A court may decline to exercise supplemental jurisdiction if "in exceptional circumstances," there are "compelling reasons for declining jurisdiction," 28 U.S.C. § 1367(c)(4), and the exclusivity provision of the TGTLA provides a compelling reason for this court to decline supplemental jurisdiction of the TGTLA claim.)

Punitive Damages

In City of Newport v. Fact Concerts, Inc., 453 U.S. 247 (1981), the United States Supreme Court held that punitive damages could not be awarded against local governments. Because Defendant City is a governmental entity, punitive damages cannot be awarded against it, and the claim for punitive damages is dismissed.

Individual Liability of Defendant Simmons

It is undisputed that Defendant Simmons not participate in Plaintiff's arrest. Simmons Affidavit at para. 4. Consequently, because there is no respondeat superior under § 1983, see Monell v. Dept. of Soc. Serv., 436 U.S. 658 (1978); Bellamy v. Bradley, 729 F.2d 416, 421 (6th Cir. 1984)(liability under section 1983 in a defendant's personal capacity must be predicated upon some showing of direct, active participation in the alleged misconduct), Defendant Simmons is entitled to summary judgment in his individual capacity.

Summary and Conclusion

The motion for summary judgment filed by Defendants City of Humboldt, Tennessee, and Raymond Simmons is GRANTED. The only claims remaining are those brought against Defendants Tony Williams and Terry Sumner.

IT IS SO ORDERED.

_____
JAMES D. TODD
UNITED STATES DISTRICT JUDGE

_____
DATE