

Enoch v Wayne County Sheriff's Off.

2022 NY Slip Op 30341(U)

February 10, 2022

Supreme Court, Wayne County

Docket Number: Index No. 81007

Judge: Daniel G. Barrett

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At a Term of the Supreme Court held in and for the County of Wayne at the Hall of Justice in the Town of Lyons, New York on the 17th day of November, 2021

PRESENT: Honorable Daniel G. Barrett
Acting Supreme Court Justice

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WAYNE

JANET E. ENOCH, STEVE O. HINDI AND
MICHAEL KOBLISKA,

Plaintiffs,

-vs-

DECISION
Index No. 81007

THE WAYNE COUNTY SHERIFF'S OFFICE,
T. D'AMATO, LARRY LINDER,
JAMES DUNLAP, GEORGE LORENZ,
A. KNAPP, P.O. JOHN DOES NOS. 1-10,

Defendants

The Defendants have filed a summary judgment motion requesting a dismissal of the Third Amended Complaint in its entirety. The Plaintiffs have cross moved requesting the County of Wayne be substituted in place of the Wayne County Sheriff's Office.

Initially, this Decision will review the viability of the causes of action pleaded in the Third Verified Amended Complaint. The next step will deal with the application for summary judgment on the basis of relatively newly enacted Uniform Rule §202.8-g(b) and finally the Decision will address the summary judgment motion as to each of the parties.

I. THIRD VERIFIED AMENDED COMPLAINT

FIRST CAUSE OF ACTION

**DEPRIVATION OF PLAINTIFFS' RIGHTS UNDER THE FOURTH, FIFTH,
AND FOURTEENTH AMENDMENTS OF THE UNITED STATES
CONSTITUTION, AND NEW YORK LAW AND THE NEW YORK STATE
CONSTITUTION;
FALSE ARREST (UNDER NEW YORK LAW AND FEDERAL LAW)**

The Court is dismissing the portion of this cause of action insofar as it alleges violations of the New York State Constitution. As stated in Lyles v State of New York, 2 A.D. 3d 694, 695 (2nd Dep't 2003).

In the present case, the recognition of the claimants' State Constitutional claims was neither necessary nor appropriate to ensure the full realization of his rights, because the alleged wrongs could have been redressed by an alternative remedy, namely, timely interposed common-law tort claims for assaults and battery, false imprisonment, and the intentional and negligent injury to property.

Plaintiffs have pleaded deprivation of their rights under the United States Constitution and false arrest under New York State Law. Therefore, it is unnecessary to plead violations of the New York State Constitution.

SECOND CAUSE OF ACTION

**NEGLIGENT HIRING, TRAINING, SUPERVISION AND RETENTION UNDER
NEW YORK STATE LAW**

The Plaintiffs improperly name the Wayne County Sheriff's Office as a Defendant in this action. The Wayne County Sheriff's Office is not a legal entity subject to suit. The Defendants have pleaded this affirmative defense in their initial answer and each successive amendment of the answer. Plaintiffs agree that the Wayne County Sheriff's Office is an improper entity and have cross-moved seeking to substitute the property defendant - the County of Wayne. The argument that the substitution should be allowed on the basis of a spelling error is not persuasive as there is no misspelling.

Plaintiffs cite Buran v Coupal, 87 N.Y. 2d 173, as a basis for adding the County of Wayne to the action after the statute of limitations has expired. This case sets forth a three pronged test for adding this defendant to the action. Three conditions must be met in order for the claims against one defendant to relate back to the claims asserted against another defendant and they are:

- (1) Both claims arose out of the same conduct, transaction, or occurrence;
- (2) The new party is "united in interest" with the original defendant and by reason of that relationship can be charged with such notice of the action that he will not be prejudiced in maintaining his defense on the merits and;
- (3) The new party knew or should have known, but for an excusable mistake by Plaintiff as to the identity of the property parties, the action would have been brought against him as well. (Buran supra p. 178)

Plaintiffs assert that the Wayne County Sheriff's Office and the County of Wayne are united in interest and that the Plaintiffs will not require any further discovery and further, the Defendant will not be prejudiced in maintaining their defense on the merits of the action. Per the affidavit of defense counsel, the deputies named in this action are being indemnified as a matter of New York Law and so there is no need to sue the County of Wayne on the basis of respondeat superior if the Defendants are found liable, any judgment would be paid in accordance with the obligation to indemnify. Although Plaintiffs assert there is no prejudice in adding the County of Wayne at this time, the Defendants disagree. The Defendant's argue that the County of Wayne would be required to engage in initial discovery regarding the claims against it and then move for summary judgment. The Defendants refute the fact that the Sheriff of Wayne County and the County of Wayne are united in interest. The Sheriff is the elected official and responsible for policies and practices of the office. The County of Wayne does not determine policy.

The Note of Issue and Statement of Readiness has already been filed by the Plaintiffs.

Examining Step Number 2 of the three pronged test:

“A court would be justified in denying a plaintiff the benefit of the doctrine in order to prevent delay or disruption in the normal course of the lawsuit. Application of the doctrine in such circumstances will likely result in prejudice to the adversary and, as noted above, bar application of the doctrine under the second prong.” Buran supra, P. 181

For the foregoing, this Court will not allow the County of Wayne to be added as a Defendant to this action. Consequently, the second cause of action is dismissed.

**THIRD CAUSE OF ACTION AGAINST DEFENDANT,
SHERIFF'S OFFICE**

MONELL CLAIM PURSUANT TO 42 U.S.C. § 1981, 1983, 1985, 1986

Plaintiffs have consented to a dismissal of this cause of action except as to 42 U.S.C. 1983. As to that cause of action against the Sheriff's Office or the County of Wayne, this Court dismisses it.

**FOURTH CAUSE OF ACTION AGAINST DEFENDANT,
SHERIFF'S OFFICE**

RESPONDEAT SUPERIOR

This cause of action is dismissed because the Sheriff's Office is not a proper party and the County of Wayne is not being permitted to be added to this action as a Defendant.

FIFTH CAUSE OF ACTION AGAINST DEFENDANT SHERIFF'S OFFICE

MUNICIPAL AND/OR GOVERNMENTAL LIABILITY

This cause of action is dismissed as the Sheriff's Office is an improper entity and the County of Wayne is not being permitted to be added to this action.

SIXTH CAUSE OF ACTION

EXCESSIVE FORCE

Plaintiffs have agreed to a dismissal of this cause of action.

SEVENTH CAUSE OF ACTION

**MALICIOUS PROSECUTION (UNDER NEW YORK STATE AND FEDERAL
LAW)**

Plaintiffs have agreed to the dismissal of this cause of action.

EIGHTH CAUSE OF ACTION

ABUSE OF PROCESS

This cause of action is dismissed. In a case in which a 911 call was made resulting in an investigation by a Sheriff with no process being issued nor was a proceeding initiated. This activity does not give rise to a claim for abuse of process. See Dobies v Brefka, 273 A.D. 2d 776 (3rd Dep't 2000)

NINTH CAUSE OF ACTION

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

The Plaintiffs agreed to a dismissal of this cause of action.

TENTH CAUSE OF ACTION

NEGLIGENCE

The Plaintiffs agreed to a dismissal of this cause of action

II. SUMMARY JUDGMENT BASED ON UNIFORM RULE § 202.8-g(b)

Pursuant to Uniform Rule §202.8-g(b) which became effective on February 1, 2021, Defendants assert the entire action should be dismissed due to the fact that the Plaintiffs did not comply with this rule. This rule provides that papers opposing a motion for summary judgment should include a corresponding numbered paragraph to each numbered paragraph in the statement of the moving party and, if necessary, additional paragraphs containing a separate short and concise statement. The Plaintiffs did, in fact, violate this rule. Violation of this rule can lead to summary judgment against the transgressor. (See Reus v Etc. Housing Coy, 2021 WL 1837673 (Clinton County Sup. Ct. 2021). The Commentaries Siegel New York Practice Sixth Edition January Supplement pp 192-194 indicates that the court has discretion in denying a summary judgment motion when this rule is violated. The Court is exercising its discretion and denying summary judgment on this basis because of the volume of information provided to the Court in opposition to the summary judgment motion.

III. SUMMARY JUDGMENT

It is well established that on a motion for summary judgment movant is entitled to judgment as a matter of law if there are no genuine issues of material fact. A genuine issue for trial exist such that a reasonable jury could find in favor of the non-movant, then summary judgment will be denied. The court must view the evidence in the light most favorable to the non-moving party and draw all reasonable inferences in favor of the non-movant. Very succinctly stated, the Plaintiffs flew a drone over Marshall Farms and then loaded their drone in a vehicle and drove south on Route 414. All three of the Plaintiffs were in the same vehicle and their vehicle was stopped by a New York State Trooper and they were detained. No vehicle and traffic laws were observed to have been violated. Viewing the evidence most favorable to the Plaintiffs requires a court to conclude there was no basis to stop and question the Plaintiffs.

The Defendants raise the issue of qualified immunity as a basis for the dismissal of the entire action.

Whether an official is entitled to qualified immunity requires a two part analysis. The threshold question is whether, “taken in the light most favorable to the party asserting the injury,... the facts alleged show the officer’s conduct violated a constitutional right.”... If the court determines that the officer’s conduct did not violate a constitutional right, the analysis ends... If the conduct does infringe a constitutional right, the Court must determine “whether the right was clearly established at the time it was allegedly infringed.

“The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted.”... “A defendant is entitled to summary judgment on qualified immunity grounds when “no reasonable jury, looking at the evidence in the light most favorable to, and drawing all inferences most favorable to, the plaintiff, could conclude that it was objectively unreasonable for the

defendant to believe that he was acting in a fashion that did not clearly violate an established federally protected right.”...

“An officer’s actions are objectively unreasonable when no officer of reasonable competence could have made the same choice in similar circumstances.”....

Mack v Town of Wallkill, 253 F. Supp. 2d 552, 559.

Defendant D’Amato arrested Plaintiff Janet Enoch. The right not to be arrested was clearly established at the time of Plaintiff Enoch’s arrest. See Golino v City of New Haven, 950 F. 2d 864, 870 (2d Cir. 1991) The dispositive question here is whether the circumstances surrounding the arrest of Ms. Enoch would have made if objectively reasonable for Defendant D’Amato to believe that arresting her did not violate the law. See Loria v Gorman, 306 F. 3d 1271, 1286 (2nd Cir.2002). The arrest of Plaintiff Enoch by Defendant D’Amato is secondary to the stop. Defendant D’Amato was assisting a New York State Trooper who made the stop. Plaintiff Enoch refused to give her identification and consequently was arrested by Defendant D’Amato. Viewing the facts most favorable to Plaintiff Enoch, she was not doing anything illegal nor had she done anything illegal, there is a factual question whether or not qualified immunity applies, the factual question is whether Defendant D’Amato made adequate inquiry about what had occurred prior to his coming upon the scene. (See Mack supra page 560). Therefore the Court is unable to grant a dismissal of the action to Defendant D’Amato.

As to Defendants George Lorenz and A. Knapp they may nonetheless be liable under §1983 for the failure to intervene in an unlawful arrest-viewing the evidence in the light most favorable to the Plaintiffs.

Even if the Court were to conclude that Bruce did not actively participate in Max's arrest, he may nonetheless be liable under §1983 for his failure to intervene in an unlawful arrest. It is widely recognized that all law enforcement officials had an affirmative duty to intervene to protect the constitutional rights of citizens from infringement by law enforcement officers in their presence...

“An officer who fails to intercede is liable for the preventable harm caused by the actions of the other officers where the officer observes or has reason to know:.. (2) that a citizen has been unjustifiably arrested.... Liability will attach if the officer had a realistic opportunity to intervene to prevent the harm from occurring.” Max supra Page 559.

Consequently, on this summary judgment motion the dismissal of the action against Defendants A. Knapp and George Lorenz is denied. The record reveals they were present at the scene after the stop occurred. Defendant Knapp conducted a pat down of Plaintiff Enoch.

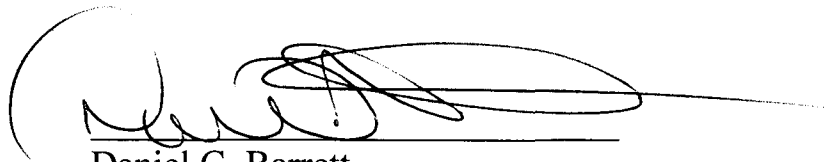
Defendant George Lorenz was at the scene after the stop and was there for about an hour. He had conversations with at least one of the Plaintiffs. For the above reasons - allowing the arrest to occur - is the basis for denying summary judgment.

This Court is dismissing all claims against Defendant James Dunlap and Defendant Larry Lindner. Defendant Lindner had no contact with any of the Plaintiffs and according to his Affidavit and it appears he wasn't at the scene. Defendant James Dunlap had no communication nor any interactions with the Plaintiffs.

Although the three Plaintiffs, Enoch, Hindi, and Kobliska were detained at the request of the New York State Trooper. Questions of fact exist as to whether Defendants Knapp, D'Amato, and Lorenz acted appropriately under the circumstances. The motion to dismiss the remaining claims of Plaintiffs, Enoch, Hindi and Kobliska are denied.

This constitutes the Decision of the Court. Counsel for Defendants to prepare an Order consistent with this Decision.

Dated: February 10, 2022
Lyons, New York



Daniel G. Barrett
Acting Supreme Court Justice