2006 WL 1626922
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United States District Court,
N.D. California.

Elin SPELLMAN, on behalf of herself and all those similarly situated, Plaintiff,
v.
HUMBOLDT COUNTY, Humboldt County Sheriff Gary Philp, In his individual and official capacities, Humboldt County Sheriff's Department, Humboldt County Sheriff's Deputies Does 1 through 50, and Roes 1 through 20, Inclusive, Defendants.

No. C-05-00568-SBA. | June 9, 2006.

Attorneys and Law Firms

Jeffrey I. Schwarzschild, Law Office of Mark E. Merin, Sacramento, CA, for Plaintiff.

Nancy K. Delaney, Mitchell, Brisso, Delaney & Vrieze, Eureka, CA, for Defendants.

Mark E. Merin, Esq., Law Office of Mark E. Merin, Sacramento, CA.

Opinion

ORDER GRANTING SUMMARY JUDGMENT

SAUNDRA B. ARMSTRONG, District Judge.

***1** Defendants' motion for summary judgment came on regularly for hearing on May 23, 2006. Mark E. Merin appeared on behalf of the plaintiff and Mitchell, Brisso, Delaney & Vrieze, by Nancy K. Delaney, appeared on behalf of the defendants.

Having considered the papers filed and arguments of counsel, and good cause appearing,

IT IS ORDERED as follows:

The Humboldt County Sheriff's Department is not a proper defendant as it is merely a department of the County of Humboldt. *Vance v. County of Santa Clara,* 928 F.Supp. 993, 996 (N.D.Cal.1996), quoting *Stump v. Gates,* 77 F. Supp 808, 816 (D.Colo.1991).

The County of Humboldt, sued herein as Humboldt County, and Humboldt County Sheriff Gary Philp have presented uncontroverted evidence and plaintiff has conceded that the County's written policy with respect to strip searches meets and exceeds constitutional standards. (Declaration of Ciarabellini and Exhibit B to Declaration.) Specifically, policy F-009 provides that:

> "All strip searches and visual body cavity searches will be conducted based on the need and within legal limitations to maintain security and to prevent the introduction of weapons and contraband into the facility. Arrestees will not be arbitrarily subjected to unnecessary strip or body cavity searches."

Nor is there any evidence presented of an unconstitutional de facto custom or policy, as plaintiff's account, even if believed, is not sufficient to establish this, or to raise a triable issue of fact in this regard. A single incident does not establish a custom or practice for purposes of a *Monell* claim. *City of Oklahoma City v. Tuttle,* 471 U.S. 808, 823-24 (1985) ("Proof of a single incident of unconstitutional activity is not sufficient to impose liability under *Monell ...").* Municipal liability may be established with a showing of a "long standing practice or custom which constitutes the standard operating procedure of the local government entity." *Jett v. Dallas Indep. Sch. Dist.,* 491 U.S. 701, 737 (1989). The custom must be so "persistent and widespread" that it constitutes a "permanent and well-settled [municipal] policy." *Monell v. Dept. of Social Services,* 436 U.S. 658, 691 (1978); *Trevino v. Gates,* 99 F.3d 911, 918 (9th Cir.1996); *Gellette v. Delmore,* 979 F.2d 1342, 1346-47 (9th Cir.1992). The absence of any similar complaints negates any inference to be drawn from plaintiff's account of events that such a custom or practice existed, or was widespread.

There is no basis for liability as to defendant Sheriff Philp in the absence of evidence of an underlying constitutional violation. Further, liability may be imposed on a supervisor under Section 1983 only if (1) the supervisor personally participated in the deprivation of constitutional rights or (2) the supervisor knew of the violations and failed to act or prevent them or (3) the supervisor implemented a policy "so deficient that the policy itself is a repudiation of constitutional rights and is the moving force of the constitutional violation." *Redman v. County of San Diego,* 942 F.2d 1435, 1446 (9th Cir.1991), *cert. denied,* 502 U.S. 1074 (1992); *Hansen v. Black,* 885 F.2d 642, 646 (9th Cir.1989).

***2** It is uncontroverted that defendant Philp did not participate in the alleged strip search of the plaintiff, know of the alleged strip search or fail to prevent it, or

implement a constitutionally infirm policy that was the moving force behind the alleged wrongdoing.

Accordingly, the County of Humboldt and defendant Philp are entitled to summary judgment as to plaintiff's Section 1983 claim.

Plaintiff's state-law claims fare no better.

Plaintiff's claim for violation of California Penal Code § 4030 fails as a matter of law because, as discussed above, County Policy F-009 sets forth the required "reasonable suspicion" standard for strip searches. There is nothing in the policy that is inconsistent with the provisions of Section 4030.

Plaintiff's claim under California Civil Code § 52.1 must also fail as a matter of law. This statute requires that plaintiff establish an underlying violation of a constitutional or statutory right. As discussed above, no such violation can be established as a matter of law.

Finally, plaintiff's claim for "invasion of privacy" under the California State Constitution is without merit. The common law tort of invasion of privacy "requires the actionable disclosure be widely publicized and not confined to a few persons or limited circumstances." *Hill v. National Collegiate Athletic Assn.,* 7 Cal.4th 1, 27 (1994). No facts have been presented in this case which would support an actionable claim for invasion of privacy under this standard.

Accordingly, defendants County of Humboldt and Gary Philp are entitled to summary judgment as to all claims set forth in plaintiff's complaint. Plaintiff's complaint is hereby ordered dismissed, and the clerk is directed to close the file.