Chavez v. Illinois State Police

United States District Court for the Northern District of Illinois, Eastern Division
March 16, 1998, Decided ; March 17, 1998, Docketed
No. 94 C 5307

Reporter: 1998 U.S. Dist. LEXIS 3616
PESO CHAVEZ, et al., Plaintiffs, vs. ILLINOIS STATE POLICE, et al., Defendants.

Disposition: [*1] Recommended that this defendants' motion for summary judgment DENIED.

Counsel: For PESO CHAVEZ, plaintiff: Jane M. Whicher, Harvey Michael Grossman, Imani Chiphe, Roger Baldwin Foundation of ACLU, Inc., Chicago, IL.

For PESO CHAVEZ, plaintiff: Jonathan Klee Baum, Ted S. Helwig, Nicole Nehama Auerbach, Katten, Muchin & Zavis, Chicago, Il.

For ILLINOIS STATE POLICE, TERRANCE W GAINER, LARRY THOMAS, DANIEL GILLETTE, CRAIG GRAHAM, ROBERT P CESNA, TROOPER BUTLER, DALE FRAHER, defendants: Roger Philip Flahaven, Iain D. Johnston, Illinois Attorney General's Office, Chicago, IL.

For HARVEY GROSSMAN, JANE M WHICHER, IMANI CHIPHE, JONATHON K BAUM, TED S HELWIG, movants: Roger Pascal, Schiff, Hardin & Waite, Chicago, IL.

For HARVEY GROSSMAN, JANE M WHICHER, IMANI CHIPHE, JONATHON K BAUM, TED S HELWIG, movants: William T. Barker, Sonnenschein, Nath & Rosenthal, Chicago, IL.

Judges: EDWARD A. BOBRICK, United States Magistrate Judge. HONORABLE BLANCHE M. MANNING, JUDGE, UNITED STATES DISTRICT COURT.

Opinion by: EDWARD A. BOBRICK

Opinion

REPORT AND RECOMMENDATION of Magistrate Judge Edward A. Bobrick

Before the court is the motion of defendants Dale Fraher and Robert Lauterbach for summary [*2] judgment on portions of the Fourth Amended Complaint of plaintiffs Peso Chavez, *et al.*, specifically, those claims of plaintiff Gregory Lee.

The plaintiffs originally filed this action in August of 1994. They presently allege claims under *42 U.S.C. § 1983* for violations of the *Fourth Amendment*, the Fourteenth Amendment's Equal Protection and Due Process Clauses, and certain federal regulations and state law provisions. Plaintiffs' claim is, essentially, that the Illinois State Police maintain a practice of stopping, detaining, and searching African-American and Hispanic motorists solely on the basis of race and without legally sufficient cause or justification. The court has entered judgment in defendants' favor as to several of plaintiffs' claims. The claims at issue in the instant proceeding involve Gregory Lee's allegations that state troopers Lauterbach and Fraher unlawfully stopped, detained, and searched him and his vehicle on two separate occasions. The defendants move for summary judgment on the basis that "Lee's identifications of [them] are so untrustworthy, inaccurate and unreliable so as to mandate judgment as a matter of law in defendants' favor." (*Defendants'* [*3] *Memorandum of Law* ("*Def.Mem.*"), at 3).

I. FACTS

In order to determine whether summary judgment is appropriate, we rely on parties' Local Rule 12 submissions. [1] Plaintiff has essentially admitted most of the facts defendants assert in their submission. Some of these assertions, however, are not facts (*See, e.g., Defendants' Statement of Facts*, PP 34, 81, 89, 90, 92), or differ from the cited portion of the record. (*See, e.g., Id.*,

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[1] Under Local Rule 12, a party moving for summary judgment must file a:

> statement of material facts as to which the moving party contends there is no genuine issue and that entitle the moving party to a judgment as a matter of law … The statement … shall consist of short numbered paragraphs, including with each paragraph specific references to the affidavits, parts of the record, and other supporting materials relied upon to support the facts set forward in the paragraph. Failure to submit such a statement constitutes grounds for denial of the motion.

Local Rule 12(m)(3). The party opposing the motion must then file:

PP 49, 51, 57, 67). Accordingly, we consult the record itself at times for a more accurate portrayal of the events at issue.

[*4] According to Lee, Illinois State troopers stopped and detained him in March and August of 1993. (*Defendants' Statement of Facts* ("*Def.St.*"), P 6; Ex. 12, at 59; *Plaintiff's Statement of Additional Facts* ("*Pl.St.*"), P 1). It was a year before he sought any legal advice regarding the lawfulness of that stop, and stops prior to it. (*Def.St.*, P 6; Ex. 12, at 60). On February 16, 1995, Lee was named a plaintiff in the First Amended Class Action Complaint. (*Id.*, P 7). At that time, he did not name the troopers who had allegedly stopped, detained, and searched him. (*Id.*, P 8). Thereafter, in March of 1995 (*Def.St.*, PP 9-10), Lee reviewed, on two separate occasions, large numbers of photographs the Illinois State Police and the Attorney General produced. (*Pl.St.*, P 2). On both occasions, he identified defendants Lauterbach and Fraher as the troopers who had stopped him. (*Id.*). Lauterbach and Fraher were then named as defendants in the Second Amended Class Action Complaint on March 10, 1995. (*Def.St.*, P 15).

A. Defendant Lauterbach

Although neither party includes such information in their Local Rule 12 statements, Lauterbach's stop of Lee [*5] apparently occurred in Cook County. (*Def. St.*, Ex. 6, PP 3, 10). Lauterbach allegedly stopped and detained Lee on a Thursday or Friday, a few days after March 16, 1993. (*Def.St.*, P 18). According to Lauterbach, this mean it must have occurred on March 18 or 19, the Thursday and Friday following March 16. (*Id.*, P 19). Lauterbach had the day off on March 18, and on the following Thursday, March 25. (*Id.*, PP 20, 23). Neither he nor the state police have a record of him stopping Lee. (*Id.*, PP 17, 22, 26, 27). This is not dispositive, however, because Lauterbach admits that the absence of a record does not mean no stop occurred. (*Id.*, Ex. 13, at 77). Lauterbach also claims he was not assigned to patrol Cook County during the times in question. (*Id.*, P 21, 24, 27, 28, 30). This, too, is not dispositive, as Illinois State troopers sometimes stop vehicles on highways outside their assigned patrol areas. (*Plaintiff's Response to Def.St.* ("*Pl.Rsp.*"), PP 21, 24; Ex. 3, P 38).

In July of 1995, after he had identified Lauterbach from the photos, Lee described Lauterbach as about 6 feet tall, late twenties or early thirties, with a mustache, and wearing a tan [*6] uniform and a "mountie" type hat. (*Def.St.*, Ex. 4, at 2). Lauterbach was 46 years old in 1993, and states that he wore green pants and has never had a mustache. (*Def.St.*, P 50). He does not state what color the rest of his uniform was -- it may have been tan. In September of 1995, Lee described Lauterbach's vehicle as being white or tan, clearly marked, and had lights on the roof. (*Def.St.*, PP 56-57; Ex. 12, at 161). Lauterbach states that he was driving a blue, unmarked squad car, with lights in the grill, not on the roof. (*Def.St.*, P 58). If there is a state police record of vehicle assignments, defendants have not provided it. Defendants' evidence continues in this vein of calling into question the reliability of Lee's identification: it was dusk, Lee saw Lauterbach only briefly, Will County Sheriff's police might look like state troopers, and so on.

2. Defendant Fraher

Fraher allegedly stopped and detained Lee in August of 1993. As with Lauterbach, Lee identified Fraher on two separate occasions from large photo arrays. Fraher advances claims similar to Lauterbach regarding records of his stops. (*Def.St.*, PP 17, 32-34). As Lauterbach's case, however, [*7] the absence of a record is not dispositive. In July of 1995, Lee described Fraher as being between 5'6" and 6 feet tall, stocky build, with a mustache, and said he wore a "mountie" type hat and a tan uniform. (*Def.St.*, Ex. 4, at 2-3). According to Fraher, in 1993, he wore a baseball type cap and green pants -- like Lauterbach, he does not indicate his uniform color. (*Def.St.*, P 53). Lee described Fraher's vehicle as being white or light tan, marked as a state trooper vehicle, and having blue lights on the roof. (*Id.*, P 59; Ex. 12, at 161; Ex. 18, at 3-4). Fraher states that his vehicle at the time would have had no lights on the roof and would have been marked as a canine

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a concise response to the movant's statement that shall contain:

(a) a response to each numbered paragraph in the moving party's statement, including, in the case of any disagreement, specific references to the affidavits, parts of the record, and other supporting materials relied upon, and

(b) a statement consisting of short numbered paragraphs, of any additional facts that require the denial of summary judgment, including references to the affidavits, parts of the record, and other supporting materials relied upon. All material facts set forth in the statement required of the moving party will be deemed to be admitted unless controverted by the statement of the opposing party.Local Rule 12(n)(3). The district court, with the approval of the Seventh Circuit, has long enforced the requirements of these rules. *Huff v. UARCO, Inc.*, 122 F.3d 374, 382 (7th Cir. 1997).

unit. (*Def.St.*, P 60). Again, if there is a record of vehicle assignments, it is not before the court. Fraher also states that he patrolled with a large, very active and loud, "German Shepard Dog." [sic] (*Def.St.*, PP 82, 84-92). Lee did not see or hear a dog during the stop. (*Id.*, P 83).

II. ANALYSIS

Under *Federal Rule of Civil Procedure 56(c)*, summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and the admissions on file, together with [*8] the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." In ruling on a motion for summary judgment, the court does not evaluate the weight of the evidence to determine the truth of a matter, but instead determines whether there is a genuine issue of triable fact as to the matter. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202 (1986). A summary judgment proceeding is not a vehicle for the resolution of factual disputes. 477 U.S. at 249-50, 106 S. Ct. at 2511. Neither may the court assume the role of advocate for one side or the other, scouring the record for evidence to support their positions. *Johnson v. Gudmundsson*, 35 F.3d 1104, 1116 n.9 (7th Cir. 1994); *Tatalovich v. City of Superior*, 904 F.2d 1135, 1139 (7th Cir. 1990) (*citing Herman v. City of Chicago,* 870 F.2d 400, 404 (7th Cir. 1989)).

The party moving for summary judgment has the burden of demonstrating that there is an absence of evidence to support the nonmoving party's case. *Celotex Corp. v. Catrett,* 477 U.S. 317, 325, 106 S. Ct. 2548, 2554, 91 L. Ed. 2d 265 (1986). [*9] If there is a doubt as to the existence of a material fact, that doubt must be resolved in favor of the nonmoving party and summary judgment should be denied. *Doe v. R. R. Donnelley & Sons Co.*, 42 F.3d 439, 443 (7th Cir. 1994). Conversely, summary judgment must be entered against a party who fails to show the existence of an element essential to that party's case, and on which it will bear the burden of proof at trial. *Celotex Corp.,* 477 U.S. at 322, 106 S. Ct. at 2552. That being said, it is clear that this case is not amenable to summary judgment.

The issue here is whether Lee has accurately identified Lauterbach and Fraher as the troopers that stopped, detained and search him and his vehicle on two separate occasions in 1993. It is an issue of Lee's credibility. Credibility determinations cannot be made in summary judgment proceedings. *Pharma Bio, Inc. v. TNT Holland Motor Exp., Inc.*, 102 F.3d 914, 918 (7th Cir. 1996); *JPM, Inc. v. John Deere Indus. Equipment Co.*, 94 F.3d 270, 273 (7th Cir. 1996). All of the facts defendants present regarding descriptions, time to view them, attention, are to be considered by a trier of fact in order to assess Lee's credibility. [*10] In addition, in attempting to underscore their stance that eyewitness identifications are unreliable, defendants here rely almost exclusively on criminal cases. All such cases involve vastly different standards of proof, and none involve summary judgment. They have little to do with the issue defendants raise here.

Along with Lee, the defendants' credibility is also at issue. Defendants have, at times, mischaracterized Lee's descriptions of them. They mischaracterize the evidence they have presented, arguing that "a law enforcement officer … is entitled to summary judgment when documentary evidence establishes that the officer was not present," citing *Claybourn v. Summerville*, 1990 U.S. Dist. LEXIS 17240 (N.D.Ill. Dec. 18, 1990) and *Apostal v. Crystal Lake*, 904 F. Supp. 1346, 1995 U.S. Dist. LEXIS 17407 (N.D.Ill. 1995) in support. (*Def.Mem.* at 4). Neither case has any bearing on the circumstances here. In *Clayborn*, attendance and assignment records, and arrest reports showed that the officer in question was not present. In *Apostal*, the plaintiff admitted the officers in question were not present. There is no such documentary evidence in this case, nor any such admission. [*11] Finally, it is noteworthy that nowhere in their Local Rule 12 statements do defendants state that they did not stop, detain, or search Lee. The best they can do is state that they do not recall having done so.

In short, the issue presented for summary judgment turns on Lee's credibility, or comes down to a swearing contest between Lee and the defendants. Either way, summary judgment is in appropriate. *Pharma Bio*, 102 F.3d at 918; *Giannopoulos v. Brach & Brock Confections, Inc.*, 109 F.3d 406, 410 (7th Cir. 1997). Accordingly, defendants are not entitled to summary judgment in this matter.

III. CONCLUSION

For the foregoing reasons, it is hereby recommended that defendants' motion for summary judgment be DENIED.

Respectfully submitted,

EDWARD A. BOBRICK

United States Magistrate Judge

DATE: March 16, 1998

Any objections to this Report and Recommendation must be filed with the Clerk of the Court within ten (10) days of receipt of this notice. Failure to file objections within the specified time waives the right to appeal the District Court's order. Fed.R.Civ.P. 72; *Thomas v. Arn*, 474 U.S. 140, 88 L. Ed. 2d 435, 106 S. Ct. 466 (1985); [*12] *Lorentzen v. Anderson Pest Control*, 64 F.3d 327, 330 (7th Cir. 1995).