[DO NOT PUBLISH]

In the United States Court of Appeals For the Eleventh Circuit

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No. 20-14518

Non-Argument Calendar

GLENN SPRADLEY,

Plaintiff-Appellant,

versus

PAT FRANK,
Clerk of the Circuit Court of Hillsborough County, Florida,
HILLSBOROUGH COUNTY,
EDWINA BAKER,
Deputy Clerk, Hillsborough County Circuit Court,

Defendants-Appellees,

"APPENDIX A." 1

C. BAKER,
Deputy Clerk of the Circuit Court of Hillsborough County,

Defendant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:18-cv-02372-CEH-AAS

Before ROSENBAUM, GRANT, and BLACK, Circuit Judges.

PER CURIAM:

Glenn Spradley, a prisoner proceeding *pro se*, appeals various district court orders regarding his 42 U.S.C. § 1983 complaint against Pat Frank, clerk of the Hillsborough County Circuit Court, Edwina Baker, a deputy clerk of the Hillsborough County Circuit Court, and Hillsborough County[1] (the County), alleging violations of his Fourteenth and First Amendment rights stemming from their refusal to file his mandamus action and alleged transfer of the action to another county. Spradley brings several issues on appeal,

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[1] When referred to as a party, Hillsborough County will be referred to as "the County" in this opinion. When referencing actions related to the Hillsborough County circuit court, this opinion will refer to it as "Hillsborough County."

which we address in turn. After review,[2] we affirm the district court.

I. THE COUNTY'S LIABILITY

First, Spradley contends the court should not have dismissed his claims against the County because it could be held liable for Frank failing to file and transferring his mandamus complaint.

"[T]o prevail on a civil rights action under § 1983, a plaintiff must show that he or she was deprived of a federal right by a person acting under color of state law. *Griffin v. City of Opa-Locka*, 261 F.3d 1295, 1303 (11th Cir. 2001). Municipalities and other local government entities are "persons" within the scope of § 1983. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978). To impose § 1983 liability on a municipality, a plaintiff must show: (1) "his constitutional rights were violated;" (2) "the municipality had a custom or policy that constituted deliberate indifference to that constitutional right;" and (3) "the policy or custom caused the violation."

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[2] We review a district court ruling on a Rule 12(b)(6) motion *de novo*. *Hill v. White*, 321 F.3d 1334, 1335 (11th Cir. 2003). A district court's rulings on discovery matters are reviewed for an abuse of discretion. *Khoury v. Miami-Dade County Sch. Bd.*, 4 F.4th 1118, 1125 (11th Cir. 2021). We review a district court's denial of a recusal motion for an abuse of discretion. *Draper v. Reynolds*, 369 F.3d 1270, 1274 (11th Cir. 2004). "We review a district court's grant of summary judgment *de novo*, applying the same standards applied by the district court." *Baas v. Fewless*, 886 F.3d 1088, 1091 (11th Cir. 2018) (quotation marks omitted). "Summary judgment is proper if there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Id.* (quotation marks omitted).

McDowell v. Brown, 392 F.3d 1283, 1289 (11th Cir. 2004). "A custom is a practice that is so settled and permanent that it takes on the force of law." *Sewell v. Town of Lake Hamilton*, 117 F.3d 488, 489 (11th Cir. 1997). Although a custom need not receive formal approval, random acts or isolated incidents are normally insufficient to establish a custom or policy. *Depew v. City of St. Marys*, 787 F.2d 1496, 1499 (11th Cir. 1986). "A policy is a decision that is officially adopted by the municipality, or created by an official of such rank that he or she could be said to be acting on behalf of the municipality." *Sewell*, 117 F.3d at 489.

Municipal liability may be imposed for a single decision by a municipal official, provided that the official possesses final authority to establish policy with respect to the action ordered. *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480-82 (1986). Whether an official is a final policymaker is dependent on an analysis of state law. *Grech v. Clayton County*, 335 F.3d 1326, 1343-44 (11th Cir. 2003) (*en banc*) (holding Georgia sheriffs were not county policymakers as to their law enforcement functions because Georgia's Constitution, statutes, and caselaw showed state power and control over sheriffs and an absence of county control).

The Florida Constitution provides a county's clerk of the circuit court is an elected office, and the county cannot abolish the office of clerk of the circuit court, transfer the clerk's duties, change the length of the term of office, or establish any manner of selection other than by election. Fla. Const. Art. VIII, § 1(d). The County's charter defines "the county government" to exclude any

constitutional officer as defined in Section 1(d) of Article VIII of the Florida Constitution, and specifically excludes the clerk of the circuit court. *Charter of Hillsborough County*, Art. I, § 1.02.[3] Florida statutes define the clerks' powers and duties. *See* Fla. Stat. § 28.01, *et seq.*

The district court did not err by dismissing Spradley's complaint against the County because he did not show the County had a custom or policy that was deliberately indifferent to his constitutional rights. *See McDowell*, 392 F.3d at 1289. Spradley's one isolated incident of Frank failing to file and transferring his mandamus complaint is insufficient to establish a custom, and to the extent he alleged other instances by stating the County had an unwritten policy, these allegations were conclusory and speculative. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (explaining while a complaint does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than "labels and conclusions," formulaic recitation of the elements of a cause of action are not enough, and factual allegations must be enough to raise a right to relief above the speculative level); *Depew*, 787 F.2d at 1499. While a single incident can be sufficient to establish a municipality's liability for its unconstitutional policy, Frank was not a policymaker for the County such that liability could be imposed on the County for her refusal to file and

[3]MUNICODE,https://library.municode.com/fl/hillsborough_county/codes/code_of_ordinances,_part_a?nodeId=CHHICO_ARTICR01, (last visited Apr. 1, 2022).

her alleged transfer of his complaint. *See Pembaur*, 475 U.S. at 480-82. Based on state law, Florida's Constitution established the offices of the clerks of the circuit courts and insulates them from control by counties, the County's Charter defines its government to exclude the clerk of the circuit court, and Florida statutes define the clerks' powers and duties. *See* Fla. Const. Art. VIII, § 1(d); *Charter of Hillsborough County*, Art. I § 1.02; Fla. Stat. § 28.011, *et seq.* Florida state law evinces state empowerment of and control over clerks of courts, rather than county control. *See Grech*, 335 F.3d at 1343-44. Thus, Frank was not a policy maker for the County, and the district court did not err by finding the County could not have been held liable for Frank's alleged wrongdoings. Spradley's argument that determining the identity of the final policymaker is best done at the summary judgment stage is irrelevant because, regardless of the final policymaker at the clerk's office, the County lacked control over the clerk's office. Accordingly, we affirm the dismissal of Spradley's complaint against the County.

II. DISCOVERY MOTIONS

Second, Spradley asserts the court abused its discretion by denying his motion to strike Frank's interrogatory answers for originally failing to answer under oath, and his motion to compel better answers from Frank because her answers were insufficiently specific.

With some exceptions, a district court may designate a magistrate judge to hear and determine any pretrial matter pending before the court. 28 U.S.C. § 636(b)(1)(A). The court may reconsider

a magistrate judge's ruling where it has been shown that the magistrate judge's order was clearly erroneous or contrary to law. *Id.*

Rule 33 requires that each interrogatory be answered under oath. Fed. R. Civ. P. 33(b)(3). Also, Rule 33 provides the grounds for objecting to an interrogatory must be stated with specificity. Fed. R. Civ. P. 33(b)(4).

Spradley cannot show the court abused its discretion by adopting the magistrate judge's denials of his discovery motions. Regarding his motion to strike Frank's answers and to impose sanctions for not answering the interrogatories under oath, Frank subsequently included the verification page to cure the Rule 33(b)(3) defect, and Spradley does not identify any authority to suggest that striking a party's interrogatory answers or imposing sanctions would be appropriate in this situation. Fed. R. Civ. P. 33(b)(3). The pagination discrepancy between the original and completed verification forms alone does not indicate that Frank's failure to originally include the completed verification form was willful or in bad faith to warrant sanctions. *See Malautea v. Suzuki Motor Co.*, 987 F.2d 1536, 1542 (11th Cir. 1993) (stating district courts have broad discretion in imposing sanctions for discovery violations). Thus, the magistrate judge's denial of this motion was not clearly erroneous or contrary to law and the district court's adoption of the denial was not an abuse of discretion. Regarding Spradley's motion to compel better answers from Frank, Spradley does not cite any binding authority to show that Frank's answers were insufficiently specific. *See* Fed. R. Civ. P. 33(b)(4). Thus, the

magistrate judge's denial of his motion to compel better answers was not clearly erroneous or contrary to law and the district court's adoption of the denial was not an abuse of discretion. Accordingly, we affirm as to this issue.

III. RECUSAL

Third, Spradley contends Judge Honeywell had a possible affiliation with Frank when she was a circuit court judge in Hillsborough County, and thus, she abused her discretion by not recusing herself. A judge shall disqualify herself if, among other reasons, she has a personal bias or prejudice concerning a party. 28 U.S.C. § 455(a), (b)(1). The standard for when a judge should have disqualified herself under § 455(a) is whether a reasonable person knowing all the facts would conclude the judge's impartiality might reasonably be questioned. *Jenkins v. Anton*, 922 F.3d 1257, 1271-72 (11th Cir. 2019). "[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. United States*, 510 U.S. 540, 555 (1994).

Judge Honeywell did not abuse her discretion by not recusing herself. Spradley's allegation that she had a "possible affiliation[]" with Frank is speculative, and it is further speculation that this potential affiliation would cause Judge Honeywell to be partial toward Frank. *See Jenkins*, 922 F.3d at 1271-72. Judge Honeywell's denials of Spradley's various motions do not constitute a valid basis for recusal, especially where the court committed no error in ruling against Spradley. *See Liteky*, 510 U.S. at 555.

IV. SUMMARY JUDGMENT

Last, regarding his Fourteenth Amendment claim, Spradley asserts evidence shows Baker transferred his mandamus complaint. Regarding his First Amendment claim, he contends he was denied access to the courts because his complaint was not litigated on the merits.

A. Fourteenth Amendment

A violation of due process may form the basis for a suit under 42 U.S.C. § 1983. *McKinney v. Pate*, 20 F.3d 1550, 1555 (11th Cir. 1994) (*en banc*). The Due Process Clause of the Fourteenth Amendment provides that no state shall deprive any person of life, liberty, or property, without due process of law. U.S. Const. amend. XIV, § 1. A violation of procedural due process occurs where the state fails to provide due process in the deprivation of a protected liberty interest. *McKinney*, 20 F.3d at 1557. A liberty interest is created when a statute contains explicitly mandatory language. *Kentucky Dep't of Corr. v. Thompson*, 490 U.S. 454, 463 (1989). State-created rights constitute liberty interests protected by the Fourteenth Amendment. *See Vitek v. Jones*, 445 U.S. 480, 488 (1980) (discussing state-created right for good-time credits). Florida's venue statute provides that "[a]ctions shall be brought only in the county where the defendant resides, where the cause of action accrued, or where the property in litigation is located." Fla. Stat. § 47.011.

The court did not err by granting Frank and Baker summary judgment on Spradley's Fourteenth Amendment claim. Even if Spradley's right to initially select venue was protected by due process, there is no evidence in the record indicating that either Frank or Baker caused his mandamus complaint to be transferred. Spradley concedes there is no evidence Frank transferred his complaint. As to Baker, Spradley argues that, because Frank's original interrogatory 14 implied the deputy clerk who returned his complaint was the same one that transferred it and her amended interrogatory 1 stated Baker returned his complaint, then Baker must have transferred the complaint. However, just because Frank's original interrogatory 14 referred to "the deputy clerk" does not mean that the same deputy clerk who returned his complaint was the same one that transferred it. Spradley's contention that Frank and Baker stated in their motion for summary judgment that they transferred his complaint is misplaced because, in context, they assumed that fact as a condition of their merits argument regarding his First Amendment claim.

Further, Frank and Baker both stated that Baker did not transfer the complaint, despite her admission that she was the one who returned it to Spradley. Spradley put forth no evidence that Frank or Baker transferred his complaint, and the only evidence in the record regarding any alleged transfer by someone at the clerk's office is Frank and Baker's denial that either of them transferred the complaint. Based on the lack of evidence, a reasonable jury could not have found in favor of Spradley. *See Young v. City of Palm*

Bay, Fla., 358 F.3d 859, 860 (11th Cir. 2004) (explaining the non-movant must go beyond the pleadings and present competent evidence in the form of affidavits or as otherwise provided in Fed. R. Civ. P. 56, setting forth specific facts to show that genuine issues exist for trial). Accordingly, the court did not err in granting summary judgment to Frank and Baker because Spradley could not show causation on his Fourteenth Amendment claim.

B. First Amendment

Access to the courts is a right grounded in the First Amendment. *Chappell v. Rich*, 340 F.3d 1279, 1282 (11th Cir. 2003). Standing requires that an inmate alleging a violation of the right of access to the courts must show an actual injury. *Bass v. Singletary*, 143 F.3d 1442, 1445 (11th Cir. 1998). The injury the inmate must demonstrate is an injury to the right of access. *Id.* Thus, the officials' actions that "allegedly infringed an inmate's right of access to the courts must have frustrated or impeded the inmate's efforts to pursue a nonfrivolous legal claim." *Id.* "Further, the legal claim must be an appeal from a conviction for which the inmate was incarcerated, a habeas petition, or a civil rights action." *Id.*

The court also did not err by granting summary judgment to Frank and Baker on his First Amendment claim. Even if his mandamus complaint gave rise to a right to access the courts, he cannot show that he was actually injured because his case was litigated in other courts. *See Bass*, 143 F.3d at 1445. Although his complaint was not filed in Hillsborough County, Spradley's complaint ended up being litigated in Pinellas County, Leon County, and the Second District Court of

Appeal. Accordingly, Spradley cannot show that Frank or Baker denied him access to the courts.

AFFIRMED.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GLENN SPRADLEY,

Plaintiff,

v. Case No. 8:18-cv-2372-T-36AAS

PAT FRANK, et al.,

Defendants.
_____/

ORDER

Before the Court are Plaintiff's Motion to Alter or Amend Order and Judgment, filed under Rule 59(e), Fed.R.Civ.P. (Doc. 166), and Defendants' opposition (Doc. 167). The motion challenges the Order granting summary judgment to Defendants (*see* Doc. 164). Upon consideration, the motion will be denied.

"The only grounds for granting [a Rule 59] motion are newly discovered evidence or manifest errors of law or fact." *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007) (quoting *In re Kellogg*, 197 F.3d 1116, 1119 (11th Cir. 1999)). Plaintiff has not presented newly-discovered evidence. Rather, he contends that granting Defendants summary judgment was manifest error. Specifically, he contends that the Court erred in 1) finding that there was no evidence that Defendant Baker forwarded his petition for a writ of mandamus to the court in Pinellas County; 2) determining that he did not have a state-created liberty interest in selecting venue for his petition; and 3) granting summary judgment to Defendants on his denial of access to the courts claim.

Having reviewed the record, the Court finds that Plaintiff failed to present sufficient

competent evidence to overcome Defendants' motion for summary judgment concerning whether Defendant Baker transferred Plaintiff's petition for a writ of mandamus to the court in Pinellas County. Moreover, Plaintiff has failed to demonstrate that the Court erred in determining that Florida law did not create a liberty interest in choosing venue for his petition for a writ of mandamus, and that Defendants' actions denied him his right under the First Amendment of access to the courts. Thus, Plaintiff has failed to provide good cause for this Court to alter or amend the Order granting Defendants summary judgment. *See Cover v. Wal-Mart*, 148 F.R.D. 294, 295 (M.D. Fla. 1993).

Accordingly, Plaintiff's Motion to Alter or Amend Order and Judgment, filed under Rule 59(e), Fed.R.Civ.P. (Doc. 166) is **DENIED**.

DONE AND ORDERED in Tampa, Florida on November 6, 2020.

Charlene Edwards Honeywell
Charlene Edwards Honeywell
United States District Judge

Copies to: *Pro Se* Plaintiff
Counsel of Record

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GLENN SPRADLEY,

Plaintiff,

v. Case No. 8:18-cv-2372-T-36AAS

PAT FRANK, et al.,

Defendants.
_____/

ORDER

Before the Court are Defendants' Motion for Summary Judgment (Doc. 112), and Plaintiff's opposition (Doc. 124) and affidavit in support (Doc. 125). Upon consideration, the Motion for Summary Judgment will be granted.

I. Factual Background[1]

Plaintiff is a Florida prisoner sentenced to life in prison. Defendant Frank is the Clerk of the Court for the Circuit Court in Hillsborough County, Florida, and Defendant Baker is a deputy clerk at that court.

On May 30, 2014, Plaintiff mailed a Complaint for Writ of Mandamus against the Florida Parole Commission (FPC) to the Circuit Court in Hillsborough County, Florida (Doc. 112-1, docket pp. 1-15). The complaint alleged, among other things, that on June 20, 2013, the FPC denied Plaintiff parole during a meeting held in Hillsborough County (*Id.*, docket p. 3).

[1] In considering the Motion for Summary Judgment, the factual background is derived from the sworn amended complaint, affidavits, and other evidence submitted by Plaintiff and Defendants in support of, or in opposition to, the dispositive motion. For purposes of ruling on Defendants' Motion for Summary Judgment, the Court construes the facts in the light most favorable to Plaintiff. *See Davis v. Williams*, 451 F.3d 759, 763 (11th Cir. 2006) (in deciding a summary judgment motion, the court views the facts in the light most favorable to the

"APPENDIX B." 13

On June 2, 2014, Defendant Baker returned the complaint to Plai[illegible] with a form that informed him, "[w]e are unable to locate the case you have referenced[,] [illegible]requested he "provide a case # (felony). If not known provide your full name and D.O.B." (D[illegible] pp. 1-2). On June 6, 2014, Plaintiff mailed a letter to Defendant Frank in which he s[illegible]docket

> Enclosed for filing, please find the original and a copy of both COMPLAINT FOR WRIT OF MANDAMUS and my affidavit to proce[illegible] without any payment of court costs and fees, along with the letter of your deputy clerk. Perhaps thinking I was seeking to file the enclosed documents in a criminal felony case already on file, your deputy clerk returned them asking that I provide a (felony) case number or, if not known, my full name and date of birth.

(Doc. 112-3, docket p. 1).

The complaint never was filed in the Circuit Court in Hillsborough County. Rather, it appears that it was forwarded to the Circuit Court in Pinellas County, Florida, where it was filed in Plaintiff's criminal case, Case No. 8000250CFSAO, on June 13, 2014 (Doc. 112-4, docket p. 2). However, neither Defendant Frank nor Defendant Baker forwarded the complaint to Pinellas County (Doc. 124, docket pp. 33, 42).

On June 18, 2014, Plaintiff mailed an amended complaint for writ of mandamus with a cover letter addressed to Defendant Frank (Doc. 112-5, docket p. 1). Defendant Baker returned the amended complaint to Plaintiff with a court form letter that indicated "all your cases are Pinellas County" (Doc. 124, docket p. 55).

On June 30, 2014, the Circuit Court in Pinellas County issued an order dismissing Plaintiff's complaint for writ of mandamus (Doc. 112-6). The court explained that Plaintiff should first exhaust his administrative remedies with the FPC and, if dissatisfied, file a petition for writ of mandamus in Leon County, Florida (*Id.*, docket p. 1). Plaintiff appealed the dismissal

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non-moving party and draws all reasonable inferences in that party's favor).

(Doc. 112-4, docket p. 2).

On July 7, 2014, Plaintiff mailed a letter to Defendant Frank in which he asked whether the complaint for writ of mandamus and motion to proceed without prepayment of costs and fees that he had mailed to the court on June 6, 2014, had been received and filed (Doc. 112-7, docket p. 1). Defendant Baker returned the letter to Plaintiff with a note written thereon which stated "please see attached of all your cases & what county. Thank you" (Doc. 112-7, docket p. 1; Doc. 124, docket p. 33). Sent with the letter was an "Inmate Population Information Detail" report from the Florida Department of Corrections regarding Plaintiff on which Defendant Baker wrote "you don't have any Hillsborough County cases. You must file in Pinellas Co." (Doc. 112-7, docket pp. 3-5) (emphasis in original).

While Plaintiff's appeal of the order dismissing his complaint for writ of mandamus in Pinellas County was pending, Plaintiff filed an Amended Petition for Writ of Certiorari in the appellate court in which he argued that the dismissal of his complaint for writ of mandamus should be quashed and the complaint transferred to the circuit court in Hillsborough County (Doc. 112-9). On September 9, 2015, the appellate court granted the Amended Petition, quashed the order dismissing the complaint for writ of mandamus, and remanded the case to the Circuit Court in Pinellas County to transfer the case to the Circuit Court in Leon County, Florida (Doc. 112-8). After the complaint was transferred to the Circuit Court in Leon County (Doc. 112-10), it was dismissed on December 7, 2015, because that court had previously imposed sanctions against Plaintiff that prohibited him from filing any further *pro se* action in that circuit (Doc. 112-11).

II. Procedural Background

On May 29, 2018, Plaintiff filed a civil rights complaint against Defendants Frank and

Baker, and Hillsborough County, in the Circuit Court in Hillsborough County (Doc. 2). The complaint alleges that Defendants violated Plaintiff's: 1) right of access to the courts under the First Amendment when they refused to file his complaint and amended complaint for a writ of mandamus in the Circuit Court in Hillsborough County; and 2) rights under the Fourteenth Amendment when they transferred his complaint to the Circuit Court in Pinellas County without an order from a judge in violation of his state created due process right to select venue (*Id.*). The complaint further alleges that Hillsborough County and/or Defendant Frank had an unwritten policy, practice, or custom directing deputy clerks to refuse to file prisoner petitions seeking a writ of mandamus against the FPC and transfer the petitions to the circuit courts in the counties in which the prisoners were convicted (*Id.*). Due to Defendants' actions, the complaint alleges, Plaintiff was forever deprived of challenging the FPC's actions on June 20, 2013, in his venue of choice, Hillsborough County, because the statute of limitations for challenging the FPC's actions elapsed on June 20, 2014 (*Id.*). Plaintiff seeks $5,000,000.00 in compensatory damages (*Id.*, docket p. 8).

On September 25, 2018, Defendants removed the action from state court to this court (Doc. 1). Defendant Hillsborough County moved to dismiss the complaint (Doc. 5), and Defendant Frank answered the complaint (Doc. 6).[2] The motion to dismiss was denied as moot (Doc. 35) after Plaintiff filed an amended complaint (Doc. 34).[3] Defendant Hillsborough County moved to dismiss the amended complaint (Doc. 39), and Defendant Frank answered the amended complaint (Doc. 42). Defendant Baker waived service of process (Docs. 71-73) and answered the amended complaint (Doc. 80). Plaintiff responded to the motion to dismiss (Doc. 47).

[2] At that time Defendant Baker had yet to be served with process.
[3] The complaint was amended solely to properly identify Defendant Baker whom erroneously had been identified as

While the motion to dismiss was pending the parties mediated the case, which resulted in an impasse (Doc. 76). The Court thereafter granted Hillsborough County's motion to dismiss, and Hillsborough County was dismissed from the case (Doc. 78).

On February 7, 2020, Defendants Frank and Baker filed their motion for summary judgment (Doc. 112). Plaintiff's response to the motion for summary judgment was filed on March 26, 2020 (Doc. 126).

III. Legal Standards

Defendants move for summary judgment. "Summary judgment is appropriate when the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." *Jean-Baptiste v. Gutierrez*, 627 F.3d 816, 820 (11th Cir. 2010) (citing Fed. R. Civ. P. 56). At this stage of the proceedings, "the evidence and all reasonable inferences from that evidence are viewed in the light most favorable to the nonmovant, but those inferences are drawn 'only to the extent supportable by the record.'" *Id.* (quoting *Penley v. Eslinger*, 605 F.3d 843, 848 (11th Cir. 2010)). The burden of establishing that there is no genuine issue of material fact lies on the moving party, and it is a stringent one. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

Rule 56(c)(1) provides as follows:

> A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:
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> (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
>
> (B) showing that the materials cited do not establish the absence or presence of a

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Defendant Baler in the original complaint (*see* Doc. 20).

genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

The nonmoving party, so long as that party has had an ample opportunity to conduct discovery, must come forward with affirmative evidence to support its claim. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 257 (1986). "A mere 'scintilla' of evidence supporting the opposing party's position will not suffice; there must be enough of a showing that the jury could reasonably find for that party." *Walker v. Darby*, 911 F.2d 1573, 1577 (11th Cir. 1990). "An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated." Fed. R. Civ. P. 56(c)(4). If, after the movant makes its showing, the nonmoving party brings forth evidence in support of its position on an issue for which it bears the burden of proof at trial that "is merely colorable, or is not significantly probative, summary judgment may be granted." *Anderson*, 477 U.S. at 249-50 (citations omitted).

IV. Discussion

A. Fourteenth Amendment claim

Plaintiff contends that he had a state created right under Section 47.011, Florida Statutes, to select the venue for his complaint for writ of mandamus, and that the Fourteenth Amendment's due process clause protected that right. He argues that Defendants Frank and Baker violated that right when they transferred his complaint for writ of mandamus to the circuit court in Pinellas County.

As a general rule, in order to sustain a due process violation under the Fourteenth Amendment, one must have a liberty interest created by the United States Constitution or by a

pleading came to be filed in Pinellas County." (*Id.*, docket p. 42).

Plaintiff argues that there is a genuine issue of material fact as to whether Defendant Baker transferred his complaint for a writ of mandamus to Pinellas County because in answering his interrogatories, Defendant Frank stated that "[t]he deputy clerk who returned and then transferred the Plaintiff's pleadings acted in violation of the Defendant clerk's policy." (*Id.*, docket p. 26). The answer, however, does not specify or even imply that Defendant Baker transferred the complaint. It is not evidence that Defendant Baker transferred/delivered the complaint to Pinellas County, especially considering Defendants Baker and Franks' answers that Defendant Baker did not transfer the complaint, and they do not know how the complaint came to be filed in Pinellas County. Therefore, on this record there is not sufficient evidence for a jury to find that either Defendant Baker or Defendant Frank transferred/delivered the complaint to Pinellas County. Accordingly, they are entitled to summary judgment on Plaintiff's Fourteenth Amendment violation claim.[4]

B. First Amendment claim

Plaintiff contends that Defendants violated his right of access to the courts under the First Amendment by refusing to file his complaint for a writ of mandamus. The Supreme Court made clear that the First Amendment grants inmates a limited constitutional right of access to the courts. *Bounds v. Smith*, 430 U.S. 817, 821, 828 (1977); *Lewis v. Casey*, 518 U.S. 343, 351 (1996); *Chandler v. Baird*, 926 F.2d 1057 (11th Cir.1991). This right necessitates that an inmate be afforded "a reasonably adequate opportunity to present claimed violations of fundamental

[4] To the extent that Plaintiff may be contending that as Clerk of the Court Defendant Frank is liable because someone at the Clerk's office must have transferred the complaint, Defendant Frank cannot be held liable under a theory of respondeat superior. *See Hartley v. Parnell*, 193 F.3d 1263, 1269 (11th Cir.1999) ("It is well established in this Circuit that supervisory officials are not liable under § 1983 for the unconstitutional acts of their subordinates on the basis of respondeat superior or vicarious liability.") (internal quotation marks and citation omitted).

the Fifth Circuit stated:

> The right of access to the courts is what may be described as a facilitative right: It is designed to ensure that a citizen has the opportunity to exercise his or her legal rights to present a cognizable claim to the *appropriate* court and, if that claim is meritorious, to have the court make a determination to that effect and order the appropriate relief.

Id. at 814, *abrogated on other grounds by Horton v. California*, 496 U.S. 128 (1990) (emphasis added).

Defendants' failure to file Plaintiff's complaint in Hillsborough County did not prevent Plaintiff from bringing his claims against the FPC in the "appropriate" court. His complaint ultimately was presented to the Circuit Court in Leon County, the court that the state appellate court determined was the appropriate court to consider Plaintiff's complaint. And the dismissal of the complaint had nothing to do with Defendants' failure to file the complaint or its timeliness. Rather, the dismissal was based on sanctions the Circuit Court in Leon County imposed on Plaintiff preventing him from filing *pro se* complaints. Therefore, it was the sanctions imposed on Plaintiff that prevented a review of the merits of Plaintiff's complaint. Accordingly, the facts do not show that Defendants deprived Plaintiff meaningful access to the courts.

Finally, to the extent that Plaintiff contends his challenge to the FPC's June 2013 proceeding was forever time-barred under the one-year statute of limitations because Defendants failed to file his complaint, he has provided no evidence in support of that contention. "In most instances, state courts can address pre-filing abuses by tolling the statute of limitations. . . ." *Swekel v. City of River Rouge*, 119 F.3d 1259, 1264 (6th Cir. 1997). Equitable tolling of a statute of limitations is available in Florida. *See Major League Baseball v. Morsani*, 790 So. 2d 1071,

1077 n.11 (Fla. 2001) ("Equitable tolling. . .may delay the running of the limitations period based on the plaintiff's blameless ignorance and the lack of prejudice to the defendant."). Plaintiff has not alleged or shown that when he attempted to refile his complaint in the Circuit Court of Hillsborough County, that he is entitled to equitable tolling of the one-year limitation period, considering he timely attempted to file his complaint but it was returned to him.[6] Plaintiff therefore has failed to present evidence that the Defendants' failure to file his complaint actually rendered any available state court remedy ineffective.

No reasonable jury could conclude that Plaintiff's constitutional right of access to the courts was violated. *See Swekel*, 119 F.3d at 1263-64 (to establish a violation of right of access to the courts, plaintiff must show that "the defendants' actions foreclosed her from filing suit in state court or rendered ineffective any state court remedy she previously may have had."). Accordingly, Defendants are entitled to summary judgment on Plaintiff's First Amendment violation claim.

It is therefore **ORDERED** and **ADJUDGED** that Defendants' Motion for Summary Judgment (Doc. 112) is **GRANTED**. Plaintiff's Motion in Limine and Motion to Strike (Doc. 126), Motion to Strike Joint Pretrial Statement (Doc. 146), Motion to Amend Exhibit List (Doc. 147), and Second or Supplemental Motion in Limine (Doc. 148) are **DENIED** as moot. The **Clerk** is directed to enter judgment in favor of Defendants and close this case.

DONE AND ORDERED in Tampa, Florida on July 1, 2020.

Charlene Edwards Honeywell
Charlene Edwards Honeywell
United States District Judge

cc: Plaintiff; Counsel of Record

[6] Defendants concede that the complaint should have been filed in the civil division of the circuit court (Doc. 124, docket p. 41).

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GLENN SPRADLEY,

Plaintiff,

v. Case No. 8:18-cv-2372-T-36AAS

PAT FRANK, et al.,

Defendants.
_____/

ORDER

Before the Court is Defendant Hillsborough County's Motion to Dismiss Plaintiff's Amended Complaint with Prejudice and Incorporated Memorandum of Law (Doc. 39), which Plaintiff opposes (Doc. 47). Upon consideration, the Motion to Dismiss will be granted.

I. ALLEGATIONS OF THE SECOND AMENDED COMPLAINT

Plaintiff is a Florida prisoner. He names as defendants in this case: 1) Hillsborough County, Florida; 2) Pat Frank, the Clerk of the Circuit Court in Hillsborough County; and 3) Edwina Baker, a deputy clerk with the Circuit Court in Hillsborough County.

Plaintiff alleges that on June 20, 2013, the Florida Parole Commission ("Commission") held a meeting in Hillsborough County during which the Commission violated "Plaintiff's right to proper consideration for parole." Plaintiff therefore attempted to file a petition for the writ of mandamus against the Commission in the Circuit Court in Hillsborough County on May 30, 2014. The petition, however, was "intentionally rejected" by Defendant Baker, who returned the petition to Plaintiff on June 2, 2014, along with a letter that stated "We are unable to locate the case you have referenced. . . .Please provide a case # (felony). If not known provide your full name and D.O.B."

On June 6, 2014, Plaintiff sent a letter, all the documents he previously mailed on May 30,

2014, and an affidavit to proceed without pre-paying costs, to Defendant Frank. The documents, however, were transferred by "Defendants" to the Circuit Court in Pinellas County, Florida, the county in which Plaintiff "was originally convicted and sentenced."

Not knowing that the documents had been transferred, Plaintiff mailed an amended petition for the writ of mandamus to the Circuit Court in Hillsborough County on June 18, 2014. The amended petition, however, was returned to Plaintiff on June 23, 2014, by Defendant Baker with a letter that stated Plaintiff's felony cases were in Pinellas County. Thereafter, the original petition that had been transferred was dismissed by the Circuit Court in Pinellas County for improper venue.

Plaintiff contends that because Defendants Baker and Frank "refused" to file Plaintiff's petition in the Circuit Court for Hillsborough County, he "missed the [one-year] deadline for filing his mandamus [petition]" against the Commission. He therefore is "forever precluded. . .from pursuing his cause of action" challenging the Commission's denial of his parole.

Plaintiff alleges that Defendant Baker acted pursuant to Hillsborough County or Defendant Frank's unwritten policy, custom, or practice of refusing to "accept for filing inmate complaints against the Florida Parole Commission and to transfer said complaints, without directions from a judge, to the court in which the inmate was convicted. . .if the inmate was convicted in a county other than Hillsborough." Defendant Frank knowingly permitted her deputy clerks to refuse to accept for filing complaints filed by inmates against the Commission and to transfer those complaints, without an order from a judge, to the counties in which the inmates were convicted.

Plaintiff contends that Defendants' actions violated his "state created due process of law right to initially select venue in violation of the 14th Amendment," as well as his right of access to the courts arising under the First Amendment. As relief, he seeks compensatory damages in the amount of $20 million against Defendant Hillsborough County, $20 million against Defendant

Frank, and $10 million against Defendant Baker.

II. STANDARD OF REVIEW

Defendant Hillsborough County moves to dismiss Plaintiff's complaint pursuant to Rule 12(b)(6), Fed. R. Civ. P., for failure to state a claim upon which relief can be granted. In deciding whether to grant a motion to dismiss on this ground, a court must accept "the allegations in the complaint as true and construe them in the light most favorable to the nonmoving party." *Starosta v. MBNA America Bank. N.A.*, 244 Fed. Appx. 939, 941 (11th Cir. 2007) (unpublished) (quoting *Manuel v. Convergys Corp.*, 430 F.3d 1132, 1139 (11th Cir. 2005)). However, "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief requires more than labels and conclusions. . . ." *Bell Atlantic Corp. et al. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (alteration in original) (citations omitted). "Factual allegations must be enough to raise a right to relief above the speculative level." *Id.*

Although the court must afford a *pro se* litigant wide leeway in pleadings, a *pro se* litigant is nonetheless required to satisfy necessary burdens in that he is "not relieved of his obligation to allege sufficient facts to support a cognizable legal claim," and "to survive a motion to dismiss, a Plaintiff must do more than merely label his claims." *Excess Risk Underwriters. Inc. v. Lafayette Ins. Co.*, 208 F. Supp. 2d 1310, 1313 (S.D. Fla. 2002). Dismissal is, therefore, permitted "when on the basis of a dispositive issue of law, no construction of the factual allegations will support the cause of action." *Glover v. Liggett Group. Inc.*, 459 F.3d 1304, 1308 (11th Cir. 2006) (citing *Marshall City Bd. Of Educ. v. Marshall City Gas Dist.*, 992 F.2d 1171, 1174 (11th Cir. 1993)).

III. SUMMARY OF THE ARGUMENTS

In its motion to dismiss, Defendant Hillsborough County contends that it should be dismissed from this action because "Plaintiff fails to make any substantive allegations against the County or any of its employees." (Doc. 39, p. 1, ¶ 2). Hillsborough County argues that the Clerk of the Circuit Court is an "independently elected constitutional officer" and is neither employed nor supervised by Hillsborough County (*Id.*, pp. 1-2, ¶¶ 3-4). As such, Hillsborough County argues, "the County could not and did not establish any policies, whether written or unwritten, to direct the Clerk and/or deputy clerks to do anything because the County does not employ any clerks and/or deputy clerks who accept inmate complaints for filing against the Florida Parole Commission." (*Id.*, pp. 2-3, ¶ 8).

Plaintiff argues that he has stated a claim against Hillsborough County because Defendant Frank "is a county officer and the office of clerk of the circuit court is an agency or part of county government," and "has final policymaking authority for the county with respect to accepting and filing civil complaints, including mandamus complaints." (Doc. 47, p. 3).

IV. DISCUSSION

The sole question here appears to be whether the Clerk of the Circuit Court in Hillsborough County is a final policymaker for Hillsborough County in "accepting and filing mandamus complaints." Plaintiff argues that Defendant Frank has such final policymaking authority for the County. If so, the County is liable under § 1983 for constitutional violations caused by Defendant Frank with regard to this duty. *See McMillian v. Monroe Cty., Ala.*, 520 U.S. 781, 784–85 (1997) ("A court's task is to 'identify those officials or governmental bodies who speak with final policymaking authority for the local governmental actor concerning the action alleged to have caused the particular constitutional or statutory violation at issue.'") (quoting *Jett v. Dallas Independent School Dist.*, 491 U.S. 701, 737 (1989)). Whether Defendant Frank is a final

policymaker for the County in this area is determined by examining state law. *Id.*, 520 U.S. at 785. In determining whether Defendant Frank is a policymaker for the State or the County, this court "must focus on control over" Defendant Frank. *Grech v. Clayton Cty., Ga.*, 335 F.3d 1326, 1330 (11th Cir. 2003). Examination of Florida law reveals that Defendant Frank is not a final policymaker for the County because she is an independently elected constitutional officer rather than an employee of the County. *See* Article VIII, Section 1(d), Florida Constitution. Under Florida's constitution

> a county charter may not abolish the office of a sheriff, a tax collector, a property appraiser, a supervisor of elections, or a clerk of the circuit court; transfer the duties of those officers to another officer or office; change the length of the four-year term of office; or establish any manner of selection other than by election by the electors of the county.

Id. And Hillsborough County's charter recognizes the independence of the Clerk of the Circuit Court. *See* Section 1.02, Hillsborough County Charter ("As used in this Charter, the term 'the county government' means the government of Hillsborough County, but such term does not include and this Charter does not affect. . .any constitutional officer, as defined in Section I(d) of Article VIII, Florida Constitution: clerk of court. . . .").

The office of the Clerk of the Circuit Court was established by Florida's Constitution rather than Hillsborough County itself. *See* Article V, Section 16, Florida Constitution ("There shall be in each county a clerk of the circuit court. . . ."). And the Clerk's powers and duties are derived from Florida's Constitution and statutory law instead of the County's laws and ordinances. *See* Fla. Stat., § 28.001, *et seq.*

Florida courts have concluded that "the clerks of the circuit courts, when acting under the authority of their article V powers concerning judicial records and other matters relating to the administrative operation of the courts, are an arm of the judicial branch and are subject to the

oversight and control of the Supreme Court of Florida. . . ." *Times Pub. Co. v. Ake*, 660 So. 2d 255, 257 (Fla. 1995). When the Clerk's office acts as "an arm of the judicial branch," the Florida Supreme Court has "inherent and *exclusive* constitutional authority" over it. *Times Pub. Co. v. Ake*, 645 So. 2d 1003, 1005 (Fla. 2d DCA 1994), *approved*, 660 So. 2d 255 (Fla. 1995) (emphasis added). Accordingly, Florida law shows that the County has no authority and responsibility over Defendant Frank's function of accepting complaints for filing with the courts.

In support of his argument that Defendant Frank is a policymaker for Hillsborough County, Plaintiff cites to an Opinion of the Florida Attorney General that states, in pertinent part, "[w]ithout question the clerk of circuit court is a county officer and the office of clerk of the circuit court is an agency or part of county government." Fla. Att'y Gen. Op. 93-17 (1993). "[S]imply labeling' an official as a county or state official[,]" however, "cannot answer the § 1983 policymaker question. . . ." *Grech*, 335 F.3d at 1330 (citing *McMillian*, 520 U.S. at 786). Rather, this Court "must focus on control over the official." *Id.*

This Court concludes that under Florida law Hillsborough County has no authority to direct or control Defendant Frank in her function of accepting complaints and petitions for filing with the courts, and that Defendant Frank is not a policymaker for the County with regard to that function. Accordingly, Hillsborough County has no § 1983 liability for Defendant Frank's policies regarding that function. *See Marsh v. Butler County*, 268 F.3d 1014, 1027 (11th Cir.2001) (*en banc*) (a local government is "liable under section 1983 only for acts for which the local government is actually responsible.") (citation omitted).

It is therefore **ORDERED** that Defendant Hillsborough County's Motion to Dismiss (Doc. 39) is **GRANTED**, and Defendant Hillsborough County is **DISMISSED** from this case.

DONE and ORDERED in Tampa, Florida on August 23, 2019.

Charlene Edwards Honeywell

Charlene Edwards Honeywell
United States District Judge

Copies to: *Pro Se* Plaintiff
Counsel of Record

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-14518-JJ

GLENN SPRADLEY,

Plaintiff - Appellant,

versus

PAT FRANK,
Clerk of the Circuit Court of Hillsborough County, Florida,
HILLSBOROUGH COUNTY,
EDWINA BAKER,
Deputy Clerk, Hillsborough County Circuit Court,

Defendants - Appellees,

C. BAKER,
Deputy Clerk of the Circuit Court of Hillsborough County,

Defendant.

Appeal from the United States District Court
for the Middle District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: ROSENBAUM, GRANT, and BLACK, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40)

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"APPENDIX D." 32