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71 F.4th 1149
United States Court of Appeals, Eighth Circuit.

Keith Allen KIEFER, Plaintiff - Appellant
v.
ISANTI COUNTY, MINNESOTA,
Defendant - Appellee

No. 22-1499
|
Submitted: March 16, 2023
|
Filed: June 29, 2023

Attorneys and Law Firms

Counsel who presented argument on behalf of the appellant and also appeared on the brief was Erick G. Kaardal, of Minneapolis, MN.

Counsel who presented argument on behalf of the appellee was Paul D. Reuvers, of Bloomington, MN. The following attorney(s) appeared on the appellee brief; Paul D. Reuvers, of Bloomington, MN., Andrew A. Wolf, of Bloomington, MN.

Before SHEPHERD, ERICKSON, and GRASZ, Circuit Judges.

Opinion

ERICKSON, Circuit Judge.

Keith Kiefer brought this lawsuit under 42 U.S.C. § 1983, alleging that Isanti County, Minnesota

(the "County") violated his Fourth and Fourteenth Amendment rights when it unlawfully prosecuted him under the County's solid waste ordinance (the "Solid Waste Ordinance"). Kiefer also asserts Minnesota state law claims for false imprisonment, malicious prosecution, and abuse of process. The district court[1] granted judgment on the pleadings as to the federal claims in favor of the County and declined to exercise supplemental jurisdiction on the remaining state law claims. We affirm.

I. BACKGROUND

This case involves a 52.94 acre parcel of real estate located in the County. Kiefer purchased the property in 1996 but has lived there since 1992. Shortly after moving onto the property in 1992, Kiefer began to use approximately one acre to store scrap and other unwanted items, including "unlicensed vehicles, piles of scrap metal, tin, old furniture, old building material, lumber, old windows, old plumbing fixtures, old sinks, a semitrailer container, old pipes, a mobile home, and other miscellaneous debris." Cnty. of Isanti v. Kiefer, No. A15-1912, 2016 WL 4068197 at *1 (Minn. Ct. App. Aug. 1, 2016) ("Kiefer I"). After receiving a citizen complaint, the County sent Kiefer several letters notifying him that his use of the property violated local law. Kiefer did not respond to the letters. On November 19,

[1] The Honorable Wilhelmina M. Wright, United States District Judge for the District of Minnesota.

2008, the County cited Kiefer with a zoning code violation.

On December 22, 2008, the County filed a criminal complaint charging Kiefer with two counts: Count one alleged Kiefer violated the County zoning code and Count two alleged Kiefer violated the Solid Waste Ordinance.[2] The County eventually dropped the zoning code violation and the case proceeded to trial on the Solid Waste Ordinance charge. After a jury convicted him, Kiefer was sentenced to 90 days in jail, 60 of which he served.

In March 2011, the County filed a civil action in Minnesota state court alleging that Kiefer violated both the County zoning code and the Solid Waste Ordinance. Kiefer responded, asserting the County had misinterpreted and misapplied the law. Following a bench trial, the state district court ruled in favor of the County. The Minnesota Court of Appeals reversed, concluding that the Solid Waste Ordinance only applies to commercial or industrial operations. Id. at *3. The Court of Appeals recognized that Kiefer's current use of the property was not permitted under the zoning code but remanded for a determination on whether Kiefer's use was a permissible preexisting

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[2] The Solid Waste Ordinance stated: "[s]olid waste shall not be stored on public or private property for more than two (2) weeks without the written approval of the Solid Waste Officer. Nonputrescible wastes suitable for recycling shall not be stored on public or private property in a manner which creates a nuisance, blight, or health hazard." Kiefer I, at *3 (quoting Isanti County, Minn., Solid Waste Ordinance § IV, subd. 4 (2005)).

nonconforming use, as the property was zoned as agricultural at the time of his purchase in 1996. Id. at *6. On remand, the Minnesota district court found Kiefer in violation of the zoning code. The Minnesota Court of Appeals affirmed. Cnty. of Isanti v. Kiefer, No. A17-0326, 2017 WL 3469521 (Minn. Ct. App. Aug. 14, 2017) ("Kiefer II").

On July 31, 2018, Kiefer petitioned in state court for postconviction relief, seeking to vacate his criminal conviction after the Court of Appeals found the Solid Waste Ordinance inapplicable. On October 8, 2018, Kiefer's petition was granted. His conviction was vacated, and the clerk was ordered to refund the fine, court costs, and court fees imposed and paid by Kiefer. Two years later, Kiefer filed this federal lawsuit, claiming unlawful seizure and violations of his due process rights, along with state law claims for false imprisonment, malicious prosecution, and abuse of process. The district court dismissed the case after determining Kiefer failed to sufficiently plead the County had violated his rights. Kiefer appeals.

II. ANALYSIS

We review the district court's grant of a motion for judgment on the pleadings *de novo*, Magdy v. I.C. Sys., Inc., 47 F.4th 884, 886 (8th Cir. 2022), viewing all facts in the complaint as true and granting all reasonable inferences in the plaintiff's favor, Levitt v. Merck & Co, Inc., 914 F.3d 1169, 1171 (8th Cir. 2019). In responding to a motion for judgment on the pleadings, the plaintiff

bears the burden of showing the complaint sufficiently states a claim for relief that is plausible on its face. Gallagher v. City of Clayton, 699 F.3d 1013, 1016 (8th Cir. 2012) (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)). Facial plausibility is demonstrated when there is sufficient factual content in the complaint allowing a court to draw a reasonable inference that the defendant is liable for the misconduct alleged. Id.

While a municipality cannot be held liable under 42 U.S.C. § 1983 merely because it employs a tortfeasor, a plaintiff may establish municipal liability "if the violation resulted from (1) an official municipal policy, (2) an unofficial custom, or (3) a deliberately indifferent failure to train or supervise." Corwin v. City of Indep., Mo., 829 F.3d 695, 699-700 (8th Cir. 2016) (cleaned up); see also Monell v. Dep't of Soc. Servs., 436 U.S. 658, 691, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). A policy is "a deliberate choice of a guiding principle or procedure made by the municipal official who has final authority regarding such matters." Mettler v. Whitledge, 165 F.3d 1197, 1204 (8th Cir. 1999). Whether policy action was taken by an individual who exercised final policymaking authority is a question of state law, and it is the trial judge who must identify "those individuals . . . who speak with final policymaking authority for the local government." Atkinson v. City of Mountain View, Mo., 709 F.3d 1201, 1214-15 (8th Cir. 2013) (quotation omitted).

For the first time on appeal, Kiefer argues the Solid Waste Ordinance itself was the official policy that

was wrongly used to prosecute property owners, and that the County prosecutor and inspection officer shared authority for purposes of assigning Monell liability. If the Solid Waste Ordinance is the official policy at issue, then it is the County Board of Supervisors as lawmakers—not the County prosecutor—that has final policymaking authority. See MINN. STAT. § 375.18, subd. 14. (describing the general powers of a County Board to include regulation of unauthorized deposit of solid waste by ordinance); Id. at § 388.051 (prescribing the duties of a county attorney). More importantly, the assertation that the Solid Waste Ordinance is the official policy of the County is not clear on the face of the complaint, as Kiefer appears only to allege the existence of some hypothetical charging policy. Kiefer's claim is unsupported in the complaint and nothing in the record suggests the existence of such a policy. The district court did not err in concluding that Kiefer failed to plausibly allege the existence of an official policy for his Monell claim.

To demonstrate the County violated his rights through an unofficial custom, Kiefer must show: "(1) the existence of a continuing, widespread, persistent pattern of unconstitutional misconduct by the governmental entity's employees; (2) deliberate indifference to or tacit authorization of such conduct by the governmental entity's policymaking officials after notice to the officials of that misconduct; and (3) that plaintiff was injured by acts pursuant to the governmental entity's custom, *i.e.*, that the custom was a moving force behind the constitutional violation." Snider v. City of

Cape Girardeau, 752 F.3d 1149, 1160 (8th Cir. 2014) (citation omitted). A plaintiff may not be privy to the facts necessary to accurately describe with specificity the alleged custom which may have caused the deprivation of a constitutional right, but the plaintiff must allege facts that would support the existence of such a custom. Doe v. Sch. Dist. of Norfolk, 340 F.3d 605, 614 (8th Cir. 2003).

Kiefer alleges in his complaint that as a matter of policy, the County used the Solid Waste Ordinance as a process to criminally charge individuals who were not conventional solid waste management operations. Complaint at § 86. The complaint also states that "[t]he County made a deliberate choice to use the Solid Waste Ordinance to allege criminal violations against individuals the County knew the statute did not apply to." Id. at § 87. These statements are nothing more than "threadbare recitals of the elements of a cause of action, supported by mere conclusory statements." Christopherson v. Bushner, 33 F.4th 495, 499 (8th Cir. 2022) (quoting Iqbal, 556 U.S. at 678, 129 S.Ct. 1937). These allegations are not enough "to raise a right to relief above the speculative level." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007).

While Kiefer's opening brief lists 21 cases, which Kiefer contends constitute proof the County used the Solid Waste Ordinance to wrongly prosecute property owners, none of these cases are properly before us as they were not included in the complaint or raised below. See Porous Media Corp. v. Pall Corp., 186 F.3d

1077, 1079 (8th Cir. 1999) (courts generally may not consider materials outside the pleadings when deciding a motion for judgment on the pleadings). Even if Kiefer sufficiently alleged a "continuing, widespread, persistent pattern," the complaint did not allege the County was in some manner deliberately indifferent after notice of a possible violation.[3] See Snider, 752 F.3d at 1160. Kiefer's complaint contains insufficient factual allegations to sustain a municipal liability claim.

Without a constitutional violation, there can be no § 1983 liability. See Sanders v. City of Minneapolis, 474 F.3d 523, 527 (8th Cir. 2007). We have previously emphasized the high burden for establishing a Fourteenth Amendment violation. Azam v. City of Columbia Heights, 865 F.3d 980, 986 (8th Cir. 2017). Kiefer alleges the County fabricated evidence, which led to his wrongful conviction, and the County knew the Solid Waste Ordinance did not apply to him.

While it is indisputable after the ruling of the Minnesota Court of Appeals that Kiefer should not have been prosecuted under the Solid Waste Ordinance, "[t]he doctrine of substantive due process is reserved for truly extraordinary and egregious cases; it does not forbid reasonable, though possibly erroneous, legal

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[3] To the extent Kiefer argues the County should be held liable for inadequate training of its employees, a failure-to-train claim cannot succeed "without evidence the municipality received notice of a pattern of unconstitutional acts committed by its employees." Atkinson, 709 F.3d at 1216 (cleaned up). Kiefer's allegations are insufficient to support such a claim.

interpretation." Schmidt v. Des Moines Pub. Schs., 655 F.3d 811, 819 (8th Cir. 2011) (quotation omitted). Viewing the complaint in a light favorable to Kiefer, he failed to plead sufficient factual content that would allow a court to draw a reasonable inference that the County fabricated evidence or prosecuted him knowing the Solid Waste Ordinance was inapplicable. We cannot say that the district court erred in rendering judgment on the pleadings.

III. CONCLUSION

For the foregoing reasons, the district court's decision dismissing Kiefer's complaint against the County is affirmed.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 22-1499

Keith Allen Kiefer

Plaintiff - Appellant

v.

Isanti County, Minnesota

Defendant - Appellee

Appeal from U.S. District Court
for the District of Minnesota
(0:20-cv-02106-WMW)

JUDGMENT

Before SHEPHERD, ERICKSON and GRASZ, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court, briefs of the parties and was argued by counsel.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

June 29, 2023

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

2022 WL 607397
Only the Westlaw citation is currently available.
United States District Court, D. Minnesota.

Keith Allen KIEFER, Plaintiff,
v.
ISANTI COUNTY, MINNESOTA, Defendant.

Case No. 20-cv-2106 (WMW/ECW)
|
Signed 03/01/2022

Attorneys and Law Firms

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Andrew A. Wolf, Paul D. Reuvers, Iverson Reuvers Condon, Bloomington, MN, for Defendant.

ORDER

Wilhelmina M. Wright, United States District Judge

Before the Court is Defendant Isanti County's (the County) motions for judgment on the pleadings or, in the alternative, for summary judgment. (Dkts. 11, 17.) Plaintiff Keith Allen Kiefer opposes the motions. For the reasons addressed below, the Court grants the County's motions for judgment on the pleadings as to Kiefer's federal constitutional claims and declines to exercise supplemental jurisdiction over Kiefer's remaining state-law claims.

BACKGROUND

Kiefer is a resident of Isanti County, Minnesota, where he owns real property. On November 19, 2008, the County cited Kiefer for an alleged zoning code violation. And on December 22, 2008, the County filed a criminal complaint charging Kiefer with violating Isanti County's Zoning Code and Solid Waste Ordinance. Following a trial, a jury convicted Kiefer of violating the Solid Waste Ordinance, and the state court sentenced Kiefer to 90 days in jail. The state court ordered Kiefer to bring his property into compliance by June 7, 2009 (60 days after the date of the court's order) and stayed the execution of Kiefer's jail sentence pending Kiefer's compliance with the order. Kiefer failed to bring his property into compliance with the Solid Waste Ordinance and served 60 days in jail.

In March 2011, the County brought a civil action against Kiefer for violating county zoning and solid waste ordinances. Kiefer answered the complaint and counterclaimed, arguing that the County had misinterpreted and misapplied the Solid Waste Ordinance. The district court ruled against Kiefer, concluding that the ordinance applied to Kiefer's conduct, relying in part on Kiefer's 2009 criminal conviction involving the same conduct. Kiefer appealed the district court judgment in the civil case, and the Minnesota Court of Appeals reversed the district court. The Minnesota Court of Appeals concluded that the ordinance's definition of solid waste was "unworkably broad" and that the ordinance was "obvious[ly] . . . meant to apply to conventional solid-waste-management operations, and not

merely outdoor storage in general." *County of Isanti v. Kiefer*, A15-1912, 2016 WL 4068197, *3–4 (Minn. App. Aug. 1, 2016).

On July 31, 2018, Kiefer petitioned the state district court for postconviction relief and vacatur of his 2009 criminal conviction. The state court granted the petition on October 8, 2019, vacated Kiefer's criminal conviction and ordered the clerk of the court to refund the fine, fees and costs that Kiefer had paid.

Kiefer filed the present lawsuit on October 2, 2020. Kiefer advances five claims. In Count I, Kiefer alleges that the County unlawfully seized Kiefer in violation of the Fourth Amendment to the United States Constitution by incarcerating Kiefer for violating the Solid Waste Ordinance. In Count II, Kiefer alleges that the County violated Kiefer's procedural-due-process rights under the Fourteenth Amendment to the United States Constitution by prosecuting and incarcerating him for the violation of a law to which he was not subject. In Counts III through V, Kiefer alleges that the County falsely imprisoned him, maliciously prosecuted him, and engaged in an abuse of process in violation of Minnesota common law. The County seeks judgment on the pleadings or summary judgment in its favor as to each claim.

ANALYSIS

A party may file a motion for judgment on the pleadings "[a]fter the pleadings are closed—but early enough not to delay trial." Fed. R. Civ. P. 12(c). The

same legal standard used to evaluate a motion to dismiss for failure to state a claim under Rule 12(b)(6), Fed. R. Civ. P., applies to a motion for judgment on the pleadings, *see Gallagher v. City of Clayton*, 699 F.3d 1013, 1016 (8th Cir. 2012). When determining whether a complaint states a facially plausible claim, a district court accepts the factual allegations in the complaint as true and draws all reasonable inferences in the plaintiff's favor. *Blankenship v. USA Truck, Inc.*, 601 F.3d 852, 853 (8th Cir. 2010). Factual allegations must be sufficient to "raise a right to relief above the speculative level" and "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007). Legal conclusions couched as factual allegations may be disregarded. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Although matters outside the pleadings generally may not be considered when deciding a motion to dismiss, a district court may consider documents necessarily embraced by the pleadings. *Ashanti v. City of Golden Valley*, 666 F.3d 1148, 1151 (8th Cir. 2012). Materials are necessarily embraced by the pleadings when a complaint alleges the contents of the materials and no party questions their authenticity. *Zean v. Fairview Health Servs.*, 858 F.3d 520, 526 (8th Cir. 2017). As such, the Court may properly consider such documents when deciding the County's motion for judgment on the pleadings.

I. Municipal Liability

Kiefer alleges he was subject to an unlawful seizure in violation of the Fourth Amendment's prohibition against unlawful seizure and suffered a violation of his right to procedural due process under the Fourteenth Amendment. To state a plausible claim as to these alleged constitutional violations, Kiefer must first adequately allege municipal liability pursuant to 42 U.S.C. § 1983. The parties dispute whether Kiefer has sufficiently pleaded municipal liability pursuant to Section 1983.

Section 1983 provides a civil cause of action against:

> [e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws. . . .

42 U.S.C. § 1983. A Section 1983 claim against a municipality cannot be based on vicarious liability. *See Bd. of Cnty. Comm'rs v. Brown*, 520 U.S. 397, 403 (1997). But a municipality may be subject to Section 1983 liability if the inadequate training of its employees, a municipal policy or an unofficial municipal custom causes a constitutional injury. *See City of Canton v. Harris*, 489 U.S. 378, 388 (1989) (training); *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978) (policy or custom); *see also Bd. of Cnty. Comm'rs*, 520 U.S. at 403–04.

A. Failure to Train

The parties dispute whether Kiefer has alleged sufficient facts to state a Section 1983 failure-to-train claim. When "an official policy is lawful on its face, a plaintiff nevertheless may establish liability by showing that a municipality caused the constitutional violation by providing inadequate training for its employees." *Graham v. Barnette*, 5 F.4th 872, 891 (8th Cir. 2021) (internal quotation marks omitted). To establish municipal liability for failure to train, "a plaintiff must show that (1) the municipality's training practices were inadequate, (2) the municipality was deliberately indifferent to the plaintiff's rights when adopting the training practices such that the failure to train reflects a deliberate or conscious choice, and (3) the plaintiff's injury was actually caused by the alleged deficiency in the training practices." *Id.* (internal quotation marks and brackets omitted). A "pattern of similar constitutional violations" is "ordinarily necessary" to establish municipal liability based on a failure to train. *Connick v. Thompson*, 563 U.S. 51, 62 (2011) (internal quotation marks omitted). But, if "the need for more or different training is so obvious, and the inadequacy [is] so likely to result in the violation of constitutional rights," the municipality "can reasonably be said to have been deliberately indifferent to the need." *City of Canton*, 489 U.S. at 390.

Here, Kiefer alleges that the County failed to train its employees that the Solid Waste Ordinance does not apply to individuals who store personal property outdoors or who do not have a solid waste

management operation. Kiefer does not allege a pattern of County officials impermissibly citing citizens for ordinance violations—let alone violations of the Solid Waste Ordinance in particular. Rather, Kiefer relies solely on his experience. In doing so, Kiefer presents no evidence to suggest that the County systemically provided inadequate training to its employees. Kiefer's factual allegations fail to suggest that his experience either is a part of a pattern of constitutional violations or is "so obviously the consequence of a systemic lack of training, as opposed to the decisions of individual officers, that the need for different or additional training was plain." *Graham*, 5 F.4th at 891 (internal quotation marks omitted). The complaint, therefore, does not plausibly allege that the County was deliberately indifferent when adopting its training practices.

For these reasons, Kiefer fails to adequately allege municipal liability by way of a failure to train employees.

B. County Policy

As Kiefer has not adequately alleged that his constitutional injury was caused by a failure to train employees, Kiefer's Section 1983 claim against the County must be based on either an official policy or an unofficial custom. *See Corwin v. City of Independence*, 829 F.3d 695, 699–700 (8th Cir. 2016). "Policy and custom are not the same thing." *Id.* A policy is "a deliberate choice of a guiding principle or procedure made by

the municipal official who has final authority regarding such matters." *Mettler v. Whitledge*, 165 F.3d 1197, 1204 (8th Cir. 1999). "[W]hether an official had final policymaking authority is a question of state law." *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483 (1986) (observing that "[a]uthority to make municipal policy may be granted directly by a legislative enactment or may be delegated by an official who possesses such authority"). Courts consult applicable municipal charters, codes and ordinances to determine whether an official has policymaking authority. *See Davison v. City of Minneapolis*, 490 F.3d 648, 661 (8th Cir. 2007).

Kiefer has not identified an official county policy or alleged facts that would support the existence of an official policy requiring the County's employees to enforce the Solid Waste Ordinance against individuals who either store personal property outdoors or are not engaged in a solid waste management operation. Kiefer relies solely on his personal experience as "one example," but he alleges no other examples and only vaguely asserts that the "County has charged others as well." Kiefer similarly has not cited any law bestowing policymaking authority on the County technician or alleged that the County technician is a policy maker. Kiefer, therefore, fails to allege facts sufficient to establish the existence of a county policy that injured Kiefer. The Court, therefore, must analyze whether Kiefer has adequately alleged a county custom, as that is the only remaining basis on which Kiefer may be able to establish municipal liability under Section 1983.

C. Unofficial Custom

The parties dispute whether Kiefer has alleged sufficient facts to support a Section 1983 unofficial-custom claim. To state a claim for Section 1983 liability based on an unofficial custom, a plaintiff must plead facts that establish (1) "the existence of a continuing, widespread, persistent pattern of unconstitutional misconduct" committed by the county's employees; (2) "deliberate indifference to or tacit authorization" of the misconduct by policymaking officials after those officials have received notice of the misconduct; and (3) that the plaintiff was injured by acts pursuant to the custom, such that "the custom was a moving force behind the constitutional violation." *Corwin*, 829 F.3d at 700 (internal quotation marks omitted). Even if a plaintiff is not privy to the facts necessary to describe with specificity the alleged custom, the complaint must allege facts that would support the existence of a custom. *Crumpley-Patterson v. Trinity Lutheran Hosp.*, 388 F.3d 588, 591 (8th Cir. 2004).

The first requirement for municipal liability based on an unofficial custom is "the existence of a continuing, widespread, persistent pattern of unconstitutional misconduct" committed by the County's employees. *Corwin*, 829 F.3d at 700 (internal quotation marks omitted). But as explained above, Kiefer fails to allege a pattern of alleged constitutional violations. Kiefer addresses only his experience. Kiefer, therefore, has not alleged facts sufficient to support this necessary element of a claim for Section 1983 liability based on an unofficial custom.

The second element of municipal liability for an unofficial custom requires a plaintiff to "allege facts showing that policymaking officials had notice of or authorized" the misconduct. *Kelly v. City of Omaha*, 813 F.3d 1070, 1076 (8th Cir. 2016) (affirming dismissal of Section 1983 claim against municipality that failed to allege such facts). Without more, vaguely referencing previous complaints made against a local government employee is insufficient to state a claim for Section 1983 liability based on a custom. *See id.*; *cf. Mettler*, 165 F.3d at 1205 (explaining that plaintiff would need to show that the local government "had failed to investigate previous incidents before a court could conclude" that municipal employees "believed a municipal custom allowed them to violate [plaintiff's] rights with impunity"); *Hassuneh v. City of Minneapolis*, 560 F. Supp. 2d 764, 771 (D. Minn. 2008) (granting municipality's motion for summary judgment when plaintiffs did not "provide any evidence that the City of Minneapolis was on notice of the alleged constitutional violation and that the City was deliberately indifferent or authorized the alleged constitutional violation").

Kiefer does not allege facts that, if proven, would establish that a policymaking official received notice of any alleged constitutional violations committed by county employees. Nor does Kiefer allege any facts from which a factfinder reasonably could infer that a policymaking official authorized or was deliberately indifferent to any alleged constitutional violations committed by county employees. Kiefer, therefore, has not alleged sufficient facts to support this necessary

element of a claim for Section 1983 liability based on an unofficial custom.

Because Kiefer has failed to state a Section 1983 claim against the County,[1] the Court grants the County's motion for judgment on the pleadings as to Kiefer's federal constitutional claims against the County. Accordingly, Counts I and II of the complaint are dismissed with prejudice.

II. Supplemental Jurisdiction over State-Law Claims

Having granted the County's motion for judgment on the pleadings as to Kiefer's federal constitutional claims, only Kiefer's state-law claims remain. A district court may decline to exercise supplemental jurisdiction over a plaintiff's state-law claims if it has dismissed all claims over which it has original jurisdiction. 28 U.S.C. § 1367(c)(3). A district court's decision to exercise supplemental jurisdiction is "purely discretionary." *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 639 (2009). Although a federal district court may exercise supplemental jurisdiction, it should "exercise judicial restraint and avoid state law issues wherever possible." *Condor Corp. v. City of St. Paul*, 912 F.2d 215, 220 (8th Cir. 1990).

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[1] In light of the foregoing conclusion, the Court need not address whether Kiefer has adequately alleged that an unofficial custom caused Kiefer's injuries.

When, as here, the "resolution of the remaining claims depends solely on a determination of state law," it is appropriate for a federal district court to decline to exercise supplemental jurisdiction over such claims. *See Glorvigen v. Cirrus Design Corp.*, 581 F.3d 737, 749 (8th Cir. 2009) (internal quotation marks omitted); *Johnson v. City of Shorewood*, 360 F.3d 810, 819 (8th Cir. 2004) ("[I]n the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine . . . will point toward declining to exercise jurisdiction over the remaining state-law claims." (quoting *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988))). For this reason, the Court declines to exercise supplemental jurisdiction over Kiefer's remaining state-law claims. Accordingly, Counts III, IV and V of the complaint are dismissed without prejudice.

ORDER

Based on the foregoing analysis and all the files, records and proceedings herein, **IT IS HEREBY ORDERED**:

1. Defendant Isanti County, Minnesota's motions for judgment on the pleadings, (Dkts. 11, 17), are **GRANTED**;

2. Plaintiff Keith Allen Kiefer's federal-law claims (Counts I and II) are **DISMISSED WITH PREJUDICE**; and

3. Plaintiff Keith Allen Kiefer's state-law claims (Counts III, IV and V) are **DISMISSED WITHOUT PREJUDICE**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Filed in District Court

State of Minnesota

STATE OF MINNESOTA **COUNTY OF ISANTI**	**DISTRICT COURT** **TENTH JUDICIAL DISTRICT** **CRIMINAL DIVISION**
Keith Allen Kiefer, Petitioner, v. State of Minnesota, Respondent.	**FINDINGS OF FACT AND ORDER** District Court File No. 30-CR-18-320

The above-entitled matters came on for a Hearing on September 28, 2018, in front of the Honorable Krista K. Martin, Judge of District Court, at the Isanti County Government Center, on Petitioner Kieth Allen Kiefer's Petition for Postconviction Relief. Present at said hearing after being given adequate notice of the same were Timothy C. Nelson, Assistant Isanti County Attorney; and Petitioner Keith Allen Kiefer, with his attorney Erick G. Kaardal.

The Court makes the following Findings of Fact and Order, after incorporating the entirety of the files and proceedings herein:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner Keith Allen Kiefer was convicted on April 9, 2009, of violating Isanti County's Solid Waste Ordinance.

2. In a subsequent 2016 decision by the Minnesota Court of Appeals, that Court concluded that Isanti County's Solid Waste Ordinance did not apply to Petitioner Keith Allen Kiefer's use of his property. *See County of Isanti v. Kiefer*, 2016 WL 4068197 (Minn. App. Aug. 1, 2016).

3. Petitioner Keith Allen Kiefer subsequently brought the instant petition seeking postconviction relief in this matter.

4. Minnesota Statutes section 590.01, subdivision 4(b)(3), extends the deadline for seeking postconviction relief where "the petitioner asserts a new interpretation of federal or state constitutional or statutory law by either the United States Supreme Court or a Minnesota appellate court and the petitioner establishes that this interpretation is retroactively applicable to the petitioner's case."

5. The Court concludes that the August 1, 2018, decision by the Minnesota Court of Appeals constitutes a new interpretation of law sufficient to satisfy Minnesota Statutes section 590.01, subdivision 4(b)(3).

6. The Court concludes that based on the Minnesota Supreme Court's recent decision and analysis in *Johnson v. State*, 916 N.W.2d 674 (Minn. 2018), the new interpretation identified above is

retroactively applicable to Petitioner Keith Allen Kiefer's criminal matter.

7. The State indicated that in light of the Minnesota Supreme Court's decision and analysis in *Johnson v. State*, 916 N.W.2d 674 (Minn. 2018), it was taking no position with respect to Petitioner Keith Allen Kiefer's instant motion for postconviction relief.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Petitioner Keith Allen Kiefer's Petition for Postconviction Relief is hereby granted.

2. Petitioner Keith Allen Kiefer's 2009 conviction for violating Isanti County's Solid Waste Ordinance is hereby vacated.

3. The Clerk of Court shall refund the fine, court costs, and court fees imposed and paid in this matter by Petitioner Keith Allen Kiefer.

BY THE COURT:

Martin, Krista (Judge)

Digitally signed by Martin, Krista (Judge)
Date: 2018.10.08 14:44:47-05'00'

The Honorable Krista K. Martin
Judge of District Court

STATE OF MINNESOTA DISTRICT COURT
COUNTY OF ISANTI TENTH JUDICIAL DISTRICT

State of Minnesota, Court File No. 30-CR-08-1290
Plaintiff,

vs. **Verdict of Guilty**

Keith Allen Kiefer, **COUNT ONE**
Defendant.

We, the jury, find the defendant Keith Allen Kiefer guilty of the charge of Violating the Isanti County Solid Waste Ordinance, in violation of Isanti County Solid Waste Ordinance Section IV, Subdivision 4.

Date: 4-8-09 [2:25 pm] /s/ [Illegible signature]
Foreperson

City: Cambridge, Minnesota
Filed in Open Court on: April 8, 2:35 ☐ am ☒ pm
/s/ [Illegible signature]
Court Administrator/Deputy Court Administrator

STATE OF MINNESOTA - COUNTY OF ISANTI

JUDICIAL DISTRICT COURT

NAME: Keith Allen Kiefer FILE# CR-08-1290

ADDRESS _____ OFFENSE (S): _____

_____ Viol of Solid Waste

DL# _____ DOB# _____ OFFENSE DATE _____

DEFENSE ATTORNEY: _____ PROSECUTOR: _____

SENTENCE ORDER

(Filed Apr. 8, 2009)

A JUDGEMENT OF GUILTY IS ENTERED AND THE DEFENDANT IS SENTENCED TO:

Jail Time of: 90 days 90 Stayed with credit for time served as determined by the jail

Fine	$ 1000
Restitution Fee	$
Surcharge Fee	$ 72
Law Library Fee	$ 10
Warrant Fee	$
CUA Fee	$
Public Defender Fee	$
Amount Stayed	$ 700
TOTAL	**$** 382.00

DEFENDANT IS PLACED ON PROBATION TO ISANTI COUNTY PROBATION DEPARTMENT

FOR: 1 Year(s) ___Months ___No Probation
___Stay of Adjudication

Fees Are Payable to: COURT ADMINISTRATION
555 18th Avenue SW, Cambridge, MN 55008

THE SENTENCE AND CONDITIONS OF PROBATION ARE EXECUTED IMMEDIATELY UNLESS SPECIFIED BELOW. THE DEFENDANT MUST PROVIDE WRITTEN PROOF TO THE PROBATION DEPARTMENT THAT EACH CONDITION HAS BEEN COMPLETED.

CONDITIONS OF PROBATIONS

THE DEFENDANT:

_x_ 1. Shall not violate any laws, court orders, or rules of probation.

_x_ 2. Shall maintain contact with Probation Officer as directed. Contact the probation department w/in 48 hours at (763) 689-3052.

___ 3. Shall not use or possess alcoholic beverages or other mood altering substances, except under a physician's written order. Testing as directed. All positive tests will be at the defendant's expense.

___ 4. Shall report to **JAIL** by 8:00 PM on: _____ or as directed by the Jailer. Contact the Jail today at (763) 689-2397.

___ 5. May be granted **HUBER** or **STS** privileges as approved by the Sheriff's Department.

✓ 6. Shall pay the **FINE** and other fees by 6 mos. at a rate of _____ beginning on _____.

___ 7. May perform **COMMUNITY SERVICE WORK** as approved by the probation department in lieu of the fine only. @ $6.00 / hour.

___ 8. Shall complete the **PICK AA ORIENTATION** program as directed.
___ 9. Shall complete an inpatient **DWI CLINIC** by 90 days or as directed.
___ 10. Shall complete a **MADD IMPACT PANEL** by 90 days or as directed.
___ 11. Shall complete an **ADULT COGNITIVE RESTRUCTURING** program by 120 days or as directed.
___ 12. Shall complete _____ **EVALUATION** and follow all recommendations as directed and approved by the Probation Officer,
___ 13. Shall complete _____ **COUNSELING / TREATMENT** and follow all recommendations as directed and approved by the Probation Officer.
___ 14. Shall have **NO CONTACT** with: _____
___ 15. Shall turn in **LICENSE PLATES, BILL OF SALE, or PROOF OF INSURANCE** on all registered vehicles to the Probation Department within _____ days.
✓ 16. Bring property into compliance. Unlicensed
___ 17. vehicles, tires and barrells within 60 days. Remaining within 120 days.
List to be provided by Zoning.

DATE: 4/8/09 **JUDGE OF DISTRICT COURT:** /s/ [Illegible signature]

I fully understand this sentence and conditions. Defendant's Signature: under protest Keith Keifer, [Illegible initials]

Address:_____ Phone#_____