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APPENDIX
Part A - appellate court disposition

[Filed 10/03/17]

[DO NOT PUBLISH]

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

No. 17-10058
Non-Argument Calendar

D.C. Docket No. 8:15-cv-02327-SDM-JSS.

DAVID PILVER,

Plaintiff-Appellant,

versus

**HILLSBOROUGH COUNTY,
LAW LIBRARY BOARD,
NORMA J. WISE,
in her official capacity,
WILLIAM C. SPRADLIN,
in his official capacity,
HILLSBOROUGH COUNTY HUMAN RESOURCES**

DEPARTMENT,

Defendants-Appellees,

NORMA J. WISE,
individually, et al.,

Defendants.

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

Before WILLIAM PRYOR, MARTIN and
ANDERSON, Circuit Judges.

PER CURIAM:

David Pilver appeals *pro se* the summary judgment against his second amended complaint that he was defamed by Hillsboro County without an opportunity to clear his name in violation of the Fifth and Fourteenth Amendments. See 42 U.S.C. § 1983. The district court also dismissed Pilver's claims against the Law Library Board, Norma Wise, William Spradlin, and the Hillsboro County Human Resources Department, and the district court

declined to exercise supplemental jurisdiction over Pilver's claims about the violation of state laws. But Pilver has abandoned any challenge that he could have made to the dismissal of those claims. *See Hamilton v. Southland Christian Sch., Inc.*, 680 F.3d 1316, 1318-19 (11th Cir. 2012). We affirm the summary judgment in favor of the County.

We review *de novo* a summary judgment. *McDowell v. Brown*, 392 F.3d 1283, 1288 (11th Cir. 2004). We view the evidence in the light most favorable to the non-moving party. *Id.* Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and . . . is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

The district court did not err by entering summary judgment in favor of the County and against Pilver's complaint of defamation. Pilver failed to allege that the County had an official policy or custom that violated his constitutional rights, as required to state a claim for municipal liability. *See McDowell*, 392 F.3d at 1289. Pilver sought to hold the County responsible for defamatory "allegations [made by Pilver's supervisor and a coworker] . . . in verbal interviews and written reports, and the written reprimand published in [his] personnel file," but as

Pilver acknowledges, "[d]efamation, by itself, is . . . not a constitutional deprivation," *Siegert v. Gilley*, 500 U.S. 226, 233 (1991); see *Paul v. Davis*, 424 U.S. 693, 701-02 (1976). Pilver alleged that he "accepted a transfer" that provided him a 40-hour instead of a 33-hour workweek, but as the district court stated, Pilver identified no "state or federal law guarantee[ing] [him] the right to work less than full-time but to receive a full-time salary." See *Von Stein v. Brescher*, 904 F.2d 572, 583-84 (11th Cir. 1990) (concluding that "a temporary, partial loss of income as a result of [a supervisor's defamatory] statement" did "not extinguish or significantly alter any right guaranteed to Plaintiff by the United States Constitution or by Florida law"). Pilver also alleged that he was "suspended from work for the rest of the day following [an] interview" and that he received an "official reprimand," but our precedent is clear that without a "loss of income or rank . . . [or] a discharge or more, injury to reputation itself is not a protected liberty interest," *Oladeinde v. City of Birmingham*, 963 F.2d 1481, 1486 (11th Cir. 1992); see *Cannon v. City of W. Palm Beach*, 250 F.3d 1299, 1303 (11th Cir. 2001).

The district court also did not err by entering summary judgment in favor of the County and against Pilver's complaint alleging a denial of due

process. Pilver argues that he was denied "a pre-deprivation hearing" and an administrative review, but his transfer "in connection with the stigmatizing injury he suffered when the [reprimand] was placed in his personnel file is insufficient to establish that the denial of an opportunity for a name-clearing hearing violated his procedural due process rights," *Cannon*, 250 F.3d at 1303; see *Paul*, 424 U.S. at 711-12. And Pilver's interests in continuing to work at a law library and in maintaining a 33-hour workweek "are not 'fundamental' rights created by the Constitution . . . [that] enjoy substantive due process protection." See *McKinney v. Pate*, 20 F.3d 1550, 1560 (11th Cir. 1994). Even if Pilver's supervisor falsely defamed and reprimanded him to conceal her mismanagement of library funds, "the due process guarantee does not . . . [create a means of] imposing liability [on a municipality] whenever someone cloaked with state authority causes harm," *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 848 (1998). Moreover, the County could not be held liable because Pilver did not allege that his reprimand and transfer were attributable to a custom or policy of the County. See *Los Angeles Cty. v. Humphries*, 562 U.S. 29, 37 (2010) (Section "1983 liability [exists] where a municipality's *own* violations [are] at issue but not where only the violations of others [are] at issue.").

We AFFIRM the summary judgment in favor of Hillsborough County.

APPENDIX
Part B - trial court disposition

[Filed 12/07/16]

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

DAVID PILVER,

Plaintiff,

v.

Case No. 8:15-cv-2327-T-23JSS

HILLSBOROUGH COUNTY, et al.,

Defendants.

_____ /

ORDER

Appearing *pro se*, David Pilver sues (Doc. 63) Norma J. Wise and Bill Spradlin in an official capacity. Also, Pilver sues the Hillsborough County Human Resources Department, the Hillsborough County "Law Library Board," and Hillsborough County, which moves (Doc. 68) for summary judgment.

BACKGROUND

A former employee of the James J. Lunsford Law Library, Pilver allegedly observed Wise, the library's director, mismanage the library's money. Under Wise, the library failed to pay timely the library's vendors. (Doc. 63 ¶¶ 22-26) The chronically late payments caused vendors to suspend both the library's access to electronic databases and the shipment of new books to the library. (Doc. 63 ¶¶ 26-29)

On September 30, 2013, Pilver told Wise that he planned to report Wise's mismanagement to her supervisor. (Doc. 63 ¶ 32) According to Pilver, the next day Wise submitted to the Hillsborough County Human Resources Department false allegations, including that Pilver screamed at Wise in front of a library guest and that Pilver often disobeyed Wise. (Doc. 63 ¶¶ 33-34) Spradlin, another library employee, corroborated Wise's allegations and falsely accused Pilver of perjury and of "harbouring desires to murder an acquaintance." (Doc. 63 ¶¶ 35-36)

When interviewed by the Human Resources Department about Wise's and Spradlin's complaints, Pilver denied the allegations and proffered "exculpatory" evidence, but the interviewer refused to accept the evidence. (Doc. 63 ¶¶ 50-54) A week

later and without providing Pilver an opportunity to rebut Wise's and Spradlin's testimony, Hillsborough County placed a letter of reprimand in Pilver's personnel file, which Florida's public-records law subjects to public scrutiny. (Doc. 63 ¶¶ 50-55)

After Pilver's reprimand, Wise allegedly sought a pretext for terminating Pilver. For example, Wise e-mailed employees to threaten "termination for [violation of] minor policies." (Doc. 63 ¶ 87 at 22) Believing that Wise's tactics targeted him, Pilver reluctantly accepted a transfer to another library. Although paid the same amount, Pilver's new position requires him to work forty hours per week — seven hours more than he worked at Lunsford. (Doc. 69 at 19)

Pilver sues under Florida law for slander (Count I), libel (Count II), and negligent hiring (Count V) and under 42 U.S.C. § 1983 for defamation (Count III) and violation of Pilver's right to due process (Count IV).

DISCUSSION

1. Pilver's Section 1983 claims against Hillsborough County fail to allege the deprivation of a federally protected right.

Section 1983 permits a person to sue in federal court if deprived by a state actor of a federally protected right. *Wideman v. Shallowford Cmty. Hosp., Inc.*, 826 F.2d 1030, 1032 (11th Cir. 1987). Count III, a Section 1983 claim based on a state-law defamation claim, fails to allege the deprivation of a federally protected right.

Count IV, a Section 1983 claim based on the violation of Pilver's right to "due process," fails to state a plausible claim for violation of substantive due process. Even if Hillsborough County denied Pilver the opportunity to rebut the defamatory claims against him and "railroaded" Pilver into a forty hour work-week, Pilver's treatment fails to "shock the conscience." See *Neal ex rel. Neal v. Fulton County Bd. of Educ.*, 229 F.3d 1069 (11th Cir. 2000) (explaining that a teacher's beating of a student's face with a metal lock, which "knocked [an eyeball] completely out of its socket," shocks the conscience).

Also, Count IV fails to state a plausible claim for violation of procedural due process because the complaint contains no allegation that Hillsborough County deprived Pilver of a protected liberty or property interest. *Grayden v. Rhodes*, 345 F.3d 1225, 1232 (11th Cir. 2003). To state a procedural due

process claim based on violation of a property interest, a government employee allegedly defamed by his government employer must show that "(1) a false statement (2) of a stigmatizing nature (3) attending a governmental employee's discharge (4) was made public (5) by the governmental employer without a meaningful opportunity for employee name clearing." *Cannon v. City of West Palm Beach*, 250 F.3d 1299, 1301 (11th Cir. 2001).

The complaint, which appears to allege the deprivation of Pilver's right to work thirty-three hours per week (Doc. 63 ¶ 89 at 20; accord Doc. 69 at 19), contains no allegation that Hillsborough County discharged Pilver. *Cannon*, 250 F.3d at 1303 (holding that a plaintiff must prove "a discharge or more" to prevail on a Section 1983 claim based on defamation).[1] Pilver's transfer, which involved no loss of pay, cannot establish a due process claim. *Oladeinde v. City of Birmingham*, 963 F.2d 1481, 1485-86 (11th Cir. 1992).

Pilver argues that the reprimand "constructive[ly] demot[ed]" Pilver by creating a "hostile work environment leading to transfer under duress." (Doc. 69 at 17) Again, a transfer involving no loss of pay deprives a government employee of no constitutionally protected interest. *Oladeinde*, 963

F.3d at 1485-86. And Pilver fails to allege a state or federal law guaranteeing Pilver the right to work less than full-time but to receive a full-time salary.

Also, Pilver argues that the absence of a fair hearing and of an administrative review of the reprimand denied Pilver the opportunity to rebut the defamatory charges against him. But a person defamed by the government cannot convert a state-law defamation claim into a constitutional grievance through the Fourteenth Amendment's due process clause. *Cypress Ins. Co. v. Clark*, 144 F.3d 1435, 1435-36 (11th Cir. 1998) (citing *Siegert v. Gilley*, 500 U.S. 226 (1991)). Because Pilver suffered no deprivation of a constitutionally protected interest, Hillsborough County is entitled to judgment as a matter of law.[2]

2. Pilver's Section 1983 claims against the remaining defendants are redundant.

Counts III and IV name as defendants Hillsborough County, the Hillsborough County "HR Dep[artmen]t," the Hillsborough County "Law Library Board," and Wise and Spradlin in an "official capacity."

Because Hillsborough County bears liability for the

Hillsborough County Human Resources Department and the Hillsborough County Law Library Board (Doc. 63 ¶¶ 10-11), the claims against the Human Resources Department and the Law Library Board duplicate the claims against Hillsborough County. And the official-capacity claims against Wise and Spradlin duplicate the claims against Hillsborough County. *Kentucky v. Graham*, 473 U.S. 159, 166 (1985) ("[A]n official-capacity suit is, in all respects other than name . . . a suit against the entity."). The claims are dismissed with prejudice.

3. Supplemental jurisdiction over the remaining state-law claims is declined.

Because only state-law claims remain, comity requires that a state court adjudicate those claims. *L.A. Draper & Son v. Wheelabrator-Frye, Inc.*, 735 F.2d 414, 428 (11th Cir. 1984) ("[I]f the federal claims are dismissed prior to trial, Gibbs strongly encourages or even requires dismissal of the state claims.") (citing *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966)).[3]

CONCLUSION

Hillsborough County's motion (Doc. 68) for summary judgment on Counts III and IV is GRANTED. The

claims in Counts III and IV against the Hillsborough County Law Library Board, against the Hillsborough County Human Resources Department, and against Wise and Spradlin in an official capacity are **DISMISSED WITH PREJUDICE**. The state-law claims in Counts I, II, and V are **DISMISSED WITHOUT PREJUDICE**.

The clerk is directed (1) to enter judgment in Counts III and IV for Hillsborough County and against David Pilver and (2) to close the case.

ORDERED in Tampa, Florida, on December 7, 2016.

S/
STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE

[1] Pilver alleges that Hillsborough County suspended him from work for part of one day (Doc. 63 ¶ 47) but fails to allege the loss of a day's pay or another tangible harm. Even if alleged, the claim fails under *Cannon's* "discharge or more" requirement. 250 F.3d at 1303.

[2] This order declines to address Pilver's First Amendment retaliation argument (Doc. 69 at 3), which Pilver raised for the first time in opposing summary judgment. *Gilmour v. Gates, McDonald and Co.*, 382 F.3d 1312, 1315 (11th Cir. 2004) ("A plaintiff may not amend [his] complaint through argument in a

brief opposing summary judgment.").

[3] Because 28 U.S.C. § 1367(d) tolls the limitation from October 2, 2015, until thirty days after entry of this order, Pilver suffers no prejudice from the dismissal of the state-law claims.

APPENDIX
Part C - denial of rehearing

[Filed 11/07/17]

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

No. 17-10058-EE

DAVID PILVER,

Plaintiff-Appellant,

versus

HILLSBOROUGH COUNTY,

LAW LIBRARY BOARD,

NORMA J. WISE,

in her official capacity,

WILLIAM C. SPRADLIN,

in his official capacity,

HILLSBOROUGH COUNTY HUMAN RESOURCES

DEPARTMENT,

Defendants-Appellees,

NORMA J. WISE,

individually, et al.,

Defendants.

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

**Before WILLIAM PRYOR, MARTIN and
ANDERSON, Circuit Judges.**

PER CURIAM:

**The petition(s) for panel rehearing filed by DAVID
PILVER is DENIED.**

ENTERED FOR THE COURT:

**S/
UNITED STATES CIRCUIT JUDGE**

ORD-41

APPENDIX
Part D - Laws of Florida 2000-445

Section 5. Definitions.—As used in this act:

- (1) “Appointing authority” means any person or agency authorized under this act or other statutory authority to employ personnel to carry out the responsibilities of the agency.**
- (2) “Appointment” means selection by an appointing authority of a certified eligible person to perform assigned duties and responsibilities in a specified position in the classified service.**
- (3) “Benefits plan” means a schedule of employment benefits to include all leave and holidays.**
- (4) “Board” means the County Civil Service Board.**
- (5) “Budget authority” means any agency or authority to which this act applies and which is empowered to develop and adopt its budget without approval by any other agency or authority.**
- (6) “Certification” means the process of providing the**

names of those eligible for a class of positions to be considered in filling a vacancy.

(7) "Certified employment lists" means employment eligibility lists and promotion eligibility lists.

(8) "Civil service" means that part of the employment system within Hillsborough County to which this act is applicable pursuant to section 4.

(9) "Classified employee" means an employee whose position is subject to the rights contained in this act and in rules adopted by the board.

(10) "Class of positions/classification" means all positions that are sufficiently similar as to kind or subject matter of work, level of difficulty or responsibilities, and qualification requirements of the work to warrant the same treatment as to title, pay range, and other personnel transactions.

(11) "Classification plan" means a document that formally describes the concepts, rules, and class specifications used in the classification and reclassification of positions in the classified service.

(12) "Commission" means the board of county commissioners of the county.

(13) “County” means Hillsborough County, Florida.

(14) “Demotion” means moving an employee from a position in one class to a position in another class having a lesser degree of responsibility and lower pay grade.

(15) “Dismissal” means the discharge of an employee from the service by the appointing authority.

(16) “Executive manager” means a position so designated by any appointing authority. The identifying characteristics of an executive manager position are:

(a) Having primary responsibility for the administration of a department or division that is major in scope in terms of a countywide program except as may be limited by municipal programs; or

(b) Being entrusted with developmental and confidential information and high level responsibility for:

1. Program research, development, implementation, and monitorship;

2. Formulation of policies; or

3. Day-to-day operations, administration, and departmental or divisional decisionmaking.

(17) "Exempt employee," which may be used interchangeably with an "unclassified employee," means an employee whose position is subject to any rights provided by the employee's appointing authority and who is enumerated in section 6(2).

(18) "Grievance" means any dispute or disagreement between an employee and management involving wages, hours of work, or conditions of employment.

(19) "Initial probationary period" means a period of 6 months of conditional employment in the same position which may be extended for an additional 6 months during which time an employee may be dismissed without appeal to the board.

(20) "Leave" means absence of a classified employee from employment authorized by the appointing authority in accordance with rules adopted by the board.

(21) "Part-time employee" means an employee who works less than 50 percent of the normal work period.

(22) "Pay plan" means a document containing one or more salary schedules.

(23) "Promotion" means moving an employee from a position in one class to a position in another class having a greater degree of responsibility and a higher pay grade.

(24) "Reduction in force" means dismissal, for reasons including, but not limited to, shortage of funds, abolition of a position, or material changes in job duties or organizational structure in accordance with rules adopted by the board.

(25) "Reemployment" means appointment of a person who was dismissed due to reduction in force in accordance with rules adopted by the board.

(26) "Resignation" means that an employee voluntarily elects to terminate the employee's employment.

(27) "Salary schedule" means a document which is adopted by the annual budget process or which is established by a collective bargaining or impasse procedure. Salary schedules must be adopted or established by any budget authority for those employees whose positions it funds and who are

subject to the terms of this act. A salary schedule must include the salary range and a minimum and a maximum rate of pay and any intermediate points within a salary range.

(28) "Substitute employee" means an employee who is temporarily employed to fill the position of a permanently employed person who is on approved leave. A substitute employee may not fill any given position for a period exceeding 120 calendar days after the first day of appointment by the appointing authority.

(29) "Suspension" means the removal of an employee from the service for a temporary period of time.

(30) "Temporary employee" means an employee whose employment is not intended to exceed 120 calendar days after the first day of appointment by the appointing authority.

(31) "Tenure" means a status granted after successful completion of an initial probationary period, entitling the employee to all rights and protections provided in this act.

(32) "Transfer" means the change of an employee from one position to another position.

Section 10. Probationary period; tenure.—

(1) All employees in the classified service are entitled to the protection of this act when they have successfully completed their initial probationary period, whether the probationary period began before or after the effective date of this act. It is the intent and purpose of this act to give the protection of tenure of employment to any classified employee of any appointing authority who has successfully completed the initial probationary period. Any person dismissed during the initial probationary period is not entitled to an appeal hearing before the board.

(2) Whenever a position in the classified service is filled by promotion, the person so promoted shall serve a period of conditional employment of 6 months in the new position which may be extended for an additional period of up to 6 months at the discretion of the appointing authority. However, if the probationary period and any extension thereof are not successfully completed, such person shall forthwith be returned to duty to the former classification held in the civil service, provided such

person has served the initial probationary period. Unsuccessful completion of a probationary period in a position of promotion is not appealable to the board.

(3)(a) Any classified employee, upon transferring to another classified position, may not incur loss of benefits, including, but not limited to, pensions and leave.

(b) Any employee who is employed in an exempt position by an agency or authority within the county and who transfers to a classified position may not incur loss of benefits, including, but not limited to, pensions and leave.

Section 11. Suspension; demotions; dismissal.—

(1) Any nontenured employee in the classified service may be suspended, demoted, or dismissed for any reason.

(2) Any appointing authority may suspend, demote, or dismiss a tenured employee following written notice to the employee of the intended action, detailing the reasons therefor and providing an opportunity to respond thereto at an informal

predisciplinary hearing scheduled for that purpose. The hearing must be scheduled no sooner than 5 working days after the date of notice of intent to discipline unless the employee waives this time and requests an earlier hearing. If the final decision is to discipline, the appointing authority must provide written notice to the employee as soon as possible following the hearing.

(3) Any employee may be suspended immediately, with or without pay and without the benefit of advanced written notice, upon determination by the appointing authority that such suspension is in the best interest of the county. The appointing authority must provide written notice to the employee as soon as possible and give the employee the opportunity to be heard as required in subsection (2).

(4) Any employee who has satisfactorily completed the initial probationary period and is thereafter suspended, demoted, or dismissed from employment may request a hearing to appeal that disciplinary action by making a written request to the board within 10 calendar days after the official date of receipt of the final notice to discipline. The request for an appeal hearing must state clearly and simply the reason or reasons the employee believes the disciplinary action was not justified and must be

received by the board within the 10-day limit, and the board must send a copy to the affected appointing authority within 3 working days after receipt thereof.

(5) The board may reverse the appointing authority's decision and restore the employee to that employee's former status only if it finds that the suspension, demotion, or dismissal was made for a reason other than just cause. The director, or a member of the board on behalf of the board, shall provide a letter to the affected parties within 10 days after the appeal hearing setting forth its findings and conclusions, and the specific reasons therefor.

Section 12. Appeal hearing procedure.—

(1) The practice and procedure of the board with respect to an appeal hearing authorized by this act shall be in accordance with adopted rules.

(2) The board shall make every reasonable effort to hear any timely filed appeal of demotion or dismissal within 30 working days after receipt of notice of appeal unless an extension of time is requested by the employee or the appointing authority. At no time may an appeal hearing be delayed beyond 60 calendar days without the consent of both parties.

Requests for appeal hearings of suspensions shall be scheduled as soon as possible. The board shall provide reasonable notice to all affected persons and provide an opportunity for all affected persons to be heard and to introduce relevant testimony and evidence at the appeal hearing, which shall be public. All testimony shall be under oath.

(3) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. All other evidence of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs is admissible, whether or not such evidence would be admissible in the courts of this state. Hearsay evidence may be introduced and used for supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding by the board unless it would be admissible over objections in a civil action.

(4) For the purpose of such hearing, the director or a member of the board is authorized to issue subpoenas to compel the attendance of witnesses and the production of books, accounts, records, and documents. The board or any member of the board may administer oaths and compel testimony. In the case of disobedience by any person of an order of the board to testify to any matter regarding which the person may be lawfully interrogated, or of a

subpoena to appear or produce documents in the person's possession, a county judge shall, upon application of the director or a member of the board, compel obedience by attachment proceedings for contempt, as in the case of a similar court order. Each person who serves such a subpoena shall receive the same fee as a sheriff and each witness who appears in obedience to a subpoena shall receive the same witness fee and mileage provided for witnesses in civil cases, which fees shall be audited and paid in the same manner as other expenses.
