

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

No. 17-10529
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

November 9, 2017

Lyle W. Cayce
Clerk

MICHELLE SKYY; SEAN VALDEZ,

Plaintiffs - Appellants

v.

CITY OF ARLINGTON,

Defendant - Appellee

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:17-CV-019

Before STEWART, Chief Judge, and ELROD and HIGGINSON, Circuit
Judges.

PER CURIAM:*

Plaintiffs-Appellants Michelle Skyy ("Skyy") and Sean Valdez ("Valdez") (collectively, "Appellants") appeal the district court's memorandum opinion and order dismissing their First Amended Complaint ("Complaint") because Appellants' Complaint failed to allege sufficient facts against the City of

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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Arlington (“City”) to overcome the general prohibition against holding a municipality liable for acts of its officials as set forth in *Monell v. New York City Dep’t Soc. Servs.*, 436 U.S. 658 (1978). Similarly, the district court dismissed Appellants’ claims for punitive damages against the City as foreclosed by *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247 (1981). We AFFIRM.

I. BACKGROUND AND PROCEDURAL HISTORY

On April 29, 2015, Appellants agreed to file for a divorce after which Skyy packed her belongings to leave Appellants’ home. In the course of leaving, Skyy picked up money sitting on a coffee table in the Appellants’ living room. Valdez, believing some of the money belonged to him, prevented Skyy from leaving the home. Appellants agreed to split the money equally. Continuing to retrieve belongings to leave the home, Skyy picked up Valdez’s AR-15 rifle leading Valdez to follow her to her Hummer to take back the AR-15 rifle. In doing so, Valdez violently grabbed Skyy’s arm and told her to leave. After Valdez took the gun and went inside the home, a terrified Skyy phoned the police. The emergency dispatcher directed Skyy to wait nearby Appellants’ home for police to arrive. At some point after the first Arlington Police Department (“APD”) police officer arrived and took Skyy to a nearby park, Valdez left Appellants’ home to search for Skyy. As Valdez walked out of the side gate of Appellants’ home, APD officers arrested him. While transporting Valdez to jail, APD officers requested his permission to enter the home — he denied their requests. Similarly, Skyy, while waiting at the nearby park, denied APD officers’ requests to enter the home.

Without having a warrant or Appellants’ permission, APD officers entered Appellants’ home. While officers searched the home, Skyy was unable to enter the home to eat special dietary food. She was told that she would be placed in cuffs if she tried to leave before APD officers permitted her to go.

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Roughly three hours after initially entering the home, APD officers received a warrant to retrieve the AR-15 rifle.¹ Valdez informed APD officers that Skyy had two guns, and officers sought to get those weapons out of her vehicle. After complying with the request to get those weapons, Skyy rejected APD officers' requests for her car keys, saying she would not give them authorization to go into her car. Despite that denial, APD officers entered her vehicle eventually having the Hummer towed away.

Skyy was arrested² and taken to the City of Arlington jail. Skyy, after informing the jail's check-in officer of her medical conditions³ and her inability to eat all day given the events, was never provided any food. This failure occurred despite assurances on two occasions that someone would provide her with food. Skyy starved for 2 days, losing 6 pounds while in jail. Skyy was also kept in a very small holding cell for over 6 hours with no restroom or water, which caused her severe abdomen pains.

Based on these events, Appellants filed an action under 42 U.S.C. § 1983, seeking monetary and punitive damages for the City's alleged violation of their Fourth Amendment right to be free from unreasonable searches and seizures. Skyy, focusing on her time spent in the City of Arlington jail, further alleged that the City violated her Eighth Amendment rights to be free from cruel and unusual punishment.

The City moved to dismiss Appellants' Complaint, arguing that the City, under *Monell*, could not be held liable for the events giving rise to Appellants'

¹ The warrants were left on the coffee table of the home and neither warrant was shown to Appellants prior to officers entering the home.

² Albeit irrelevant to the analysis in this case, the reason for Skyy's arrest is unclear from the record. Presumably, the marijuana grow tent discussed in Appellants' briefing of the affidavit issue played a role in her arrest.

³ Skyy suffers from Celiac Sprue Disease (severe wheat gluten allergy) and Endometriosis.

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alleged constitutional injuries unless the wrongful conduct of an employee was undertaken pursuant to policy or custom of the City. Similarly, the City argued that punitive damages against the City were barred under *City of Newport*. In an 8-page memorandum opinion and order, the district court granted the City's motion to dismiss, concluding that Appellants' Complaint failed to satisfy the *Monell* test for imposing municipal liability based on its failure to plead any facts establishing a custom or policy of the City that led to the constitutional tort. The district court also agreed with the City's position that punitive damages against the City were prohibited under *City of Newport*. The district court denied Appellants' motion to alter or amend judgment. Appellants timely appealed.

II. DISCUSSION

This court reviews the dismissal of a complaint under Rule 12(b)(6) de novo, applying the same standard as the district court. At this stage, the inquiry is primarily cabined to the complaint.⁴ See *Hale v. King*, 642 F.3d 492, 498–99 (5th Cir. 2011) (per curiam). To survive a motion to dismiss, the complaint “must provide the plaintiff's grounds for entitlement to relief—including factual allegations that when assumed to be true raise a right to relief above the speculative level.” *Rosenblatt v. United Way of Greater Houston*, 607 F.3d 413, 417 (5th Cir. 2010) (citation and quotation marks omitted). In this case, because Appellants are pro se, we construe the complaint liberally. See *Bustos v. Martini Club, Inc.*, 599 F.3d 458, 465 (5th Cir. 2010). Cf. *Longoria v. Dretke*, 507 F.3d 898, 901 (5th Cir. 2007) (“Although we

⁴ In addition, “court[s] may take into account documents incorporated into the complaint by reference or integral to the claim, items subject to judicial notice, matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint whose authenticity is unquestioned.” *Meyers v. Textron, Inc.*, 540 F. App'x 408, 409 (5th Cir. 2013) (per curiam) (citing *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007)).

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liberally construe pro se briefs, such litigants must still brief contentions in order to preserve them.”).

A. *Monell* Liability

Pointing to the City of Arlington Personnel Manual (“Manual”), Appellants essentially argue that the City should be held liable because its officers are directed to follow certain procedures and, in this case, those officers did not do so.⁵

The City can only be liable under Section 1983, however, “for acts that are directly attributable to it ‘through some official action or imprimatur.’” *James v. Harris Cty.*, 577 F.3d 612, 617 (5th Cir. 2009) (quoting *Piotrowski v. City of Houston*, 237 F.3d 567, 578 (5th Cir. 2001) (quotation marks omitted)). Beyond the mere presence of a constitutional violation by municipal employees, a plaintiff must also show “that an official policy promulgated by the municipality’s policymaker was the moving force behind, or actual cause of, the constitutional injury.”⁶ *Id.* (citation omitted). Where the policy is not facially unconstitutional, a plaintiff must show that it was “adopted with deliberate indifference to the known or obvious fact that such constitutional violations would result.” *James*, 577 F.3d at 617 (citation and quotation marks omitted). Although establishing a municipal policy is usually done via “written

⁵ Appellants did not sue the individual officers, but the Complaint includes a comment under the “Defendants” heading stating “that [the] Complaint against them is in an Official Capacity involving City of Arlington (Police Department).” To the extent that Appellants sought to sue the officers in their official capacity, those claims are construed as against the municipality. *See Brooks v. George Cty.*, 84 F.3d 157, 165 (5th Cir. 1996).

⁶ Where there is no policy but the individual or entity violating the constitutional rights in a singular instance is a policymaker, the decision may constitute official policy. *See, e.g., Burge v. Par. of St. Tammany*, 187 F.3d 452, 471 (5th Cir. 1999) (citation omitted). As we have previously held, however, it is not necessary for plaintiffs to identify a specific policymaker at the motion to dismiss stage. *See Groden v. City of Dallas*, 826 F.3d 280, 283–84 (5th Cir. 2016) (“[T]he specific identity of the policymaker is a legal question that need not be pled; the complaint need only allege facts that show an official policy, promulgated or ratified by the policymaker, under which the municipality is said to be liable.”).

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policy statements, ordinances, or regulations,” this circuit also views municipality customs—“widespread practice that is so common and well-settled”—as municipal policy. *Peterson v. City of Fort Worth*, 588 F.3d 838, 847 (5th Cir. 2009); *see also Gates v. Texas Dep’t of Protective and Regulatory Servs.*, 537 F.3d 404, 436 (5th Cir. 2008) (“A custom is shown by evidence of a persistent, widespread practice of government officials or employees, which, although not authorized by officially adopted and promulgated policy, is so common and well settled as to constitute a custom that fairly represents government policy.”) (citation omitted). “Isolated violations are not the persistent, often repeated, constant violations, that constitute custom and policy as required for municipal section 1983 liability.” *Piotrowski*, 237 F.3d at 581 (citation and marks omitted). “[T]here must be a direct causal link between the municipal policy and the constitutional deprivation.” *Id.* at 580.

Appellants, ostensibly attempting to demonstrate a municipality custom or policy that served as the moving force behind their constitutional deprivation, rely upon various portions of the Manual. First, Appellants argue that the Manual’s directive that “employee[s] shall obey and shall not engage in any conduct prohibited by the United States, Texas, or any other state or political subdivision wherein the conduct of the employee occurred” satisfies the imposition of liability upon the City for Appellants’ Fourth Amendment violations as well as Skyy’s Eight Amendment violations.⁷ City of Arlington, Texas Personnel Manual, § 201.02.A, <http://www.arlington-tx.gov/employment/wp-content/uploads/sites/21/2016/12/Personnel-Manual.pdf> (hereinafter, “Manual”). In promulgating such rules, Appellants maintain, the City controls their employees. Appellants reason that because

⁷ Appellant Skyy explicitly states as much with respect to her Eight Amendment claim, arguing that, given these Manual pronouncements, “[t]here is an affirmative link between the policy of City of Arlington Personnel Manual and the Eight Amendment.”

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three APD officers failed to “follow established employee policy by illegally entering their home,” the City is subject to liability. In the same vein, Appellants contend that a City of Arlington detective and APD officer violated the Manual directive that “[n]o employee may knowingly enter, or cause to be entered, any inaccurate, false, or improper information, or misrepresent the facts in any City records or reports, whether such reports are oral or written” when providing their affidavits to support search warrants without including context for how they located a marijuana grow tent. *Id.* at § 201.09.A

Appellants’ arguments simply misconstrue the showing necessary at this stage to overcome the general prohibition against a municipality’s liability based on a theory of vicarious liability or respondeat superior. Indeed, distilled to their essence, Appellants’ claims are rooted in a theory of respondeat superior—that is, the City should be held liable because its officers are directed to follow certain procedures and, in this case, those officers in the course of their employment did not do so. Such claims are prohibited. In *Young v. City of Houston*, 599 F. App’x 553, 555 (5th Cir. 2015), this circuit analyzed a “complaint alleg[ing] that [plaintiff] was injured despite policies in place to prevent injury.” In other words, the plaintiff’s injury stemmed from “City employees’ disregard of these city policies.” *Id.* The *Young* panel appropriately held that “[Young’s] respondeat superior claim is not cognizable under § 1983.” *Id.* (citing *City of Canton, Ohio v. Harris*, 489 U.S. 378, 389 (1989)).

Of course, Appellants’ Complaint would survive if sufficient facts are alleged to demonstrate a City custom. See *Peterson*, 588 F.3d at 847. Additionally, given that the alleged policies do not facially violate or authorize the violation of the constitutional rights Appellants assert have been violated, Appellants might also allege facts sufficient to show that the purported policies were adopted with deliberate indifference to the likelihood that APD officers would violate citizens’ Fourth and Eighth Amendment rights. However, by

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relying on their single incident with APD officers, and without identifying similar incidents demonstrating a persistent, widespread practice of government officials or employees, Appellants' Amended Complaint fails to allege sufficient facts to demonstrate either deliberate indifference or a City custom. *See Piotrowski v. City of Houston*, 51 F.3d 512, 517 (5th Cir. 1995) (holding that the plaintiff did not state a Section 1983 claim against the municipality where the alleged injury stemmed from actions of individual police officers, not city policy or custom); *see also Johnson v. Deep E. Texas Reg'l Narcotics Trafficking Task Force*, 379 F.3d 293, 309–10 (5th Cir. 2004) (holding that the plaintiff did not plead sufficient facts to demonstrate deliberate indifference when failing to plead “that there had ever been any similar incidents (or allege any other facts suggesting that the alleged policy was adopted or maintained with deliberate indifference to constitutional rights)”).

B. Punitive Damages

Appellants seek five million dollars in punitive damages. Concluding that punitive damages for actions of its officials were not accorded against a municipality at common law in 1871 when Congress enacted the first iteration of Section 1983, the Supreme Court, in *City of Newport*, held that a municipality was immune from the imposition of punitive damages unless Congress specifically provides to the contrary. 453 U.S. at 259–71. When this circuit has had occasion to address the issue of punitive damages against a municipality we have faithfully applied *City of Newport*, rejecting attempts to impose punitive damages for constitutional and other violations where Congress has not expressed a clear intention to do so. *See Gil Ramirez Grp. v. Houston Indep. Sch. Dist.*, 786 F.3d 400, 412–13 (5th Cir. 2015); *Stern v. Hinds Cty.*, 436 F. App'x 381, 382 (5th Cir. 2011). Because Congress has not expressed a clear intention to permit punitive damages against municipalities in Section

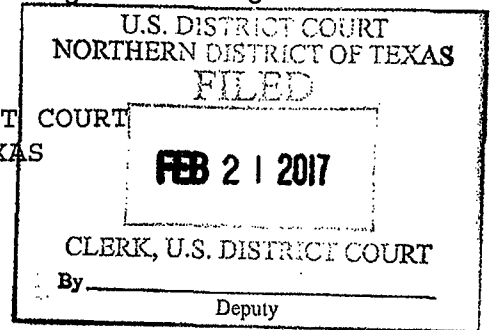
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1983 actions stemming from alleged Fourth and Eighth Amendment violations, Appellants' are barred from seeking punitive damages.

III. CONCLUSION

For the foregoing reasons, the district court's judgment is **AFFIRMED**.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION



MICHELLE SKYY, ET AL.,

Plaintiffs,

VS.

CITY OF ARLINGTON POLICE
DEPARTMENT,

Defendant.

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NO. 4:17-CV-019-A

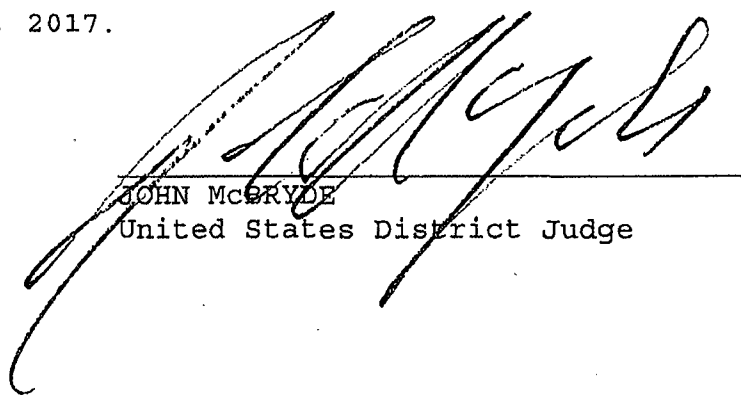
ORDER

On February 14, 2017, "City of Arlington Police Department" filed a motion to dismiss the original complaint of plaintiffs, Michelle Skyy and Sean Valdez. The court notes that after it authorized the marshal to serve the summons and complaint, plaintiffs filed an amended complaint on January 24, 2017. The pending motion thus addresses a complaint that has been superseded. Accordingly, the court finds that the motion should be denied without prejudice so that defendant can address the currently pending pleading. The court further finds that the caption should be changed to reflect that the defendant is City of Arlington.

The court ORDERS that the motion to dismiss filed February 14, 2017, be, and is hereby, denied without prejudice to the filing by March 13, 2017, of an appropriate motion to dismiss the amended complaint.

The court further ORDERS that the caption of this action be amended to reflect that City of Arlington is the defendant.

SIGNED February 21, 2017.



JOHN McCRYDE
United States District Judge

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

MAR 29 2017

CLERK, U.S. DISTRICT COURT

By _____
Deputy

MICHELLE SKYY, ET AL.,

Plaintiffs,

VS.

CITY OF ARLINGTON,

Defendant.

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NO. 4:17-CV-019-A

MEMORANDUM OPINION AND ORDER

Came on for consideration the second motion of defendant, City of Arlington, to dismiss. The court, having considered the motion, the response of plaintiffs, Michelle Skyy ("Skyy") and Sean Valdez ("Valdez"), the record, and applicable authorities, finds that the motion should be granted.

I.

Plaintiffs' Claims

On January 6, 2017, plaintiffs filed their original complaint, Doc.¹ 1, and on January 24, 2017, their first amended complaint for violations of civil rights, Doc. 12. Plaintiffs assert claims under 42 U.S.C. § 1983 for violation of their Fourth Amendment rights and plaintiff Skyy additionally alleges that her Eighth Amendment rights were violated. Plaintiffs seek monetary and punitive damages.

¹The "Doc. __" reference is to the number of the item on the docket in this action.

In brief, plaintiffs allege: On April 29, 2015, they agreed to divorce. They became involved in a scuffle when Skyy tried to take some of Valdez's money and his AR-15 rifle. Skyy called 911. She waited around the corner from their home for police. Arlington police arrested Valdez. Officers asked if they could go inside the house and both Skyy and Valdez declined to give permission. Police used Valdez's keys to enter the home and search it without a warrant or probable cause. Skyy was detained 6 or 7 hours before she was arrested. She told police that Valdez was verbally/emotionally abusive. Valdez told police Skyy had two guns, so officers asked her to retrieve them from her vehicle. They then searched the vehicle and had it towed. Skyy was arrested and notified jail personnel that she had a severe wheat gluten allergy (Celiac Sprue Disease) and endometriosis. Jailers never gave Skyy any food she could eat. She starved for two days and lost 6 pounds. She was kept in a small holding cell for over 6 hours without a restroom or water, which caused severe abdomen pains. Skyy discovered after being released from jail that police had ransacked her home.

II.

Grounds of the Motion

Defendant urges two grounds in support of its motion. First, plaintiffs cannot pursue their claims under § 1983 because they

have failed to identify any custom or policy of defendant that caused them harm. Second, defendant is immune from the claim for punitive damages.

III.

Applicable Legal Standards

A. Motion to Dismiss for Failure to State a Claim

Rule 8(a)(2) of the Federal Rules of Civil Procedure provides, in a general way, the applicable standard of pleading. It requires that a complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 8(a)(2), "in order to give the defendant fair notice of what the claim is and the grounds upon which it rests," Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal quotation marks and ellipsis omitted). Although a complaint need not contain detailed factual allegations, the "showing" contemplated by Rule 8 requires the plaintiff to do more than simply allege legal conclusions or recite the elements of a cause of action. Twombly, 550 U.S. at 555 & n.3. Thus, while a court must accept all of the factual allegations in the complaint as true, it need not credit bare legal conclusions that are unsupported by any factual underpinnings. See Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009) ("While legal conclusions can provide

the framework of a complaint, they must be supported by factual allegations.").

Moreover, to survive a motion to dismiss for failure to state a claim, the facts pleaded must allow the court to infer that the plaintiff's right to relief is plausible. Iqbal, 556 U.S. at 678. To allege a plausible right to relief, the facts pleaded must suggest liability; allegations that are merely consistent with unlawful conduct are insufficient. Id. In other words, where the facts pleaded do no more than permit the court to infer the possibility of misconduct, the complaint has not shown that the pleader is entitled to relief. Id. at 679.

"Determining whether a complaint states a plausible claim for relief . . . [is] a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." Id.

B. Municipal Liability Under § 1983

The law is clearly established that the doctrine of respondent superior does not apply to § 1983 actions. Monell v. New York City Dep't of Soc. Servs., 436 U.S. 658, 691 (1978); Williams v. Luna, 909 F.2d 121, 123 (5th Cir. 1990). Liability may be imposed against a municipality only if the governmental body itself subjects a person to a deprivation of rights or causes a person to be subjected to such deprivation. Connick v.

Thompson, 563 U.S. 51, 60 (2011). Local governments are responsible only for their own illegal acts. Id. (quoting Pembaur v. Cincinnati, 475 U.S. 469, 479 (1986)). Thus, plaintiffs who seek to impose liability on local governments under § 1983 must prove that action pursuant to official municipal policy caused their injury. Monell, 436 U.S. at 691. Specifically, there must be an affirmative link between the policy and the particular constitutional violation alleged. City of Oklahoma City v. Tuttle, 471 U.S. 808, 823 (1985).

Proof of a single incident of unconstitutional activity is not sufficient to impose liability, unless proof of the incident includes proof that it was caused by an existing, unconstitutional policy, which policy can be attributed to a municipal policymaker. Tuttle, 471 U.S. at 823-24. (If the policy itself is not unconstitutional, considerably more proof than a single incident will be necessary to establish both the requisite fault and the causal connection between the policy and the constitutional deprivation. Id. at 824.) Thus, to establish municipal liability requires proof of three elements: a policymaker, an official policy, and a violation of constitutional rights whose moving force is the policy or custom. Piotrowski v. City of Houston, 237 F.3d 567, 578 (5th Cir. 2001).

The Fifth Circuit has been explicit in its definition of an "official policy" that can lead to liability on the part of a governmental entity, giving the following explanation in an opinion issued en banc in response to a motion for rehearing in Bennett v. City of Slidell:

1. A policy statement, ordinance, regulation, or decision that is officially adopted and promulgated by the municipality's lawmaking officers or by an official to whom the lawmakers have delegated policy-making authority; or

2. A persistent, widespread practice of city officials or employees, which, although not authorized by officially adopted and promulgated policy, is so common and well settled as to constitute a custom that fairly represents municipal policy. Actual or constructive knowledge of such custom must be attributable to the governing body of the municipality or to an official to whom that body had delegated policy-making authority.

Actions of officers or employees of a municipality do not render the municipality liable under § 1983 unless they execute official policy as above defined.

735 F.2d 861, 862 (5th Cir. 1984) (per curiam).

The general rule is that allegations of isolated incidents are insufficient to establish a custom or policy. Fratre v. City of Arlington, 957 F.2d 1268, 1278 (5th Cir. 1992); McConney v. City of Houston, 863 F.2d 1180, 1184 (5th Cir. 1989); Languirand v. Hayden, 717 F.2d 220, 227-28 (5th Cir. 1983).

C. Punitive Damages

The law is well-settled that governmental entities are not subject to punitive damages. City of Newport v. Fact Concerts, Inc., 453 U.S. 247, 259-60 & n. 21, 271 (1981); Tex. Civ Prac. & Rem. Code §101.024.

IV.

Analysis

A. § 1983 Claims

As defendant notes, plaintiffs have not pleaded any facts to establish a custom or policy of defendant. Rather, the facts they plead relate only to one incident. Although they argue to the contrary, the gist of their complaint is that defendant is liable because it employed the persons about whom they complain. This is clear, because they argue, for example, that defendant's policy (its "law and rule") is that a judge must sign off on a warrant before officers enter a resident's home, but police failed to follow that procedure. Doc. 20 at unnumbered third page. Failure to follow policy does not create municipal liability absent circumstances not alleged here.

B. Punitive Damages

The law is clear that municipalities are immune from punitive damages. City of Newport, 453 U.S. at 271. See Doc. 19 at 12, n.31 (citing cases). The cases plaintiffs cite are from

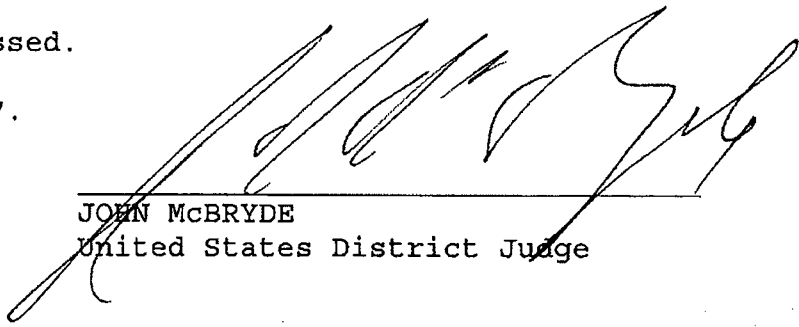
other circuits and are not authoritative in any event. Doc. 20 at unnumbered fifth page and attachment A. Young v. City of Des Moines, 262 N.W.2d 612 (Iowa 1978), was overruled by Parks v. City of Marshalltown, 440 N.W.2d 379 (Iowa 1989). Chestnut v. City of Lowell, 305 F.3d 18 (1st Cir. 2002), did not involve a constitutional issue, and it recognized holding of City of Newport and vacated the judgment for punitive damages. Pulla v. Amoco Oil Co., 72 F.3d 648 (8th Cir. 1995), concerns review of punitive damages in a suit by an employee against his employer and does not involve a municipality. Kemezy v. Peters, 79 F.3d 33 (7th Cir. 1996), was a suit against a police officer. And, the court does not find a opinion or order dated October 15, 2014, in Reeves v. Town of Cottageville, No. 2:12-CV-2765-DCN (D.S.C.), but the record reflects that the matter was settled and a judgment of dismissal entered.

V.

Order

The court ORDERS that defendant's motion to dismiss be, and is hereby, granted, and that plaintiff's claims against defendant be, and are hereby, dismissed.

SIGNED March 29, 2017.



JOHN MCBRYDE
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

MICHELLE SKYY and
SEAN VALDEZ,

Plaintiffs,

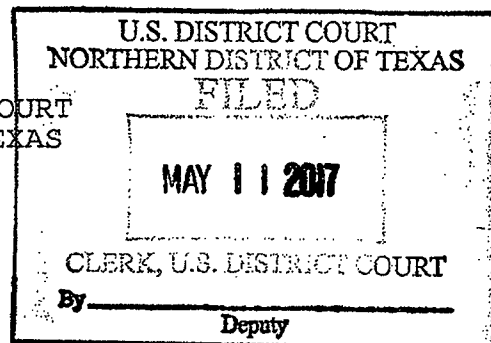
VS.

CITY OF ARLINGTON,

Defendant

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CIVIL ACTION NO.4:17-CV-019-A

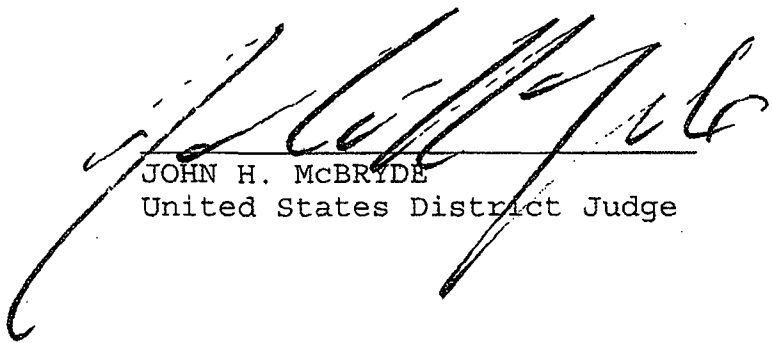


ORDER GRANTING MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS

Now pending is a completed document entitled "Affidavit of Indigency" filed by plaintiffs Michelle Skyy and Sean Valdez. As the document recites the financial condition of these parties, the Court construes it as a motion for leave to proceed in forma pauperis on appeal. After review and consideration of the motion to proceed in forma pauperis on appeal, the court concludes that the motion should be granted. Therefore,

The court orders that the motion to proceed in forma pauperis on appeal (doc. 26) is GRANTED.

SIGNED May 11, 2017.


JOHN H. McBRIDE
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

NORTHERN DISTRICT OF TEXAS

FILED

JAN 13 2017

COURT TEXAS

CLERK, U.S. DISTRICT COURT

By

Deputy

MICHELLE SKYY and
SEAN VALDEZ

VS.

CITY OF ARLINGTON
POLICE DEPARTMENT

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CIVIL ACTION NO. 4:17-CV-019-A

ORDER AUTHORIZING PLAINTIFF TO PROCEED IN FORMA PAUPERIS

Plaintiffs Michelle Skyy and Sean Valdez initiated this suit by filing a complaint, now accompanied by a long-form application to proceed in forma pauperis from each of them. Having reviewed Plaintiffs' in-forma-pauperis motions/applications, the court has determined that Plaintiffs are entitled to proceed in forma pauperis under 28 U.S.C. § 1915(a)(1). Although the information provided indicates that in-forma-pauperis status is presently warranted, Plaintiffs are advised that under 28 U.S.C. § 1915(e)(2), the Court shall dismiss the case at any time if the Court determines the allegations of poverty are untrue, or if the action is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief.¹ See 28 U.S.C. § 1915(e)(2)(B). Therefore,

The court ORDERS that Plaintiffs' motions to proceed in forma pauperis [docket nos. 2, 7, and 8] are GRANTED, such that Michelle Sky and Sean Valdez are authorized to proceed with the commencement

¹No summons shall issue unless authorized by further order of the Court.

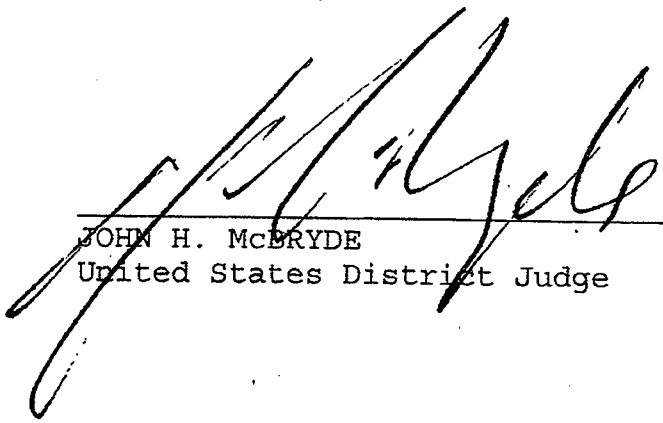
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JAN 25 2018

OFFICE OF THE CLERK
SUPREME COURT, U.S.

of this civil suit without prepayment of fees or the necessity of giving security therefor.

SIGNED January 13, 2017.



JOHN H. MCBRYDE

United States District Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-10529

MICHELLE SKYY; SEAN VALDEZ,

Plaintiffs - Appellants

v.

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Appeal from the United States District Court
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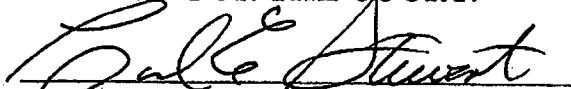
ON PETITION FOR REHEARING

Before STEWART, Chief Judge, and ELROD and HIGGINSON, Circuit
Judges.

PER CURIAM:

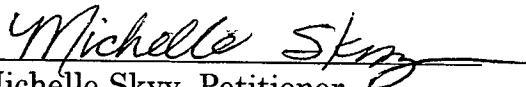
IT IS ORDERED that the petition for rehearing is *DENIED*

ENTERED FOR THE COURT:


UNITED STATES CIRCUIT JUDGE

CERTIFICATE OF SERVICE

Petitioners hereby certify that on the 22nd day of January, 2018 a physical mailed copy of the foregoing Petition was filed with the Clerk of Court for the Supreme Court of the United States. The same holds true of a copy served by agreed email to the Respondent, Robert Fugate, Respondent's Attorney, since the District Court's policy with named Judge did not require Petitioner to file electronically.


Michelle Skyy, Petitioner


Sean Valdez, Petitioner