

No. _____

In the

Supreme Court of the United States

STEVEN R. DEWITT,

Petitioner,

vs.

CERESSA HANEY, TRENT SEXTON, AND MELANIE PRETTI

Respondent.

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

Petitioner respectfully requests leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*. Petitioner was granted leave to proceed *in forma pauperis* and represented by court-appointed counsel on appeal in the United States Court of Appeals for the Eleventh Circuit under Addendum Five of that Court's rules. A copy of the appointment order has been appended to this motion.

Respectfully submitted,

s/ E. Travis Ramey

E. Travis Ramey

Counsel of Record

Appellate Advocacy Clinic

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**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

STEVEN R. DEWITT,

Plaintiff,

vs.

Case No. 4:21cv340-AW-MAF

LOMAR BARKLEY, et al.,

Defendants.

_____ /

ORDER

Plaintiff, proceeding pro se, has initiated this case by submitting a civil rights complaint pursuant to 42 U.S.C. § 1983, ECF No. 1, a motion for in forma pauperis status, ECF No. 2, a motion requesting issuance of a subpoena, ECF No. 3, and a motion requesting leave to amend the complaint to name the unknown person, ECF No. 4. Review of Plaintiff's in forma pauperis motion demonstrates that Plaintiff qualifies for in forma pauperis status. Thus, good cause having been shown, Plaintiff is not required to pay the filing fee for this case.

Prior to reviewing Plaintiff's complaint, ECF No. 1, and the motions filed therewith, Plaintiff submitted a first amended complaint. ECF No. 5.

This version of the complaint has been reviewed. Because it is insufficient as filed, Plaintiff is required to submit a second amended complaint.

In general, Plaintiff alleges that on July 21, 2021, he went to the lobby of the Office of Intervention and Detention Alternatives. ECF No. 5 at 9. He indicates that he was waiting in the lobby to speak with Virginia Jackson and “conduct a First Amendment audit.” *Id.* While waiting, an unknown female told Plaintiff several times that she was not giving him “permission to record her.” *Id.* A disagreement arose between them and, at some point, she ordered Plaintiff to leave the building. *Id.* When Plaintiff refused, the police were called and Plaintiff was eventually coerced to leave under the threat of arrest. *Id.* at 10.

In asserting claims for violating his First Amendment rights, Plaintiff seeks to name Defendants Lomar Barkley and the City of Tallahassee for the actions of other persons on a theory of respondeat superior. ECF No. 1 at 10 and 14. Plaintiff asserts that the respondeat superior doctrine makes “an employer or principal liable for wrong of an employee or agent if it was committed within the scope of employment or agency.” *Id.* at 10; see *also id.* at 15. Plaintiff is not correct.

The doctrine of respondeat superior or vicarious liability does not provide a basis for recovery in a § 1983 civil rights action. Piazza v. Jefferson Cty., 923 F.3d 947, 957 (11th Cir. 2019) (stating “[s]upervisory officials cannot be held liable under § 1983 for unconstitutional acts by their subordinates based on respondeat-superior or vicarious-liability principles” and citing Hartley v. Parnell, 193 F.3d 1263, 1269 (11th Cir. 1999)). Instead, there must be “allegations of personal participation” or facts showing “a ‘causal connection’ between a supervisor’s actions and the alleged constitutional violation.” Piazza, 923 F.3d at 957 (citing Cottone v. Jenne, 326 F.3d 1352, 1360 (11th Cir. 2003)). A causal connection may be shown by pointing to “a supervisor’s policy or custom” that “resulted in “deliberate indifference to constitutional rights.” 923 F.3d at 957 (citing Cottone, 326 F.3d at 1360-61). It may also be shown by “the absence of a policy [which] led to a violation of constitutional rights.” 923 F.3d at 957 (citing Rivas v. Freeman, 940 F.2d 1491, 1495 (11th Cir. 1991)). Either way, a plaintiff cannot “prove that a policy or its absence caused a constitutional harm” without pointing to multiple incidents or “multiple reports of prior misconduct by a particular employee.” *Id.* at 957. Here,

Plaintiff points to no such facts. Accordingly, there is no basis for supervisory liability in this case against the City or Defendant Barkley.

Moreover, Plaintiff's complaint does not adequately demonstrate that his First Amendment rights were violated. Plaintiff alleges that he was in a public building and, additionally, judicial notice can be taken that the Office of Intervention and Detention Alternatives is operated by the Leon County Probation Department. However, Plaintiff has not alleged that he was engaging in public speech, participating in a demonstration, or otherwise pursuing protected First Amendment activities. Plaintiff states only that he was on the premises to "conduct a First Amendment audit," ECF No. 1 at 11, and it appears that the person he wanted to speak with (Virginia Jackson) was not present at the time.¹ Plaintiff must explain that allegation and provide facts to support his First Amendment claims.

Additionally, Plaintiff filed a motion seeking issuance of a subpoena to obtain the body camera recordings of the police officers involved in this case. ECF No. 3. He contends that he submitted a public records request for that information, but was informed he would receive redacted versions.

¹ The amended complaint indicates that Jackson was on "her lunch break." ECF No. 5 at 11.

Id. at 3. Plaintiff's motion is denied without prejudice at this time. Issuance of a subpoena comes during the discovery phase of litigation; this case has not progressed that far. Plaintiff must first present a viable amended complaint and Defendants must be served with process. Additionally, Plaintiff's argument that he is entitled to obtain the camera recordings pursuant to the Freedom of Information Act [FOIA] is incorrect. That act pertains to federal agencies and departments, see 5 U.S.C. § 551(1), not a local police department. Thus, Plaintiff may have other avenues to obtain the recordings, but the FOIA does not allow it.

Finally, Plaintiff filed a motion requesting leave to amend his complaint at a later time when he has learned the identity of the unknown Defendant. ECF No. 4. This motion is denied as premature. Plaintiff may use the discovery process to learn the identity of the Jane Doe (unknown) Defendant. Thereafter, he should file a motion requesting service be made on the individual, providing a name and address for that service. Plaintiff may also request the complaint be amended at that time to provide the correct name of the party being sued. Fed. R. Civ. P. 15(c).

Plaintiff will be provided another complaint form and he shall have until **September 20, 2021**, in which to file a second amended complaint.

Plaintiff is reminded that he must name as Defendants only those persons who are responsible for the alleged constitutional violations. Plaintiff must place their names in the style of the case on the first page of the civil rights complaint form and in the other appropriate sections of the form. Further, Plaintiff should clearly state the factual allegations which support the legal conclusions of the complaint; merely stating legal conclusions is insufficient. Plaintiff must set forth each allegation in a separately numbered paragraph, as it is essential that the facts relating to each Defendant be set out clearly and in detail.

The second amended complaint must contain all of Plaintiff's allegations and should not in any way refer to prior versions of the complaint. As an amended complaint completely replaces all previous complaints, claims not raised in the second amended complaint are deemed abandoned. N.D. Fla. Loc. R. 15.1. The second amended complaint filed with the Court must contain Plaintiff's original signature, but Plaintiff shall also keep an identical copy for himself.

Accordingly, it is **ORDERED**:

1. Plaintiff's in forma pauperis motion, ECF No. 2, is **GRANTED**, and Plaintiff is not required to pay the filing fee for this case.

2. Plaintiff has until **September 20, 2021**, in which to submit a second amended complaint in compliance with this Order. Plaintiff need not file service copies until instructed to do so by the Court.

3. Plaintiff's motion for issuance of a subpoena, ECF No. 3, is **DENIED** without prejudice.

4. Plaintiff's motion requesting subsequent leave to amend, ECF No. 4, is **DENIED** as premature.

5. Plaintiff must immediately file a notice of change of address with the Clerk's Office in the event that his address changes. This Court will not seek to locate a non-incarcerated litigant, so if mail cannot reach Plaintiff, this case may be dismissed.

6. **Failure to comply with this Court Order may result in a recommendation of dismissal of this action.**

7. The Clerk of Court shall return this file upon receipt of Plaintiff's compliance with this Order or no later than September 20, 2021.

DONE AND ORDERED on August 19, 2021.

S/ Martin A. Fitzpatrick
MARTIN A. FITZPATRICK
UNITED STATES MAGISTRATE JUDGE

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

STEVEN R. DEWITT,

Plaintiff,

v.

Case No. 4:21-cv-340-AW-MAF

CERESSA HANEY, et al.,

Defendants.

_____/

ORDER GRANTING MOTION TO PROCEED IFP ON APPEAL

Plaintiff Steven DeWitt had moved to proceed *in forma pauperis* on appeal. Generally, a litigant may proceed IFP on appeal without further authorization when he had IFP status in the district court. Fed. R. App. P. 24(a)(3). But both 28 U.S.C. § 1915(a)(3) and Federal Rule of Appellate Procedure 24(a)(3) provide that an appeal may not be taken IFP if the trial court certifies in writing that the appeal is not taken in good faith. Because I do not find the appeal to be in bad faith, and because DeWitt proceeded IFP here (*see* ECF No. 7), the motion (ECF No. 78) is GRANTED, and DeWitt may appeal without paying the filing fee.

SO ORDERED on May 1, 2023.

s/ Allen Winsor

United States District Judge

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

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.call.uscourts.gov

May 11, 2023

Steven R. Dewitt
2315 JACKSON BLUFF RD APT 427-E
TALLAHASSEE, FL 32304

Appeal Number: 23-11203-HH
Case Style: Steven Dewitt v. Ceressa Haney, et al
District Court Docket No: 4:21-cv-00340-AW-MAF

NO ACTION / DEFICIENCY NOTICE

No action will be taken on the filing submitted by Appellant Steven R. Dewitt. Motion to proceed in forma pauperis [9934990-2].. Motion to proceed in forma pauperis filed/granted in District Court on May 1, 2023.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
New / Before Briefing Cases:	404-335-6135	Capital Cases:	404-335-6200
Cases in Briefing / After Opinion:	404-335-6130	CM/ECF Help Desk:	404-335-6125
Cases Set for Oral Argument:	404-335-6141		

Notice No Action Taken

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

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

October 01, 2024

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 23-11203-HH
Case Style: Steven Dewitt v. Ceressa Haney, et al
District Court Docket No: 4:21-cv-00340-AW-MAF

The enclosed order has been ENTERED.

Electronic Filing

All counsel must file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Although not required, non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing are available on the Court's website.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

MOT-2 Notice of Court Action

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-11203

STEVEN R. DEWITT,

Plaintiff-Appellant,

versus

UNKNOWN PERSON, et. al.,

Defendants,

CERESSA HANEY,
Supervisor,
TRENT SEXTON,
Police Officer,
MELANIE PRETTI,
Police Officer,

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Order of the Court

23-11203

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 4:21-cv-00340-AW-MAF

ORDER:

On the Court's own motion, the Court directs counsel to be appointed to represent the appellant in this appeal. Counsel will be appointed by separate order.

DAVID J. SMITH
Clerk of the United States Court of
Appeals for the Eleventh Circuit

ENTERED FOR THE COURT - BY DIRECTION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-11203

STEVEN R. DEWITT,

Plaintiff-Appellant,

versus

UNKNOWN PERSON, et. al.,

Defendants,

CERESSA HANEY,
Supervisor,
TRENT SEXTON,
Police Officer,
MELANIE PRETTI,
Police Officer,

2

Order of the Court

23-11203

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 4:21-cv-00340-AW-MAF

ORDER:

The Court previously ordered that counsel would be appointed for the Appellant Steven R. Dewitt. The Court hereby appoints the following attorney as counsel for Appellant under Addendum Five to this Court's rules:

E. Travis Ramey
Director, Appellate Advocacy Clinic
The University of Alabama School of Law
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Phone: (205) 348-4960
Email: tramey@law.ua.edu

/s/ Charles R. Wilson
UNITED STATES CIRCUIT JUDGE