

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION
CIVIL ACTION NO. 3:02-CV-443-C

FILED
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WESTERN DISTRICT OF KY
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ROBERT D. HARDIN

PLAINTIFF

VS.

SETTLEMENT CONFERENCE STATEMENT
OF PLAINTIFF

WILLIAM S. CARCARA, ET AL

DEFENDANTS

*** ** ** ** **

SUMMARY OF THE CASE

This action, pursuant to § 42 U.S.C 1983 arose as a result of Defendant, Mark Watson's activities while a detective with Metro Narcotics of the combined Louisville Jefferson County police force. Watson's entanglement with Plaintiff Hardin commenced on or about March 25, 1998, when Watson allegedly received a tip from a confidential informant about drug activities in the home of Robert Hardin. Watson procured a warrant based on the alleged information provided by the informant, and following a raid on the Defendant's home pursuant to that warrant, and as a result of the physical assault by Defendant Watson on Mr. Hardin, Mr. Hardin suffered an angina attack, and was transported to Audubon Hospital where a complete blood work up was done as a result his hospitalization. Watson alleged that Hardin flushed some form of cocaine down the toilet when the police entered the home, and in fact broke the commode to establish whether or not there was any cocaine, which might have been caught in the trap, of which there was not, although valium was found at the residence. (Hardin is a heart patient, had a prescription for valium).

A blood analysis of Mr. Hardin from the night of his arrest indicated no trace of any controlled substance in his bloodstream despite the allegations contained in the warrant, that the confidential informant had seen Mr. Hardin smoke crack cocaine and marijuana at his residence, and further, that five (5) drug transactions took place in the informant's presence in the past 48 hours inside the Defendant's residence. The Jefferson Circuit Court, despite the medical evidence, relied on the testimony taken from Defendant Watson, and a Affidavit filed by Watson in the criminal action, and denied Mr. Hardin's Motion to Suppress the Evidence. A Plea Agreement was reached, and Hardin plead guilty in exchange for similar charges against his wife being dismissed. Following Watson's arrest and conviction, the Defendant moved to reopen this criminal case again, alleging the fraudulent Affidavit, and this time when the Commonwealth checked with the informant named on the pay voucher contained in the police files, it was determined that the named individual (code name John Homes) did not know Hardin, nor had he ever been to Hardin's home, nor had he ever provided any of that information. On that basis, the conviction was set aside, and the case was dismissed.

At the criminal trial of Watson and Christine Richardson, Watson plead guild to 299 felonies and three (3) misdemeanor offenses, and was sentenced to 20 years in prison. The incident involving Hardin occurred prior to the indictment period, but Watson's conduct is consistent with those offenses for which he was charged, and plead guilty. As noted in the Settlement Conference Statement of Plaintiff, Northington, the jury which heard the evidence against Ms. Richardson, wrote ...

“we felt that her misdeeds resulted, in part, from extremely lax enforcement of the SOP, and very permissive attitude on the part of some of her superiors, to liberties which were taken.”

In the course of this case, Mr. Watson has been deposed twice, and has made statements to the effect that the procedures he employed were taught to him by other officers in the Street Division, of which he was initially assigned, but he subsequently refused to answer any questions at the second deposition based on his asserting his Fifth Amendment privilege. Watson also refused to identify the alleged informant, which has since been ordered by this Court, and is currently under review by the District Judge.

In response to the criminal activities of Mr. Watson, the services of Executive Research Forum were retained to conduct an investigation into the processes, procedures, and policies of the Metro Narcotics Task Force, which resulted in the 75 page assessment, including 69 recommendations for necessary change to hold the Task Force to the highest standards of professional competence.

Plaintiff has retained the expert services of Dr. Paul McCauley, Phd., BCFE, to testify on behalf of the Plaintiff as an expert in this case. Although Dr. McCauley has not issued a written report yet, as discovery has not been completed, it is believed by the Plaintiff, that his testimony will corroborate Plaintiff's impressions and belief that there was lack of institutional control, and therefore, liability would attach for lack of adequate administrative supervision.

PLAINTIFF'S CLAIMS

Plaintiff filed this suit alleging that his Civil Rights were violated pursuant to the 14th Amendment and under § 14 U.S.C. 1983. The Plaintiff also alleges a Monell claim (Monell, et al v Department of Social Services of the City of New York, et al) 436 U.S. 658.98 S. Ct. 2018, 56 L.Ed .2d. 611 (1978 U.S. LEXIS 100) against Louisville and Jefferson County Metro Government and its predecessors, and interests for failure to train and adequately supervise the

Defendant Watson, for its failure to adequately and properly investigate citizens complaints of misconduct against officers of Metro Narcotics Division, and deliberate indifference to the Constitutional Rights of the persons within the municipality. All of these claims are still pending.

DAMAGES

The Plaintiff, Robert Hardin, as a result of the physical assault on his person by Defendant Watson, suffered an angina attack during the course of the arrest. Also seized were sums of money from his wife at the time of his arrest. All of the money has been returned, however, Plaintiff incurred medical expenses in excess of \$7,000.00 for his stay in the hospital, and further treatment. In addition, there is a significant legal expense in excess of approximately \$20,000.00 involved in research, depositions, and other expenses incurred to date. Should this matter go to trial, additional legal fees will be incurred, which could escalate the costs of settlement significantly. No discovery has been taken with regard to the Plaintiff's medical proof as yet, as we are awaiting the determination with regard to liability on behalf of the municipality.

ISSUES OF LAW

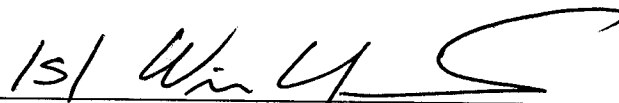
The issues of law in this case center on the Metro Government's claim of limited sovereign immunity and that Louisville Metro Government is not a person, as defined by § 42 *U.S.C. 1983*. Further, the County would argue that in order for the Plaintiff to prevail, they would have to show an affirmative acts of indifference to their supervisory role in order to be culpable in this case. With regard to the first possession, clearly Monell has put that claim to rest. It now clearly makes municipalities and other local governments subject to the ambit of

1983 claims. Even the more recent Will v Michigan Department of State Police, 491 U.S. 58, 105 L. Ed. 45, 109 S. Ct. 2304 (1989), originally a 6th Cir. Case, held that while “neither a State nor its officials acting in their official capacities are ‘persons’ under § 1983” that only applies to States, which are protected from suit based on Eleventh Amendment immunity. No such immunity attaches to municipalities and municipal governments, as the holding of Monell was expressly distinguished in that action.

Monell itself is not to the contrary. True, prior to Monell the Court had reasoned that if municipalities were not persons then surely States also were not. And Monell overruled Monroe, undercutting that logic. But it does not follow that if municipalities are persons then so are States. States are protected by the Eleventh Amendment while municipalities are not, and we consequently limited our holding in Monell ‘to local government units which are not considered part of the State for Eleventh Amendment purposes.’ Conversely, our holding here does not cast any doubt on Monell, and applies only to States or governmental entities that are considered ‘arms of the State’ for Eleventh Amendment purposes. *Id at 70* (Internal and external citations omitted).

Thus, County Government is not rescued under the Will holding, as this action was brought prior to consolidation of Metro Government, and irrespective of the status of Metro Government, the City of Louisville and Jefferson County Government, its individual predecessors, fall within the individual ambit of Monell and subject to liability. With regard to the second potential defense, that of negligent administration, the Plaintiff’s believe that there was a plethora of evidence produced at Watson’s trial, which lead the jury to conclude that the City was grossly negligent in its management of the Metro County Narcotics Task Force. Based on what we believe the evidence will show, we believe County Government will be bound in this case and therefore, liability will attach.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the Settlement Conference Statement of Plaintiff was mailed via first-class postage paid U.S. mail on November 14th, 2005 to parties in this action at the addresses listed below:

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Respectfully submitted,



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