

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Jermaine Wilson and Dameon)
Sanders, individually and for a)
class)
)
Plaintiffs,) 14-cv-8347
)
-vs-) (*Judge Lee*)
)
City of Evanston, Illinois,)
)
Defendant.)

**RESPONSE TO DEFENDANT'S CROSS MOTION
FOR SUMMARY JUDGMENT**

The Court should deny defendant's cross motion for summary judgment: defendant fails to support its motion with evidentiary material and relies on at least one erroneous legal theory.¹

**I. The Court Should Deny the Cross-Motion for
Summary Judgment for Failure to Comply with Local
Rule 56.1**

Defendant flouts the requirements of Local Rule 56.1. First, defendant includes 91 statements of "undisputed facts," rather than the 80 permitted by the Local Rule.

Second, defendant includes several factual contentions in its "Statement of Undisputed Facts" (ECF No. 160) without a citation to

¹ Defendant does not seek summary judgment on plaintiffs' Takings Claim, limiting its cross-motion to plaintiff's Due Process claims.

evidentiary materials or with a citation that contradicts the contention.

The following are among the improper contentions:

Contention 31: The Prisoner Property Receipts attached as Exhibits 5 and 6 refers arrestees to the EPD website.

The reference on the form to the EPD website is to obtain “the normal operating hours of the Property Bureau.” (ECF Nos. 160-6, 160-7.)

This is vastly different than “referring” arrestees to the EPC website.

Contention 33: The City of Evanston posts information about arrestee property on its website, www.cityofevanston.org contained in Exhibits 9, 10 and 11.

Contention 34: Plaintiffs had access to the internet while in custody at CCDOC.

Contentions 35 and 36: Description of material purportedly posted on Evanston’s website.

Defendant does not provide any evidentiary materials to support either of these three contentions.

Contention 38: The Property Disposal section referenced in Exhibits 9 to 11 provides that property owners may make a written request for an extension of the holding period.

Defendant does not provide a citation to any evidentiary material to support this contention.

Contention 51: Most arrestee property is retrieved.

Defendant supports this contention with a citation to the deposition of Michael Wasowicz (ECF No. Wasowicz Dep. 46:5-10), an Evanston employee. Plaintiffs set out lines 5-17 of the deposition below:

Q: What's the number of items that are unclaimed each year?

Wasowicz: I don't know the specific number of items that are unclaimed.

Most items are picked up. I don't know I can't give you a specific number at this point as to what's unclaimed.

Q: Is is more than ten a month that are unclaimed?

Defense: Objection, calls for speculation. If you know.

Wasowicz: I've never looked at the numbers for unclaimed either on a monthly basis or an annual basis so I don't have a number.

(ECF No. 152-16, Wasowicz Dep. 46:5-17.) Testimony from a witness who admits that he "never looked up the numbers" does not support the claim that "most arrestee property is retrieved."

Contention 59: The Prisoner Property Receipt attached as Exhibit 6 demonstrates that Sanders transferred possession of the identified personal property to the EPD.

Defendant fails to provide a page citation for this claim and ignores the deposition testimony of plaintiff Sanders that the signature at the bottom of Exhibit 6 was not his signature. (ECF No. 160-9 at 9, Sanders Dep. 30:6-16.)

The Court should enforce Local Rule 56.1 and strike defendant's cross motion. *Brownlee v. Catholic Charities of the Archdiocese of Chicago*, No. 16-CV-665, 2020 WL 977968, at *4 (N.D. Ill. Feb. 28, 2020). This sanction is especially appropriate because defendant is represented by counsel and includes factual contentions that are contrary to the record.

II. Deliberate Indifference Is Not an Element of Plaintiffs' Challenge to an Express Municipal Challenge

Defendant contends it is entitled to summary judgment because plaintiffs are unable to prove deliberate indifference. (ECF No. 159 at 9-10.) Deliberate indifference, however, is not an element of the claim in this case.

Unlike cases involving municipal inaction, where the plaintiff must provide that the municipality “has notice that its program will cause constitutional violations,” *J.K.J. v. Polk Cty.*, 960 F.3d 367, 379 (7th Cir. 2020), deliberate indifference is not required when, as in this case, constitutional injury is caused by an express municipal. The Supreme Court established this principle in *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658 (1978), which arose from an “official policy [that] compelled pregnant employees to take unpaid leaves of absence before such leaves were required for medical reasons.” *Id.* at 661. “Deliberate indifference” is only an element of a *Monell* claim that involves the failure of the municipality to respond to a need, such as a failure to prevent suicides in detention facilities, *Frake v. City of Chicago*, 210 F.3d 779, 782 (7th Cir. 2000), a failure to train. *Rankin v. Wexford Health Sources, Inc.*, No. 16 C 9534, 2019 WL 3554543, at *4 (N.D. Ill. Aug. 5, 2019), or a failure

to prevent the loss or theft of detainee property. *Elizarri v. Sheriff*, 901 F.3d 787, 788 (7th Cir. 2018).

Evanston in this case has an express policy to dispose of detainee property that is not retrieved within 30 days of arrest, even for arrestees who are pre-trial detainees and unable to retrieve their property. Deliberate indifference is therefore not part of the class claim.

III. Conclusion

For the reasons above stated, the Court should deny defendant's cross-motion for summary judgment.

Respectfully submitted,

/s/ Kenneth N. Flaxman
Kenneth N. Flaxman
ARDC 830399
Joel A. Flaxman
200 S Michigan Ave Ste 201
Chicago, IL 60604-2107
(312) 427-3200

attorneys for the plaintiff class