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

Curtis Lamond Oats, Sr.,	)	
	)	No. 22-cv-50113
Plaintiff,	)	
	)	
vs.	)	Judge Johnston
	)	
McHenry County, Illinois	)	
and Jason Enos,	)	Magistrate Judge Schneider
	)	
Defendants.	)	

DEFENDANTS' MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT

Defendants McHenry County, Illinois and McHenry County Animal Control Officer Jason Enos, through Patrick Kenneally, McHenry County State's Attorney, and his duly authorized Assistant State's Attorneys, Andrew Hamilton and Troy Owens, and for their Memorandum in Support of Summary Judgment submits the following.

INTRODUCTION

Plaintiff's complaint seeks relief under §1983 for malicious prosecution, violations of the fourth amendment and first amendment retaliation (Collectively hereinafter referred to as "Plaintiff's Claims"), based upon a 2021 ordinance violation (the "OV") that was issued to Plaintiff by an employee of Defendant. The OV charged the failure to register a domestic animal that was being maintained on Plaintiff's residential property, as well as the failure to vaccinate said animal. The Court should grant summary judgment against Plaintiff because there is no genuine issue of material fact, and, as a matter of law, that the discovery record has revealed a gross failure of proof regarding Plaintiff's inability to establish the necessary elements of Plaintiff's Claims.

FACTUAL BACKGOUND

Defendants incorporate Defendants' Statement of Undisputed Material Facts.

STANDARD OF REVIEW

Summary judgment is proper where the record demonstrates "that there is no genuine issue as to any material fact, and the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). A genuine issue of material fact arises if sufficient evidence favoring the nonmoving party exists to permit a reasonable jury to return a verdict for that party. *Ajayi v. Aramark Business Services*, 336 F.3d 520, 527 (7th Cir. 2003).

The moving party bears the initial burden of identifying those portions of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

The nonmoving party cannot rest on the pleadings alone, but must identify specific facts that raise more than a mere scintilla of evidence to show a genuine triable issue of material fact. *See Murphy v. ITT Technical Services, Inc.*, 176 F.3d 934, 936 (7th Cir. 1999). In deciding a motion for summary judgment, the court can only consider evidence that would be admissible at trial under the Federal Rules of Evidence. *Bombard v. Fort Wayne Newspapers, Inc*., 92 F.3d 560, 562 (7th Cir. 1996). Finally, conclusory allegations alone cannot defeat a motion for summary judgment. *Thomas v. Christ Hospital and Medical Center*, 328 F.3d 890, 2003 U.S. App. LEXIS 7921, at *11 (7th Cir. April 25, 2003)

I. THERE IS NO GENUINE ISSUE OF MATERIAL FACT THAT PLAINTIFF HAS FAILED TO ESTABLISH THAT DEFENDANT ENOS COMMENCED THE UNDERLYING ORDINANCE COMPLAINTS OUT OF MALICE.

The tort of malicious prosecution requires the plaintiff to prove five elements: (1) the commencement or continuance of an original criminal or civil judicial proceeding by the defendant; (2) the termination of the proceeding in favor of the plaintiff; (3) the absence of

probable cause for such proceeding; (4) the presence of malice; and (5) damages resulting to the plaintiff. *Beaman v. Freesmeyer*, 2019 IL 122654, *P26. In order to show malice, a plaintiff must prove the prosecution was initiated for a reason other than to bring plaintiff to justice. *Holland v. City of Chicago*, 643 F.3d 248, 255 (7th Cir. 2011).

On March 23, 2022, Animal Control Officer Janelle Carlson issued two complaints against Plaintiff for failure to register under McHenry County Ordinance Code Article 6, 8.04.840 (Failure to Register) and Article 6, 8.04.890 (Failure to Register) in McHenry County Case No. 22OV000313. *DSMF, ¶30.* Defendant Enos never issued any of the complaints alleging violations of the McHenry County Ordinance Code against the Plaintiff. *DSMF, ¶32*

Applied to the instant action, there is the sum total of zero evidence that Defendant Enos issued the complaints that form the basis of Plaintiff's third amended complaint. Plaintiff has not pled the identity of the alleged agent who issued said complaints. As such, to the extent Plaintiff seeks recovery against Defendant Enos for initiating the civil prosecution act issue, there is no possibility of establishing that he did so. The only evidence is that he did not.

Given that the only evidence in the discovery record is that Defendant Enos did not issue any of the complaints that form the basis of Plaintiff's malicious prosecution claims, finding a material issue of fact that he supposedly did so out of malice is a factual impossibility.

Summary judgment should be granted in Defendant Enos' favor as it pertains to any allegation that he commenced the civil prosecution and did so maliciously.

II. THERE IS A GROSS FAILURE OF PROOF THAT PLAINTIFF SUFFERED ANY DAMAGES PURSUANT TO HIS MALICIOUS PROSECUTION CLAIM.

Without any evidence of damages, claims of malicious prosecution are ripe for summary judgment. *Turner v. City of Chi.*, 2015 U.S. Dist. LEXIS 159139, *11-12. The burden rests on the

party seeking to recover to establish that he sustained damages and to establish a reasonable basis for the computation of those damages." *Sharon Leasing, Inc. v. Phil Terese Transp., Ltd.*, 299 Ill.App.3d 348, 356, (1998). Evidence of damages cannot be remote, speculative, or uncertain. *Dowd & Dowd, Ltd. v. Gleason*, 352 Ill.App.3d 365, 383-84, (2004).

In *Turner*, the court noted that:

> During discovery, the plaintiffs failed to produce any information on damages, other than Rule 26 disclosures which generally identified the categories of damages sought by plaintiffs: "Compensatory [sic] and pain/suffering damages and attorney's fees" and "nominal damages (civil rights violations) (if applicable), and punitive damages and attorney's fees". *Id*., *13.

For purposes of summary judgment, the court found that the evidence referred to was insufficient to raise a genuine issue material fact. The court granted summary judgment against Plaintiff based upon plaintiff's failure of proof regarding Plaintiff's lack of damages. The case before the Court is actually worse than the *Turner* plaintiff.

In his deposition, Plaintiff admitted that he has not suffered the following forms of damages. Plaintiff admitted that has not suffered damages for mental health or physical injury. *DSMF,* ¶34. Plaintiff is not seeking recovery for any wage loss. *DSMF,* ¶37. Plaintiff has not suffered out of pocket expenses. *DSMF,* ¶37. Plaintiff was unable to identify any economic injury or damages. *DSMF,* ¶37. Plaintiff is not seeking to recover any of the costs of bringing the instant action. *DSMF,* ¶38. Finally, Plaintiff refused to answer whether he is seeking attorney fees or how much, if any, he spent on the same. *DSMF,* ¶39. In sum, Plaintiff's injury and damages are, at best, remote, speculative, or uncertain. At worst, they are non-existent. Either way, Plaintiff has produced the sum total of zero evidence of injury or damages, making summary judgment appropriate.

III. THERE IS NO GENUINE ISSUE OF MATERIAL FACT THAT PLAINTIFF HAS FAILED TO ESTABLISH THAT DEFENDANTS VIOLATED PLAINTIFF'S FOURTH AMENDMENT RIGHTS.

In order to make a viable § 1983 claim against Officer Enos, a plaintiff must establish the violation of a federal right." *Golden State Transit Corp. v. Los Angeles*, 493 U.S. 103, 106. A plaintiff must also establish that the person who violated his rights acted under color of state law. *Gomez v. Toledo*, 446 U.S. 635, 604. When a §1983 claim is based on an alleged violation of the Fourth Amendment, a plaintiff is required to establish two additional elements: "(1) that the officers' conduct constituted a search or seizure and (2) that the search or seizure was 'unreasonable.'" *White v. City of Markham*, 310 F.3d 989, 993.

Applying this claim against Defendant McHenry County, however, Plaintiff has an additional hurdle. In ¶20 of the third amended complaint, Plaintiff seeks to apply the doctrine of *respondent superior* to Defendant McHenry County based upon the alleged tortious conduct of Defendant Enos. However, under *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978), a governmental party can only held liable for its own violations of the federal constitution.

Under *Monell,* a governmental entity's own violations consist of a policy or custom made by lawmakers or by those "whose edicts and acts may fairly aid to represent official policy." *Monell*, 694.

To prevail on a *Monell* claim, a plaintiff must establish: (1) a deprivation of a federal right; (2) some governmental action can be traced to the deprivation, i.e., policy or custom; (3) policy or custom demonstrating the governmental entity's fault; and (4) government action that was the moving force behind the federal violation. *Dean v. Wexford Health Service, Inc.*, 18 F.4th 214, 235 (7th Cir. 2021). Absent such a showing, Plaintiff's respondent superior claim fails as a matter of law.

i. PLAINTIFF'S FOURTH AMENDMENT CLAIM FAILS AS MATTER OF LAW AGAINST DEFENDANT ENOS.

Plaintiff's Fourth Amendment claim is seeded in the false allegation that Defendant Enos "searched" Plaintiff's mailbox. Defendant Enos denies this allegation. *DSMF*, ¶25-26. However, even viewing the evidence in the most favorable light for Plaintiff, the allegation still fails as a matter of law.

The doctrine of qualified immunity insulates government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Pearson v. Callahan*, 555 U.S. 223, 231 (2009).

It is undisputed that said mailbox is not attached to Plaintiff's home, but, rather, exists at the edge of his property line near the adjoining street that his home is located on. *DSMF*, ¶24. There is no evidence that there is a lock on the mailbox. DSMF, ¶21. "A search within the meaning of the Fourth Amendment occurs only when a reasonable expectation of privacy is infringed." *United States v. Ruth*, 65 F.3d 599, 604 (7th Cir. 1995). "The Amendment does not protect the merely subjective expectation of privacy, but those '[expectations] that society is prepared to recognize as 'reasonable." *Oliver v. United States*, 466 U.S. 170, 177 (1984).

While Fourth Amendment protections extend to the curtilage of one's home, whether an area outside of one's home is considered "curtilage" depends on several factors. *United States v. Dunn*, 480 U.S. 294, 300 (294). The factors include, "the proximity of the area claimed to be curtilage to the home, whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by." *Id.,* 301. Here, an analysis of these factors, even in the light most favorable to Plaintiff, reveals that the area by Plaintiff's mailbox is not included within

the curtilage of Plaintiff's property. Specifically, Plaintiff's mailbox was two to three steps from the public street. *DSMF,* ⁋*25*. Plaintiff's mailbox was unlocked. *DSMF,* ⁋ *17*. There is no evidence showed that Plaintiff made any attempt to shield the mailbox from public view or access, (*DSMF,* ⁋ *21*) and the mailbox was not attached to the home (*DSMF,* ⁋*18*) are facts that support Defendants' position here. As a result, Plaintiff has failed to establish a reasonable and legitimate expectation of privacy in the area near his mailbox.

Plaintiff has also failed to establish a clearly discerned constitutional right consistent with cases interpreting the Fourth Amendment in a mailbox that is unattached to his home. Several jurisdictions have held that an individual has minimal to no reasonable expectation of privacy in an unlocked mailbox. See *United States v. Green*, 2019 U.S. Dist. LEXIS 64953 (D. Mont. April 16, 2019) (no reasonable expectation of privacy in a residential mailbox under circumstances); *United States v. Stokes*, 829 F.3d 47 (1st Cir. 2016) (no expectation of privacy in a P.O. Box); *United States v. Osunegbu*, 822 F.2d 472 (5th Cir. 1987) (minimal expectation of privacy in P.O. Box); *United States v. Lewis*, 738 F.2d 916 (8th Cir. 1984) (no legitimate expectation of privacy in unlocked mailbox). As such, Plaintiff has failed to identify a clearly established constitutional right of which a reasonable person would have known.

Even considering Plaintiff's own testimony, it is undisputed that Plaintiff cannot establish that Defendant Enos searched his mailbox. Plaintiff admitted the following during his deposition. He was too far away to tell if Defendant Enos looked at the contents in his mailbox. *DSMF*, ¶20. Plaintiff could not see what, if anything, Defendant Enos pulled out of his mailbox. *DSMF*, ¶22 He never saw any mail in Defendant Enos's hand because Plaintiff was "too far away" and his angle of sight was "blocked." *DSMF*, ¶23. Plaintiff did not know what, if anything, Defendant Enos looked at while standing near Plaintiff's mailbox. *DSMF*, ¶22.

Defendant Enos respectfully submits that there is no genuine factual issue that Plaintiff did not witness Defendant Enos searching his mailbox for purposes of attempting to establish a Fourth Amendment violation of Plaintiff's rights.

Finally, in addition to the matters that relate to Defendant Enos, Defendant Enos restates the arguments in section II above pertaining to Plaintiff's total failure to establish any damages for any of the claims made in his third amended complaint, including Plaintiff's Fourth Amendment violation claim. There is no genuine issue of material fact plaintiff failed to establish that he has suffered any damages that the law recognizes as compensable.

ii. PLAINTIFF FAILED TO MEET THE ELEMENTS OF *MONELL* AS IT RELATES TO HIS FOURTH AMENDMENT CLAIM AGAINST MCHENRY COUNTY UNDER THE DOCTRINE OF *RESPONDEAT SUPERIOR*.

The only fact that exists in the summary judgment record is that neither the McHenry County Animal Control Department nor McHenry County had policies or customs that required or authorized its agents to search the mailboxes of individuals who were being investigated for McHenry County Animal Control ordinance violations. *DSMF*, ¶27, ¶34. Additionally, Defendant Enos did not have authority to promulgate or create policy or custom on behalf of the McHenry County Animal Control Department or McHenry County. *DSMF*, ¶35. This evidence stands uncontroverted, unrebutted, and uncontradicted by any other evidence in the discovery record. Not only is there no genuine material issue of fact that there was never such a policy or custom in existence on behalf of Defendant McHenry County or the Animal Control Department, not one witness, document, or other discovery instrument has provided so much as a shard of evidence, proving, implying, or inferring the existence of the same.

Put simply, Defendant McHenry County can only be exposed to §1983 liability unless it has been shown that it, and not merely its alleged agents, have some culpability for constitutional

injury. As applied to the instant action, the discovery record is perfect and clear. Plaintiff has established literally zero evidence of the same.

IV. THE COURT SHOULD GRANT SUMMARY JUDGMENT AGAINST PLAINTIFF'S FIRST AMENDMENT RETRIBUTION CLAIM.

To survive summary judgment on First Amendment retaliation claim, Plaintiff must establish that (1) Plaintiff engaged in constitutionally protected activity; (2) but for the protected speech, Defendants would not have taken the alleged retaliatory action against Plaintiffs; and (3) Plaintiffs suffered a deprivation likely to deter future First Amendment activity. *Baker v. City of Chicago*, 483 F.Supp.3d 543, 557 (N.D. Ill. 2020). "It is not enough to show that an official acted with a retaliatory motive and that plaintiff was injured-the motive must *cause* the injury. Specifically, it must be a "but-for" cause, meaning that the adverse action against the plaintiff would not have taken absent the retaliatory motive." *Nieves v. Bartlett*, 139 S. Ct. 1715, 1722 (2019).

In ¶¶ 15, 17, and 20 of Plaintiff's third amended complaint, Plaintiff alleges that an employee of Defendant McHenry initiated a prosecution for the afore-mentioned ordinance violations in retribution for complaints that Plaintiff made about the supposed search of Plaintiff's mailbox by Defendant Enos. The employee is not named as a party or even identified in the pleading. McHenry County Animal Control Officer Janelle Carlson drafted, signed, and issued the two animal control ordinance complaints at issue. *DSMF,* ¶31. Carlson is in no position to issue or promulgate policy or customs on behalf of the McHenry County Animal Control Department or McHenry County. *DSMF,* ¶45. Carlson had no contact with Plaintiff before issuing the complaints. *DSMF,* ¶44. Carlson has never met Plaintiff. *DSMF,* ¶42. Carlson has never spoken to Plaintiff about anything having to do with the facts of this lawsuit, or otherwise. *DSMF,* ¶44.

Defendants restate the arguments in section II above pertaining to Plaintiff's total failure to establish any damages for any of the claims made in his third amended complaint, including Plaintiff's First Amendment retribution claim.

Even if Plaintiff could conjure some nominal theory of injury or damages in this regard, Plaintiff has not established a retaliatory motive on the part of Carlson to initiate the prosecution. Further, there is a total absence of proof that any supposed injury has causal nexus to the unidentified retaliatory motive. Given that the only evidence in the discovery record is that Carlson has never met, spoken to, or had contact with Plaintiff before the commencement of the ordinance violation prosecution, linking these elements is a factual impossibility, which explains Plaintiff's gross failure of proof on his First Amendment retaliation claim.

As it pertains to Defendant McHenry County, Plaintiff has not come anywhere in the same universe of establishing that the subjects of Plaintiff's First Amendment retaliation claim have anything to do with policies and customs of the County. Put plainly, there is an utter void of evidence establishing a claim under *Monell.*

Not one witness testified that the initiation of the prosecution at issue had anything to do the effectuation or implementation of any policy or custom of Defendant McHenry County. Not one iota of evidence established that Carlson initiated the ordinance violation prosecution in compliance with the established procedures of the County. The record is bereft of any reference that Carlson had authority or responsibility for the promulgation of policy, and or custom for initiating civil ordinance, prosecutions, much less ones having anything to do with the free expression of First Amendment content. The situation is worse than merely having insufficient evidence. The problem for Plaintiff is that the only evidence in the record is the exact opposite, which is that Carlson was not operating pursuant to procedure, policy, or custom, and had no

authority to make such policies on behalf of the County. *DSMF,* ¶45. These facts stand uncontroverted by any other proof in the case. The Court should grant summary judgment on Plaintiff's First Amendment retaliation claim because there is a complete failure of proof under *Monell* for holding Defendant McHenry County liable for the alleged conduct of its agents.

CONCLUSION

For the reasons stated above, the Court should grant summary judgment, with prejudice in favor of Plaintiff and against Defendant.

Respectfully submitted,

By: /s/ Troy C. Owens
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CERTIFICATE OF SERVICE

I, Troy Owens, an attorney, hereby certify that on May 2, 2024, I caused the foregoing to be filed using the Court's CM/ECF system, which effected service on all parties.

/s/ Troy Owens