

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

Curtis Lamond Oats, Sr.,)	
)	No. 3:22-cv-50113
<i>Plaintiff,</i>)	
)	
<i>-vs-</i>)	<i>(Judge Johnston)</i>
)	
McHenry County, Illinois, and)	<i>(Magistrate Judge Schneider)</i>
Jason Enos,)	
)	
<i>Defendants.</i>)	

PLAINTIFF'S RESPONSE TO RULE 56.1 STATEMENT

Plaintiff submits the following in response to defendants' Rule 56.1 statement:

Contention: 1. The facts giving rise to the instant action (the "Incident") occurred on August 18, 2021, at 4816 East Lake Shore Drive, Wonder Lake Illinois 60097. Deposition of J. Enos (hereinafter referred to as "Enos Dep.", and attached hereto as "Exhibit A"), p.5, ls.1-24.

Response: Admit.

Contention: 2. At all relevant times, Plaintiff, Curtis Lamond Oats Sr. resided at 4816 East Lake Shore Drive Wonder Lake Illinois 60097 (hereinafter referred to as Plaintiff's Residence"), which was his residential dwelling, and a single-family home at said address. Deposition of Plaintiff (hereinafter referred to as "Plaintiff Dep." and attached hereto as "Exhibit B". p. 4, ls. 23-24.

Response: Admit.

Contention: 3. Plaintiff resided at "Plaintiff's Residence" for a period of 13, almost 14 years, Plaintiff Dep., p. 5, ls. 5-6.

Response: Admit.

Contention: 4. At the time of the Incident, an adult sized Pomeranian dog over the age of four months, remained at Plaintiff's Residence, with Plaintiff's permission; Plaintiff's daughter, Christina Randall, owned the dog. Plaintiff's Dep., p.14, ls. 3-24; affidavit of Officer Enos (hereinafter referred to as "Enos Aff." and attached hereto as Exhibit C) at .3. 5. The Dog's name was JD. Plaintiff Dep., p. 15. ls. 4-6. JD was not registered in McHenry County. Plaintiff Dep., p. 24, ls. 6-10; Enos Aff. at .6.

Response: Admit.

Contention: 6. JD remained at Plaintiff's Residence to provide emotional support to Plaintiff's son, who was undergoing emotional problems. Plaintiff's Dep., p.14, ls. 14-17. Plaintiff was "caring for" the dog and Plaintiff had JD in his "care". Plaintiff Dep., p. 15, ls. 16-19.

Response: Admit.

Contention: 7. JD remained at Plaintiff's residence for a period of two weeks after August 18, 2021. JD came once per month to Plaintiff's residence between August 2021 and January 2022. Plaintiff Dep., p.16, ls. 1-5

Response: Admit.

Contention: 8. JD would stay at Plaintiff's residence maybe less than five times in 2021. Id.

Response: Admit.

Contention: 9. McHenry County Animal Control Officer Jason Enos was dispatched to the Incident location due to complaints of a nuisance barking call. Enos Dep., p.5, ls. 12-15.

Response: Admit.

Contention: 10. Plaintiff testified that his dog was barking prior to the Animal Control Officer's approach to his residence. Plaintiff. Dep., p. 22, ls. 3-5.

Response: Admit.

Contention: 11. JD was tied up in his front yard and was barking at people running back and forth. Plaintiff Dep., p. 22, ls.7-8.

Response: Admit.

Contention: 12. Officer Jason Enos was dispatched to Plaintiff's residence to respond to a public complaint for a dog barking. Enos Dep., p. 5, ls 6-8.

Response: Admit.

Contention: 13. Officer Enos was prevented from learning JD's lack of vaccination and registration from the limited information he was given by Plaintiff. Enos Dep., p. 6, ls. 19-22.

Response: Admit.

Contention: 14. Plaintiff provided Officer Enos with the name of the dog ("JD") and the name of the dog's veterinarian. Enos Dep., p. 6, ls. 21-23; Enos called the veterinarian on August 18, 2021. Enos Dep., p. 8, ls. 22-24.

Response: Admit.

Contention: 15. Plaintiff refused to provide Officer Enos with Plaintiff's name. Enos Aff. ¶ 6.

Response: Admit.

Contention: 16. Officer Enos did not attempt to enter the residence during his conversation with Plaintiff. Plaintiff Dep., p. 39, ls. 20-22. Officer Enos left the porch. Plaintiff Dep., p. 24, ls. 10-11.

Response: Admit.

Contention: 17. Plaintiff testified that Officer Enos opened his mailbox after leaving his Porch. Plaintiff Dep., p. 38, ls. 9-11.

Response: Admit.

Contention: 18. Plaintiff testified that the mailbox was not located on his porch but was on the property just off the driveway. Plaintiff Dep., p. 38, ls. 12-21.

Response: Admit.

Contention: 19. Plaintiff was unable to see Officer Enos search his mailbox. Plaintiff Dep., p. 62. ls. 4-7.

Response: Disputed. Oats Dep. 38:5-11 (“I saw him leave off the porch, walk towards the driveway, and then he went towards the mailbox.”)

Contention: 20. Plaintiff was unable to see if Officer Enos allegedly took anything out of the mailbox as he was too far away. Plaintiff Dep., p.62. ls. 12-18.

Response: Disputed. Oats Dep. 55:5-7 (Enos “stopped by the mailbox, opened it up, searched through a few pieces of mail, put the mail back in the mailbox.”)

Contention: 21. Plaintiff alleges that Officer Enos opened the mailbox and went to his car. Plaintiff Dep., p.63, ls. 5-10.

Response: Admit.

Contention: 22. Plaintiff was unable to tell if there was ever mail in Officer Enos’s hand. Plaintiff Dep., p. 63. ls. 17-24.

Response: Disputed. Oats Dep. 63:5-10 (Enos “opened the mailbox, stuck his hand into the mailbox, pulled something out, put it back, and went to his car”)

Contention: 23. Plaintiff did not see any mail in Officer Enos’s hand because he was too far away to see it from the angle that he was located at because his hand was being blocked by the mailbox. Plaintiff Dep., p. 65, ls. 5-15.

Response: Disputed. See response to Contentions 20 and 22, Oats Dep. 55-5-7, 63:5-10.

Contention: 24. None of the mail was ever opened by Officer Enos. Plaintiff Dep. p. 66. ls. 19-21.

Response: Admit.

25. Plaintiff did not know how many feet the mailbox was from the street but testified that it was located two-three steps

from the street on his lawn. Plaintiff Dep., p. 43, ls. 14-18.

Response: Disputed. (Oats Dep. 42:24-45:17.) (Oats was unable to translate “two or three of my steps” in a linear distance.)

Contention: 26. Officer Enos testified that he did not recall if he saw Plaintiff’s mailbox on the date of the Incident. Enos Dep., p. 7, ls. 3-5.

Response: Admit.

Contention: 27. Officer Enos testified that he has never looked inside of a resident’s mailbox in the course of his work for McHenry County. Enos Dep., p. 7, ls. 10-13.

Response: Admit.

Contention: 28. Later that day, on August 18, 2021, Plaintiff entered the offices of the McHenry County Animal Control located at 100 N. Virginia Street, Crystal Lake, IL 60014. (Affidavit of Officer Carlson) (hereinafter referred to as “Carlson Aff.” and attached hereto as Exhibit D) at ¶ 6.0

Response: Admit.

Contention: 29. Plaintiff advised Animal Control personnel that he takes his dog to the Banfield Pet Hospital (‘Banfield’) in Wonder Lake, Illinois, where his vaccinations were done. Carlson Aff. ¶ 9.

Response: Admit.

Contention: 30. Animal Control Officers called Banfield and inquired about the existence in their records of a dog by the name of “JD” at Plaintiff’s address of 4816 East Lake Shore Drive, Wonder Lake, Illinois. Id. at ¶ 10. Banfield indicated they did not have a record of such a dog. Id.

Response: Objection. Any statement made to Animal Control Officers by Banfield is inadmissible hearsay that cannot be presented in an admissible form because Banfield has not been identified as a witness.

Contention: 31. On December 4, 2021, Animal Control Officer Janelle Carlson drafted, signed, and 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. Id. at ¶ 17. The complaints referred to in the preceding paragraph are attached hereto as Exhibit E and were issued and signed by Animal Control Officer Janelle Carlson, not Defendant Enos. Enos Aff. ¶ 21.

Response: Admit.

Contention: 32. Plaintiff's Third Amended Complaint, attached as Exhibit F, alleges in Paragraph 15 that "On March 23, 2022, an employee of defendant McHenry County, acting within the scope of employment and as the final decision maker for McHenry County, initiated a prosecution in the Circuit Court of the Twenty-Second Judicial Circuit against Plaintiff by filing a complaint and causing Plaintiff to be served with a summons for an alleged violation of an ordinance of McHenry County". Exhibit F. at Paragraph 15.

Response: Admit.

Contention: 33. Officer Enos never issued a complaint alleging violations of the McHenry County ordinance code against the Plaintiff. Enos Aff. ¶ 21.

Response: Admit.

Contention: 34. It has never been the policy or practice of McHenry County Animal Control or McHenry County to search a resident's mailbox in the course of investigating a possible McHenry County ordinance violation. Carlson Aff. at .5 See also Enos Aff. at 13. and Enos Dep., p. 7, ls. 10-13.

Response: Admit.

Contention: 35. Officer Enos does not have authority to promulgate or create policy or custom on behalf of the McHenry County Animal Control Department nor McHenry County. Enos Aff. ¶ 15.

Response: Admit.

Contention: 36. Plaintiff testified that he is not seeking any physical or psychological damages as a result of the allegations in his complaint. Plaintiff Dep. p. 73, ls. 6-18.

Response: Admit.

Contention: 37. Plaintiff is not seeking damages or recovery for any mental health injury. Plaintiff Dep. p. 75, ls. 11-13.

Response: Admit.

Contention: 38. Plaintiff received no physical injury in the incident alleged in his complaint. Plaintiff Dep. p. 75, ls. 14-16.

Response: Admit.

Contention: 39. Plaintiff is not seeking any damages or recovery for any economic injury. Plaintiff Dep. p. 76, ls. 18-23.

Response: Admit.

Contention: 40. Plaintiff is not seeking any costs associated with prosecuting this action. Plaintiff Dep. p. 80, ls. 11-22.

Response: Disputed. Oats Dep 80:11-14 (Defense counsel accepting statement of plaintiff's counsel that "the only costs we're seeking to recover are those of the cost of this action as provided by statute and rule.").

Contention: 41. Plaintiff refused to answer whether he is seeking attorney fees or how much, if any, he spent on the same. Plaintiff Dep. p. 77. ls. 1-10.

Response: Disputed. Oats Dep. 77:77:16-19 (Plaintiff's counsel interposed a privilege to this inquiry.)

Contention: 42. Animal Control Officer Janelle Carlson never met Plaintiff. Carlson Aff. ¶ 18.

Response: Admit.

Contention: 43. Animal Control Officer Janelle Carlson was never present for any of the conduct alleged in the third amended complaint. Id.

Response: Admit.

Contention: 44. Animal Control Officer Janelle Carlson has never spoken to Plaintiff. Id.

Response: Admit.

Contention: 45. Animal Control Officer Janelle Carlson did not have the authority to promulgate or create policy or custom on behalf of the McHenry County Animal Control Department or McHenry County. Carlson Aff. ¶ 24.

Response: Objection: This is a question of law under *Pembaur v. Cincinnati*, 475 U.S. 469, 480 (1986). Plaintiff contends that Carlson was the “final decisionmaker” for the County about instituting ordinance violation proceedings.

/s/ Kenneth N. Flaxman
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