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

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

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Defendants seek summary judgment on the three claims plaintiff asserts in his third amended complaint: A Section 1983 claim against defendant Enos for the unlawful search of plaintiff's mailbox, a Section 1983 claim against defendant McHenry County for First Amendment retaliation, and a state law malicious prosecution claim against defendant McHenry County. The Court should deny this motion for the reasons set out below.

I. Defendant Enos Has Waived the Affirmative Defense of Qualified Immunity Defense

Defendant Enos does not mention qualified immunity in his motion for summary judgment. (ECF No. 67.)

Federal Rule of Civil Procedure 7(b)(1)(B) requires that a motion must "state with particularity the grounds for seeking the order."

Defendants offer three grounds for seeking dismissal of plaintiff's claim arising from the search of his mailbox. Missing is any reference to qualified immunity.

Defendants state the following as grounds for dismissal of plaintiff's mailbox search claim:

> (c) As it relates to Defendant Enos and Defendant McHenry County, pursuant to Plaintiff's Fourth Amendment violation claim, there is no genuine issue of material fact that:
>
> > (i) Defendant Enos engaged in conduct violative of the Fourth Amendment;
> >
> > (ii) Plaintiff had a legitimate expectation of privacy recognized by the Fourth Amendment in the property claimed by Plaintiff to be covered by the Fourth Amendment;
> >
> > (iii) Plaintiff has failed to meet the elements of *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978) for purposes of extending the doctrine of *respondeat superior* to Defendant McHenry County, based upon on the conduct of its agents in this action.

(ECF No. 67 at 2.) Although defendants state three grounds for dismissal of plaintiff's mailbox search claim, the motion fails to mention qualified immunity.

In *Martinez v. Trainor*, 556 F.2d 818 (7th Cir. 1977), the Seventh Circuit explained that the "particularity" standard of Rule 7 means "reasonable specification." *Id.* at 820. The Court of Appeals applied this rule to a Rule 59 motion in *Martinez* and *Elustra v. Mineo*, 595 F.3d 699, 707-08

(7th Cir. 2010), but there is nothing in Rule 7(b) that precludes its application to summary judgment motions.

Defendants make two brief references to qualified immunity in their supporting memorandum. (ECF No. 68 at 2 and 7.) But just as a plaintiff "may not amend his complaint is his response brief," *Pirelli Armstrong Tire Corp Retiree Medical Benefits Trust. v. Walgreen Co.*, 631 F.3d 536 (7th Cir. 2011), so too defendants should not be permitted to amend their motion for summary judgment with arguments in a supporting memorandum. The Court should therefore conclude that defendants have waived their affirmative defense of qualified immunity.

II. Defendant Enos Searched Plaintiff's Mailbox

The record, viewed in the light most favorable to plaintiff, shows that defendant Enos searched plaintiff's mailbox. Plaintiff stated at his deposition that after leaving the front porch, Enos "stopped by the mailbox, opened it up, searched through a few pieces of mail, put the mail back in the mailbox." (Plaintiff's Additional Fact, ¶ 3.)

On summary judgment, "[t]he Court must construe the 'evidence and all reasonable inferences in favor of the party against whom the motion under consideration is made.'" *Trexler v. City of Belvidere*, No. 3:20-CV-50113, 2024 WL 554304, at *1 (N.D. Ill. Feb. 12, 2024), *citing Rickher v.*

Home Depot, Inc., 535 F.3d 661, 664 (7th Cir. 2008). The Court should therefore reject the alternate standard proposed by defendants.

Defendants ask the Court to reject plaintiff's deposition testimony and conclude that plaintiff was too far away to see if Defendant Enos looked at the contents of plaintiff's mailbox (Defendants' Rule 56.1 Statement, ¶¶ 20, 22-23.) These credibility arguments are improper on summary judgment: "At the summary judgment stage, the Court should not be determining credibility and weighing evidence; those functions belong to the jury." *Ponder v. County of Winnebago*, No. 3:20-CV-50041, 2023 WL 7531272, at *4 (N.D. Ill. Nov. 13, 2023) (cleaned up). The Court should therefore reject the alternate facts proposed by defendants; at summary judgment, the Court must accept plaintiff's testimony that he observed Enos search the mailbox.

III. The Search of Plaintiff's Mailbox Violated the Fourth Amendment

A. Plaintiff had a reasonable expectation of privacy in the contends of his mailbox

Defendants argue that plaintiff did not have a reasonable expectation of privacy in the contents of his United States Postal mailbox. (ECF No. 68 at 5-8.) This is incorrect.

First, as discussed in more detail below, the search of the mailbox required a warrantless crossing of the curtilage of plaintiff's dwelling. (Plaintiff's Additional Facts, ¶ 2.)

Second, "[l]etterboxes are an essential part of the nationwide system for the delivery and receipt of mail, and since 1934 access to them has been unlawful except under the terms and conditions specified by Congress and the Postal Service." *U.S. Postal Serv. v. Council of Greenburgh Civic Associations*, 453 U.S. 114, 128–29 (1981). One federal statute, 18 U.S.C. § 1708, make it unlawful to remove mail from a mailbox. Another statute, 18 U.S.C. § 1725, provides "significant protection for the privacy interests of postal customers. Section 1725 provides postal customers the means to send and receive mails without fear of their correspondence becoming known to members of the community." *Council of Greenburgh Civic Associations*, 453 U.S. at 118.

These federal criminal statutes create a reasonable expectation of privacy in the contents of mailboxes.

Defendants cite several easily distinguishable cases for their claim that "an individual has minimal to no reasonable expectation of privacy in an unlocked mailbox." (ECF No. 68 at 7.)

The defendant in *United States v. Green*, No. CR 19-05-BLG-SPW-02, 2019 WL 1643661 (D. Mont. Apr. 16, 2019) sought to suppress "packages addressed to Gregory Green and seized from their residential mailbox by law enforcement." *Id.* at *6. The district judge concluded that there was no reasonable expectation in the public, unlocked mailbox. *Id.* at 7. *Green* did not involve the claim presented here, that the warrantless entry onto plaintiff's property to search his mailbox, which was within the curtilage, violated the Fourth Amendment.

United States v. Stokes, 829 F.3d 47 (1st Cir. 2016) likewise did not involve a mailbox search within the curtilage. There, the officer searched a P.O. Box at a post office. *Id.* at 51-52. Similarly, *United States v. Osunegbu*, 822 F.2d 472 (5th Cir. 1985), involved the search of a private postal box. *Id.* at 478.

United States v. Lewis, 738 F.2d 916 (8th Cir. 1984) involved "[a] mailbox bearing a false name with a false address and used only to receive fraudulently obtained mailings." *Id.* at 919 n.2. The Court held that the defendant therefore did not have a legitimate expectation of privacy in the mailbox and it's contents. *Id.* In a concurring opinion, Judge McMillian expressed his view that "appellant's understanding that access to *his* mailbox would be limited (or at least that police officers could not lawfully

open it or inspect its contents without a search warrant) is clearly one recognized and permitted by society." *Id.* at 924. This reasoning shows that plaintiff had a reasonable expectation of privacy in his mailbox.

Defendants have failed to show that the Court should reject plaintiff's claim of a reasonable expectation of privacy. The Court should therefore deny defendants' motion for summary judgment on this issue.

B. The search of the mailbox required a warrantless crossing of the curtilage of plaintiff's dwelling

Defendants do not challenge the rule that government agents may not cross the curtilage to search a mailbox. This rule follows from *Florida v. Jardines*, 569 U.S. 1 (2013) where the police used a dog to sniff the front porch of a suspect's dwelling. The Court there held that this was an unlawful search because "the officers learned what they learned only by physically intruding on Jardines' property to gather evidence." *Id.* at 11. The Court reaffirmed this rule in *Collins v. Virginia*, 138 S. Ct. 1663 (2018): "When a law enforcement officer physically intrudes on the curtilage to gather evidence, a search within the meaning of the Fourth Amendment has occurred." *Id.* at 1670.

Rather than argue about the law, Defendants assert that defendant Enos did not cross the curtilage to search plaintiff's mailbox. (ECF No. 68

at 6-7.) Defendants seek to support this claim with factual contentions that do not appear in their Statement of Facts.

Defendants' Contention 18 states:

> 18. Plaintiff testified that the mailbox was not located on his porch but was on the property just off the driveway.

(ECF No. 69 at 3.)

Defendants mistakenly refer to this contention as number 24[1] and cite it as supporting the proposition that plaintiff's mailbox "exists at the edge of his property near the adjoining street that his home is located on." (ECF No. 68 at 6.) The Court should disregard this factual contention because it is not properly supported.

Defendants drafted contention 18 and should not be heard to complain that it is incomplete or misleading. Nothing in contention 18 support the statement that the mailbox is "near the adjoining street" or "at the ends of his property."

Defendants also improperly misread contention 21, ECF No. 69 at 3. Contention 21 states:

> 21. Plaintiff alleges that Officer Enos opened the mailbox and went to his car.

(ECF 69 at 3.)

[1] Contention 24 states: None of the mail was ever opened by Officer Enos. (ECF No. 69 at 4.)

Defendants assert that this contention shows "There is no evidence that there is a lock on the mailbox." (ECF No. 68 at 6.) There is nothing about a lock in this contention. Nor does the word "lock" appear in defendant's statement of facts. (ECF No. 69.)

Defendants also ask the Court to read contention 21 as showing that Plaintiff had not "made any attempt to shield the mailbox from public view or access." (ECF No. 68 at 7.) Again, this statement does not appear in contention 21. The word "public" appears once in defendants' statement of facts, referring to the type of complaint to which defendant Enos had responded. (ECF No. 69, ¶ 12, at 2.)

Defendants repeat the assertion about the non-existence of a lock at ECF No. 68 at 7, this time attributing it to contention 17. (ECF No. 68 at 7.) This is another groundless claim: Contention 17 states as follows:

> 17. Plaintiff testified that Officer Enos opened his mailbox after leaving his Porch.

(ECF No. 69 at 3.)

Contention 21, however, reads as follows:

> 21. Plaintiff alleges that Officer Enos opened the mailbox and went to his car.

(ECF No. 69 at 3.)

It is defendants' burden on their motion for summary to establish that defendant Enos did not physically intrude on the curtilage to gather evidence. *Collins v. Virginia*, 138 S. Ct. 1663, 1670 (2018). Defendants have failed to meet their burden and the disputed facts must be resolved at trial.

IV. Plaintiffs Brings His Fourth Amendment Mailbox Search Claim Solely Against Defendant Enos

Plaintiff brings his Fourth Amendment claim solely against defendant Enos. As set out in paragraph 13 of the operative complaint:

> 13. The above-described conduct by defendant Enos violated Plaintiffs' rights under the Fourth Amendment of the United States.

(Third Amended Complaint, ECF No. 39 at 3.) The Court should therefore ignore defendant's arguments (ECF No. 68 at 8-9) about *Monell* liability against McHenry County on this claim. Plaintiff brings no such claim.

V. The First Amendment Retaliation Claim

Plaintiff complained to McHenry County about the way he was being treated by the Animal Control Officer. (Plaintiff's Additional Facts, ¶ 4.) Plaintiff (who is African American, Plaintiff's Additional Facts, ¶ 9) complained that he was being harassed because of his race. (Plaintiff's Additional Facts, ¶ 6.) Plaintiff's complaints caused McHenry County to initiate ordinance violation proceedings against him. (Plaintiff's Additional Facts, ¶ 5.)

"[A] government official cannot coerce a private party to punish or suppress disfavored speech on her behalf." *Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. ___, No. 22-842 (slip op. 11, May 30, 2024). Defendants do not argue that plaintiff's complaints about unfair treatment and harassment because of his race are not protected, First Amendment speech. Defendant has therefore waived this issue.

Defendants argue that plaintiff is unable to present any evidence that the County initiated ordinance violation proceedings because of plaintiff's complaints about unfair treatment and harassment because of his race. (ECF No. 68 at 10-11.) This is incorrect. Defendants' business records, authenticated by Animal Control Officer Carlson (Exhibit 3 at 3) show that the ordinance violation complaint was prepared and mailed to plaintiff because of his "confrontational nature." (Plaintiff's Additional Facts 5.)

Defendants also argue that plaintiff is unable to prove that McHenry County is responsible for initiation of the ordinance violation complaints. (ECF No. 10.) This is incorrect. The ordinance violation complaint was issued in the name of McHenry County by one of its employees. (Additional Facts, ¶ 7.) The employee who signed the complaints "was at the apex of authority," *J.K.J. v. Polk County*, 960 F.3d 367, 382 (7th Cir. 2020) (cleaned up) and therefore had final policymaking authority, making the County

liable for the retaliation. *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480 (1986).

VI. State Law Malicious Prosecution

Plaintiff brings his state law malicious prosecution solely against McHenry County. (Third Amended Complaint, ¶ 20, ECF No. 39 at 4.) Defendants do not challenge this approach but ask the Court to grant summary judgment on the state law claim because of the absence of evidence that defendant Enos initiated the prosecution. (ECF No. 2-3.)

Plaintiff does not allege that defendant Enos initiated the prosecution. Plaintiff pleaded his state law malicious prosecution claim in accordance with "the Illinois rule that a servant is not a necessary party to a respondeat superior action against his master." *Bachenski v. Malnati*, 11 F.3d 1371 1378 n.9 (7th Cir. 1993). Plaintiff alleged as follows in paragraphs 15-18 of the third amended complaint:

> 15. On March 23, 2022, an employee of defendant McHenry County, acting within the scope of employment and as the final decisionmaker 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.
>
> 16. The employee of defendant McHenry County did not have probable cause to initiate the above referred prosecution.
>
> 17. The employee of defendant McHenry County initiated the ordinance violation prosecution because plaintiff had

> complained about the unlawful search of his mailbox and had demonstrated to agents of McHenry County that there was no factual basis to accuse him of having violated any animal control ordinance of the County.
>
> 18. The prosecution terminated in plaintiff's favor on June 16, 2022.

(ECF No. 39, ¶¶ 15-18.)

The Court should limit its ruling on summary judgment to the issues framed by defendants. That plaintiff did not identify Enos as the employee responsible for the malicious prosecution is of no consequence. *Gordon v. Degelmann*, 29 F.3d 295, 299 (7th Cir.1994) (noting that the defendant village could be liable for damages arising out of an unidentified employee's conduct even though the employee was not named as a party defendant). The Court should therefore deny the motion to dismiss the state law malicious prosecution claim.

VII. Conclusion

The Court should therefore deny the motion for summary judgment.

Respectfully submitted,

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