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' REPLY 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 Reply in Support of Summary Judgment submits the following.

INTRODUCTION

In Defendants' motion for summary judgment ("Defendants' Motion"), Defendants raise the following matters: (1) there is no genuine issue of material fact that Defendant Enos commenced the underlying ordinance complaints ("Ordinance Complaints") out of malice; (2) there is no genuine issue of material fact that Plaintiff has tendered a gross failure of proof to support that he suffered any damages pursuant to his malicious prosecution claim; (3) as a matter of law, there is no proof in the discovery record that Defendants violated Plaintiff's Fourth Amendment rights; and (4) Plaintiff's First Amendment retribution claim fails under the standards that guide summary judgment.

Pursuant to each theory, in Plaintiff's Response in Opposition to Summary Judgment ("Plaintiff's Response") Plaintiff has either recycled arguments previously made in Rule 12(b)(6)

motion practice without applying any of the evidentiary rules that control summary judgment or completely ignored arguments that Defendants' Motion was based upon. For the following reasons, the Court should grant Defendants Motion with prejudice.

I. DEFENDANTS DID NOT ISSUE THE ORDINANCE COMPLAINTS OUT OF MALICE.

Initially, Plaintiff concedes that Defendant Enos did not issue the Ordinance Complaints at all, let alone out of malice. Plaintiff avers that his malicious prosecution claim is solely directed at Defendant McHenry County (Plaintiff's Response, §VI, p. 12). In that Plaintiff concedes that Defendant Enos had zero role in Plaintiff's malicious prosecution claim, Defendants request that the Court grant summary judgment in favor of Defendant Enos on said claim.

As it pertains to Plaintiff's malicious prosecution claim against Defendant McHenry County, Plaintiff has to establish: (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).

Plaintiff's Response suffers from a greater failing than merely proffering insufficient proof of Defendant McHenry County's malicious intention (other than to bring Plaintiff to justice). Plaintiff's Response has not proffered any proof of the same. Plaintiff completely ignored the argument. Plaintiff has not tendered any deposition testimony on behalf of any witness in the case to support this evidentiary obligation. Plaintiff has not proffered any affidavit from which such an inference can be drawn. Plaintiff has not cited any legal authority supporting the manner in which

Plaintiff's malicious prosecution claim should be analyzed by the Court regarding his obligation to tender proof of malice. Plaintiff has not even attempted to argue that the Ordinance Complaints were commenced for any malicious purpose. Put another way, there is zero proof in the discovery record of any malicious prosecutorial motive. Absent, any evidence, argument, or proffer of a malicious prosecutorial motive, the court should grant Defendants' Motion on Plaintiff's malicious prosecution claim.

II. PLAINTIFF HAS NOT TENDERED EVIDENCE OF DAMAGES TO SUPPORT HIS MALICIOUS PROSECUTION CLAIM.

Absent 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.

This was held to be insufficient in *Turner.* In the portion of Plaintiff's Response directed at damages to support his malicious prosecution claim, similar to the arguments made about the malice prong above, Plaintiff has effectively surrendered. No evidence, legal citation, or argument is made to discharge his obligation to prove that he has suffered any damages pursuant to his malicious prosecution claim. Plaintiff's Response is a vacuous, empty void on the issue of whether Plaintiff has suffered any damages, warranting summary judgment.

III. THE COURT SHOULD GRANT SUMMARY ON PLAINTIFF'S FOURTH AMENDMENT CLAIM IN FAVOR OF DEFENDANT AS A MATTER OF LAW.

In Defendants' Motion, Defendant McHenry County sought summary judgment, in part, because Plaintiffs have not met the requisites of *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978) to impose liability on McHenry County. Additionally, both Defendants argued that Plaintiff has not established that he suffered damages by the supposed Fourth Amendment violation, and that facts that Plaintiff developed in the discovery record were insufficient to raise such a claim.

(i) Plaintiff Failed to Meet the Strictures of *Monell* for Purposes of Holding Defendant McHenry County Liable for the Alleged Conduct of its Agents.

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).

Plaintiff effectively concedes that there is insufficient evidence under *Monell* for purposes of holding Defendant McHenry County liable for Plaintiff's Fourth Amendment claim. In Plaintiff's Response, Plaintiff surrenders any claim against Defendant McHenry County premised upon the Fourth Amendment (Plaintiff's Response, §IV, p.10), stating that "Plaintiffs (sic) brings (sic) His Fourth Amendment Claims Solely Against Defendant Enos." At a minimum, summary judgment should be granted in favor of Defendant McHenry County on Plaintiff's Fourth Amendment.

(ii) Plaintiff has Not Established That He Suffered Damages by the Supposed Fourth Amendment Violation.

As applied to Defendant Enos, Defendants restate the arguments 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. In Plaintiff's Response, Plaintiff has offered no argument, proffer of evidence, or legal authority establishing that Plaintiff suffered any damages based upon the alleged violation of his Fourth Amendment rights. Like every other claim asserted by Plaintiff, Plaintiff has ignored the argument that he has failed to establish damages. There is no genuine issue of material fact plaintiff failed to establish that he has suffered any damages that the law recognizes as compensable.

(iii) The Facts That Plaintiff Developed in the Discovery Record Were Insufficient to Raise Such a Fourth Amendment Violation.

Finally, as applied to Defendant Enos, there are two reasons why Plaintiff's Response fails hit the mark in establishing Fourth Amendment Violation claim, based upon the evidence produced in discovery, and how the law has treated the same.

First, in Plaintiff's Response, Plaintiff argues that he testified that Defendant Enos "stopped by the mailbox, opened it up, searched through a few pieces of mail, put the mail back in the mailbox." (Plaintiff's Response, § II, p. 3). Conclusory statements, not grounded in specific facts, are not sufficient to avoid summary judgment. *Bordelon v. Bd. of Educ.*, 811 F.3d 984 (7th Cir. 2016).

Upon more meaningful examination, Plaintiff admitted during his deposition that: 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; and, Plaintiff did not know what, if anything, Defendant Enos looked at while standing near Plaintiff's mailbox. *DSMF*, ¶22.

Shedding the conclusory nature of Plaintiff's testimony, and testing its reliability under meaningful inquiry reveals that there is no genuine factual issue that Plaintiff did not witness Defendant Enos "searching" his mailbox within the meaning of the Fourth Amendment.

Additionally, Plaintiff has failed to establish a legitimate expectation of privacy in the contents of his mailbox. Plaintiff argues that he had a legitimate expectation of privacy in the contents of his mailbox. Plaintiff cites no authority establishing this expectation of privacy. Defendants have proven the contrary or, at the very least, shown that there is not a violation of a clearly established right. *Golden State Transit Corp. v. Los Angeles*, 493 U.S. 103, 106 (1989).

Plaintiff argues that 18 U.S.C. §1708 creates a legitimate expectation of privacy in one's mailbox because §1708, "make [sic] it unlawful to remove mail from a mailbox." (Plaintiff's Response, § II, p.5). This is a gross mischaracterization. At the very least, according to one of the applicable jury instructions, a violation of 18 U.S.C. §1708 requires, in part, that at the time of the stealing or taking, an individual must have "intended to deprive the owner of the rights and benefits of ownership" (William J. Bauer Pattern Criminal Jury Instructions of the Seventh Circuit, 2023 Edition, p. 769). Plaintiff does not cite any authority establishing that such a statute creates a privacy interest in a mailbox.

Plaintiff also suggests that 18 U.S.C. §1725 supports his privacy expectation position, citing *U.S. Postal Serv. v. Council of Greenburgh Civic Associations*, 483 U.S. 114, 118 (1981). (Plaintiff's Response, § II, p.5). However, Plaintiff takes this citation out of context. The full citation for that sentence, omitted by Plaintiff, states, "The final justification offered by the Postal Service for §1725 was that the statute provided significant protection for the privacy interests of postal customers." *Council of Greenburgh Civic Associations*, 453 U.S. at 118. The Court was clearly identifying an argument by the U.S. Postal Service and not, as Plaintiff seems to contend,

establishing a legitimate privacy expectation in a mailbox. Plaintiff also fails to explain how a fineable offense penalizing individuals who deposit mail without postage with the intent to avoid payment of postage, as the one identified in §1725, translates into a cognizable right to privacy.

Plaintiff's attempt to distinguish between the cases cited by Defendants and the instant action is equally tenuous. Plaintiff fails to explain how the differences are inapplicable to the statements of law made in the cases cited by Defendant. As an example, the court in *United States v. Green*, noted that jurisdictions that have considered this question "have held that a person has no reasonable expectation of privacy in an unlocked accessible mailbox. *United States v. Stokes*, 829 F.3d 47 (1st Cir. 2016); *Hinton*, 222 F.3d 664 (9th Cir. 2000); *United States v. Osunegbu*, 822 F.2d 472 (5th Cir. 1987); *United States v. Lewis*, 738 F.2d 916 (8th Cir. 1984); *State v. Champion*, 594 N.W.2d 526 (Minn. Ct. App. 1999); *Gabriel v. State*, 290 S.W.3d 426 (Tex. Ct. App. 2009); see *Parker v. State*, 40 Ala. App. 244, 112 So.2d 493 (Ala. Ct. App. 1959)." 2019 U.S. Dist. LEXIS 64953 *P17. As such, Plaintiff's distinctions should bear little, if any, consideration by this Court in determining whether there has been a violation of a clearly established right for §1983 purposes.

Finally, Plaintiff does not have a reasonable expectation of privacy in the immediate area surrounding his mailbox and, as a matter of law, Plaintiff cannot establish that Defendant Enos violated the Fourth Amendment.

Plaintiffs have not established that Defendant Enos unlawfully intruded upon the curtilage of Defendant's residence. "A curtilage line is not necessarily the property line, nor can it be located merely by measuring the distance separating the home and the area searched." *United States v. French*, 291 F.3d 945, 951 (7th Cir. 2002). Plaintiff seems to claim that entry upon the property is a *per se* unlawful intrusion into the curtilage of Plaintiff's home. However, the Court in *French* ruled that a home's 'curtilage' is the area outside the home itself but so close to and intimately

connected with the home and the activities that normally go on there that it can reasonably be considered part of the home. *Id*. *French* also held that whether an area is within a house's curtilage depends not only on proximity to the house but also on the use of the area and efforts to shield it from public view and access as well as the nature for which it is used. *Id*. Plaintiff has plainly failed to establish that access to the mailbox was inside of the intimate areas of Plaintiff's home and, therefore, within Plaintiff's reasonable expectation of privacy.

The Court should hold that Plaintiff's Fourth Amendment claim fails as a matter of law.

IV. PLAINTIFF'S FIRST AMENDMENT RETALIATION CLAIM IS RIPE FOR SUMMARY JUDGMENT.

To prevail on summary judgment on a 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 insufficient 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).

Defendants have presented three theories of summary judgment that are aimed Plaintiff's First Amendment retaliation claim, namely that Plaintiff has failed to establish: (1) the requirements of *Monell;* (2) that he has suffered any damages; and (3) that Defendants acted with a retaliatory motive to initiate the Ordinance Complaints.

(i) Plaintiff has Failed to Establish the Requirements of *Monell.*

In order to sidestep the requirements of *Monell*, Plaintiff erroneously posits that although he did not name the employee who initiated the Ordinance Violation as a defendant, "Defendants' business records, 'authenticated by Animal Control Officer Carlson' show that the ordinance violation complaint was prepared and mailed to plaintiff because of his "confrontational nature.""; Plaintiff also argues that Ordinance Complaints were "issued in the name of the County by one of its employees because of his 'confrontational nature." (Plaintiff's Response, §5, p.11). Finally, Plaintiff falsely cites the Court to *J.K.J. v. Polk Cty*, 960 F.3d 367 (7th Cir. 2020), incorrectly claiming it stands for proposition that an employe who signs a complaint "has the apex of authority" for purposes of *Monell* (Plaintiff's Response, §5, p.11). Plaintiff has inaccurately stated all of the above.

Every evidentiary fact relied upon and cited in this portion of Plaintiff's Response exists as unauthenticated hearsay. There is no foundation from any deposition, affidavit, or any other evidentiary source that lays foundations which identify what each document is. Additionally, there are no foundations within this portion of Plaintiff's Response that lay foundations for business records or public records hearsay exceptions.

Moreover, *J.K.J* does not stand for the proposition that an employe who signs a complaint or initiates a prosecution has "the apex of authority" for purposes of *Monell.* In that case, two female inmates suffered repeated sexual assaults at the hands of a correctional officer. *Id.,* 376. The trial focused on the Defendant's written policies prohibiting sexual contact between inmates and guards. The only portion of the *J.P.J.* decision where the word "apex" was used is when the court considered whether the promulgator of the written policies had the "apex of authority" as a *Monell* decision maker. *Id.,* 382. *J.P.J.* had nothing to do with any prosecutorial defendant signing any complaints or initiating any form of prosecution. *J.P.J.* is the only legal defense that Plaintiff

has relied upon in asking the Court to deny summary judgment based upon Defendants' First Amendment *Monell* theory of summary judgment. As such, Plaintiff has tendered a failure of law and fact to establish the requisites of *Monell* cited above.

(ii) Plaintiff has Failed to Establish That He Has Suffered Damages.

Defendants have argued in the previous sections of this Reply that Plaintiff has not submitted any proof of damages for any part of his case. His First Amendment retaliation claim suffers the same defect. For the reasons stated above relating to lack of damages, Defendants request that the Court grant summary judgment.

(iii) Plaintiff has Failed to Establish That Defendants Initiated the Ordinance Complaints Out of a Retaliatory Motive.

In response to Defendant McHenry County's argument that Plaintiff has not established that Defendants acted with a retaliatory motive relating to Plaintiff's First Amendment expression, Plaintiff cites unauthenticated reports from Janelle Carlson alleging that she initiated the Ordinance Complaints because of Plaintiff's "confrontational nature." (Plaintiff's Response, § V, p.11). Plaintiff's Response is completely silent on what was supposedly expressed. No words, content, or expression are proffered to the Court for the purpose of alleging why Plaintiff's First Amendment rights were supposedly violated. Defendant McHenry County respectfully submits the First Amendment does not protect the "nature" by which content is expressed; it protects only the content that is actually expressed. In the instant action, the actual content of expression serving as the putative motive for Ordinance Complaints of Plaintiff's First Amendment retaliation claim exists in the record as guesswork, or words that can only be imagined, but have never been proven by Plaintiff. As such, Plaintiff's defense to summary judgment relating to his First Amendment retaliation claim is insufficient to survive summary judgment.

CONCLUSION

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

Respectfully submitted,

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

I, Troy Owens, an attorney, hereby certify that on June 17, 2024, I caused the foregoing to be filed using the Court's CM/ECF system, which effected service on all parties.

/s/ Troy Owens