

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 07-6356

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Nov 10, 2008
LEONARD GREEN, Clerk

VERONDA JACKSON; MONICA JOHNSON;)
CAROLYN KIRK-WIGLEY,)

Plaintiffs-Appellants,)

v.)

SHELBY COUNTY GOVERNMENT; MARK)
LUTTRELL, Sheriff, in his individual and)
official capacity,)

Defendants-Appellees.)

2008 U.S. App. Lexis 24045

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF
TENNESSEE

ORDER

Before: BOGGS, Chief Judge; MERRITT and GRIFFIN, Circuit Judges.

Veronda Jackson, Monica Johnson, and Carolyn Kirk-Wigley, represented by counsel, appeal a district court judgment dismissing their civil rights action brought pursuant to 42 U.S.C. §§ 1981, 1983, and 1988, and the Tennessee Human Rights Act (THRA), Tenn. Code Ann. §§ 4-21-101 to 4-21-401. The parties have expressly waived oral argument, and this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

On March 8, 2005, the appellants were indicted by a federal grand jury for conspiring to distribute drugs to inmates in the Shelby County (Tennessee) Jail. The Director (William S. Cash) of the Bureau of Professional Standards and Integrity (BPSI) received unsigned copies of the indictment, and forwarded them to Investigator Mitchell Williams. The BPSI decided to charge the appellants with violating two internal standard operating rules of conduct, solely on the basis of the indictments. On March 9, 2005, each appellant received a written notice of the charges against her as well as notice of a March 15, 2005, hearing to determine whether she had violated the rules of

conduct. The notice advised the appellants that they could “provide written witness statements, evidence or materials that relate to any defense you may have to these violations.” (Notices - J.A., pp. 87, 99, and 107). Captain Billie Bolden conducted the appellants’ hearings. Each of the appellants failed to make any statements or to present any evidence in her defense. Bolden determined that the appellants should be terminated from their employment. However, Chief Jailer James E. Coleman made the final decision to terminate the appellants’ employment. The terminations became effective March 19, 2005. Bolden provided the appellants with written notice of her decisions and informed them that they had seven days to appeal the determinations. On April 15, 2005, the Assistant Secretary of the Shelby County Civil Service Merit Board informed the appellants that their appeals, filed on April 11, 2005, were untimely.

Seeking monetary and equitable relief, the appellants sued the Shelby County Government and the Shelby County Sheriff (Mark Luttrell), essentially claiming that the defendants terminated their employment as deputy jailers in violation of their due process rights and without providing them with a name-clearing hearing. The parties filed cross-motions for summary judgment. Upon review, the district court granted summary judgment in favor of the defendants because: 1) the plaintiffs’ claims against the sheriff in his individual capacity failed because the doctrine of respondeat superior liability does not apply in § 1983 actions; 2) the plaintiffs’ claims against the sheriff in his official capacity mirrored the claims against the County, and were therefore redundant; and 3) the plaintiffs failed to identify a municipal policy or custom that violated their rights, because the record reflects that the County provided the plaintiffs with all the process due them.

On appeal, the appellants essentially reassert their claim that the defendants’ actions violated their due process rights because they were provided with an inadequate hearing.

Upon review, we conclude that the district court properly granted summary judgment to the defendants. The appellants argue that the pre-termination hearings provided for them were defective because the defendants relied on an unsigned indictment to support their decisions to terminate the appellants. The appellants argue that reliance on the indictments created an irrebuttable presumption of guilt, and that they were terminated based on mere accusations.

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We review de novo a district court's grant of summary judgment, using the same test as used by the district court. *Lucas v. Monroe County*, 203 F.3d 964, 971 (6th Cir. 2000). Summary judgment is proper if no genuine issue exists as to any material fact and the moving party is entitled to judgment as a matter of law. *Id.* The moving party has the burden of showing an absence of evidence to support the non-moving party's case. *Covington v. Knox County Sch. Sys.*, 205 F.3d 912, 914 (6th Cir. 2000). Once the moving party has met its burden of production, the non-moving party must come forward with significant probative evidence showing that a genuine issue exists for trial. *Id.*

The defendants met their initial burden of establishing that they were entitled to summary judgment on the above-mentioned claims. First, the district court properly granted summary judgment on the claims against Sheriff Luttrell. The appellants' allegations do not state a claim against the sheriff, in his individual capacity, because the doctrine of respondeat superior does not apply in § 1983 lawsuits to impute liability onto supervisory personnel, *see Monell v. Dep't of Soc. Servs. of New York*, 436 U.S. 658, 691-95 (1978), unless it is shown that the defendant "encouraged the specific incident of misconduct or in some other way directly participated in it." *Bellamy v. Bradley*, 729 F.2d 416, 421 (6th Cir. 1984). The record clearly reflects that the sheriff did not actively participate in the appellants' termination proceedings. Second, the district court properly granted summary judgment to the defendants on the claims against the sheriff in his official capacity because those claims mirror the claims against the County, and are therefore redundant.

The district court properly granted summary judgment on the claims against the County. It is undisputed that the appellants were provided with notice that they had been charged with violating the personal conduct code. Furthermore, the record reflects that they were afforded an opportunity to present evidence in their own defense. Finally, they were provided with a written notice of the outcome of the hearing and an opportunity to appeal the determination. Although the appellants argued that the unsigned indictments constituted improper evidence and created an irrebuttable presumption of guilt, the district court properly concluded that the appellants' hearings provided them with ample opportunity to rebut the County's evidence. However, the appellants failed to provide any statements or to present any substantive evidence in their defense. There simply is no

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indication that the appellants' hearings did not comport with the basic requirements of procedural due process. See *Wolff v. McDonnell*, 418 U.S. 539, 563-67 (1974).

In response to the defendants' motion for summary judgment, the appellants did not meet their burden of presenting significant probative evidence in support of their complaint in order to defeat the defendants' well-supported motion. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986); *Am. Acad. of Ophthalmology, Inc. v. Sullivan*, 998 F.2d 377, 382 (6th Cir. 1993).

For these same reasons, the district court did not abuse its discretion when it denied the appellants' cross-motion for summary judgment. See *Hanover Ins. Co. v. Am. Eng'g Co.*, 33 F.3d 727, 730 (6th Cir. 1994).

Accordingly, we affirm the district court's judgment.

ENTERED BY ORDER OF THE COURT



Leonard Green

Clerk