

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

TAMMY AINSWORTH,

Plaintiff

v.

CHRISTOPHER HAWLEY, et al.,

Defendants

Civil No. 96-271-P-C

GENE CARTER, District Judge

MEMORANDUM OF DECISION AND ORDER GRANTING IN
PART AND DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

The Court now has before it a Motion for Summary Judgment filed by Defendants Christopher Hawley, the City of Portland, and the Portland Police Department. Defendants' Motion for Summary Judgment with Incorporated Memorandum of Law (Docket No. 5). Plaintiff Tammy Ainsworth complains that in the course of an encounter she had with two Portland Police officers, she was the victim of an assault and battery (Count I), she was arrested without a warrant, in violation of 15 M.R.S.A. § 704 (Count II), and her civil rights were violated pursuant to 42 U.S.C. § 1983 (Count III). After a through review of Plaintiff's deposition and Defendant Hawley's answers to interrogatories, the Court concludes that summary judgment should be granted in favor of Defendants the City of Portland and the Portland Police Department on Count III and denied with respect to Defendant Hawley on all Counts.

I. FACTS

On September 23, 1995, Officers Dan Knight and Christopher Hawley of the Portland Police Department responded to a request from the State of Maine Department of Human Services to check on the safety and welfare of Oriana Harrison's children. Defendants' Answers to Plaintiff's Interrogatories at 1; Police Report attached to Defendants' Answers to Plaintiff's Interrogatories. Advised that Ms. Harrison was staying with Ms. Ainsworth at 80 Grant Street, the officers went to that address and entered a common hallway. Police Report attached to Defendants' Answers to Plaintiff's Interrogatories. When the officers came to the door of Ms. Ainsworth's apartment, they initially identified themselves as "Domino's Pizza." Ainsworth Dep. at 50-51. Then Ms. Ainsworth recognized the voice as that of a police officer she knew. Ainsworth Dep. at 50-51. The officer asked Ms. Ainsworth to open the door, which she did, "put[ting] [her] arm up on the door frame and one on the door" to prevent the officers entry into the apartment. Ainsworth Dep. at 50-51. The officers told Ms. Ainsworth that they were there to speak with Oriana Harrison. Ainsworth Dep. at 54. Ms. Ainsworth stated that "[Oriana's] in there" and indicated by turning her head that Ms. Harrison was in the adjacent room. Ainsworth Dep. at 54-55. Before both officers entered the apartment, Ms. Ainsworth, "shoved Officer Knight and [Officer Hawley] backwards and then shut[ing] the door in a very forceful way on Officer

Knight's leg and foot." Defendants' Answers to Plaintiff's Interrogatories at 2-3. The officers forced the door open in order to enter the apartment and Ms. Ainsworth was "pushed up against the back wall." Ainsworth Dep. at 55; see also Ainsworth Dep. at 53.

Ms. Ainsworth was angered by being pushed, and she immediately went to the phone to call a lawyer. Ainsworth Dep. at 55. At this point the "people [in the living room] were getting up to leave. And there was a lot of talking, so [she] put the phone down. [She] went to shut the door, all the while asking them to leave. Then [she] went to go into the bedroom and Marcus was on the bed, and [she] had to get him up." Ainsworth Dep. at 55. "Everybody was trying to leave . . . they were all trying to get out the door at once." Ainsworth Dep. at 56. Ms. Ainsworth went from the living room to the bedroom and shut the door. Ainsworth Dep. at 56-57. "[O]ne of the officers followed [her into the bedroom]. Then two of [the police officers] were there. And [she] went to get up in the corner [of the bed], trying to get as far away from them as [she] could." Ainsworth Dep. at 57. One of the officers "pulled out mace and sprayed" it at Ms. Ainsworth. Ainsworth Dep. at 57.

At this point, Ms. Ainsworth was "really freaking out" and ordering the officers out of the house. Ainsworth Dep. at 57. Ms. Ainsworth was crying and "trying to wipe [her] face on the blanket." Ainsworth Dep. at 59. At the same time, Ms. Ainsworth "heard lots of scrambling and running down the stairs."

Ainsworth Dep. at 59. The officers then put handcuffs on her, but she refused to walk, and the officers dragged her through the apartment. Ainsworth Dep. at 59. When they reached the door, Ms. Ainsworth stood up but continued to refuse to walk. Ainsworth Dep. at 59. Officer Hawley then "slammed [her] up against the wall in the hallway" two or three times. Ainsworth Dep. at 59. When Officer Hawley pushed Ms. Ainsworth up against the wall, her left shoulder hit the wall first and her whole body was "squished."¹ Ainsworth Dep. at 60. Finally, Ms. Ainsworth agreed to walk down the interior stairs. Ainsworth Dep. at 60. When they reached the outside door

there were all kinds of people looking [and Ms. Ainsworth] felt real, really embarrassed being hauled out of [her] house in handcuffs. So [she] hesitated before [going] outside. And [she] was saying, no, no. I don't want to go. I didn't do anything. And [the officer] pushed [her] some more. [Officer Hawley] pushed [her] onto [her] car; and . . . [she] was trying to -- trying to refrain from going into the police car. So [Officer Hawley] slammed [her] up against [her] car, grabbed [her] by the back of [her] head and slammed [her] face onto the louvers of [her] car, the window protector things, the black louvers. And that split [her] nose open.

Ainsworth Dep. at 60-61. Ms. Ainsworth was then picked up and placed into the police car. Ainsworth Dep. at 61. The officers arrested Ms. Ainsworth, charging her with assault and possession of a hypodermic apparatus. Defendants' Answers to Plaintiff's

¹Ms. Ainsworth sustained no injury from this part of the altercation. Ainsworth Dep. at 60.

Interrogatories at 5; Police Report attached to Defendants' Answers to Plaintiff's Interrogatories.

II. DISCUSSION

The Court of Appeals for the First Circuit has explained that the workings and purposes of the summary judgment procedure:

Summary judgment has a special niche in civil litigation. Its "role is to pierce the boilerplate of the pleadings and assay the parties' proof in order to determine whether trial is actually required." Wynne v. Tufts Univ. Sch. of Med., 976 F.2d 791, 794 (1st Cir. 1992), cert. denied, 113 S. Ct. 1845 (1993). The device allows courts and litigants to avoid full-blown trials in unwinnable cases, thus conserving the parties' time and money, and permitting courts to husband scarce judicial resources.

A court may grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). . . .

Once a properly documented motion has engaged the gears of Rule 56, the party to whom the motion is directed can shut down the machinery only by showing that a trialworthy issue exists. See National Amusements [v. Town of Dedham], 43 F.3d [731,] 735 [(1st Cir. 1995)]. As to issues on which the summary judgment target bears the ultimate burden of proof, she cannot rely on an absence of competent evidence, but must affirmatively point to specific facts that demonstrate the existence of an authentic dispute. See Garside [v. Osco Drug. Inc.], 895 F.2d [46,] 48 [(1st. Cir. 1990)]. Not every factual dispute is sufficient to thwart summary judgment; the contested fact must be "material" and the dispute over it must be

"genuine." In this regard, "material" means that a contested fact has the potential to change the outcome of the suit under the governing law if the dispute over it is resolved favorably to the nonmovant. See [United States v.] One Parcel [of Real Property with Buildings], 960 F.2d [200,] 204 [(1st Cir. 1992)]. By like token, "genuine" means that "the evidence about the fact is such that a reasonable jury could resolve the point in favor of the nonmoving party" Id.

When all is said and done, the trial court must "view the entire record in the light most hospitable to the party opposing summary judgment, indulging all reasonable inferences in that party's favor," Griggs-Ryan [v. Smith], 904 F.2d [112,] 115 [(1st Cir. 1990)], but paying no heed to "conclusory allegations, improbable inferences, [or] unsupported speculation," Medina-Munoz [v. R.J. Reynolds Tobacco Co.], 896 F.2d [5,] 8 [(1st Cir. 1990)]. If no genuine issue of material fact emerges, then the motion for summary judgment may be granted.

. . . [T]he summary judgment standard requires the trial court to make an essentially legal determination rather than to engage in differential factfinding

McCarthy v. Northwest Airlines, Inc., 56 F.3d 313, 314-15 (1st Cir. 1995).

Based on the record in this case, the Court concludes that there are issues of fact which preclude granting Defendant Hawley's Motion for Summary Judgment. The issues of fact include, inter alia, whether Ms. Ainsworth gave the officers consent to enter her apartment. Ms. Ainsworth's account of the events surrounding the officers entry into her apartment is confusing. At one point she states: "Once I opened the door and

I held my arms up like that, that was no stopping them. They just gave me one good push, and I hit the wall behind me. And the door flung open all the way, and in they came." Ainsworth Dep. at 53. At another point in her deposition, Ms. Ainsworth stated that she "offered to let them in and talk to Oriana." Ainsworth Dep. at 64. Furthermore, the Court notes that nowhere in Officer Hawley's report of the incident or in his interrogatories does he state that Ms. Ainsworth gave her consent for the officers to enter her apartment. On this record, the Court will deny Defendant Hawley's Motion for Summary Judgment on all Counts.

Count III of Plaintiff's Complaint asserts a claim pursuant to 42 U.S.C. § 1983 against Defendants City of Portland and the Portland Police Department as well as Officer Hawley. The Defendants move to dismiss the claims asserted against the City of Portland and the Portland Police Department. A municipality cannot be held liable for the constitutional torts of its employees under § 1983 on a respondeat superior theory. Monell v. New York City Department of Social Services, 436 U.S. 658, 691 (1978). A municipality may, however, be liable under § 1983 if, under color of some official policy or custom, the municipality causes an employee to violate another's constitutional rights. Id. at 692. Municipal liability for violations of constitutional rights caused by official policy extends to violations caused by the failure of a municipality to train and/or supervise its employees where the failure to train or supervise caused the

constitutional wrong. City of Canton v. Harris, 489 U.S. 378, 386-87 (1989). Plaintiff's Complaint fails to allege failure to train or supervise employees on the part of the City of Portland or the Portland Police Department. Plaintiff's Complaint appears to state a claim for respondeat superior liability. The Court will grant Defendants City of Portland and the Portland Police Department's motion to dismiss on the ground that a municipality cannot be liable, as a matter of law, on the theory of respondeat superior.

Accordingly, it is hereby ORDERED that Defendant Hawley's Motion for Summary Judgment be, and it is hereby, DENIED on Counts I, II, and III. It is further ORDERED that Defendants City of Portland and the Portland Police Department's Motion for Summary Judgment be, and it is hereby, GRANTED on Count III.

GENE CARTER
District Judge

Dated at Portland, Maine this 18th day of March, 1997.