

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

<b>JENNIFER S. STRUK,</b>	)	
	)	
<b>PLAINTIFF</b>	)	
	)	
<b>v.</b>	)	<b>Civil No. 98-221-P-H</b>
	)	
<b>LEROY L. JONES and TOWN OF</b>	)	
<b>WALDOBORO,</b>	)	
	)	
<b>DEFENDANTS</b>	)	

**ORDER ON DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT**

This lawsuit arises out of a traffic stop in the town of Waldoboro (“the Town”). Jennifer Struk alleges that Leroy Jones, the chief of police for the Town, unjustifiably seized her and used excessive force in effecting that seizure. In state court, she sued both Chief Jones and the Town for compensatory damages and Chief Jones for punitive damages pursuant to 42 U.S.C. § 1983 (Count I), the Maine Civil Rights Act (Count II), the Maine Tort Claims Act (“MTCA”) (Counts III & IV) and 15 M.R.S.A. § 704 (Count V). Ms. Struk also pled a claim for unspecified declaratory relief under Maine’s Uniform Declaratory Judgments Act (Count VI).

The defendants removed the action to this court pursuant to 28 U.S.C. § 1441 and now have moved for summary judgment on all counts. In addition, Chief Jones has moved for partial summary judgment on the issue of punitive damages. For the reasons that follow, summary judgment is **GRANTED** in favor of the Town on all Counts; summary judgment for Chief Jones is **GRANTED** on Counts IV and VI, and **DENIED** on all other Counts; and Chief Jones’s motion for partial summary judgment on punitive damages is **DENIED**.

## I. LIABILITY AND IMMUNITY OF THE TOWN

### A. Federal and State Civil Rights Act

Ms. Struk argues that the Town is liable for her injuries because: (a) the Town negligently retained Chief Jones, despite its knowledge of his inadequacy as a police chief; and (b) the actions of Chief Jones as a policymaker can be imputed to the Town, establishing a municipal custom or policy that directly caused her constitutional harm. Ms. Struk has not provided sufficient evidence to support either theory of liability.

A municipality cannot be held liable under § 1983 on a theory of respondeat superior. To determine municipal liability under § 1983:

First, the Court must consider whether an identifiable policy or custom exists which can be attributed to the [town]; such custom “must be so well-settled and widespread that the policymaking officials of the municipality can be said to have either actual or constructive knowledge of it yet did nothing to end the practice.” Bordanaro v. McLeod, 871 F.2d 1151, 1156 (1st Cir. . . . 1989). Second, the Court must be satisfied that [the plaintiff] has adequately demonstrated a “direct causal link between a municipal policy or custom and the alleged constitutional deprivation,” [City of] Canton v. Harris, 489 U.S. 378, 385 . . . (1989), that “must have been the cause of and the moving force behind the deprivation of constitutional rights.” Bordanaro, 871 F.2d at 1156.

Fowles v. Stearns, 886 F. Supp. 894, 898 (D. Me. 1995). A municipality can be held liable if the police chief is a policymaker and acquiesces in a police custom or policy of which he has actual or constructive notice. See Comfort v. Town of Pittsfield, 924 F. Supp. 1219, 1234 (D. Me. 1996). A single event does not establish a policy or custom. See Bordanaro, 871 F.2d at 1156-57. A municipality can also be held liable for inadequately training or supervising its employees, but only if the inadequacy is so patent and the risk of constitutional harm to the inhabitants is so flagrant that

the failure to train or supervise constitutes deliberate indifference to the rights of the inhabitants. See Harris, 489 U.S. at 388-90.

Ms. Struk has not offered sufficient evidence to hold the Town liable for failure to supervise or fire Chief Jones. Chief Jones's single, unsuccessful workers' compensation claim for stress; his two or three complaints of stress from overly demanding job expectations; the Town's dissatisfaction with his supervisory abilities and motivation; and the Town's concerns about his honesty do not establish the Town's deliberate indifference to the risk of the harm—excessive force—that Ms. Struk allegedly suffered. This is all the more true in light of the fact that no claim of unlawful arrest or excessive force has ever previously been made against Chief Jones or any other Waldoboro police officer. Moreover, Ms. Struk points to no evidence that Chief Jones's asserted stress, dishonesty or poor management directly caused her to be deprived of any right.

Similarly, the Town's response to the (ultimately unsubstantiated) claim that Chief Jones threatened a former officer, and the Town's response to Chief Jones's failure to order the arrest of an individual for violation of a protection from abuse order show no deliberate indifference to the rights of citizens during police seizures. Ms. Struk suggests that a town acts in deliberate indifference to the rights of arrestees when it retains an officer after a competent internal investigation reveals that a citizen has made a false claim of threats by the officer; this casts the § 1983 net too wide. Ms. Struk also appears to suggest that a Town acts in deliberate indifference to the rights of arrestees when it suspends but does not fire a police chief who fails to order the arrest of a man who violates a protection from abuse order. Ms. Struk essentially claims that the Town should have inferred: (1) that Chief Jones was indifferent to threats to the safety of citizens because he failed to order the single arrest in question, (2) that such indifference indicated that Chief Jones himself was a threat to citizens and would act with unconstitutional violence toward them when

arresting them in the future, and (3) that this risk was so patent that the Town can be said to have been deliberately indifferent to it. These chains of inference are far too attenuated for purposes of imposing municipal liability under the strict standard of Harris.

Ms. Struk has not offered sufficient evidence to hold the Town liable for Chief Jones's acts in his policymaking capacity. Ms. Struk points in particular to Chief Jones's failure to report the incident with Ms. Struk.<sup>1</sup> Apparently there is no policy requiring officers to make a written record of traffic stops, but there is a policy requiring officers to make a written record of every use of force. See Dep. of Leroy Jones at 153-54. Ms. Struk offers no evidence that such policies amount to knowledge on the part of the Town of unconstitutional conditions or that Chief Jones's failure to make the required report in this instance was anything other than an isolated occurrence.

The plaintiff concedes that § 1983 principles of supervisory liability apply under the Maine Civil Rights Act. See Pl.'s Obj. to Defs.' Joint Mot. for Summ. J. at 6. Accordingly, summary judgment is **GRANTED** to the Town on Count II, as well as on Count I.

### **B. Remaining Counts Against the Town**

In her reply to the Town's motion for summary judgment, Ms. Struk does not allege that genuine issues of fact are material to the issue of municipal liability on any counts other than Counts I and II. This alone warrants granting summary judgment to the Town on Counts III through VI. In addition, I make the following observations.

#### ***1. Maine Tort Claims Act***

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<sup>1</sup> The plaintiff fails to offer any record evidence to support her suggestion that Chief Jones might have failed to retain a videotape of the incident in question. See Pl.'s Obj. to Defs.' Joint Mot. for Summ. J. at 7-8. For purposes of summary judgment, there is no relevant issue regarding videotape in police cruisers.

Absent a statute expressly authorizing suit against a municipality, municipalities are absolutely immune from suit on any tort claim seeking damages, see 14 M.R.S.A. § 8103, except in four situations that are not relevant to this case, see 14 M.R.S.A. § 8104-A. In her response to the Town’s motion for summary judgment, Ms. Struk points to no facts (disputed or undisputed) that would warrant application of one of the § 8104-A exceptions. Accordingly, summary judgment in favor of the Town is proper on the claims under the MTCA.

***2. "Wanton and Oppressive" Arrest: 15 M.R.S.A. § 704***

There is no evidence of the Town’s direct involvement in any “wanton and oppressive” arrest, and § 704 by its terms does not regulate the conduct of municipalities. Ms. Struk has not pointed to any law that would support imposition of vicarious municipal liability under § 704, nor has she pointed to any genuine issue of material fact that would preclude awarding the Town judgment as a matter of law. Accordingly, summary judgment must be awarded in favor of the Town on Count V.

**II. LIABILITY OF CHIEF JONES**

The plaintiff’s primary claim against Chief Jones is his alleged use of excessive force in physically seizing her following an alleged traffic violation and refusal to stop for the police. The material facts are hotly disputed concerning the nature of the force used by Chief Jones and of the resistance that the plaintiff offered. Summary judgment must be denied because of these factual disputes on the qualified immunity defense to the federal claim under 42 U.S.C. § 1983 and the state claim under the Maine Civil Rights Act. Because of the factual conflict over the degree of force, I also **DENY** summary judgment on the other state law claims for excessive force, Counts III and V.

There is no basis, however, for proceeding to trial on the *grounds* for the arrest. Although Ms. Struk claims that Chief Jones was harassing her for previous rudeness on her part, she admits that she knew Chief Jones was signaling to her in his cruiser to pull over before she reached a red light; that he got out of the cruiser and spoke to her at the red light, requesting her registration; and that she refused to hand over her registration to him at the red light, but instead pulled away when the light turned green leaving him standing in the intersection (after having instructed him that she would stop only when she reached her child's day care facility). Regardless of Chief Jones's actual motives, under the objective standard mandated by federal caselaw, a reasonable police officer had adequate grounds for arrest for the Class E criminal offense of failing to stop, see 29-A M.R.S.A. § 2414(2). Chief Jones therefore has qualified immunity for the fact of the arrest itself, although the amount of force is an issue for trial. For the same reason, summary judgment is **GRANTED** on Count IV, a state law claim for false arrest and false imprisonment.

### **III. DECLARATORY JUDGMENT**

In Count VI, Ms. Struk seeks a declaratory judgment. Ms. Struk has not shown how any of the issues genuinely in dispute would be material to a determination of declaratory relief; furthermore, in her reply brief, the plaintiff argues that summary judgment should be denied only as to Counts I through V. See Pl's Obj. to Defs.' Joint Mot. for Summ. J. at 5. Accordingly, summary judgment is **GRANTED** to the defendants on Count VI.

### **IV. PUNITIVE DAMAGES**

Ms. Struk seeks punitive damages on her federal claim (Count I) and on one of her state law claims (Count III). Chief Jones has moved in the alternative for partial summary judgment on the

issue of punitive damages. Punitive damages can be awarded against Chief Jones on the federal claim if his conduct was driven by evil motive or intent or if it involved a reckless indifference or callous disregard for Ms. Struk's federally protected rights. See Smith v. Wade, 461 U.S. 30, 56 (1983). Punitive damages can be awarded against Chief Jones on Count III if he acted with express malice, meaning ill will toward Ms. Struk, or with implied malice, which is found where conduct is so outrageous that malice toward a person injured by that conduct can be inferred. See Tuttle v. Raymond, 494 A.2d 1353, 1361 (Me. 1985). Genuine issues of fact exist regarding Chief Jones's state of mind and motivation in seizing Ms. Struk. Specifically, a jury could believe that Chief Jones seized and beat Ms. Struk solely in retaliation for her having cursed him several days earlier. Accordingly, summary judgment precluding punitive damages is not proper.

## V. CONCLUSION

For the foregoing reasons, summary judgment is **GRANTED** on all Counts to the defendant Town of Waldoboro. Summary judgment is **GRANTED** on Counts IV and VI to the defendant Leroy Jones and **DENIED** on all other Counts. Chief Jones's motion for partial summary judgment on punitive damages is **DENIED**.

**SO ORDERED.**

**DATED THIS 14<sup>TH</sup> DAY OF DECEMBER, 1998.**

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**D. BROCK HORNBY**  
**UNITED STATES CHIEF DISTRICT JUDGE**