Brombolich v. City of Collinsville et al Doc. 79

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CHERYL BROMBOLICH

Plaintiff,

vs.

CITY OF COLLINSVILLE, SCOTT WILLIAMS, in his Individual and Official Capacity, and MICHAEL TOGNARELLI, in his Individual and Official Capacity,

Case No. 16-cv-490-DRH-DGW

Defendants.

MEMORANDUM and ORDER

HERNDON, District Judge:

I. Introduction

Now before the Court is defendant's, City of Collinsville, motion to dismiss plaintiff's first amended complaint (Doc. 28) pursuant to FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6). Plaintiff, Cheryl Brombolich, (hereinafter "Brombolich") opposes the motion on grounds that the question of whether defendant Scott Williams (hereinafter "Williams") acted with final policymaking authority delegated to him by the City of Collinsville is one of fact and, thus, cannot be answered at the motion to dismiss stage. (Doc. 55). For the reasons explained below, the Court **DENIES** defendant's motion to dismiss. (Doc. 39).

II. Background

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Count I of plaintiff's first amended complaint alleges violations of 42 U.S.C. § 1983 against defendants City of Collinsville and Williams in his Individual and Official capacity. In 2008, plaintiff was appointed and sworn in as City Clerk for the City of Collinsville. (Doc. 28, ¶ 5). She served in that capacity from 2008 until her alleged constructive discharge in 2014. (Doc. 28, ¶ 5). Her responsibilities included supervising the employees of the City Clerk's office. (Doc. 28, ¶ 6). At all relevant times, plaintiff states she met or exceeded her reasonable job expectations. (Doc. 28, ¶ 7).

Defendant Scott Williams was the City Manager for the City of Collinsville and plaintiff's direct supervisor at the time of her alleged constructive discharge. (Doc. 28, ¶¶ 8, 12). Thus, he functioned as the administrative head of the City municipal government. (Doc. 28, ¶ 9). As a result, plaintiff states defendant Williams had "final authority to hire and fire employees as well as to appoint or remove unelected officers." (Doc. 28, ¶ 10) (citing 65 ILCS 5/5-3-7). Further, plaintiff believes "[a]s City Manager, and pursuant to the duties delegated to him by the Illinois Municipal Code and the City, Williams created and implemented City of Collinsville policies." (Doc. 28, ¶ 11).

In June of 2014, plaintiff became aware of sexual harassment and intimidation complaints involving a member of her staff and a City department head. (Doc. 28, ¶ 13). The harassment and intimidation is said to have been "continuous and included allegations of unwanted sexual advances and unwanted physical touching in addition to threats against the victim's family." (Doc. 28, ¶

13). The department head, who plaintiff claims is a "personal friend of Defendant Williams," allegedly threatened the victim by stating that "if anyone ever crossed him[,] he would burn their house down and shoot them and their family as they ran out the door." (Doc. 28, ¶¶ 13, 15). Plaintiff alleges that defendant controlled the City's internal reporting policies, and that he "actively discouraged the victim from discussing [the] matter with Plaintiff or with any member of the Collinsville City Council or with the Mayor," despite plaintiff being her direct reporter. (Doc. 28, ¶¶ 14, 19). Defendant Williams "purported to have made an internal investigation… [but] the department head was not subjected to any discipline." (Doc. 28, ¶ 16).

Plaintiff states that she complained to defendant Williams and City Corporate Counsel Steven Giacoletto in her public capacity about the City's response to the harassment and intimidation complaint, but that these complaints fell upon deaf ears. (Doc. 28, ¶ 19). Further, plaintiff had "multiple conversations in person and over the phone with the victim of the harassment, other current City employees, and former City employees" as a private citizen regarding the harassment and intimidation complaints, as well as about alleged unlawful hiring practices of defendant Williams. (Doc. 28, ¶ 20). The unlawful hiring practices allegedly consisted of "alter[ing] the results of a Civil Service exam for the benefit of one of [Williams's] friends… to the detriment of a person who scored higher on the civil service exam." (Doc. 28, ¶ 18).

On information and belief, defendant Williams became aware of the above described conversations. (Doc. 28, ¶ 22). In retaliation, he allegedly "devised a pretext to humiliate Plaintiff and force her early termination from employment with the City." (Doc. 28, ¶ 23). Specifically, defendant Williams suspended plaintiff for using City credit cards for personal use, a violation of City policy that he controlled. (Doc. 28, ¶ 24). Plaintiff alleges it was common practice to personally use the public credit cards and then reimburse the City from the card user's personal account. (Doc. 28, ¶ 23). Despite having reimbursed the City, plaintiff was suspended, while other City employees who committed the same alleged violation were not. (Doc. 28, ¶ 24). Defendant Williams allegedly "knew this activity was common practice and knew specifically of other City employees who violated this policy…." (Doc. 28, ¶ 24). Plaintiff was then advised that "Williams intended to gratuitously humiliate Plaintiff and demand her termination before the public at a City Council meeting," even though he "did not need the consent of the City Counc[il] to terminate Plaintiff's employment." (Doc. 28, ¶ 25).

On September 11, 2015, after 30 years of working for the City, plaintiff resigned her employment "under duress and out of fear that her character would be placed in a false light if she remained as an employee…." (Doc. 28, ¶¶ 26, 27). Thereafter, plaintiff brought the underlying lawsuit on May 2, 2016 (Doc. 1). In her amended complaint, plaintiff alleges that she would not have resigned "but for Defendant Williams suspending her and preparing to gratuitously demand that she resign…." (Doc. 28, ¶ 28). Further, plaintiff alleges defendants' conduct

amounted to a constructive discharge and violation of the First Amendment of the United States Constitution, as the treatment was "in retaliation for her lawful statements as a private citizen to other private citizens on matters of public concern." (Doc. 28, ¶¶ 29-30). Thereafter, on October 14, 2016, the City of Collinsville filed the pending motion to dismiss (Doc. 39), to which plaintiff opposed (Doc. 55).

III. Motion to Dismiss

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) challenges the sufficiency of the complaint for failure to state a claim upon which relief may be granted. *Gen. Hallinan v. Fraternal Order of Police Chicago Lodge No. 7*, 570 F.3d 811, 820 (7th Cir. 2009). The Supreme Court explained in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007), that to withstand Rule 12(b)(6) dismissal, a complaint "does not need detailed factual allegations," but must contain "enough facts to state a claim for relief that is plausible on its face." 550 U.S. at 570.

Twombly and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), retooled federal pleading standards, but notice pleading remains all that is required in a complaint. "A plaintiff still must provide only 'enough detail to give the defendant fair notice of what the claim is and the grounds upon which it rests and, through his allegations, show that it is plausible, rather than merely speculative, that he is entitled to relief.'" *Tamayo v. Blagojevich*, 526 F.3d 1074, 1083 (7th Cir. 2008) (citation omitted). In making this assessment, the district court accepts as true all

well-pleaded factual allegations and draws all reasonable inferences in the plaintiff's favor. *See Rujawitz v. Martin*, 561 F.3d 685, 688 (7th Cir. 2009); *St. John's United Church of Christ v. City of Chi.,* 502 F.3d 616, 625 (7th Cir. 2007).

The above standard applies to civil rights cases alleging municipal liability, as "a federal court may not apply a heightened pleading standard more stringent than the usual Rule 8(a) pleading requirements." *See Estate of Sims ex rel. Sims v. Cnty of Bureau*, 506 F.3d 509, 514 (7th Cir. 2007) (citing *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 165 (1993)). Particular to this case, the Seventh Circuit has acknowledged that "district courts continue to struggle with… exactly what a plaintiff bringing a municipal liability suit must plead to survive a motion to dismiss…." *See McCormick v. City of Chicago*, 230 F.3d 319, 324 (7th Cir. 2000). For this reason, it clarified in *McCormick* that notice pleading is all that is required, as "plaintiff need not 'allege all, or any of the facts logically entailed by the claim… A plaintiff does not have to plead evidence…. [A] complaint does not fail to state a claim merely because it does not set forth a complete and convincing picture of the alleged wrongdoing.'" *Id.* at 325 (quoting *Payton v. Rush-Presbyterian-St. Luke's Medical Center*, 184 F.3d 623, 626-27 (7th Cir. 1999) (internal citations omitted)).

IV. Analysis

To state a § 1983 claim against a municipality, the complaint must allege that "an official policy or custom not only caused the constitutional violation, but was 'the moving force' behind it." *Id.* (citing *City of Canton, Ohio v. Harris*, 489 U.S. 378, 389 (1989). Further, under such a theory, "there is no respondeat superior liability… [as] the Supreme Court 'distinguish[es] acts of the *municipality* from acts of *employees* of the municipality.'" *Milestone v. City of Monroe, Wis.*, 665 F.3d 774, 780 (7th Cir. 2011) (quoting *Pembaur v. City of Cincinnati*, 475 U.S. 469, 479 (1986) (emphasis in original) (internal citations omitted)); *See* also *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 n. 58 (1978). In so doing, it limits liability to "action for which the municipality is actually responsible." *Pembaur*, 475 U.S. at 479. Thus, plaintiff must eventually prove the constitutional violation was caused by one of the following: "(1) an express municipal policy; (2) a widespread, though unwritten, custom or practice; or (3) a decision by a municipal agent with 'final policymaking authority.'" *Milestone,* 665 F.3d at 780 (quoting *Darchak v. City of Chi. Bd. of Educ.*, 580 F.3d 622, 629 (7th Cir. 2009)).

Here, only the third potential avenue for liability is at issue. The question of "whether an entity has final policymaking authority is a question of state or local law." *Id.* (citing *Jett v. Dallas Indep. Sch. Dist.*, 492 U.S. 701, 737 (1989)); *See* also *Kujawski v. Bd. of Comm'rs*, 183 F.3d 734, 737 (7th Cir. 1999); *Darchak*, 580 F.3d at 630. However, "not every municipal official with discretion is a final policymaker," as "authority to make final policy in a given area requires more

than mere discretion to act." *Id.* (citing *Darchak*, 580 F.3d at 630 and *Gernetzke v. Kenosha Unified Sch. Dist. No. 1*, 274 F.3d 464, 469 (7th Cir. 2001)). The relevant question is whether the official's "decisions are subject to review by a higher official or other authority." *Id.* (citing *Gernetzke*, 274 F.3d at 469).

Thus, the situations in which municipal liability is proper under this theory are limited to when "the official who commits the alleged violation… has authority that is final in the special sense that there is no higher authority." *Gernetzke*, 274 F.3d at 469. The official "must possess 'responsibility for making law or setting policy,' that is 'authority to adopt rules for the conduct of government,'" rather than "the mere authority to implement pre-existing rules…." *Killinger v. Johnson*, 389 F.3d 765, 771 (7th Cir. 2004) (citing *Rasche v. Village of Beecher*, 336 F.3d 588, 599, 601 (7th Cir. 2003) (internal citations omitted); *See* also *Auriemma v. Rice*, 957 F.2d 397, 400-01 (7th Cir. 1992)). Such authority "may be granted directly by a legislative enactment or may be delegated by an official who possesses such authority…." *Rasche*, 336 F.3d at 600; *See* also *Pembaur*, 475 U.S. at 483; *Eversole v. Steele*, 59 F.3d 710, 716-17 (7th Cir. 1995). If the power is delegated, however, then the "person or entity with final policymaking authority must delegate the power to make policy, not simply the power to make decisions." *Darchak*, 580 F.3d at 630; *See* also *Kujawski*, 183 F.3d at 739.

Defendant, City of Collinsville, argues in its motion to dismiss that plaintiff has failed to allege any basis for municipal liability. (Doc. 39, pg. 3). Specifically, defendant does not believe that 65 ILCS 5/5-3-7 provides a city manager with the

"responsibility for making law or setting policy," or "authority to adopt rules for the conduct of the government," as required to have final policymaking authority. (Doc. 39, pg. 6). Thus, according to defendant, plaintiff has not "identified any state or local law, or custom having the force of law, that grants Defendant Williams… the authority to adopt rules that are relevant to this case." (Doc. 39, pg. 5-6) (citing *Kujawski*, 183 F.3d at 737). Instead, defendant believes that 65 ILCS 5/5-3-7 "merely provides the city manager with the authority to implement pre-existing rules." (Doc. 39, pg. 7).

Further, defendant argues that plaintiff is "confusing the role of a decision-maker with that of a final policymaker…," which it believes is insufficient to state a claim against a municipality under § 1983. (Doc. 39, pg. 7-8). That is, defendant argues the Seventh Circuit has recognized "a plaintiff must lose 'unless an entirely executive decision establishes municipal policy because it is final….'" (Doc. 39, pg. 8) (quoting *Auriemma*, 957 F.2d at 400). Because it is argued defendant Williams "only had authority to implement pre-existing rules and did not have the authority to set policy," defendant believes plaintiff's claims are insufficient and require dismissal. (Doc. 39, pg. 8) (citing *Killinger*, 389 F.3d at 772; *Gernetzke*, 274 F.3d at 469; *Lopez v. Shines*, No. 93 C 1243, 1993 WL 437450, at *2 (N.D. Ill. Oct. 27, 1993)).

Conversely, plaintiff argues whether defendant Williams acted with final policymaking authority delegated to him by the City of Collinsville is an issue of fact to be decided by the jury. (Doc. 55, pg. 1). Such authority was allegedly

delegated and used to constructively discharge plaintiff when the City of Collinsville allowed defendant Williams to set policy for the following: (1) hiring and firing city employees, (2) using City credit cards, and (3) reporting sexual harassment. (Doc. 55, pg. 1).

Plaintiff cites Seventh Circuit authority to support the above position. (Doc. 55, pg. 2) (citing *Kujawski*, 183 F.3d at 737; *Jett*, 491 U.S. at 737; *City of St. Louis v. Praprotnik*, 485 U.S. 112, 124 n. 1 (1988)). Specifically, it argues that the Seventh Circuit has "repeatedly reversed grants of summary judgment to municipalities on this point" by discussing cases in which reasonable inferences could be made about delegated policy decisions. (Doc. 55, pg. 2) (discussing *Kujawski*, 183 F.3d at 740; *Valentino v. Vill. of S. Chi. Heights*, 575 F.3d 664, 678 (2009)). In so doing, it attempts to highlight the differences in the standards for motions to dismiss and motions for summary judgment, as well as analogize the present facts with those contained in *Kujawski* and *Valentino*. (Doc. 55, pg. 2-3). Lastly, plaintiff distinguishes *Auriemma*, which was cited extensively by defendant, by showing differences in the facts and that it too was decided at the summary judgment stage. (Doc. 55, pg. 2).

Here, the Court finds that plaintiff has stated sufficient allegations to give defendant notice of the claims being made against it. As noted above, this is all that is required to plead a claim of municipal liability. Enough facts have been alleged, that when accepted as true, state claims that are plausible on the face of the complaint. That is, plaintiff has provided facts regarding defendant Williams,'

the administrative head for the City's municipal government, delegated authority to make final policy in the areas of hiring and firing City employees, using City credit cards, and reporting sexual harassment. In so doing, plaintiff has sufficiently alleged that it was defendant Williams' decisions as a final policymaker in these areas that were the "driving force" behind her First Amendment violations, and therefore her complaint survives the motion to dismiss stage. Additional facts are needed to determine whether defendant Williams was in fact delegated this authority by legislative enactment or an official or entity possessing such authority, and whether it was to make final policy or simply executive decisions. For the time being, however, plaintiff's well-pleaded facts in these areas must be accepted as true.

V. Conclusion

Accordingly, the Court **DENIES** defendant's motion to dismiss plaintiff's first amended complaint. (Doc. 39).

IT IS SO ORDERED.

Signed this 14th day of July, 2017.

David R. Herndon

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United States District Judge