Peroli, et al. v. Huber, et al. Doc. 103

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOETTE PEROLI, *et al.*,	)	Case No. 1:19-cv-1755
	)	
Plaintiffs,	)	Judge J. Philip Calabrese
	)	
v.	)	Magistrate Judge David A. Ruiz
	)	
GREGORY HUBER, *et al.*,	)	
	)	
Defendants.	)	
	)	

OPINION AND ORDER

This case arises out of the arrest and prosecution of Plaintiff Joette Peroli for allegedly making false statements in a written complaint of misconduct against deputies of the Medina County Sheriff's Department. Plaintiff and her husband, Justin Peroli, bring claims under both federal and State law against Medina County, the Medina County Sheriff's Department, multiple deputies of the Medina County Sheriff's Department (the "County Defendants"), the City of Medina, and Medina City Prosecutor Gregory Huber. Previously, the Court dismissed Plaintiffs' federal claims against the City of Medina and Mr. Huber in a ruling dated May 12, 2020 (ECF No. 52). The County Defendants move for a summary judgment on all claims against them. The City of Medina and Mr. Huber also seek a summary judgment on the claims that remain against them under State law.

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STATEMENT OF FACTS

On Defendants' motions for summary judgment, the record establishes the following undisputed facts, which in the current procedural posture the Court construes in the light most favorable to Plaintiffs.

A. The Incident at the Courthouse

In 2005, Ms. Peroli was diagnosed with post-traumatic stress disorder. (ECF No. 91-1, PageID #1529; ECF No. 91-2, ¶ 3, PageID #1555.) Since then, Ms. Peroli has received regular psychiatric treatment for this condition. (ECF No. 91-1, PageID #1532–33; ECF No. 91-2, ¶¶ 5 & 6, PageID #1555.)

On June 15, 2017, while she was in her third year of law school, Ms. Peroli was at the Medina County courthouse to testify in a friend's divorce proceeding. (ECF No. 91-2, ¶ 7, PageID #1555.) As she sat in a public waiting area, Ms. Peroli witnessed a verbal altercation between an attorney and her friend's grandmother, who was also there to testify. (ECF No. 84-1, PageID #1210, #1220.) When Ms. Peroli attempted to intervene to comfort the woman, the attorney confronted her. (*Id.*, PageID #1230, #1290.) As a result of the disturbance, the court administrator instructed a deputy sheriff to escort Ms. Peroli from the courthouse. (*Id.*, PageID #1231, #1290.)

According to Plaintiffs, to execute that directive, a deputy sheriff then "physically grabbed" Ms. Peroli's arm and "pulled [her] out of the waiting area." (*Id.*, PageID #1262.) Ms. Peroli testified that she told the deputy that she suffered from PTSD and asked him to stop touching her, but he did not. (*Id.*, PageID #1238.) The

County Defendants maintain that the deputy scarcely touched Ms. Peroli. Deputy Demko swears that he put his hand on Ms. Peroli's shoulder for a few seconds to guide her out of the courthouse waiting area and did not touch her a second time. (ECF No.85-2, ¶¶ 10 & 11, PageID #1435.) Surveillance video of the incident is included in the record. That video shows that Deputy Demko momentarily touched Ms. Peroli on the shoulder to escort her from the waiting room of the courthouse. (ECF No. 97.) The video further shows Deputy Demko and Sgt. Kiousis leading Ms. Peroli out of the building without touching her again. (*Id.*)

B. Ms. Peroli's Report of the Incident and the Investigation

Plaintiffs claim that Ms. Peroli experienced a panic attack shortly after her encounter with the Medina County Sheriff's Deputies. (ECF No. 91-2, ¶ 20, PageID #1557.) She filed a written complaint against Deputy Demko and Sgt. Kiousis at the Medina County Sheriff's Department an hour after the incident. (*Id.*, at ¶ 29.)

After Ms. Peroli filed her complaint, the Medina County Sheriff's Department assigned Lt. Matthew Linscott to investigate. (ECF No. 85-5, ¶ 5, PageID #1456.) As part of his investigation, Lt. Linscott reviewed Ms. Peroli's complaint, the courthouse surveillance video of the incident, Deputy Demko's body camera footage, Sgt. Kiousis' body camera footage, and the body camera footage of Sgt. Heckel, who assisted Ms. Peroli in filling out her complaint. (*Id.* at ¶ 6.)

Lt. Linscott also contacted Ms. Peroli and requested that she come to the Sheriff's Department to review the allegations and the video footage. (*Id.* at ¶ 8.)

Ms. Peroli did not show up for a scheduled meeting with Lt. Linscott, nor did she return his calls seeking to reschedule their meeting. (*Id.* at ¶ 9.)

In her complaint, Ms. Peroli alleges that Deputy Demko and Sgt. Kiousis touched and pushed her against her will on multiple occasions during the incident. (ECF No. 4-1, PageID #137–39.) Lt. Linscott identified "stark differences" between the events as she describes them in her complaint and the video footage. (ECF No. 85-5, ¶ 11, PageID #1457.) Consequently, Lt. Linscott found the allegations contained in Ms. Peroli's complaint to be unfounded and assigned Sgt. Kiousis to conduct his own independent investigation of the incident. (*Id.* at ¶¶ 12 & 13.) Lt. Linscott testified that at no point did he discuss the possibility of filing criminal charges against Ms. Peroli with Sgt. Kiousis. (*Id.* at ¶ 12.)

During his investigation, Sgt. Kiousis also reviewed Ms. Peroli's complaint, the courthouse surveillance footage, Deputy Demko's body camera footage, and his own body camera footage. (ECF. No. 85-3, ¶ 8, PageID #1439.) Sgt. Kiousis then prepared a report, which he forwarded to Mr. Huber, the Medina City Prosecutor, and requested Mr. Huber's review to determine if charges were appropriate for filing a false report. (*Id.*)

C. The City Prosecutor Decides to Press Charges

After reviewing the video footage, Sgt. Kiousis' report, and Section 2921.15 of the Ohio Revised Code, Mr. Huber sent a letter to Sgt. Kiousis authorizing a single charge against Ms. Peroli for violating that statute. (ECF No. 62-2, PageID #579.) On August 15, 2017, Sgt. Kiousis, prepared, executed, and filed the criminal

complaint and affidavit with the clerk of the Medina Municipal Court. (ECF No. 4-4, Page ID #145.) The warrant authorized the issuance of a summons in lieu of arrest. (*Id.*) Nonetheless, on August 17, 2017, the Medina Municipal Court Deputy Clerk issued an arrest warrant for Ms. Peroli. (ECF No. 85-3, ¶ 9, PageID #1439.)

D. Ms. Peroli's Arrest

Later that same day, Deputies Taylor and Norris received a copy of the arrest warrant from Sgt. Heckel during morning roll call and proceeded to Plaintiffs' residence to arrest Ms. Peroli. (ECF. No. 85, ¶ 7, PageID #1460.)

Deputy Taylor's body camera footage of the arrest shows the following (all as seen on the video footage filed at ECF No. 86): Upon answering the door, Ms. Peroli stepped outside as instructed. Deputy Taylor notified Ms. Peroli that she was under arrest for making a false complaint against the Medina County Sheriff's Department. Ms. Peroli complied with Deputy Taylor's request to turn around and place her hands behind her back. Ms. Peroli then informed Deputy Taylor that she suffers from PTSD and needed her medication.

After Deputy Taylor asked Ms. Peroli to step toward the curb near the officers' vehicle, he asked Ms. Peroli for permission to open the front door to call for Mr. Peroli. Ms. Peroli granted permission to do so, and Deputy Taylor called for Mr. Peroli, who answered the door. Deputy Taylor informed Mr. Peroli that Ms. Peroli was under arrest and that she needed her medication.

As Deputy Taylor waited near the front door for Mr. Peroli to retrieve Ms. Peroli's medication, Ms. Peroli began to experience what she describes as a panic

attack. Within approximately one minute of Ms. Peroli alerting the officers that she was having a panic attack, Deputy Taylor called for an ambulance. Deputies Taylor and Norris attempted to calm Ms. Peroli while they waited for the ambulance. When EMS arrived, they asked the officers if it was necessary to keep Ms. Peroli handcuffed. After several minutes, Deputy Taylor agreed to remove Ms. Peroli's handcuffs. At no point during the arrest did Ms. Peroli ask to have her handcuffs removed.

Ms. Peroli continued to experience emotional distress during the ambulance ride to a hospital for evaluation. Upon arrival, the deputies agreed to issue a summons to Ms. Peroli in lieu of arresting her. The officers informed Ms. Peroli that she was not being arrested, but that she needed to report to municipal court instead.

Later, the municipal court dismissed with prejudice the criminal charge against Ms. Peroli for violating Section 2921.15 on the ground that Ms. Peroli's conduct in filing a citizen complaint did not constitute criminal conduct under the statute. (ECF No. 4-5, PageID #148–50.)

Ms. Peroli claims that Defendants' actions during her arrest exacerbated her PTSD and that she continues to experience intense psychological distress as a result. (ECF No. 91-1, PageID #1538.)

ANALYSIS

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). On a motion for summary judgment, the Court must view evidence in

the light most favorable to the non-moving party. *Kirilenko-Ison v. Board of Educ. of Danville Indep. Schs.*, 974 F.3d 652, 660 (6th Cir. 2020) (citing *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)). On a motion for summary judgment, the moving party has the initial burden of establishing that there are no genuine issues of material fact as to an essential element of the claim or defense at issue. *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1479–80 & n.12 (6th Cir. 1989); *Chappell v. City of Cleveland*, 584 F. Supp. 2d 974, 988 (N.D. Ohio 2008). The moving party, however, is not required to file affidavits or other similar materials negating a claim on which its opponent bears the burden of proof, so long as the moving party relies upon the absence of an essential element in the record. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986); *Chappell*, 584 F. Supp. 2d at 987.

Ultimately, the Court must determine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 251 (1986).

I. Motion for Summary Judgment of the County Defendants

Plaintiffs bring claims under federal and State law for false arrest, excessive force, and retaliation against the County Defendants, alleging violations of Ms. Peroli's First, Fourth, and Fourteenth Amendment rights (Count 2), *Monell* claims based on Medina County's alleged unconstitutional policies and practices with respect to handling citizens' complaints against the Medina County Sheriff's Department and its employees (Counts 3 and 4), violation of Title II of the Americans

with Disabilities Act (Count 5), conspiracy (Count 6), intentional/negligent infliction of emotional distress (Count 7), false arrest (Count 8), malicious prosecution (Count 9), and loss of consortium (Count 10). (*See* ECF No. 4.)

I.A. Qualified Immunity

Qualified immunity shields law enforcement officers and public officials against suit where their conduct does not violate clearly established statutory or constitutional rights of which a reasonable officer would be aware. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); *Barnes v. Wright*, 449 F.3d 709, 715 (6th Cir. 2006). Beyond the benefit of guarding against potentially disabling threats for civil damages, the doctrine protects public officials from undue interference in the performance of their duties. *Dickerson v. McClellan*, 101 F.3d 1151, 1157 (6th Cir. 1996).

To determine if qualified immunity bars suit, the Court employs a three-step inquiry. First, the Court must determine if a constitutional violated occurred. *Barnes*, 449 F.3d at 715 (quotation omitted). Second, the Court determines if the right was clearly established and one which a reasonable officer would have known at the time. *Id.* (quotation omitted). Third, the Court determines if the plaintiff has identified sufficient evidence to show that the defendant's conduct was objectively reasonable in light of the clearly established right. *Id.* (quotation omitted); *Binay v. Bettendorf*, 601 F.3d 640, 651 (6th Cir. 2010).

I.A.1. False Arrest and Malicious Prosecution

Plaintiffs allege that the County Defendants violated Ms. Peroli's First, Fourth, and Fourteenth Amendment rights when they falsely arrested her for a single count of violating Section 2921.15 of the Ohio Revised Code, a misdemeanor of the first degree (Count 2). They also bring a false arrest claim under State law (Count 8) and a claim for malicious prosecution (Count 9). Because the County Defendants argue that the presence of probable cause necessarily defeats each of Plaintiffs' claims on this score, the Court analyzes these counts together.

Under both federal and Ohio law, Plaintiffs must establish a lack of probable cause to succeed on a claim of false arrest. *See Voyticky v. Village of Timberlake*, 412 F.3d 669, 677 (6th Cir. 2005); *Henderson v. City of Euclid*, 8th Dist. Cuyahoga No. 101149, 2015-Ohio-15, at ¶ 55. Ordinarily, an arrest pursuant to a facially valid warrant provides a complete defense to a claim under Section 1983 for false arrest. *Voyticky*, 412 F.3d at 677. Such is the case under Ohio law as well. *McFarland v. Shirkey*, 106 Ohio App. 517, 524, 151 N.E.2d 797, 802 (1958).

Similarly, a claim for malicious or retaliatory prosecution requires a plaintiff to plead and prove the absence of probable cause for the underlying criminal charge. *Hartman v. Moore*, 547 U.S. 250, 259 (2006) ("Establishing the existence of probable cause will suggest that prosecution would have occurred even without a retaliatory motive."); *Trussell v. General Motors Corp.*, 53 Ohio St. 3d 142, 559 N.E.2d 732 (1990), syllabus. Probable cause "requires only a probability or substantial chance of

criminal activity, not an actual showing of such activity." *District of Columbia v. Wesby*, 138 S. Ct. 577, 586 (2018) (citation omitted).

I.A.1.a. Probable Cause Under Controlling State Law

Plaintiffs argue that the County Defendants lacked probable cause because Sgt. Kiousis prepared Ms. Peroli's affidavit and arrest warrant with "material omissions of law and fact." (ECF. No. 91, ¶ 2, Page # 1500.) Those material omissions, according to Plaintiffs, include Ms. Peroli's "clearly established constitutional right to file a complaint, her PTSD or the *Davenport* requirements." This last item refers to a decision of the intermediate appellate court in *City of Akron v. Davenport*, No. 21552, 2004-Ohio-435, at ¶¶ 17 & 18, which requires that a sworn complaint be filed with a court or legislative agency to trigger criminal liability under Section 2921.15. Plaintiffs rely on *Davenport*, which constitutes controlling law in Medina, to argue that the County Defendants lacked probable cause as a matter of law.

But *Davenport* is not dispositive on the issue of probable cause. Even assuming that the intermediate appellate court correctly interpreted Section 2921.15, a matter on which the plain language of the statute casts serious doubt, the County Defendants relied on their good faith belief, after three separate levels of investigative review, that Ms. Peroli's actions provided probable cause for a charge under the statute. Subsequently, they pursued their office's standard course of action in obtaining a valid arrest warrant. (ECF No. 62, PageID #591.) Notwithstanding *Davenport*, Mr. Huber testified that he could have charged Ms. Peroli with other falsification charges. (ECF No. 62, PageID #628.) For example, it appears that there

was probable cause to charge Ms. Peroli with a violation of Section 2921.13(A)(3), which prohibits making a false statement to mislead a public official. Where "no probable cause exists to arrest a plaintiff for a particular crime, but that probable cause exists to arrest plaintiff for a related offense, the plaintiff cannot prevail in a suit alleging wrongful arrest brought pursuant to 42 U.S.C. § 1983." *Voyticky*, 412 F.3d at 676 (citing *Avery v. King*, 100 F.3d 12, 14 (6th Cir. 1997)).

I.A.1.b. Res Judicata

Plaintiffs argue that the municipal court's dismissal with prejudice of the criminal charge against Ms. Peroli constitutes a finding that probable cause did not support the charge in the first place and binds the parties here under the doctrine of res judicata. Application of the doctrine depends on (1) a final decision on the merits by a court of competent jurisdiction; (2) a subsequent action between the same parties or their privies; (3) an issue in the subsequent action which was litigated or which should have been litigated in the prior action; and (4) an identity of the causes of action. *Bragg v. Flint Bd. of Educ.*, 570 F.3d 775, 776 (6th Cir. 2009).

On the record presented, the Court declines to apply res judicata. In following *Davenport*, the municipal court determined that the criminal complaint charging Ms. Peroli did not state a criminal offense. (ECF No. 4-5, PageID #150.) In other words, the court held only that the City could not charge Ms. Peroli under Section 2921.15, not that there was no probable cause to charge her with that or any crime. Unlike *Higgason v. Stephens*, 288 F.3d 868, 875 (6th Cir. 2002), on which

Plaintiffs rely, the court made no finding regarding probable cause, leaving the parties to litigate the issue now on Plaintiffs' claims under Section 1983.

I.A.1.c. Right to File False Complaints

Nor does the Constitution protect a person's right to file false complaints. Although such a proposition may appear fairly basic, the Court appreciates that criminal charges and arrest may chill the exercise of First Amendment rights that are necessary for the people to check the exercise of power on the part of those serving in their government. Some facts and circumstances may present difficult questions regarding where to draw that line. But that is not the case here. Plaintiffs' reports were demonstrably false, as captured on video—to the point where no rational juror could conclude anything other than the complaint attempted to create official consequences for deputies simply carrying out the duties of their jobs in good faith. Ms. Peroli's real grievance lies with the mediating attorney or court administrator who ordered her out of a public waiting area in the first place. One may fairly question the wisdom of pursuing charges against Ms. Peroli, but the record shows there was probable cause to do so.

I.A.2. Retaliation

That raises the question whether the County Defendants retaliated against Ms. Peroli for complaining of the actions of the deputies at the courthouse, even if her complaints were intentionally or negligently false. To succeed on a retaliation claim, Plaintiffs must demonstrate that (1) they engaged in protected conduct; (2) an adverse action was taken against Plaintiffs that would deter a person of ordinary

firmness from continuing to engage in that conduct; and (3) the adverse action was motivated at least in part by Plaintiffs' protected conduct. *Thaddeus-X v. Blatter*, 175 F.3d 378, 394 (6th Cir. 1999).

Plaintiffs argue that the First Amendment protects Ms. Peroli's complaint against the deputies. To prevail on a claim for retaliation involving activity protected under the First Amendment, assuming this case presents such a claim, Plaintiffs must show an absence of probable cause. *Reichle v. Howards*, 566 U.S. 658, 665 (2012). Indeed, the Supreme Court holds that the presence or absence of probable cause tends to be dispositive of the issue of retaliation. *See Hartman*, 547 U.S. at 261. In *Hartman*, the Supreme Court explained that "demonstrating that there was no probable cause for the underlying criminal charge will tend to reinforce the retaliation evidence and show that retaliation was the but-for basis for instigating the prosecution." *Id.* On the other hand, "the existence of probable cause will suggest that prosecution would have occurred even without a retaliatory motive." *Id.* Such is the case here, as Mr. Huber's testimony shows. (ECF No. 62, PageID #628.) Because the record shows that Defendants had probable cause, Plaintiffs' retaliation claim fails as a matter of law.

I.A.3. Excessive Force

As for excessive force, Plaintiffs can prevail on their claim "by providing only objective evidence that the challenged governmental action is not rationally related to a legitimate governmental objective or that it is excessive in relation to that purpose." *Kingsley v. Hendrickson*, 576 U.S. 389, 398 (2015).

This inquiry does not turn on the subjective intent of the officer involved; instead, the standard is objective, examining what a reasonable officer on the scene knew at the time. *Id.* at 397–98. In assessing objective reasonableness, the Supreme Court identified the following additional considerations (a non-exhaustive list): (1) "the relationship between the need for the use of force and the amount of force used"; (2) "the extent of the plaintiff's injury"; (3) "any effort made by the officer to temper or to limit the amount of force"; (4) "the severity of the security problem at issue"; (5) "the threat reasonably perceived by the officer"; and (6) "whether the plaintiff was actively resisting." *Id.* at 397. These considerations protect an officer who acts in good faith. *Id.* at 399.

Here, Deputies Taylor and Norris arrested Ms. Peroli at her home pursuant to a valid arrest warrant, which also provided the officers with discretion to issue a summons in lieu of arrest. Plaintiffs argue that the fact that the officers issued a summons to Ms. Peroli at the hospital provides "conclusive evidence that arrest was not warranted." (ECF No. 91, PageID #1509.) But probable cause determines whether an arrest is warranted, and the warrant at issue afforded the officers discretion to take Ms. Peroli into custody. Although the Court questions the decisions and judgments resulting in Ms. Peroli's arrest, the record demonstrates that her arrest was lawfully within Defendants' power.

Moreover, Deputy Taylor's body camera footage shows that the officers used the minimum amount of force necessary to secure the arrest and acted professionally and appropriately throughout. Even as Ms. Peroli experienced a panic attack, the

officers remained calm during the arrest. They asked Mr. Peroli to retrieve his wife's medication immediately after Ms. Peroli requested it. Under the objective standard governing excessive force claims, the record—consisting largely of videotaped evidence—presents evidence so one sided that the County Defendants are entitled to a judgment as a matter of law that the officers did not act unreasonably or excessively in arresting Ms. Peroli. Indeed, based on that body camera footage, no reasonable juror could determine that there is a genuine issue of material fact as to whether the County Defendants used excessive force. *See Scott v. Harris*, 550 U.S. 372, 380 (2007) ("When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.").

I.A.4. Extraordinary Circumstances

Notwithstanding the foregoing analysis, the parties dispute whether exceptional circumstances entitle Defendants to qualified immunity even if Plaintiffs could show a constitutional violation. Specifically, Defendants claim that the advice of counsel entitles them to qualified immunity even if Plaintiffs establish an underlying constitutional violation. Plaintiffs vigorously disagree. Because the Court concludes that no constitutional violation occurred, it has no occasion to consider the argument further.

* * *

For these reasons, as a matter of law, Plaintiffs cannot maintain their claims for false arrest, excessive force, and retaliation in Count 2, false arrest in Count 8, and malicious prosecution in Count 9.

I.B. *Monell* Claims

In Counts 3 and 4 of their amended complaint, Plaintiffs bring claims under *Monell v. New York City Department of Social Services*, 426 U.S. 658 (1978). Specifically, pointing to the disclaimer on the complaint form warning that any false statements may be prosecuted under Section 2921.15 of the Ohio Revised Code, Plaintiffs maintain that the Medina County Sheriff's Department has an official policy of suppressing First Amendment rights. Further, Plaintiffs argue that the County Defendants' failure to train or supervise its Sheriff's deputies resulted in the injuries claimed. Plaintiffs subsequently dismissed Count 4 under Rule 41(a). (ECF No. 89, PageID #1478.)

I.B.1. Practice of Suppressing First Amendment Rights

Medina County Sheriff's Department Chief Deputy Kenneth Baca testified that the County does not have a policy of prosecuting citizens for filing false complaints under Section 2921.15. (ECF. No. 89, PageID #1388, at ¶ 12.) Also, in footnote 9 of their opposition, Plaintiffs note that only two cases, both decided before 2004, prosecuted alleged violations of Section 2921.15, each in municipal court. Three cases, including Ms. Peroli's, over some two decades hardly constitutes a practice or policy, let alone one that amounts to suppressing complaints.

In addition, the record establishes that Defendants reviewed Ms. Peroli's complaint, attempted to contact her regarding its substance, reviewed the relevant video footage, and subsequently issued an arrest warrant based on the facts and law as Mr. Huber understood them. This record simply does not support a finding that Defendants violated Ms. Peroli's constitutional rights as a matter of policy, and no reasonable juror could conclude otherwise, in the Court's view.

I.B.2. Failure to Train or Supervise

Plaintiffs claim that the County Defendants failed to train or properly supervise their employees with respect to the policies and procedures for handling complaints. Plaintiffs argue that the County Defendants demonstrated deliberate indifference to citizens' rights by failing to provide training to handle what they contend is the recurring situation of responding to complaints, evidenced by the dozens of complaints related to officer misconduct. Assuming several dozen complaints, even a large number of complaints does not establish a failure to train or supervise employees. To the contrary, the record reflects that the County Defendants receive extensive training in dealing with persons with mental and emotional disabilities, training relating to the use of force and crisis intervention, as well as updates to reflect changes in federal and State law. (ECF No. 83, ¶¶ 6–12, PageID #1114–15.)

Finally, because the Court concludes that Plaintiffs failed to demonstrate a genuine issue of material fact that a constitutional violation occurred here, the

County Defendants cannot be found liable under *Monell*. *See Robertson v. Lucas*, 753 F.3d 606, 622 (6th Cir. 2014).

* * *

For the foregoing reasons, the County Defendants are entitled to judgment as a matter of law on Count 3.

I.C. Political Subdivision Immunity Under Ohio Law

Under Section 2744.03 of the Ohio Revised Code, political subdivisions and their employees enjoy immunity against claims under State law unless a specific statutory exemption applies.

I.C.1. Political Subdivision Immunity for Medina County

To determine whether the statute applies to a political subdivision or its employees, Ohio courts use a three-tier analysis. *Lambert v. Clancy,* 125 Ohio St. 3d 231, 2010-Ohio-1483, 927 N.E.2d 585, ¶ 8 (citing *Smith v. McBride*, 130 Ohio St. 3d 51, 2011-Ohio-4674, 955 N.E.2d 954, ¶13). First, Ohio law contains blanket immunity for political subdivisions:

> a political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function.

Ohio Rev. Code § 2744.02(A)(1). Second, this blanket immunity applies unless the plaintiff can demonstrate that an enumerated exception applies. *Lambert*, 125 Ohio St. 3d 231, 2010-Ohio-1483, 927 N.E.2d 585, ¶ 9 (identifying the five statutory exceptions to immunity in Section 2744.02(B)). Third, if an exception applies, then

the court determines whether a defense to the exception in restores the immunity of the political subdivision. *Id.*

Here, Medina County asserts an entitlement to political subdivision immunity against Plaintiffs' claims under Ohio law. Beyond the assertion of immunity, however, Medina County scarcely makes an argument for immunity based on the statute. For their part, Plaintiffs contest the merits of their individual claims, but make no objection to application of Section 2744.02 or 2744.03 to Medina County. The Court finds the parties' arguments on this point wholly frustrating. Because the second tier of the analysis places the burden on Plaintiffs to demonstrate an exception to Medina County's statutory political subdivision liability, the Court concludes that the County has immunity under the statute.

I.C.2. Political Subdivision Immunity for Individual Defendants

Under Section 2744.03(A)(6), employees of a political subdivision also enjoy immunity against suit. *Lambert*, 125 Ohio St. 3d 231, 2010-Ohio-1483, 927 N.E.2d 585, ¶ 10. Instead of using the three-tier analysis for political subdivisions, public employees have immunity unless:

> (a) The employee's acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities;
>
> (b) The employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner;
>
> (c) Civil liability is expressly imposed upon the employee by a section of the Revised Code.

Ohio Rev. Code § 2744.03(A)(6); *see also Argabrite v. Neer*, 149 Ohio St. 3d 349, 2016-Ohio-8374, 75 N.E.3d 161, ¶¶ 7 & 8; *Lambert*, 125 Ohio St. 3d 231, 2010-Ohio-1483, 927 N.E.2d 585, ¶ 10.

The parties dispute whether Section 2744.03(A)(6)(b) applies—that is, whether the individual Defendants acted maliciously, recklessly, or in bad faith. These standards are rigorous and difficult to establish in most cases, especially where law enforcement officers carry out their duty to arrest and detain a person. *Argabrite*, 149 Ohio St. 3d 349, 2016-Ohio-8374, 75 N.E.3d 161, ¶ 8. Under the high bar Section 2744.03(A)(6)(b) sets, the actions of the individual Defendants fall far short of the rigorous standard. On the record presented, Plaintiffs fail to raise a genuine issue of material fact whether an exception to political subdivision immunity applies.

I.D. Plaintiffs' Remaining Claims

Even if any claim Plaintiffs assert survived as a matter of law, the record demonstrates that Defendants are nonetheless entitled to summary judgment on each.

I.D.1. Americans with Disabilities Act

In Count 5, Plaintiffs claim that the County Defendants violated Title II of the Americans with Disabilities Act because they did not make reasonable accommodations for Ms. Peroli at the time of her arrest due to her PTSD. In relevant part, the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from the participation in or be denied the benefits of

the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132.

The Sixth Circuit has not addressed the extent to which this language imposes a duty on arresting officers to make reasonable accommodations during an arrest, and there is a circuit split on the issue. *Compare Rosen v. Montgomery Cnty.*, 121 F.3d 154, 157–58 (4th Cir. 1997) (stating "[t]he most obvious problem is fitting an arrest into the ADA at all . . . calling a[n] arrest a 'program or activity' of the County . . . strikes us as a stretch of the statutory language and the underlying legislative intent"), *with Hainze v. Richards*, 207 F.3d 795, 802 (5th Cir. 2000) (holding that police officers are "under a duty to reasonably accommodate [plaintiff's] disability in handling and transporting him"). Additionally, Medina County argues it cannot be held liable on Plaintiffs' ADA claim on a theory of *respondeat superior* for the actions of its deputies. Plaintiffs respond that the Sixth Circuit has not squarely addressed this issue either.

Regarding whether the ADA requires arresting officers to accommodate a disability, in the Court's view, the Fourth Circuit has the better of the argument. An arrest does not exclude a qualified individual from the services, programs, or activities of a public entity or otherwise discriminate against such an individual. Nor does an arrest deny benefits to a qualified individual.

Even assuming that Deputies Taylor and Norris were obligated to make reasonable accommodations under the ADA during Ms. Peroli's arrest, judgment as a matter of law in favor of the County Defendants is still appropriate. After reviewing

the available evidence, including Deputy Taylor's body camera footage of the arrest, the Court fails to see how any reasonable juror could conclude that the officers' actions rise to the level of violating the ADA. When Ms. Peroli advised officers that she suffers from PTSD, Deputy Taylor immediately asked Mr. Peroli to retrieve Ms. Peroli's medication. Further, Deputy Taylor called for an ambulance approximately one minute after Ms. Peroli began experiencing a panic attack. Deputy Taylor also attempted to calm Ms. Peroli during the arrest and ultimately deferred to the medical judgment of the personnel who arrived with the ambulance. None of these actions suggest that Deputies Taylor or Norris discriminated against Ms. Peroli because of her PTSD or any other condition the ADA covers.

To survive a motion for summary judgment on a claim under Title II of the ADA, Plaintiffs must show, among other things, that there is a dispute of material fact that Defendants intentionally discriminated against Ms. Peroli because of her disability. *Dillery v. City of Sandusky*, 398 F.3d. 562, 567 (6th Cir. 2005). The record contains no such evidence. Further, Plaintiffs' argument on this claim cuts against their claim that the County Defendants arrested Ms. Peroli in retaliation for filing the complaint, though she may argue in the alternative. Either way, Defendants are entitled to judgment as a matter of law on this claim.

I.D.2. Conspiracy

In Count 6, Plaintiffs claim the County Defendants conspired to retaliate against Ms. Peroli to deprive her of her constitutional rights under the First and

Fourth Amendments. From the amended complaint, it is unclear whether Plaintiffs this claim under federal or State law. Therefore, the Court analyzes it under each.

I.D.1.a. Conspiracy Under Ohio Law

To survive a motion for summary judgment on a conspiracy claim under Ohio law, Plaintiffs must demonstrate a "malicious combination of two or more persons to injure another person, in a way not competent for one alone, resulting in actual damages." *Kenty v. Transamerica Premium Ins. Co.*, 72 Ohio St. 3d 415, 419, 1995-Ohio-61, 650 N.E.2d 863, 866–67 (quoting *LeFort v. Century 21-Maitland Realty Co.*, 32 Ohio St. 3d 121, 126, 512 N.E.2d 640, 645 (1987)). To support their argument, Plaintiffs make two arguments based on the evidence in the record.

First, Plaintiffs cite various pages from the deposition transcripts of Lt. Linscott, Sgt. Kiousis, and Mr. Huber, claiming the testimony concedes that agents of the County and the City conspired to retaliate against Ms. Peroli. None of this testimony, however, says what Plaintiffs claim it does or otherwise supports their conspiracy or retaliation claims. Put simply, these witnesses concede that they investigated and ultimately pursued charges against Ms. Peroli based on her filing of a (false) complaint. Beyond that, the testimony is consistent that each witness had a good faith belief that Ms. Peroli violated Section 2921.15 of the Ohio Revised Code.

Second, Plaintiffs rely on an admission the County Defendants made in answering the amended complaint. There, the County Defendants admitted that two deputies "arrested Plaintiff in her home in retaliation for her filing a civilian complaint." (ECF No. 4, ¶ 84, PageID #111; ECF No. 11, ¶ 48, PageID #179; *see also*

ECF No. 102.) Notwithstanding this answer, the County Defendants denied every other allegation in the amended complaint that they retaliated against Ms. Peroli. (*See* ECF No. 11, ¶¶ 43, 66, 72 & 80, PageID #179, 181–82.) Additionally, the evidentiary record contradicts the argument that the County Defendants conceded retaliation. As just one example, Deputy Taylor testified that Sgt. Heckel did not discuss whether he had any prior interactions with Ms. Peroli, negating an inference of retaliatory motive. (ECF No. 51-5, PageID #408.) The evidence undermines the pleading on which Plaintiffs rely and confirms that the County Defendants gave that answer mistakenly. Even assuming Plaintiffs may rely on the answer of their opposing parties over the evidence in the record, that admission in the answer does not suffice to create a *genuine* issue of material fact that precludes the entry of a summary judgment on the record presented.

I.D.2.b Conspiracy Under Federal Law

Under federal law, Plaintiffs must demonstrate that (1) a single plan existed, (2) the conspirators shared an objective to deprive her of her constitutional rights, and (3) an overt act was committed in furtherance of the conspiracy that caused the injury. *Jackson v. City of Cleveland*, 925 F.3d 793, 817 (6th Cir. 2019). Under the law of this Circuit, a conspiracy claim requires an underlying constitutional violation. *Wiley v. Oberlin Police Dep't*, 330 F. App'x 524, 530 (6th Cir. 2009) (citations omitted). Because the record shows the absence of a constitutional violation as a matter of law, Plaintiffs cannot maintain this claim, and Defendants are entitled to summary judgment.

I.D.3. Intentional and Negligent Infliction of Emotional Distress

In Count 7 of their amended complaint, Plaintiffs claim that Defendants intentionally and/or negligently inflicted emotional distress on Ms. Peroli by (1) failing to follow the precedent of *Davenport*; (2) refusing to provide medical assistance to Ms. Peroli during her arrest; and (3) refusing to loosen Ms. Peroli's handcuffs during her arrest. In their brief, Plaintiffs do not address their claim for negligent infliction of emotional distress; therefore, they waived it. *See Humphrey v. United States Attorney Gen.'s Office*, 279 F. App'x 328, 331 (6th Cir. 2008).

Even if the Court were to consider this claim on the merits, it would still fail. Ohio does not recognize a claim for negligent infliction of emotional distress where the plaintiff's fear of a "nonexistent physical peril" causes the distress. *Heiner v. Moretuzzo*, 73 Ohio St. 3d 80, 87, 1995-Ohio-65, 652 N.E.2d 664, 669–70. Body camera footage in the record makes clear that at no time during her arrest was Ms. Peroli in any actual physical peril, regardless of her subjective beliefs.

With respect to intentional infliction of emotional distress, Ohio requires a plaintiff to show that (1) the defendant intended to cause the plaintiff serious emotional distress; (2) the defendant's conduct was extreme and outrageous; and (3) the defendant's conduct was the proximate cause of plaintiff's serious emotional distress. *See Phung v. Waste Mgt. Inc.*, 71 Ohio St. 3d 408, 410, 1994-Ohio-389, 644 N.E.2d 286, 289. Ohio employs a reasonable person standard. That is, the emotional distress suffered by the plaintiff must be of such a nature that "no reasonable person

could be expected to endure it." *Pyle v. Pyle*, 11 Ohio App. 3d 31, 34, 463 N.E.2d 98, 103 (8th Dist. 1983) (quoting Restatement (Second) of Torts § 46 cmt. j (1965)).

Again, the video footage of Ms. Peroli's arrest, even construing the facts in the light most favorable to Plaintiffs, shows the absence of a genuine issue of material fact as to at least the second element of a claim for intentional infliction of emotion distress. Body camera footage of Ms. Peroli's arrest shows that Deputy Taylor requested Mr. Peroli to retrieve his wife's medication to treat her PTSD. Deputy Taylor also attempted to calm Ms. Peroli during her panic attack and deferred to the medical judgment of the paramedics who arrived on the scene. No rational trier of fact could review the video footage and find such conduct extreme or outrageous. For these reasons, Defendants are entitled to judgment as a matter of law on Count 7.

I.D.4. Loss of Consortium

In Count 10, Mr. Peroli asserts a claim of loss of consortium. Because this claim is derivative of his wife's causes of action, he may not pursue the claim independently. *Monak v. Ford Motor Co.*, 95 F. App'x. 758, 768 (6th Cir. 2004). Because Ms. Peroli's claims do not survive summary judgment, neither do her husband's.

II. Motion for Summary Judgment of the City of Medina and Mr. Huber

Plaintiffs alleged claims under both federal and State law against Defendants City of Medina and its city prosecutor, Gregory Huber. In a previous ruling, the Court dismissed Plaintiffs' federal claims. (*See* ECF No. 52.) Arguing that they enjoy

immunity from suit, these Defendants seek a summary judgment on all remaining State law claims against them, which include claims for conspiracy (Count 6), intentional/negligent infliction of emotional distress (Count 7), false arrest (Count 8), malicious prosecution (Count 9), and loss of consortium (Count 10).

Specifically, these Defendants argue that Mr. Huber's role as the city prosecutor entitles him to absolute prosecutorial immunity. Also, the City of Medina and Mr. Huber argue that the Ohio Political Subdivision Tort Immunity Act bars Plaintiffs' remaining claims against them.

II.A. Jurisdiction

As a threshold matter, because of the previous dismissal of the federal claims against the City of Medina and Mr. Huber, the Court examines its jurisdiction to take up these Defendants' motion for summary judgment. Under 28 U.S.C. § 1367(a), district courts exercise supplemental jurisdiction over all other claims that are so related to those in the action within the court's original jurisdiction that they form part of the same case or controversy. Further, Section 1367(c)(3) provides that a district court may decline to exercise supplemental jurisdiction if the district court has dismissed all claims over which it has original jurisdiction.

In deciding whether to exercise supplemental jurisdiction, the district court should consider factors such as "comity, judicial economy, convenience, and fairness." *Pinney Dock & Transp. Co. v. Penn Cent. Corp.,* 196 F.3d 617, 620–21 (6th Cir. 1999). After reviewing the record in this matter, the Court will not exercise its discretion to decline supplemental jurisdiction over Plaintiffs' State law claims. In this matter,

Plaintiffs' claims against the City of Medina and Mr. Huber involve the same set of facts and circumstances such that there is one case or controversy between the parties. Moreover, the remaining claims do not raise novel issues of State law, and no exceptional circumstance applies. Additionally, the Court finds that retaining jurisdiction best serves the ends of judicial economy and the convenience of the parties by resolving all claims comprising the same case or controversy and avoiding piecemeal litigation. Therefore, the Court turns to the claims under State law against the City of Medina and Mr. Huber.

II.B. Prosecutorial Immunity

In *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976), the Supreme Court held that prosecutors enjoy absolute immunity where "their activities are intimately associated with the judicial process." Although the Supreme Court articulated this principle in the context of a claim under Section 1983, Ohio courts have adopted the *Imbler* framework and apply it to common-law claims involving prosecutorial misconduct. In particular, the Ohio Supreme Court recognizes that a prosecutor has absolute immunity where he engages in quasi-judicial conduct, including the initiation of prosecution and presentation of the State's case. *Willitzer v. McCloud*, 6 Ohio St. 3d 447, 449, 453 N.E.2d 693, 695 (1983) (citing *Imbler*, 424 U.S. at 431). Under Ohio law, however, immunity does not extend to a prosecutor engaged in "essentially investigative or administrative functions." *Id.* To determine whether immunity applies, Ohio courts follow *Imbler*'s functional approach, examining "the nature of the function performed, not the identity of the actor who performed it." *Moore v. City of*

Cleveland, 8th Dist. Cuyahoga No. 100069, 2014-Ohio-1426, ¶ 18 (citing *Forrester v. White*, 484 U.S. 219, 229 (1988)).

Against this standard, Plaintiffs argue that Mr. Huber does not enjoy immunity for his actions because they were administrative or investigative in nature and did not involve his performance as an advocate. In particular, Plaintiffs argue that Mr. Huber made no attempt to determine whether probable cause supported charges against Ms. Peroli and that he acted merely as an "administrative rubber stamp" for the Medina County Sheriff's Department. On the record presented, the Court determines that Mr. Huber's actions included reviewing Ms. Peroli's complaint, reviewing the security and body camera footage of Sgt. Kiousis and Deputy Demko, reviewing the report of Sgt. Kiousis, reviewing Section 2921.15, and approving the recommendation of a criminal charge against Plaintiff. (ECF No. 62-1, PageID #583, 591 & 600–01.)

Such actions constitute preliminary steps in initiating a prosecution and are intimately associated with the judicial phase of prosecution. Accordingly, applying Ohio law to the record, the Court determines that absolute prosecutorial immunity shields Mr. Huber. Plaintiffs maintain that immunity does not shield Mr. Huber because he lacked probable cause to charge Ms. Peroli and deferred to the request for charges the Medina County Sheriff's Department made. Aside from the fact that the record does not support this argument, his position as a prosecutor requires Mr. Huber to exercise his judgment in determining whether to bring criminal charges, bringing that decision within his core responsibility of initiating a

prosecution, for which immunity applies. "The public trust of the prosecutor's office would suffer if he were constrained in making every decision by the consequences in terms of his own potential liability in a suit for damages." *Imbler*, 424 U.S. at 424–25. Further, the Court previously addressed the application of prosecutorial immunity in its May 12, 2020 ruling dismissing Plaintiffs' federal claims against Mr. Huber and the City of Medina. (ECF. No. 52, PageID #493–95.) Because Ohio courts apply the federal framework *Imbler* established, the Court sees no reason why the same analysis should not apply to Plaintiffs' State law claims as well. For these reasons, Mr. Huber is entitled to judgment on the claims remaining against him.

II.C. Claims Against the City of Medina

Plaintiffs do not dispute that the City of Medina is a political subdivision under Section 2744.01(C)(2) of the Ohio Revised Code. In conceding this point, Plaintiffs take on the burden of demonstrating that one of the enumerated exceptions to political subdivision immunity applies. *Lambert*, 125 Ohio St. 3d 231, 2010-Ohio-1483, 927 N.E.2d 585, ¶ 9. But Plaintiffs have failed to argue that any does. Therefore, Plaintiffs have not demonstrated a genuine issue of material fact as to the City's immunity in this case.

CONCLUSION

For the foregoing reasons, there are no genuine disputes of material fact, and Defendants are entitled to a judgment in their favor as a matter of law or because no rational juror could find in their favor on certain claims, as the case may be.

Therefore, the Court **GRANTS** Defendants' respective motions (ECF Nos. 61 & 85) for summary judgment on all remaining counts.

SO ORDERED.

Dated: January 29, 2021

Judge J. Philip Calabrese
United States District Judge
Northern District of Ohio