UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JOEL BRIGGS,
Plaintiff

vs

THE VILLAGE OF GREENHILLS,
Defendant

Case No. 1:05-cv-044
Barrett, J.
Hogan, M.J.

REPORT AND RECOMMENDATION

On March 8, 2006, this matter was administratively stayed by the Court pending a decision by the Sixth Circuit Court of Appeals on plaintiff's appeal from the Court's Order of June 14, 2005 denying plaintiff's motion for judgment on the pleadings. (Doc. 44). On December 13, 2006, the Court of Appeals dismissed plaintiff's interlocutory appeal (Doc. 52), and on February 28, 2007, the mandate of the Court of Appeals was issued. (Doc. 69). Accordingly, this case is now reopened on the docket of this Court.

This matter is before the Court on plaintiff's second motion for judgment on the pleadings (Doc. 13); plaintiff's third motion for judgment on the pleadings (Doc. 18) and defendant's response thereto (Doc. 22); plaintiff's motion for summary judgment (Doc. 19) and defendant's response thereto (Doc. 21); defendant's motion for summary judgment (Doc. 20); defendant's motion for sanctions (Doc. 29), plaintiff's "OPPOSE defendant white citizen filed 6/15/05 testimony OF ABUSE of rational discretion TO NOT TO understand!" (Doc. 31), and defendant's reply in support of its motion for sanctions (Doc. 33); defendant's motion to amend the scheduling order (Doc. 37); plaintiff's motion for reconsideration of the Court's

August 30, 2005 Deficiency Order (Doc. 38); plaintiff's fourth motion for judgment on the pleadings (Doc. 50) and defendant's response thereto and renewal of motion for sanctions (Doc. 51); plaintiff's motion "for Reconsideration by Intelligent and Discretion of this U.S. District Court" (Doc. 54) and defendant's memorandum in opposition thereto (Doc. 58); plaintiff's motion "to ADD METERIAL (sic) TESTIMONY in memorandum" (Doc. 55) and defendant's memorandum in opposition thereto (Doc. 60); plaintiff's motion "to STATE REMINDERS! to this HONORABLE COURT of Laws" (Doc. 57) and defendant's memorandum in opposition thereto (Doc. 62); plaintiff's motion for reconsideration of the dismissal of his appeal (Doc. 59); plaintiff's motion to oppose by common sense in the memorandum (Doc. 61) and defendant's memorandum in opposition thereto (Doc. 64); plaintiff's fifth motion for judgment on the pleadings (Doc. 63), defendant's memorandum in opposition thereto (Doc. 67), and plaintiff's reply memorandum (Doc. 65); and plaintiff's motion "to oppose defendant memorandum of no substance of no material evidence of no fact for a foundation of law." (Doc. 68).

On January 24, 2005, plaintiff Joel Briggs filed a complaint in this federal court. (Doc. 1). Mr. Briggs alleges that he was unlawfully convicted of speeding by the Village of Greenhills Mayor's Court on June 22, 2004. (Doc. 1). He alleges that his automobile was actually pulled over in Springfield Township, and not within the jurisdictional limits of the Village of Greenhills, and therefore the defendant was without jurisdiction to charge him with a violation of a Greenhills' ordinance. Attached to plaintiff's complaint is a document entitled "Review, Waiver & Release" from the Greenhills Mayor's Court which states that Mr. Briggs was convicted of the offense of "speed." Mr. Briggs states that this form fails to

specify the numerical section of the Codified Ordinances of Greenhills, Ohio he was alleged to have violated. (Doc. 1, Exh. A). He was fined $120.00. When he failed to pay the fine, a capias was issued for his arrest. (Doc. 1, Exh. C). He was arrested on December 15, 2004, taken to the police station, paid the fine, and released. (Doc. 1, Exh. D). Plaintiff then sent a letter to the Village of Greenhills requesting that the Village "erase" his name and conviction from its records. When the Village failed to do so, he filed this lawsuit, alleging defamation, slander, and pain and suffering. (Doc. 1 at 3). He also alleges that his constitutional right of privacy was violated and that he was "unconstitutionally handcuffed!, arrested!, prision (sic) searched!, fingerprinted!, and mugshotted! (sic)." *Id.* As relief, plaintiff seeks $5 million. (Doc. 1 at 3).

The following facts, as set forth in defendant's motion for summary judgment, have not been disputed by Mr. Briggs: On or about May 18, 2004, Officer Robert Dean of the Village police department pulled over Mr. Briggs for speeding. (Doc. 20, Affidavit of Off. Robert Dean, Exhibit 1). Mr. Briggs was speeding within the jurisdictional limits of the Village. (Doc. 20, Aff. of Off. Dean, Exhibit 1). On or about June 22, 2004, Mr. Briggs appeared in the Village Mayor's Court to contest the speeding ticket. (Doc. 20, Affidavit of Jeffrey Forbes, Exhibit 2). During the trial on the speeding ticket, Mr. Briggs argued that the speeding ticket was invalid because he was not pulled over within the jurisdiction of the Village. (Doc. 20, Aff. of Forbes, Exhibit 2). On this same day, Mr. Briggs was convicted of speeding. (Doc. 20, Aff. of Forbes, Exhibit 2; see also Plaintiff's Complaint, Exhibit A).

As a result of his conviction for speeding, Mr. Briggs was ordered to pay a total of

$120.00 for the speeding fine and court costs. (Plaintiff's Complaint, Doc. 1, Exhibit A). The full amount of the fine was required to be paid by July 27, 2004. (Doc. 1, Exhibit A). Mr. Briggs signed the Review, Waiver & Release, which sets forth the conviction for the offense of speeding, the fine ordered and the date upon which the payment was due. (Doc. 1, Exhibit A). On July 1, 2004, Attorney Jeff Forbes, on behalf of the Village, sent a letter to Mr. Briggs to remind him that the time in which he could appeal the conviction would expire on July 6, 2004. (Doc. 20, Aff. of Forbes, Exhibit 2-B). Mr. Briggs did not file any such appeal. (Doc. 20, Aff. of Forbes, Exhibit 2). The letter from Mr. Forbes also advised Mr. Briggs that the full amount of the ordered fine was due by July 27, 2004 and if full payment was not received and/or Mr. Briggs did not appear on July 27, 2004 in the Village Mayor's Court, a warrant would be issued for his arrest. (Doc. 20, Aff. of Forbes, Exhibit 2-B). Mr. Briggs failed to pay the fine by July 27, 2004 and/or appear in the Village Mayor's Court on July 27, 2004. (Doc. 20, Aff. of Forbes, Exhibit 2). As a result, Mr. Briggs was found to be in contempt of court and a warrant was issued for his arrest. (Doc. 20, Aff. of Forbes, Exhibit 2-C; see also Doc. 1, Exhibit C).

On or about August 5, 2004, another letter was mailed to Mr. Briggs, this time by the clerk of court, advising him that a warrant for contempt of court had been issued for his failure to pay the fine and/or appear on July 27, 2004. (Doc. 20, Aff. of Forbes, Exhibit 2-D). Thereafter, on December 15, 2004, Mr. Briggs was arrested on the warrant issued for his failure to appear in the Village Mayor's Court. (Doc. 20, Aff. of Forbes, Exhibit 2). After his arrest, Mr. Briggs did pay the $120.00 fine and was released. (Doc. 1, Exhibit C).

I. Defendant's Motion for Summary Judgment Should be Granted; Plaintiff's Motion for Summary Judgment Should be Denied.

A motion for summary judgment should be granted if the evidence submitted to the court demonstrates that there is no genuine issue as to any material fact and that the movant is entitled to summary judgment as a matter of law. Fed. R. Civ. P. 56; *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). The moving party must demonstrate the absence of genuine disputes over facts which, under the substantive law governing the issue, could affect the outcome of the action. *Celotex Corp.*, 477 U.S. at 323.

In response to a properly supported summary judgment motion, the non-moving party "is required to present some significant probative evidence which makes it necessary to resolve the parties' differing versions of the dispute at trial." *Sixty Ivy Street Corp. v. Alexander*, 822 F.2d 1432, 1435 (6th Cir. 1987); *Harris v. Adams*, 873 F.2d 929, 931 (6th Cir. 1989). "[A]fter a motion for summary judgment has been filed, thereby testing the resisting party's evidence, a factual issue may not be created by filing an affidavit contradicting [one's own] earlier deposition testimony." *Davidson & Jones Dev. Co. v. Elmore Dev. Co.*, 921 F.2d 1343, 1352 (6th Cir. 1991).

The trial judge's function is not to weigh the evidence and determine the truth of the matter, but to determine whether there is a genuine factual issue for trial. *Anderson*, 477 U.S. at 249-50. The trial court need not search the entire record for material issues of fact, *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1479-80 (6th Cir. 1989), but 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*, 477 U.S. at 251-52.

If, after an appropriate time for discovery, the opposing party is unable to demonstrate a *prima facie* case, summary judgment is warranted. *Street*, 886 F.2d at 1478 (citing *Celotex* and *Anderson*). "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

Summary judgment should be granted for defendant Village of Greenhills. First, plaintiff has failed to establish a claim for relief under 42 U.S.C. § 1983 against the Village of Greenhills. Second, plaintiff has failed to allege any facts or present any evidence showing a violation of his federal rights. Third, the Court is without diversity jurisdiction over plaintiff's state law claims and should decline to exercise pendent jurisdiction over the state law claims.

To establish a claim for relief under 42 U.S.C. § 1983, plaintiff must present evidence showing 1) the deprivation of a right or privilege secured by the Constitution or laws of the United States, and 2) the deprivation was caused by a person acting under color of state law. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), *overruled in part on other grounds*, *Daniels v. Williams*, 474 U.S. 327 (1986).

Municipalities and other local government units are considered "persons" for purposes of Section 1983 liability. *See Monell v. Department of Social Services of City of New York*, 436 U.S. 658, 690 (1978). However, "a municipality cannot be held liable *solely* because it employs a tortfeasor-or, in other words, a municipality cannot be held liable under § 1983 on a *respondent superior* theory." *Monell*, 436 U.S. at 691 (emphasis in original). *See also*

Gregory v. Shelby County, Tenn., 220 F.3d 433, 441 (6th Cir. 2000). "[A] local government *may not be sued* under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom . . . inflicts the injury that the government as an entity is responsible under § 1983." *Id.* at 694 (emphasis added).

Thus, Section 1983 limits municipal liability to the violation of some "official policy" attributable to the municipality. This may originate from acknowledged government lawmakers or those in positions of responsibility "whose edicts may fairly be said to represent official policy." *Monell,* 436 U.S. at 694. A plaintiff attempting to establish municipal liability pursuant to Section 1983 may demonstrate three categories of "official policy": (1) an express policy or custom of the municipality; (2) a final policymaker's conduct; or (3) the municipality's failure to train employees. *See Board of County Comm'rs of Bryan County, OK v. Brown,* 520 U.S. 397, 397-398 (1997). Municipalities and other governmental entities cannot be held responsible for a constitutional deprivation unless there is a direct causal link between a policy or custom and the alleged deprivation. *Monell*, 436 U.S. at 691; *Deaton v. Montgomery County, Ohio*, 989 F.2d 885, 889 (6th Cir. 1993). *See also Polk County v. Dodson*, 454 U.S. 312 (1981)(municipal policy must be "moving force" behind constitutional deprivation); *Miller v. Calhoun County,* 408 F.3d 803, 815 (6th Cir. 2005)(plaintiff must prove municipal policies and practices directly caused a constitutional violation).

In this case, plaintiff has failed to establish a Section 1983 claim for relief against the Village of Greenhills because he has failed to allege any facts or present any evidence that any injuries he allegedly sustained were the result of an unconstitutional policy or custom of the Village. *Matthews v. Jones*, 35 F.3d 1046, 1049 (6th Cir. 1994). *See Monell*, 436 U.S. at 694;

Doe v. Claiborne County, 103 F.3d 495, 507 (6th Cir. 1996); *Garner v. Memphis Police Department*, 8 F.3d 358 (6th Cir. 1993), *cert. denied*, 510 U.S. 1177 (1994). Nor has plaintiff even identified any municipal policy or custom that allegedly caused his injuries. *See Brown*, 520 U.S. at 403. Plaintiff has failed to allege any facts showing that the police officer who issued him the traffic citation or arrested him after he failed to pay his fine acted pursuant to an unconstitutional policy or custom of the Village of Greenhills. At most, plaintiff's § 1983 claim against the Village is based on a theory of *respondeat superior*. Therefore, plaintiff has failed to establish a claim for relief under Section 1983 against the Village of Greenhills.

In addition, plaintiff has failed to allege facts or present evidence of a violation of his constitutional rights. To the extent plaintiff alleges defendant violated his federal constitutional right to privacy, plaintiff fails to allege facts showing that defendant invaded or disclosed matters of a personal nature or somehow violated his interest in independence in making certain kinds of important decisions. *See Whalen v. Roe*, 429 U.S. 589, 699 (1977), and cases cited therein. Nor has plaintiff stated any facts or presented any evidence whatsoever in support of his claim that he was "unconstitutionally handcuffed!, arrested!, prision (sic) searched!, fingerprinted!, and mugshotted! (sic)." (Doc. 1 at 3). The Court is not required to accept non-specific factual allegations and inferences or unwarranted legal conclusions. *See Dellis v. Corrections Corp. of America*, 257 F.3d 508, 511 (6th Cir. 2001). On summary judgment, plaintiff is required to present some significant probative evidence in support of his claims. *Sixty Ivy Street Corp.*, 822 F.2d at 1435. Plaintiff's conclusory and unsupported allegations are insufficient to establish his constitutional claims in this matter. *Scheid v. Fanny Farmer Candy Shops, Inc.*, 859 F.2d 434, 437 (6th Cir. 1988).

Finally, to the extent plaintiff may be seeking to invoke the diversity jurisdiction of the Court, his complaint reveals such jurisdiction is lacking. A district court has jurisdiction over a suit between citizens of different states when the amount in controversy "exceeds the sum or value of $75,000, exclusive of interest and costs." 28 U.S.C. § 1332(a). For a federal court to have diversity jurisdiction pursuant to section 1332(a), the citizenship of the plaintiff must be "diverse from the citizenship of each defendant" thereby ensuring "complete diversity." *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996), citing *State Farm Fire & Casualty Co. v. Tashire*, 386 U.S. 523, 531 (1967). In other words, for complete diversity to exist the plaintiff must be a citizen of a different state than each of the defendants. *Caterpillar*, 519 U.S. at 68; *Napletana v. Hillsdale College*, 385 F.2d 871, 872 (6th Cir. 1967). In the absence of complete diversity, the Court lacks subject matter jurisdiction. *Caterpillar*, 519 U.S. at 68.

There is no complete diversity of citizenship in this case. Plaintiff and the defendant are Ohio citizens. Accordingly, this Court lacks subject matter jurisdiction on the basis of diversity of citizenship.

To the extent plaintiff claims the defendant's actions violate the state law of Ohio, the Court should decline to exercise pendent jurisdiction over such claims because plaintiff fails to state a viable federal law claim. *See United Mine Workers v. Gibbs*, 383 U.S. 715 (1966). Thus, plaintiff's state law claims should be dismissed without prejudice for lack of jurisdiction.

Accordingly, defendant's motion for summary judgment should be granted and plaintiff's motion for summary judgment should be denied.

II. Defendant's Motions for Sanctions Should be Denied.

Defendant requests that the Court impose sanctions on Mr. Briggs for his conduct in this matter pursuant to Rule 11, Fed. R. Civ. P. In addition, defendant requests the Court to sanction Mr. Briggs' bad faith conduct under the Court's inherent authority. (Docs. 29, 51).

A party seeking sanctions under Rule 11 must follow a two-step process: (1) serve the Rule 11 motion on the opposing party for a designated period (at least twenty-one days); and (2) file the motion with the court. *Ridder v. City of Springfield*, 109 F.3d 288, 294 (6th Cir. 1997), *cert. denied*, 522 U.S. 1046 (1998). Rule 11 states that the motion for sanctions "shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected." Fed. R. Civ. P. 11(c)(1)(A). This so-called "safe harbor" provision of Rule 11 means "'that a party will not be subject to sanctions on the basis of another party's motion unless, after receiving the motion, it refuses to withdraw that position or to acknowledge candidly that it does not currently have evidence to support a specified allegation. . . . [T]he timely withdrawal of a contention will protect a party against a motion for sanctions.'" *Ridder*, 109 F.3d at 294 (citing Fed. R. Civ. P. 11 Advisory Committee Notes (1993 Amendments)). Thus, "the offending party can avoid sanctions altogether by withdrawing or correcting the challenged document or position after receiving notice of the allegedly violative conduct." *Ridder*, 109 F.3d at 294. Compliance with the safe harbor provision of Rule 11 is mandatory. *Id.* at 297.

In the instant case, defendant has not shown compliance with the twenty-one day safe

harbor provision. Defendant has presented no evidence showing it presented Mr. Briggs with its proposed Rule 11 motion or requested that he withdraw his challenged motions at least 21 days before filing its Rule 11 motion for sanctions in this Court. Because defendant failed to comply with the dictates of Rule 11, the motion should be denied.

Defendant is correct, however, that the Court has the inherent power to prevent abuse of the judicial process, including the imposition of sanctions against a party who has acted in bad faith, vexatiously, wantonly or for oppressive reasons. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 50 (1991); *First Bank of Marietta v. Hartford Underwriters Ins. Co.*, 307 F.3d 501, 514 (6th Cir. 2002). "[T]he imposition of inherent power sanctions requires a finding of bad faith" or conduct tantamount to bad faith. *First Bank of Marietta,* 307 F.3d at 517, 519 (citing *Chambers,* 501 U.S. at 50; *Roadway Express, Inc. v. Piper,* 447 U.S. 752, 767 (1980)). A party seeking sanctions must show by clear and convincing evidence that the adverse party's actions are entirely without color and are motivated by bad faith. *See Shepherd v. American Broadcasting Companies, Inc.,* 62 F.3d 1469, 1477 (D.C. Cir. 1995); *Autorama Corporation v. Stewart,* 802 F.2d 1284, 1287 (10th Cir. 1986).

In this case, plaintiff has filed five "motions for judgment on the pleadings," two of which were filed after the Court's adoption of the Report and Recommendation to deny plaintiff's initial motion for judgment on the pleadings. In addition, plaintiff has filed numerous other motions and pleadings essentially reiterating the same argument: that he was not lawfully convicted of speeding because the "waiver" document attached to his complaint and subsequent documents simply says "speed" without specifying a numerical section of the ordinance he violated. While plaintiff's pro se status does not alone absolve him from the

imposition of sanctions, his conduct in this case evinces more of a lay-person's misunderstanding or misguided view of the law, rather than bad faith conduct warranting sanctions. Plaintiff has made his position amply clear to the Court through his numerous motions and pleadings. Although the Court has determined that plaintiff's position is ultimately without merit, the Court does not find bad faith or conduct tantamount to bad faith in this matter. The Court should not award sanctions based on its inherent authority. *See Roadway Express,* 447 U.S. at 767; *First Bank of Marietta,* 307 F.3d at 517.

III. Defendant's Motion to Amend Scheduling Order Should be Denied as Moot.

Defendant seeks a revision of the Court's scheduling order of April 18, 2005. (Doc. 37). In the event the Court adopts the recommendation of the undersigned Magistrate Judge, defendant's motion to amend the scheduling order should be denied as moot.

IV. Plaintiff's Remaining Motions Should be Denied.

In the event the Court adopts the recommendation of the undersigned Magistrate Judge that defendant's motion for summary judgment be granted and plaintiff's motion for summary judgment be denied, then plaintiff's second motion for judgment on the pleadings (Doc. 13); plaintiff's third motion for judgment on the pleadings (Doc. 18); plaintiff's motion for reconsideration of the Court's August 30, 2005 Deficiency Order (Doc. 38); plaintiff's fourth motion for judgment on the pleadings (Doc. 50); plaintiff's motion "for Reconsideration by Intelligent and Discretion of this U.S. District Court" (Doc. 54); plaintiff's motion "to ADD METERIAL (sic) TESTIMONY in memorandum" (Doc. 55); plaintiff's motion "to STATE REMINDERS! to this HONORABLE COURT of Laws" (Doc. 57); plaintiff's motion to

oppose by common sense in the memorandum (Doc. 61); plaintiff's fifth motion for judgment on the pleadings (Doc. 63); and plaintiff's motion "to oppose defendant memorandum of no substance of no material evidence of no fact for a foundation of law" (Doc. 68) should be denied as moot.

Plaintiff's motion for reconsideration of the dismissal of his appeal (Doc. 59) should be denied as this District Court is without jurisdiction to reconsider the Sixth Circuit Court of Appeals' dismissal of plaintiff's notice of appeal.

IT IS THEREFORE RECOMMENDED THAT:

1. Defendant's motion for summary judgment (Doc. 20) be **GRANTED**.

2. Plaintiff's motion for summary judgment (Doc. 19) be **DENIED**.

3. Defendant's motions for sanctions (Docs. 29, 51) be **DENIED**.

4. Defendant's motion to amend scheduling order (Doc. 37) be **DENIED** as moot.

5. Plaintiff's second motion for judgment on the pleadings (Doc. 13); plaintiff's third motion for judgment on the pleadings (Doc. 18); plaintiff's motion for reconsideration of the Court's August 30, 2005 Deficiency Order (Doc. 38); plaintiff's fourth motion for judgment on the pleadings (Doc. 50); plaintiff's motion "for Reconsideration by Intelligent and Discretion of this U.S. District Court" (Doc. 54); plaintiff's motion "to ADD METERIAL (sic) TESTIMONY in memorandum" (Doc. 55); plaintiff's motion "to STATE REMINDERS! to this HONORABLE COURT of Laws" (Doc. 57); plaintiff's motion to oppose by common

sense in the memorandum (Doc. 61); plaintiff's fifth motion for judgment on the pleadings (Doc. 63); and plaintiff's motion "to oppose defendant memorandum of no substance of no material evidence of no fact for a foundation of law" (Doc. 68) be **DENIED** as moot.

6. Plaintiff's motion for reconsideration of the dismissal of his appeal (Doc. 59) be **DENIED**.

7. This matter be closed on the docket of the Court.

Date: 4/16/07

/ Timothy S. Hogan
Timothy S. Hogan
United States Magistrate Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JOEL BRIGGS,
Plaintiff

Case No. 1:06-cv-044
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NOTICE TO THE PARTIES REGARDING THE FILING OF OBJECTIONS TO THIS R&R

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation ("R&R") within **TEN (10) DAYS** after being served with a copy thereof. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent's objections within **TEN DAYS** after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn,* 474 U.S. 140 (1985); *United States v. Walters,* 638 F.2d 947 (6th Cir. 1981).