

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ALEKSANDRA CICHOWSKI and
CEZARY CICHOWSKI,

Plaintiffs,

v.

THE BANK OF MAUSTON; ROBERT FAIT;
and DONNA MUELLER,

Defendants.

OPINION AND ORDER

05-C-262-C

This matter is before the court on a motion for summary judgment brought by defendants Robert Fait and Bank of Mauston. In their complaint, plaintiffs Aleksandra and Cezary Chichowski alleged that these two defendants violated plaintiff Aleksandra Cichowski's constitutional rights under the Fourth Amendment when they participated in her unlawful arrest. I will refer to defendants Fait and Bank of Mauston in this opinion as "the defendants" (defendant Donna Mueller filed a motion for summary judgment which will be addressed in a separate opinion). Jurisdiction is present. 28 U.S.C. § 1331.

Before ruling on defendants' motion, a preliminary matter requires attention. Both

parties received instructions concerning this court's rules for summary judgment motions. The preliminary pretrial conference order that Magistrate Judge Crocker issued on February 9, 2006, dkt. #77, included several attachments: (a) this court's "Procedures to be Followed on Motions for Summary Judgment;" (b) "Helpful Tips for Filing Summary Judgment Motions in Cases Assigned to Judge Barbara B. Crabb;" and (c) "Memorandum to Pro Se Litigants Regarding Summary Judgment Motions." The document entitled "Procedures to be Followed . . ." explains that a party opposing a motion for summary judgment (in this case, plaintiffs) must respond to the moving party's proposed findings of fact by answering each numbered fact in a separate paragraph, using the same paragraph number (Section II.D.1). If the opposing party wishes to dispute a proposed fact, it must state its version of the fact and refer to evidence that supports that version (Section II.D.2). Moreover, if the party opposing the motion cannot explain in its response to the moving party's proposed facts all of the facts relevant to its claims, it may propose its own findings of fact by presenting each fact in a separate, numbered paragraph including a reference to evidence supporting the proposed fact (Section I.B.1, 2). The procedures provide unequivocally that "the court will not consider facts contained only in a brief" (Section I.B.4).

The Memorandum to Pro Se Litigants included the following cautionary language:

This court expects all litigants, including persons representing themselves, to make sure that they follow this court's Procedures to be Followed on Motions for Summary Judgment. . . . Please note that if you do not follow the

procedures, you will not be given a second chance to do so. . . . If your response to any proposed fact does not comply with the court's procedures or relies on evidence that is not admissible, the court will take the opposing party's factual statement as true and undisputed. If you do not follow the court's procedures, the court will not consider what you file.

Plaintiffs failed to follow the court's summary judgment procedure. They did not file a response to defendants' proposed findings of fact. Instead, they filed a brief, dkt. #92, consisting primarily of a lengthy recitation of facts. None of these facts can be considered. Procedure to be Followed on Motions for Summary Judgment, Section I.B.4. Moreover, plaintiffs did not file their own proposed findings of fact. Instead, they submitted the affidavit of plaintiff Aleksandra Cichowski (dkt. #93). It is common for parties to a summary judgment motion to file affidavits as evidence to support certain proposed findings of fact. Affidavits are appropriate vehicles to present a party's version of facts of which she has firsthand knowledge. However, an affidavit is not an appropriate substitute for a properly submitted response to the opposing party's proposed findings of fact. Because plaintiffs have not followed this court's procedures, I will disregard all of the factual statements made in their brief and affidavit. Ziliak v. AstraZeneca LP, 324 F.3d 518 (7th Cir. 2003) (when party fails to comply with district court's summary judgment procedures, proper response is to disregard the nonconforming submissions). Therefore, in determining the material and undisputed facts, I have considered defendants' proposed findings of fact only. From these proposed facts I find the following to be material and undisputed.

UNDISPUTED FACTS

A. Parties

Plaintiff Aleksandra Cichowski is a resident of Onalaska, Wisconsin. Plaintiff Cezary Cichowski is a resident of Wisconsin Dells, Wisconsin. Defendant Robert Fait is the president of the Bank of Mauston. Defendant Bank of Mauston is a Wisconsin corporation with its principal place of business in Mauston, Wisconsin.

Plaintiff Aleksandra Cichowski went to the Bank of Mauston to serve a subpoena on defendant Fait and another bank employee. While she was at the bank, she chased and grabbed defendant Fait when he refused to accept a subpoena for another bank employee. A bank employee called the Mauston Police Department. The police department dispatched officer Michael Zilisch to the bank. Officer Zilisch arrested plaintiff Aleksandra Cichowski and charged her with disorderly conduct.

DISCUSSION

Private actors who collaborate with a state official to deny an individual her constitutional rights may be said to be acting under color of state law. Starnes v. Capital Cities Media, 39 F.3d 1394, 1397 (7th Cir. 1994). A private actor may be liable when a plaintiff can show a “meeting of the minds” between private and state actors to engage in a

constitutional deprivation. Sparkman v. McFarlin, 601 F.2d 261, 264 (7th Cir. 1979). In the present case, for plaintiffs to prevail on their claim that defendants violated plaintiff Aleksandra Cichowski's right to be free from an unlawful arrest under the Fourth Amendment, they would have to show that she was subjected to an unlawful arrest and that defendants collaborated with a state official to effectuate the arrest. Plaintiffs have made neither showing. There is no evidence in the record to suggest that Aleksandra Cichowski's arrest was unlawful. Indeed, the undisputed facts reveal that she chased and grabbed defendant Fait; such behavior in a business establishment is a solid ground for an arrest for disorderly conduct. Moreover, plaintiffs have offered no evidence to prove that defendant Fait reached an agreement with the police to plan and execute plaintiff Aleksandra Cichowski's allegedly unlawful arrest. No reasonable jury could conclude on the basis of the evidence before this court that defendant Fait fabricated evidence to get Aleksandra Cichowski arrested or otherwise planned her unlawful arrest with the police. Consequently, no reasonable jury could conclude that defendant Fait violated plaintiff Aleksandra Cichowski's constitutional rights when she was arrested at the bank. Because defendant Bank of Mauston is an entity that can be held liable only through the principles of agency law, it could be liable only if defendant Fait were found liable. Defendants' motion for summary judgment will be granted.

It bears mentioning that plaintiffs were not prejudiced by my decision to exclude their

brief and affidavit because these documents did not conform with this court's rules. Even though I did not rely on plaintiffs' submissions, I read both documents in their entirety. If plaintiffs had submitted proposed facts in an admissible format (not buried in a brief and affidavit), they might have successfully placed into dispute the lawfulness of plaintiff Aleksandra Cichowski's arrest (plaintiffs contend that Aleksandra Cichowski was not being disruptive at the bank when she was arrested). However, even in their inadmissible submissions, plaintiffs failed to adduce any evidence to show a meeting of the minds between defendants and public actors. Plaintiffs allege in their brief and affidavit that defendants had reason to want to retaliate against plaintiffs; but they provided only conclusory allegations (and no factual evidence) that defendants actually communicated with the police officers to stage an unlawful arrest. Lujan v. National Wildlife Federation, 497 U.S. 871, 888 (1990) ("The object of [summary judgment] is not to replace conclusory allegations of the complaint or answer with conclusory allegations of an affidavit."); Drake v. Minnesota Mining & Manufacturing Co., 134 F.3d 878, 887 (7th Cir. 1998) (Fed. R. Civ. P. 56 "demands something more specific than the bald assertion of the general truth of a particular matter[;] rather it requires affidavits that cite specific concrete facts establishing the existence of the truth of the matter asserted."). Even if I had extracted facts from plaintiffs' brief and affidavit, plaintiffs still would have failed to show that defendants

violated plaintiff Aleksandra Cichowski's constitutional rights when she was arrested at the bank.

ORDER

IT IS ORDERED that defendants Robert Fait's and Bank of Mauston's motion for summary judgment is GRANTED. These defendants are dismissed from the case.

Entered this 22d day of June, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge