

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

TABATHA BARNES, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. CIV-16-184-HE
)	
THE CITY OF OKLAHOMA CITY,)	
a municipal corporation, et al.,)	
)	
Defendants.)	

REPLY OF DEFENDANT CITY
TO PLAINTIFFS' RESPONSE TO DEFENDANT CITY'S
MOTION FOR SUMMARY JUDGMENT

COMES NOW a Defendant, Chief William City ("City"), and for his Reply to Plaintiffs' Response to Defendant City's Motion for Summary Judgment, states as follows:

First, Plaintiff Barnes did not file any Response to Defendant City's Motion for Summary Judgment. Therefore, judgment should be entered for Defendant City on Barnes' causes of action alleged against City.

Second, Defendant City raised a defense of qualified immunity in his Motion for Summary Judgment. Defendant City argued that there are no material disputes of fact which would preclude summary judgment in this case and that he is entitled to qualified immunity. In *Pearson v. Callahan*, 555 U.S. 223, 231 (2009), the Court restated the general Rule regarding qualified immunity by stating:

The doctrine of qualified immunity protects government officials "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person

would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). Qualified immunity balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably.

Because qualified immunity is “an immunity from suit rather than a mere defense to liability . . . it is effectively lost if a case is erroneously permitted to go to trial.” *Mitchell v. Forsyth*, 472 U.S. 511, 526, 105 S. Ct. 2806, 86 L.Ed.2d 411 (1985) (emphasis deleted).

And at 555 U.S. 244-245, the Court stated:

...“The principles of qualified immunity shield an officer from personal liability when an officer reasonably believes that his or her conduct complies with the law. Police officers are entitled to rely on existing lower court cases without facing personal liability for their actions.”

Regarding a claim against a supervisor, the Court stated in *Schneider v. City of Grand Junction Police Department*, 717 F.3d 760, 767-768 (10th Cir. 2013):

We have referred to claims against supervisors as based on “supervisory liability,” *see, e.g., Meade v. Grubbs*, 841 F.2d 1512, 1527 (10th Cir. 1988), though this label can be misunderstood as implying vicarious liability. “Section 1983 does not authorize liability under a theory of respondeat superior.” *Brown v. Montoya*, 662 F.3d 1152, 1164 (10th Cir. 2011). For this reason, the Supreme Court has suggested the term “supervisory liability” is “a misnomer.” *Ashcroft v. Iqbal*, 556 U.S. 662, 677... (2009). “Absent vicarious liability, each Government official, his or her title notwithstanding, is only liable for his or her own misconduct.” *Id.*

The plaintiff therefore must show an “affirmative link” between the supervisor and the constitutional violation. *Dodds v. Richardson*, 614 F.3d 1185, 1195 (10th Cir. 2010). This requires, for example, more than “a supervisor’s mere knowledge of his subordinate’s” conduct. *See Iqbal*, 556 U.S. at 677... This notion is embodied in the three elements required to establish a successful § 1983 claim against a defendant based on his or her supervisory responsibilities: (1) personal involvement; (2) causation, and (3) state of mind.

* * *

Iqbal, however, articulated a stricter liability standard for this first element of personal involvement. *See Dodds*, 614 F.3d at 1199. In *Iqbal*, the Supreme Court explained that “[b]ecause vicarious liability is inapplicable to ... §

1983 suits, a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution." 556 U.S. at 676, 129 S.Ct. 1937, "[W]e have not yet had occasion to determine what allegations of personal involvement ... meet *Iqbal*'s stricter liability standard." *Dodds*, 614 F.3d at 1199. (Note omitted.)

And at 768-769:

The second element requires the plaintiff to show that the defendant's alleged action(s) caused the constitutional violation. As we said in *Dodds*, nothing in *Iqbal* "altered the Supreme Court's previously enunciated § 1983 causation ... analysis." *Dodds*, 614 F.3d at 1200. "A plaintiff [must] establish the 'requisite causal connection' by showing 'the defendant set in motion a series of events that the defendant knew or reasonably should have known would cause others to deprive the plaintiff of her constitutional rights.'" *Id.* at 1185 (quoting *Poolaw v. Marcantel*, 565 F.3d 721, 732-33 (10th Cir. 2009)); see also *Starr v. Baca*, 652 F.3d 1202, 1218 (9th Cir. 2011)....

* * *

The third element requires the plaintiff to show that the defendant took the alleged actions with the requisite state of mind. Precisely what state of mind is required for individual liability depends on the type of claim a plaintiff brings. See *Iqbal*, 556 U.S. at 676...; *Dodds*, 614 F.3d at 1204-05.

Qualified immunity shields Chief City from suit and liability under 42 U.S.C. §1983 if his "conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Kisela v. Hughes*, 138 S.Ct. 1148, 1152 (2018)(*per curiam*); *City of Escondido, Cal. v. Emmons*, 139 S.Ct. 500, 503 (2019).

When the defense of qualified immunity is invoked, the plaintiff must demonstrate (1) that the defendant's actions violated a federal constitutional or statutory right, and if so, (2) that the right was clearly established at the time of the defendant's unlawful conduct. *Cillo v. City of Greenwood Vill.*, 739 F.3d 451,460 (10th Cir. 2013). If the plaintiff fails to make either showing, the defendant is entitled to qualified immunity. See *Olsen v. Layton Mills Mall*, 312 F.3d 1304, 1312 (10th Cir. 2002).

Here, Plaintiffs do not even address Citty's assertion of qualified immunity, and do not address the elements of the qualified immunity defense. In fact, the words "qualified immunity" do not appear one time in Plaintiffs' Response to Citty's Motion for Summary Judgment. Because Plaintiffs do not address Citty's assertion of qualified immunity and therefore wholly failed to make either showing, pursuant to *Olsen*, Chief Citty is entitled to qualified immunity on all claims by all Plaintiffs.

Because Plaintiffs waived any objection to qualified immunity for Citty by not addressing the elements of the qualified immunity defense, and therefore Citty is entitled to qualified immunity, Defendant Citty will not address Plaintiffs' Additional Facts Precluding Summary Judgment. Defendant City submits that none of the additional facts proposed by Plaintiffs are material or relevant, especially given that Citty is entitled to qualified immunity. Further, these additional facts are in violation of LCvR 56.1(c) which states that the nonmovant shall not present facts that are not material to an issue raised by the movant.

Finally, it appears that counsel has waived any argument for Plaintiffs Hill, Johnson and Morris, as counsel only requests in the Conclusion that the Court "deny Defendant Bill Citty's motion for summary judgment with respect to Plaintiffs Ligons and Lyles."

CONCLUSION

Plaintiffs fail to address Citty's assertion of qualified immunity. Therefore, Citty is entitled to judgment based on qualified immunity.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 27 day of October, 2021, I electronically transmitted the attached Defendant City's Reply to Plaintiffs' Response to Defendant City's Motion for Summary Judgment to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the ECF registrants on file herein.

/s/ Sherri R. Katz