

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-7791  
Conference Calendar

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ELOISE MCGEE,

Plaintiff-Appellant,

versus

KATHERINE FOSTER ET AL.,

Defendants,

HOLMES COUNTY, MS,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Southern District of Mississippi  
USDC No. CA-3:93-57(L)(N)  
- - - - -  
(September 23, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Pursuant to 42 U.S.C. § 1983, Eloise McGee sued Holmes County, Mississippi, alleging that a justice court judge violated state law and McGee's due process rights by setting excessive bail after McGee was arrested for child abuse. McGee sought to amend her complaint to state causes of action under the Eighth and Fourteenth Amendments for denial of due process and excessive

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\* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

bail. The magistrate judge denied the motion to amend as futile, and the district court dismissed McGee's suit for failure to state a claim. McGee challenges the dismissal.

"In reviewing a Rule 12(b)(6) dismissal, this Court accepts all well pleaded averments as true and views them in the light most favorable to the plaintiff." Mitchell v. McBryde, 944 F.2d 229, 230 (5th Cir. 1991) (internal citations, quotations and alterations omitted). "The dismissal will not be upheld unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Id. (internal quotation marks and citation omitted).

"In a § 1983 action, a municipality may not be held strictly liable for the acts of its non-policy-making employees under a respondeat superior theory." Benavides v. County of Wilson, 955 F.2d 968, 972 (5th Cir.), cert. denied, 113 S. Ct. 79 (1992). A local governing body "may be liable under § 1983, however, where the alleged unconstitutional activity is inflicted pursuant to official policy." Johnson v. Moore, 958 F.2d 92, 93 (5th Cir. 1992). Municipal liability under § 1983 also may be predicated upon an isolated decision made by a person with power to make policy for the municipality. Pembaur v. Cincinnati, 475 U.S. 469, 480, 106 S. Ct. 1292, 89 L. Ed. 2d 452 (1986). A § 1983 complaint against a municipality must identify the policy, connect the policy to the municipality, and show that the particular injury occurred because of the execution of the policy. Bennett v. Slidell, 728 F.2d 762, 767 (5th Cir. 1984) (en banc), cert. denied, 472 U.S. 1016 (1985).

McGee relies heavily on Pembaur. She argues that a county judge in Mississippi is a county policymaking official and that the county is liable for the judge's isolated decision to set her bail at \$50,000. "[A] municipal judge acting in his or her judicial capacity to enforce state law does not act as a municipal official or lawmaker." Johnson, 958 F.2d at 94. This Court distinguishes between the judge's administrative actions, which may constitute official county policy, and the judge's judicial actions, wherein the judge effectuates state policy by applying state law. See id.

McGee argues that the decision in Johnson is contrary to the Supreme Court's decision in Pembaur. While some municipal judges may make more policy than others, the pith of McGee's argument is that the county judge violated her rights in implementing the state bail statute. The setting of bail is a judicial duty. See Thomas v. Sams, 734 F.2d 185, 189-90 (5th Cir. 1984), cert. denied, 472 U.S. 1017 (1985). The decision of the district court is AFFIRMED.