UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 94-10369
(Summary Calendar)

GENE O. YEE, JR. and
MARY LYNN YEE,

Plaintiffs-Appellants,

versus

CITY OF DALLAS, TX, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
For the Northern District of Texas
(D-92-CV-257)

(October 3, 1994)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:*

Gene and Mary Lynn Yee filed suit against the City of Dallas and various of its officials alleging that Mr. Yee had been suspended from his job as a Dallas police officer in retaliation for a grievance he filed against his supervising lieutenant. The district court granted the defendants' motion for summary judgment, and the Yees appeal. We affirm.

---

* Local Rule 47.5.1 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

I

At the time of suit, Gene Yee was a police officer with the Dallas Police Department ("DPD"). In August, 1989, Yee filed a grievance against lieutenant, William Carter, alleging that Carter had violated the DPD's Code of Conduct. One week after the DPD's Internal Affairs Division ("IAD") commenced a formal investigation of Yee's complaint, Yee himself became the subject of an investigation. Several police officers reported to the IAD that Yee had encouraged them to engage in a work slow-down, allegations that Yee denied.

The IAD sustained the allegations against both men. After a pre-termination hearing, Yee was discharged for violating various sections of the DPD Code of Conduct and the City of Dallas Personnel Rules. Yee then appealed his discharge to the Dallas Assistant City Manager, who sustained the DPD's findings in part and reduced Yee's termination to a four-month suspension.

Yee and his wife[1] sued the City of Dallas and various City officials in their official capacities ("the City") in state court. They alleged that Yee's suspension was in part "a retaliation for [his] filing a grievance against a superior," and that this retaliation was part of policy encouraged by the City of Dallas. The City removed the case to federal court, and the district court granted the City's subsequent motion for summary judgment

[1] Yee's wife claims loss of consortium damages resulting from the trauma of Yee's suspension.

dismissing the Yees' § 1983 claims.[2]

II

The Yees argue that the district court erroneously granted the City's motion for summary judgment on their § 1983 municipal liability claim against the City. In an appeal from summary judgment, we review the record *de novo*, drawing all inferences most favorable to the party opposing the motion. *Garcia v. Elf Atochem N.A.*, 28 F.3d 446, 449 (5th Cir. 1994). "Summary judgment is proper if the movant demonstrates that there is an absence of genuine issues of material fact." *Duckett v. City of Cedar Park*, 950 F.2d 272, 276 (5th Cir. 1992) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202 (1986)). The burden then shifts to the nonmovant to "direct the court's attention to evidence in the record sufficient to establish that there is a genuine issue of material fact for trial))that is, the nonmovant must come forward with evidence establishing each of the challenged elements of its case upon which it will bear the burden of proof at trial." *Id.*

As a local government entity, the City will be liable under § 1983 only for acts of local officials pursuant to official government policy. *See Monell v. Department of Social Servs.*, 436 U.S. 658, 694, 98 S. Ct. 2018, 2037, 56 L. Ed. 2d 611 (1978); *Guidry v. Broussard*, 897 F.2d 181, 182 (5th Cir. 1990). "There must have been execution of government policy either by the

[2] The district court also declined to exercise supplemental jurisdiction over the Yees' state law claims and dismissed them without prejudice. The Yees do not appeal the dismissal of their state law claims.

lawmaker . . . or by a person `whose edicts or acts may fairly be said to represent official policy.'" *Guidry*, 897 F.2d at 182 (quoting *Pembaur v. Cincinnati*, 475 U.S. 469, 478, 106 S. Ct. 1292, 1297, 89 L. Ed. 2d 452 (1986)).

The Yees argue that the district court erroneously placed the burden of proof on them to prove the existence of a policy or custom (or a policy-maker's knowledge of the alleged custom). The Yees contend that "it is the movants' burden to set forth facts refuting Plaintiffs' claims." However, this argument misstates the legal standard for summary judgment. The movant bears the initial burden of establishing that there are no genuine issues of material fact. *Lavespere v. Niagara Mach. & Tool Works, Inc.*, 910 F.2d 167, 178 (5th Cir. 1990). "To satisfy this burden, the moving party may either submit evidentiary documents that negate the existence of some material element of the nonmoving party's claim . . . or, if the crucial issue is one for which the nonmoving party will bear the burden of proof at trial, merely point out that the evidentiary documents in the record contain insufficient proof concerning an essential element of the nonmoving party's claim . . . ." *Id*. In this case, the City has done both. It introduced documentary evidence that the City's personnel rules prohibit retaliation against employees for using the grievance or appeal procedures. It also pointed out that the Yees had offered no summary judgment evidence of either a policy of retaliation or a policy-maker's knowledge of a custom of retaliation.

The burden then shifted to the Yees to provide "significant

probative evidence" showing that there was a genuine issue for trial. *State Farm Life Ins. v. Gutterman*, 896 F.2d 116, 118 (5th Cir. 1990). On appeal, the Yees argue that the "record is replete with genuine issues of material fact as to [their] allegations regarding their Section 1983 claims which would preclude the Defendants from summary judgment . . . ." However, the Yees have not pointed to any evidence in the summary judgment record to support this claim. Neither have the Yees pointed to any evidence in the record supporting the elements of their municipal liability action against the City.[3]

Our independent review of the summary judgment record leads us to agree with the district court's conclusion that the Yees failed to come forward with summary judgment evidence proving the crucial elements of their § 1983 claim against the City. The record is simply devoid of significant probative evidence that Mr. Yee was suspended pursuant to a policy or custom attributable to the City. Accordingly, the district court did not err in granting the City's motion for summary judgment on Yee's § 1983 claims.

III

For the foregoing reasons, we **AFFIRM**.

---

[3] The Yees argue in their brief that "[i]n their pleadings, [they] stated that the practice of retaliation and wrongful termination were [sic] taken by individuals in the highest policy-making and decision-making authority within the [sic] Dallas." We have previously explained, however, that "`only evidence--not argument, not facts in the complaint--will satisfy' the burden," and "[u]nsworn pleadings, memoranda or the like are not, of course, competent summary judgment evidence." *Johnston v. City of Houston*, 14 F.3d 1056, 1060 (5th Cir. 1994) (quoting *Solo Serve Corp. v. Westowne Ass'n*, 929 F.2d 160, 164 (5th Cir. 1991), and *Larry v. White*, 929 F.2d 206, 211 n.12 (5th Cir. 1991), *cert. denied*, 113 S. Ct. 1946, 123 L. Ed. 2d 651 (1993)).