

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

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Thomas B. Plunkett, III
Clerk

No. 25-30614

MICHAEL MCCLANAHAN; GARY CHAMBERS; EUGENE COLLINS,

Plaintiffs—Appellees,

versus

BRANDON NOEL, *Mayor Pro Tempore, City of Baton Rouge, Parish of East
Baton Rouge,*

Defendant—Appellant.

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:17-CV-1720

Before SMITH, HAYNES, and ENGELHARDT, *Circuit Judges.**

PER CURIAM:**

At a May 2017 Baton Rouge Metropolitan Council meeting, Plaintiffs sought to voice their displeasure about the Metropolitan Council's inaction following the death of Alton Sterling. Scott Wilson, then Mayor Pro Tempore of the Metropolitan Council and the City of Baton Rouge, had each Plaintiff removed from the meeting after each began speaking. Plaintiffs

* Judge Haynes would reverse and remand.

** This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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thereafter sued the City of Baton Rouge and the Mayor Pro Tempore, in his official capacity. Plaintiffs alleged municipal liability via 42 U.S.C. § 1983, and asserted, *inter alia*, two First Amendment claims: viewpoint discrimination and violation of their right to attend a public meeting. With efficiency in mind, Plaintiffs moved to dismiss their claims against the City with prejudice prior to trial and proceeded only against the Mayor Pro Tempore. After a bench trial, the district court concluded that the Mayor Pro Tempore violated Michael McClanahan's and Eugene Collins's First Amendment rights, but not Chambers's. Because the Mayor Pro Tempore was acting as a final decisionmaker but not a final policymaker, we REVERSE and RENDER judgment in Defendant's favor.

I.

This action has its roots in a May 2017 Baton Rouge Metropolitan Council meeting. Michael McClanahan, Gary Chambers, and Eugene Collins each attended the meeting with intentions of voicing their displeasure regarding the Council's inaction following the death of Alton Sterling.¹ Prior to the meeting, McClanahan, then the Louisiana State Conference President for the National Association for the Advancement of Colored People ("NAACP"), had posted on Facebook, calling for "NAACP members to wear black and pack the courthouse . . . to demand the Mayor fire the Police Chief and the two officers for the murder of Alton Sterling."

¹ Sterling was shot and killed by officers from the Baton Rouge Police Department on July 5, 2016. After investigating the shooting, the Department of Justice decided not to charge the officers involved.

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Scott Wilson,² then Mayor Pro Tempore of the Metropolitan Council and the City of Baton Rouge, was informed of the plan to pack the courthouse. In anticipation, Wilson arranged for an increased security presence at the meeting.

At the meeting, Wilson invited members of the public to comment on each agenda item. McClanahan, Chambers, and Collins each attempted to comment.

McClanahan went first. McClanahan approached the podium to comment on Agenda Item 50, which related to the authorization of a settlement for damages resulting from a sewer backup. McClanahan introduced himself, and before he could say much, Wilson interrupted him. McClanahan explained that he opposed Item 50 “because on July the 5th, 2016, Alton Sterling was killed.” Immediately Wilson ordered him removed. McClanahan tried to explain that he opposed the sewer issue because “the City had not finished taking care of the business as it pertained to Alton Sterling,” but he was unable to finish. He was removed from the podium as well as from the meeting at Wilson’s direction.

Chambers also attempted to participate. He approached the podium to discuss another sewer item, but began by saying “[s]o you guys are gonna rob me of my constitutional rights to say what I believe needs to be said.” Wilson instructed Chambers to speak on topic. Chambers did not attempt to explain why his comments were on topic, so he was also removed from the podium and the meeting. Thereafter, the sergeant-at-arms arrested Chambers.

² Wilson was sued in his official capacity, so the name of the Mayor Pro Tempore defendant has changed over the course of the case as different people have held that position.

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Collins approached later. He attempted to speak on Agenda Item 60, which related to “opposition of the Metropolitan Council to House Bill 276 filed in the 2017 Session while under officer involved incident investigations.” Wilson initiated discussion on this item by asking if anyone wished to speak. Collins approached after another speaker. Then, once at the podium, Collins stated: “I oppose this motion because on July . . .” Just then, Wilson ordered that Collins be removed, and he was escorted from the room.

McClanahan, Chambers, and Collins sued the City and Mayor Pro Tempore Wilson, in his official capacity, in December 2017. Alleging *Monell*³ liability via 42 U.S.C. § 1983, Plaintiffs asserted, *inter alia*, two First Amendment claims: viewpoint discrimination and violation of their right to attend a public meeting. The claims against the City and Defendant were identical.

With efficiency and clarity in mind,⁴ Plaintiffs moved to dismiss their claims against the City with prejudice prior to trial. Defendant Wilson later sought dismissal on this basis: he argued that, because the claims against him and the City were redundant, a “dismissal with prejudice is a final adjudication on the merits of the claims made against both defendants.” Defendant candidly explained that he was “unclear what procedural rule best serves as the basis for [his] motion,” but he speculated that it may “be a Rule 12(b) motion for lack of subject matter jurisdiction for mootness as all claims have been dismissed with prejudice and no case or controversy remains, depriving this Court of subject matter jurisdiction” and further explained that, though contemplated as a basis for the motion, “*res judicata* appear[ed]

³ *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658 (1978).

⁴ On appeal, Plaintiffs explain that they “determined that having two sets of independent lawyers at trial representing what was, in essence, one entity would be inefficient and unwieldy.”

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only applicable to a second cause of action.” At any rate, the district court denied Defendant’s motion. It reasoned that “dismissal of the redundant parties appears to be more a matter of judicial discretion and procedural housekeeping that should not substantively affect the Plaintiff[s’] claims.”⁵

A bench trial took place in March 2021. At trial, Plaintiffs introduced video evidence from the May 2017 meeting and another meeting (demonstrating that speakers were removed when discussing Sterling’s killing) as well as video evidence from four other meetings during which speakers were off topic (to demonstrate that the off-topic rule was not always enforced). At trial, Defendant contended that Plaintiffs were simply “removed for making off topic comments” or neglecting “to follow established procedures by approaching the podium and simultaneously making some statement,” all in violation of the City’s Code of Ordinances.

A few years later, the district court entered its Findings of Fact and Conclusions of Law. As for Plaintiffs’ First Amendment claims, the district court concluded that Defendant violated McClanahan’s and Collins’s First Amendment rights, but not Chambers’s. After concluding that Defendant violated their First Amendment rights, the district court issued a declaratory judgment in McClanahan’s and Collins’s favor. Moreover, the district court accordingly concluded that McClanahan and Collins were prevailing parties. As a result, it ordered Defendant to pay for their costs and attorney’s fees. Defendant appealed.

Defendant makes several arguments on appeal, two of which we address. First, he contends that because the district court dismissed with prejudice the City (against which identical claims were brought), the district

⁵ Wilson thereafter sought a stay from the district court and this court, but both attempts were unsuccessful.

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court also, in effect, dismissed the claims against him. It follows, Defendant argues, that because “there was no longer a case or controversy” and the “case was moot,” subject matter jurisdiction no longer existed. Second, Defendant argues that the district court erred in concluding that Defendant was a policymaker.

II.

A.

“Issues of subject matter jurisdiction are questions of law reviewed de novo.” *Pershing, L.L.C. v. Kiebach*, 819 F.3d 179, 181 (5th Cir. 2016) (emphasis omitted). “The standard of review for a bench trial is well established: findings of fact are reviewed for clear error and legal issues are reviewed de novo.” *Kona Tech. Corp. v. S. Pac. Transp. Co.*, 225 F.3d 595, 601 (5th Cir. 2000); Fed. R. Civ. P. 52(a)(6). A district court’s finding “is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” *Guzman v. Hacienda Recs. & Recording Studio, Inc.*, 808 F.3d 1031, 1036 (5th Cir. 2015) (quoting *Anderson v. City of Bessemer City*, 470 U.S. 564, 573 (1985)). If there are two permissible views, the district court’s conclusion was not clearly erroneous. *Id.* Then, review after “a bench trial requires even greater deference to the trial court’s findings when they are based upon determinations of credibility.” *Id.* (citation modified).

B.

“We always start with subject matter jurisdiction.” *Matter of RE Palm Springs II, L.L.C.*, 106 F.4th 406, 411 (5th Cir. 2024). Defendant, in his briefing and at oral argument, asserted the claims against him are moot because of the with-prejudice dismissal of the City of Baton Rouge and Parish of East Baton Rouge. Because these claims are moot, Defendant argues, we lack subject matter jurisdiction.

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One part of subject matter jurisdiction is standing. *HSBC Bank USA, N.A. v. Crum*, 907 F.3d 199, 202 (5th Cir. 2018). Mootness has often been described as “‘the doctrine of standing set in a time frame.’” *Nat’l Rifle Ass’n of Am., Inc. v. McCraw*, 719 F.3d 338, 344 (5th Cir. 2013) (quoting *Goldin v. Bartholow*, 166 F.3d 710, 717 (5th Cir. 1999)). “‘A claim is moot when a case or controversy no longer exists between the parties.’” *Smith v. Edwards*, 88 F.4th 1119, 1124 (5th Cir. 2023) (quoting *Brinsdon v. McAllen Indep. Sch. Dist.*, 863 F.3d 338, 345 (5th Cir. 2017), *as revised* (July 3, 2017)). “‘We have repeatedly held that an “actual controversy” must exist not only “at the time the complaint is filed,” but through “all stages” of the litigation.’” *Students for Fair Admissions, Inc. v. Univ. of Texas at Aust.*, 142 F.4th 819, 824 (5th Cir. 2025) (quoting *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013)). “‘A case is moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party.’” *Jackson v. Noem*, 132 F.4th 790, 793 (5th Cir. 2025) (quoting *DeOtte v. State*, 20 F.4th 1055, 1064 (5th Cir. 2021)). If “‘the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot.’” *Id.* (quoting *Chafin v. Chafin*, 568 U.S. 165, 172 (2013)).

None of Defendant’s arguments demonstrate how it would be “impossible” for “any effectual relief whatever” to be granted to Plaintiffs. Dismissal with prejudice of duplicative claims that have perhaps been finally resolved on the merits does not necessarily mean that those claims, asserted against a different defendant, are moot such that the district court is deprived of subject matter jurisdiction. A final judgment on the merits does not render a dispute moot so much as it precludes that action from being relitigated. *See* 18 WRIGHT & MILLER’S FEDERAL PRACTICE & PROCEDURE § 4402 (3d ed. 2026) (noting that “claim preclusion, or true *res judicata*” “treats a judgment, once rendered, as the full measure of relief to be accorded between the same parties on the same claim or cause of action” (citation modified)).

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However, Defendant forfeited any available preclusion arguments by failing to raise or brief them. *See Rollins v. Home Depot USA*, 8 F.4th 393, 397 (5th Cir. 2021) (“A party forfeits an argument by failing to raise it in the first instance in the district court—thus raising it for the first time on appeal—or by failing to adequately brief the argument on appeal.”).

Given this, mootness does not apply, and we have subject matter jurisdiction.

III.

Having decided subject matter jurisdiction, we reach the second issue: whether Defendant was the final policymaker for purposes of *Monell* liability. For the following reasons, we conclude he was not.

A.

“It is well established that a city is not liable under § 1983 on the theory of respondeat superior.” *Valle v. City of Hou.*, 613 F.3d 536, 541 (5th Cir. 2010) (citing *Monell*, 436 U.S. at 694). Instead, a municipality may be held liable “only for acts directly attributable to it through some official action or imprimatur.” *Id.* (citation modified).

“To establish municipal liability under § 1983, a plaintiff must show the deprivation of a federally protected right caused by action taken ‘pursuant to an official municipal policy.’” *Id.* (quoting *Monell*, 436 U.S. at 691). To that end, a litigant “must identify: (1) an official policy (or custom), of which (2) a policymaker can be charged with actual or constructive knowledge, and (3) a constitutional violation whose moving force is that policy or custom.” *Id.* at 541–42 (citation modified).

A litigant may demonstrate that a policy exists “through evidence of an actual policy, regulation, or decision that is officially adopted and promulgated by” someone “with policymaking authority.” *Id.* at 542

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(citation omitted). Under this “single incident exception,” *id.* (quoting *Bolton v. City of Dall.*, 541 F.3d 545, 548 (5th Cir. 2008) (per curiam)), a “single decision” by a final policymaker can “constitute a policy for which a [municipality] may be liable,” *id.* (alteration in original) (citing *Brown v. Bryan Cnty.*, 219 F.3d 450, 462 (5th Cir. 2000)).

Plaintiffs urged the single incident exception, and the district court agreed. To this end, the district court reasoned that Defendant was a final policymaker because “he was, as chairman, the final decisionmaker as to all procedural points at the [Metropolitan] Council” and “was the final decisionmaker as to whether to allow members of the public to speak.” As Defendant points out, the district court did not distinguish between a final “decisionmaker” and a final “policymaker.” This slippage makes a difference.

This court has recognized that the distinction between a “decisionmaker” and a “policymaker” is “fundamental.” *Bolton*, 541 F.3d at 548–49 (citing *Jett v. Dall. Indep. Sch. Dist.*, 7 F.3d 1241, 1247 (5th Cir. 1993)). Two Supreme Court plurality opinions, *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986), and *City of St. Louis v. Praprotnik*, 485 U.S. 112 (1988), have clarified “that discretion to exercise a particular function does not necessarily entail final policymaking authority over that function.” *Bolton*, 541 F.3d at 549 (first citing *Pembaur*, 475 U.S. at 483–84; and then citing *Praprotnik*, 485 U.S. at 130).

Critically, when determining if one is a policymaker (as opposed to a decisionmaker), the finality of a decision is not decisive. *Id.* at 550. “Municipal liability attaches only where the decisionmaker possesses final authority to establish municipal policy with respect to the action ordered.” *Pembaur*, 475 U.S. at 481. So, “[w]hen an official’s discretionary decisions are constrained by policies not of that official’s making, those policies, rather

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than the subordinate's departures from them, are the act of the municipality." *Praprotnik*, 485 U.S. at 127.

This court has distinguished between a policymaker and a decisionmaker on other occasions. For example, this court found a police captain was not a final policymaker because, though he possessed "decisionmaking or operational command authority" and made the final decision ordering entry into a home, he was only afforded a "measure of discretion in carrying out the City's policy," *Valle*, 613 F.3d at 543–44. In another case we considered a city manager who possessed "final decisionmaking authority in certain employment decisions," but found he was not a final policymaker because he did not possess policymaking authority and only followed the standards set out in the city charter. *Bolton*, 541 F.3d at 550–51.

B.

Here, Defendant was a final *decisionmaker*, rather than a final *policymaker*.

"Whether a particular official has 'final policymaking authority' is a question of *state law*." *Jett*, 491 U.S. at 737 (citation modified). In this case state law came from the Open Meetings Law and the City Ordinances.

The Open Meetings Law delegates authority for making "reasonable rules and restrictions regarding [the] comment period" to the governing body, LA. STAT. ANN. § 42:14D, here the Metropolitan Council. Relevant to Plaintiffs' claims are the "on topic" rule (relevant for McClanahan) "and the request permission to speak rule" (relevant for Collins). LA. STAT. ANN. § 42:14D. Furthermore, the City's ordinances make clear that Defendant's role, as Mayor Pro Tempore and chair, was simply one of enforcement. *See* Code of Ordinances § 1.8 ("Any point of order or

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procedure shall be ruled on by the chair in accordance with the rules set forth in these ordinances, the plan of government, and applicable state law[.]”).

The City delegated to Defendant final decisionmaking authority, not final policymaking authority. The City’s Ordinances clarify that Defendant would have the final word on points of order at meetings. *Id.* (“The ruling of the chair on the procedural point shall be final.”). But this court has made plain that the fact that one may make *final decisions* does not automatically render one a *policymaker*. *Bolton*, 541 F.3d at 550. Here, Defendant’s “discretionary decisions [were] constrained by policies not of [his] making,” so his “departures from them” were not the municipality’s acts. *See Praprotnik*, 485 U.S. at 127. Defendant exercised discretion to enforce the City’s policies, which is decisionmaking rather than policymaking authority. *See Merriott v. City of Bossier City*, 179 F.4th 393, 412 n.15 (5th Cir. 2026).

IV.

Because this case does not present mootness concerns, we have subject matter jurisdiction. Additionally, because Defendant was acting as a decisionmaker but not a policymaker, we REVERSE and RENDER JUDGMENT in favor of Defendant against Plaintiffs.