

**THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

RICHARD BANKS, JUDY BANKS, ROGER  
MCCARREN and LARRY MEYER,

Plaintiffs

vs.

KAREN GALLAGHER, ANTHONY  
MARIANO, WILLIAM STADNITSKI and  
DICKSON CITY BOROUGH,

Defendants

EDWARD J. KRAFT, JR.,

Plaintiff,

vs.

KAREN GALLAGHER, ANTHONY  
MARIANO, and DICKSON CITY BOROUGH,

Defendants.

CIVIL ACTION NO. 3:08-1110

(CAPUTO, D.J.)  
(MANNION, M.J.)

CIVIL ACTION NO. 3:08-1177

(CAPUTO, D.J.)  
(MANNION, M.J.)

(ELECTRONICALLY FILED)

**DEFENDANT WILLIAM STADNITSKI'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

AND NOW, comes the Defendant, William Stadnitski, by and through his counsel, Post & Schell, P.C., and files the within Motion for Partial Summary Judgment, and in support thereof states the following:

1. Plaintiffs allege in their complaint that the Defendants illegally threatened, harassed, and/or arrested them, and otherwise interfered with their rights under the First, Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States.

2. Defendant William Stadnitski now submits his Motion for Partial Summary Judgment to the claims made against him by Plaintiffs Richard Banks, Judy Banks, Roger McCarren, and Larry Meyer.

3. Defendant incorporates his Short & Concise Statement of Facts in Support of his Motion for Partial Summary Judgment as if same were fully set forth at length herein.

4. Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." F.R.C.P. 56(c).

5. An issue is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is "material" if it might affect the outcome of the case under governing law. Id.

6. The moving party bears the burden of informing the district court of the basis of its motion and of identifying those portions of the record which demonstrate the absence of a genuine issue of material fact. Mazaheri v. Prudential Ins. Co. of Am., 2007 U.S. Dist. LEXIS 93024 at 11-12.

7. Once the moving party demonstrates that there is an absence of evidence to support the nonmoving party's claims, the "non-moving party must rebut the motion with facts in the record and cannot rest solely on assertions made in the pleadings, legal memoranda, or oral argument." Berkeley Inv. Group. Ltd. V. Colkitt, 455 F.3d 105, 201 (3d Cir. 2006).

8. Summary judgment is appropriate if the nonmoving party fails to make a sufficient showing to establish an essential element on which that party will bear the burden at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986).

**Count IV-All Plaintiffs v. William Stadnitski**

9. Defendant incorporates the previous paragraphs by reference as though set forth at length herein.

10. Plaintiffs assert in Count IV that Defendant Stadnitski is liable to them on the basis of inadequate supervision and training of his police officers, and acquiescence in “improper and illegal activities” of Defendants Gallagher and Mariano.

11. To establish a claim for supervisory liability under 1983, a plaintiff must (1) identify the specific supervisory practice or procedure that the supervisor failed to employ, and show that (2) the existing custom and practice without the identified, absent custom or procedure created an unreasonable risk of the ultimate injury, (3) the supervisor was aware that this unreasonable risk existed, (4) the supervisor was indifferent to the risk, and (5) the underling’s violation resulted from the supervisor’s failure to employ that supervisory practice or procedure. Potts v. City of Philadelphia, 224 F. Supp. 2d 919, 931 (E.D. Pa. 2002) (citing Brown v. Muhlenberg Township, 269 F.3d 205, 216 (3d Cir. 2001)).

12. Plaintiffs have produced no evidence, either factual or expert, that Defendant Stadnitski failed to employ any procedure or practice that would have prevented the “injuries” complained of by Plaintiffs.

13. In fact, it is undisputed that the Officers went through the state required courses for Act 120 certification to become a police officer.

14. Defendant Stadnitski saw that his police officers went through all of the state-mandated training required of them as police officers prior to this event, trusted in the judgment of the ADA who advised the police officers during the incident, and had the interests of the patrons of the Old Country Buffet at heart when he handled the situation at issue. Exhibit 7 at pp. 31-32, 24-25, 26, 28.

15. Despite having every opportunity to do so, Plaintiffs have failed to identify a single inappropriate written policy or provide an expert report suggesting that Chief Stadnitski's actions were in any way inappropriate.

16. Plaintiffs have not articulated, much less established any of the elements necessary to sustain a claim for supervisory liability or the presence and understanding of any peculiar risk, so Count IV should be dismissed on this basis.

17. Even if this Honorable Court were to find that there somehow existed a jury question as to the theory on the basis of supervisory liability, Plaintiffs' claims fail for another reason.

18. Defendant Stadnitski has been sued in his individual capacity, and, as such, is entitled to qualified immunity. Government officials performing discretionary functions are generally shielded from personal 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 (1982).

19. The Supreme Court has held that the issue of qualified immunity of a defendant should be decided early in the proceedings so that the costs and expenses of trial are avoided where the defense is dispositive. Saucier v. Katz, 533 U.S. 194, 200 (2001).

20. Qualified immunity is a question of law for the Court, and requires the Court to address two issues: 1) whether, considering the facts in the light most favorable to the plaintiff, the officer's conduct violated a Constitutional right; and 2) whether the Constitutional right at issue was clearly established at the time of the alleged violation. Pearson v. Callahan, 129 U.S. 808 (2009); Gilles v. Davis, 427 F.3d 197, 205 (3d Cir. 2005).

21. To satisfy the first prong of the test, a plaintiff must show that “the limits of a Constitutional protection have been so clearly defined as to preclude the official’s act from being questionably Constitutional.” Devatt v. Lohenitz and City of Easton, 338 F. Supp. 2d 588, 594 (E.D. Pa. 2004).

22. To satisfy the second prong, the plaintiff must demonstrate that “the state of the law is so clear that any reasonable official knew, or should have known, that his conduct would be illegal.” Devatt v. Lohenitz and City of Easton, 338 F. Supp. 2d 588, 594 (E.D. Pa. 2004).

23. If these requirements have been satisfied, “. . . the inquiry proceeds to another, closely related issue, that is, whether the officer made a reasonable mistake as to what the law requires.” Carswell v. Borough of Homestead, 381 F.3d 235, 241 (3d Cir. 2004).

24. In determinations of qualified immunity, the entire episode should be taken into account. Orsatti v. New Jersey State Police, 71 F.3d 480, 483 (3d Cir. 1995). Qualified immunity thus affords officers ample room for mistaken judgments, protecting all but those who are plainly incompetent or who knowingly violate the law. Orsatti v. New Jersey State Police, 71 F.3d 480, 483 (3d Cir. 1995); Carswell v. Borough of Homestead, 381 F.3d 235 (3d Cir. 2004).

25. It is critical to understand that Plaintiffs knowingly sought to provoke an encounter such as occurred as is clearly set forth in the e-mails sent to one another and posted at the organizational website which were attached as Exhibit 1 to the Reply to the Summary Judgment Motion of Edward Kraft.

26. They descended upon this restaurant without ever calling to advise the establishment that ten (10) armed men would be arriving together and it is of little surprise that the patrons were afraid and sought the help and protection of the police. They were prepared to

and did videotape this staged encounter, where only one side of the encounter was privy to their plan and purpose in being there.

27. Yet, when the Officers calmly and professionally responded to the complaints and fears of the citizens which were obviously expected and intended by the Plaintiffs, Plaintiffs respond with a lawsuit suggesting nefarious actions and evil motives with absolutely no basis in fact.

28. There is no evidence that Defendant Stadnitski was plainly incompetent or knowingly violated the law.

29. At the time of the incident in question, Defendant Stadnitski had served the police force and the citizens admirably for thirty-seven (37) years, and, as noted above, had never encountered any situation like the one at hand.

30. There was no specific policy or procedure identified by Plaintiffs as inappropriate. There is no reason, and Plaintiffs have produced no evidence, to impose on Defendant Stadnitski a requirement that he know the detailed nuances of every federal statutes, state statutes, and an entire body of constitutional law and then pass them on to each officer.

31. In fact, in a 2009 opinion from this District, the court stated, "As a practical matter, a municipality cannot be expected to train every officer on every element of every statute or law that exists in Pennsylvania. Such an undertaking would be ineffective at best, futile at worst, and most importantly, is beyond what is required by the law." Kelly v. The Borough of Carlisle, et al., 2009 U.S. Dist. LEXIS 37618, \*29 (M.D. Pa. 2009).

32. Here, each Officer met the requirements of and had the requisite training provided to all Officers for compliance with Act 120, including annual updates. There is no evidence,

either factual or expert, that Chief Stadnitski failed to meet any particular standard or knowingly violated any law.

33. Accordingly, Defendant Stadnitski is entitled to judgment as a matter of law on Count IV, and his motion for summary judgment should be granted accordingly.

**Count IV-All Plaintiffs v. All Defendants**

34. Defendant incorporates the previous paragraphs by reference as though set forth at length herein.

35. Count IV is merely a repetition of the other claims in the Amended Complaint, reiterating that Plaintiffs allege that the Defendants violated their rights under the First, Fourth, Fifth and Fourteenth Amendments. Amended Complaint at ¶ 37.

36. For the reasons the Plaintiffs' claims against Defendant Stadnitski fail, and to the extent that they fail, Count IV also cannot withstand Defendant Stadnitski's motion for partial summary judgment.

**Count VI-Pennsylvania Constitution**

37. Defendant incorporates the previous paragraphs by reference as though set forth at length herein.

38. Any state law claims that can be read into the Plaintiffs' complaint against Defendant Stadnitski must be dismissed because he is entitled to official immunity under the Political Subdivision Tort Claims Act, 42 Pa. C.S.A. § 8545. 42 Pa. C.S.A. § 8545 ("PSTCA").

39. Under the PSTCA, state law claims raised against a public official in his official capacities are barred. Damron v. Smith, 616 F. Supp. 424, 426 (E.D. PA. 1985).

40. When an official is sued in his individual capacity, however, he may be outside the immunity provided by the PSTCA. In order to escape the immunity, a plaintiff must prove

that the official committed an “act [constituting] a crime, actual fraud, actual malice or willful misconduct . . .” 42 Pa. C.S.A. § 8454; 42 Pa. C.S.A. § 8550.

41. There is no evidence that Defendant Stadnitski committed any act which constituted a crime, actual fraud, actual malice, or willful misconduct.

42. In fact, as noted above, Defendant Stadnitski testified that he had never encountered an incident such as the one at issue in his thirty-seven years of service.

43. Defendant Stadnitski followed department policy, enforced policies to ensure that police officers are appropriately handling serious situations, and relied upon advice provided by the ADA to the police officers. Exhibit 7 at pp. 24-25, 26, 28.

44. Any state law claim against Defendant Stadnitski must be dismissed.

45. Plaintiffs’ demands for money damages on the basis of Pennsylvania Constitutional violations must be dismissed because “[a]lthough the Pennsylvania Constitution has been said to provide for an action for injunctive relief to enforce its equal rights provisions, there has been no such holding as to an action for damages.” Kaucher v. County of Bucks, 2005 U.S. Dist. LEXIS 1679, \*31-32 (E.D. Pa. 2005).

46. Courts in the Eastern District of Pennsylvania that have considered whether there is a private cause of action for damages under the Pennsylvania Constitution have concluded that no such right exists. See, e.g., Dooley v. City of Philadelphia, 153 F. Supp. 2d 628, 633 (E.D. Pa. 2001).

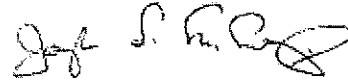
47. Plaintiffs’ demands for injunctive relief should also be dismissed because they are overly broad and would be unenforceable.

**WHEREFORE**, Defendant Stadnitski requests that his Motion for Partial Summary Judgment on the above bases be granted.

**Respectfully submitted,**

**POST & SCHELL, P.C.**

By:



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**CERTIFICATE OF SERVICE**

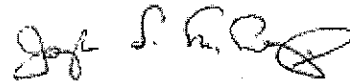
I, Joseph F. McNulty, Jr., Esquire do hereby certify that I caused a true and correct copy of the foregoing document(s) to be served upon the following designated person(s) via Electronic Service on the date set forth below:

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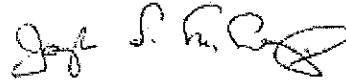
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**CERTIFICATE OF NONCONCURRENCE**

I hereby certify that counsel for the respective Plaintiffs do not concur in the respective Defendants Motions for Summary Judgment which are filed herein.

**POST & SCHELL, P.C.**

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