

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM A. COLE, SR.,
Appellant,

vs.

RONALD D. VARGAS, INDIVIDUALLY
AND/OR IN HIS OFFICIAL CAPACITY
AS A CITY OF NORTH LAS VEGAS
EMPLOYEE; CITY OF NORTH LAS
VEGAS, A POLITICAL SUBDIVISION
OF THE STATE OF NEVADA; NORTH
LAS VEGAS POLICE OFFICER M.
LAKIN, BADGE NO. 1175; NORTH LAS
VEGAS POLICE OFFICER MARK A.
MARTIN, BADGE NO. 1144; NORTH
LAS VEGAS POLICE OFFICER T.
WILKERSON, BADGE NO. 725; AND
NORTH LAS VEGAS POLICE
DEPARTMENT,
Respondents.

No. 43866

FILED

DEC 27 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
J. Bloom
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court's summary judgment order. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

Appellant filed a complaint, alleging that, in March 1999, respondents deprived him of his personal property and violated his civil and due process rights by threatening to arrest him for trespassing if he did not leave the land where he had been residing within ten minutes. Appellant alleged that, because he was given no prior notice, he was unable to retrieve much of his personal property, which respondents then wrongfully removed. Respondents answered, generally denying the allegations and asserting several affirmative defenses.

Respondents filed a summary judgment motion, arguing that, in December 1998, they sent written notice of county code violations to the

property owners, who then hired a contractor to clear the land. Respondents noted that appellant had admitted that, on December 18, 1998, a code enforcement officer advised him that he was trespassing and should move his personal property. According to respondents, they sent several more violation notices to the property owners and, on March 11, 1999, respondents informed appellant in person that he had to leave the property by March 16, 1999. On March 17th, respondents found that the county code violations persisted, and the next day the property owners cleared the land, while respondents performed a civil stand-by. Respondents argued that they were not liable to appellant because there was no constitutional deprivation and no official policy or custom supporting such a deprivation, or any evidence that they acted with knowledge that they were violating clearly established law. The district court granted respondent's summary judgment motion.

We review orders granting summary judgment de novo.¹ "Summary judgment is appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law."²

"To establish a claim under [42 U.S.C.] § 1983, the plaintiff must prove that the conduct complained of: (1) was committed by a person acting under color of state law, and (2) deprived the plaintiff of rights, privileges, or immunities secured by the Constitution or laws of the United

¹Wood v. Safeway, Inc., 121 Nev. ___, ___, 121 P.3d 1026, 1029 (2005).

²Id. at ___, 121 P.3d at 1031.

States.”³ For a city to be liable under § 1983, a claimant must establish that his constitutional rights were violated as a result of a city custom or policy.⁴

In this case, appellant’s assertions that he was deprived of his personal property without due process is belied by his own deposition, wherein he admits that he (1) had been warned that he was trespassing and, (2) was aware that his personal property was subject to removal several months before it was actually removed. There is nothing to support his allegations that respondents violated his civil rights or acted unreasonably by issuing citations to the property owner and performing a civil stand-by while the property owner had the land cleared. Likewise, there is nothing to support a conclusion that the city respondent had a custom or policy that resulted in depriving appellant of his civil rights. Moreover, because the property owners removed appellant’s personal property, respondents are not liable. Thus, appellant’s due process and civil rights violation claims fail as a matter of law. Accordingly, the district court properly granted summary judgment to respondents, and we

ORDER the judgment of the district court AFFIRMED.

Douglas, J.
Douglas

Rose, J.
Rose

Parraguirre, J.
Parraguirre

³State of Nevada v. Dist. Ct. (Anzalone), 118 Nev. 140, 153, 42 P.3d 233, 241 (2002).

⁴See Monell v. New York City Dept. of Social Services, 436 U.S. 658, 690-91 (1978) (stating also that a municipality cannot be held liable under a respondeat superior theory solely because it employs a tortfeasor).

cc: Hon. Sally L. Loehrer, District Judge
William A. Cole, Sr.
Freeman Law Firm
Clark County Clerk