United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-7058 **September Term, 2017**

FILED ON: FEBRUARY 16, 2018

VAUGHN JONES AND ANTONIO PIXLEY,
APPELLANTS

v.

DISTRICT OF COLUMBIA, ET AL.,
APPELLEES

Appeal from the United States District Court
for the District of Columbia
(No. 1:16-cv-00085)

Before: MILLETT and PILLARD, *Circuit Judges*, and WILLIAMS, *Senior Circuit Judge*

J U D G M E N T

This case comes before the court on appeal from the United States District Court for the District of Columbia's order dismissing Vaughn Jones's and Antonio Pixley's complaint. This action was considered on the briefs of the parties. The court has afforded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. CIR. R. 36(d). It is

ORDERED AND ADJUDGED that the order of the United States District Court for the District of Columbia be affirmed. The plaintiffs failed to plausibly allege a claim of municipal liability.

Vaughn Jones and Antonio Pixley served as basketball coaches at Coolidge High School, a public high school in the District of Columbia. Jones was the head coach of the boys' varsity basketball team, while Pixley served as the assistant varsity coach and head coach of the boys' junior varsity team. Jones and Pixley each signed one-year agreements in which they committed to, among other things, follow all D.C. Interscholastic Athletic Association Rules in their work as coaches.

Coaching positions within the District of Columbia Public School system ("D.C. Schools") are extra duty pay assignments, meaning that coaches receive stipends rather than a salary or

regular pay. Jones's main employment was as the Dean of Students at Paul Public Charter School. Coolidge employed Pixley as a behavioral technician working with at-risk students.

On October 31, 2015, D.C. Schools removed Jones and Pixley from their coaching positions after an official investigation concluded that they had coerced school administrative personnel into falsifying a student athlete's records so that the athlete would appear to be eligible to play high school basketball for an additional year. Jones was also permanently barred from serving as a D.C. Schools coach because this was "the second time in two years" that Jones had been investigated for eligibility infractions.

Coolidge's Principal contacted Mary Outlaw, the Deputy Chief of Secondary Academic Support, on Jones's and Pixley's behalf to inquire about their right to have those decisions reviewed. Outlaw responded by forwarding an email from a D.C. Schools employee relations specialist advising that, because the coaching positions were extra duty and not formal employment positions, the coaches could only appeal their terminations by submitting a written protest to D.C. Schools' Office of Labor Management and Employee Relations.

Neither Jones nor Pixley appears to have exercised that right to review. Instead, Jones and Pixley filed suit under 42 U.S.C. § 1983 and District tort law against the District of Columbia and four District employees in their official capacities—Mary Outlaw, Chief of Schools John Davis, Director of the D.C. Interscholastic Athletic Association Stephanie Evans, and Interim Director of the D.C. Interscholastic Athletic Association Reginald Ballard.

The district court dismissed the complaint for failure to state a claim, including both the federal claim under 42 U.S.C. § 1983 and the District-law tort claims. With respect to the Section 1983 claim, the court ruled that Jones's and Pixley's complaint failed to plausibly allege the elements of municipal liability. Specifically, the district court ruled that the coaches alleged "no facts" and only "conclusory statements to show that [the Defendants] had any role in Plaintiffs' termination or denial of their right to be heard." *Jones v. District of Columbia*, 241 F. Supp. 3d 81, 88 (D.D.C. March 15, 2017). The only allegations supported with any factual specificity involved Outlaw's issuance of the termination letters and forwarding of an email describing the coaches' limited appeal rights. *Id*. Those allegations still fell short, the district court concluded, because the complaint failed to allege any facts suggesting that Outlaw had the "final policymaking authority" required for "her acts to be attributed to the District under § 1983" and thus to establish "municipal liability under § 1983 and *Monell* [*v. Department of Soc. Servs.*, 436 U.S. 658 (1978)]." *Id*.[1]

The district court had jurisdiction over the Section 1983 claim under 28 U.S.C. § 1331 (2012). Jones and Pixley timely appealed, and this court has jurisdiction under 28 U.S.C. § 1291 (2012). We review *de novo* the district court's dismissal of the Section 1983 claim for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), accepting all well-pleaded factual

[1] The district court's dismissal of Jones's and Pixley's tort claims is not challenged on appeal. In addition, the student athlete and his mother were plaintiffs in district court, asserting a number of their own tort claims. But they did not appeal the district court's dismissal of their claims and are not parties to this appeal.

allegations of the complaint as true and drawing all reasonable inferences from those allegations in the coaches' favor. *Jones v. Kirchner*, 835 F.3d 74, 79 (D.C. Cir. 2016).

Jones's and Pixley's briefing makes clear their disagreement with D.C. Schools' findings concerning the student athlete's eligibility, and we assume for purposes of this appeal that their well-pleaded factual allegations are true. But whether the student athlete in question was eligible to play another year and whether Jones and Pixley actually committed the alleged misconduct are irrelevant to the only issue raised before this court. Jones's and Pixley's sole claim for relief preserved on appeal rests entirely on a theory of municipal liability: namely that the District, through its officials, allegedly deprived Jones and Pixley of due process in conjunction with the loss of their coaching positions. The law is well-settled that, to state a cognizable claim of municipal liability, the complaint must plausibly allege that "a custom or policy of the municipality caused the violation." *Baker v. District of Columbia*, 326 F.3d 1302, 1306 (D.C. Cir. 2003); *see Monell*, 436 U.S. at 694. Simply alleging missteps by some municipal employees will not suffice. Instead, to state a claim that a municipal policy or custom caused their constitutional injury, Jones and Pixley had to plausibly allege one of the following theories of liability: (i) "the explicit setting of a policy by the [District] government that violates the Constitution," (ii) unconstitutional action by a "policy maker" within the District government, (iii) "the adoption through a knowing failure to act by a policy maker of actions by his subordinates that are so consistent that they have become 'custom,'" or (iv) "the failure of the [District] government to respond to a need (for example, training of employees) in such a manner as to show 'deliberate indifference' to the risk that not addressing the need will result in constitutional violations." *Baker*, 326 F.3d at 1306 (internal citations omitted). At least one of those potential bases for municipal liability must be adequately pled for a Section 1983 claim to withstand a motion to dismiss for failure to state a claim. *Blue v. District of Columbia*, 811 F.3d 14, 20 (D.C. Cir. 2015).

Jones's and Pixley's complaint fails that task. Nowhere does the complaint identify a "relevant type of municipal policy" that has caused their alleged injury. *Blue*, 811 F.3d at 20. All the complaint says is that the challenged actions "involved decision makers who are directors and senior officials within District Government," and that their behavior "represent[ed] official acts or customs taken on behalf of Defendant District of Columbia Government[.]" J.A. 39. It thus seems clear that the complaint purports to ground municipal liability on a "policy maker" theory.

But simply labeling a defendant a "policy maker" does not suffice to state a claim of municipal liability. Rather, the "key element" of such a claim is that the relevant official wielded "final policy making authority" with respect to the allegedly unconstitutional conduct. *Blue*, 811 F.3d at 20 (quoting *Santiago v. Warminster Township*, 629 F.3d 121, 135 n.11 (3d Cir. 2010)); *see Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 737 (1989). Jones's and Pixley's complaint is silent in that respect. They allege no facts that would show or even support a reasonable inference that any of the defendant officials was a final policy maker regarding either the terminations or the alleged denial of due process, and they identify no basis in District law for drawing such a conclusion.

Jones and Pixley contend on appeal that the complaint supports a reasonable "inference that John Davis," the Chief of D.C. Schools, "was a final policymaker with the proper grant of authority and that he made or approved the decision to fire th[e coaches.]" Opening Br. 2. It does not. The

only allegation in the complaint that concerns Davis's actions is the claim that he "told students' parents that [the coaches] were a 'danger' to students." J.A. 10, ¶ 8. That provides no footing for a reasonable inference that Davis (i) exercised final policymaking authority over D.C. Schools' "extra duty" contracts with coaches, (ii) was even aware of or participated in their termination or the review process offered to them, or (iii) otherwise exercised any final decision-making authority in this particular case.

Because the complaint fails to plausibly allege any reasonable basis on which to infer municipal liability, the district court properly dismissed the complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). We accordingly affirm the judgment of the district court.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41(a)(1).

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken Meadows
Deputy Clerk