

Goodwin v. Moyer
549 F. Supp. 2d 621 (M.D. Pa. Mar. 29, 2006)

MEMORANDUM AND ORDER

JOHN E. JONES III, United States Magistrate Judge.

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

Plaintiff Perle C. Goodwin (“Plaintiff” or “Goodwin”) commenced this civil rights action pursuant to 42 U.S.C. § 1983 on April 18, 2005, by filing a complaint against Defendants Steven Moyer, superintendent of the Tunkhannock Area School District (“School District”), Karen Delancey, director of transportation of the School District, Tunkhannock Area Board of Directors (“Board of Directors”), and Husband, the owner and operator of Forward Transportation/Husband’s Trucking (collectively “Defendants”). (Rec.Doc. 1).

FACTUAL BACKGROUND

Plaintiff alleges that Defendants are liable in their individual and official capacities for violating his civil rights under the United States Constitution and Pennsylvania law because they invaded his privacy by installing a video camera on Plaintiff’s school bus and deprived him of substantive and procedural due process of law by circumscribing and then terminating his employment as a bus driver without a hearing. As the Magistrate Judge accurately submits, Plaintiff’s theory of liability is premised upon the following facts he submits, which the Court must accept as true at this juncture, for the purpose of considering Motions to Dismiss.

Plaintiff was employed as a school bus driver by Defendant Husband’s company, Forward Transportation/Husband’s Trucking, which contracted with the School District to provide school bus service. Plaintiff’s school bus was equipped with a video camera, which Defendants allegedly installed “individually, jointly and severally” and “with the knowledge, concurrence and approval of the individual defendants.” (Rec.Doc. 7). On June 6, 2003, Plaintiff drove bus number 20 and Defendant Husband was on the bus to show Plaintiff the route because he had not previously driven that route. After delivering the children on that date, Plaintiff received a letter from Defendant Delancey informing him that “he had let a little girl walk from the mini-mart on Route 292 to her home in a trailer park.” *Id.* Defendants Moyer and Delancey met with Plaintiff concerning the incident. Defendant Delancey sent Plaintiff a letter informing him that he was authorized only to drive bus number 48 and “the late run two times a week.” On June 10, 2003, Defendant Delancey sent Plaintiff a letter informing him that, after discussing the issue with Defendant Moyer, he was not approved to be a full-time driver for the 2003–2004 school year. In addition, if Plaintiff were ever to be used as a substitute bus driver, the School District administration would first have to approve the use.

On or about November 3, 2004, Plaintiff requested a hearing concerning his employment before the Board of Directors; however, he received no response. Plaintiff contends that the School Code mandates a hearing before a bus driver can be dismissed or terminated. This refers to the Public School Code, 24 P.S. § 5–514, which provides the following:

The board of school directors in any school district ... shall after due notice, giving the reasons therefor, and after hearing if demanded, have the right at any time to remove any of its officers, employees, or appointees for incompetency, intemperance, neglect of duty, violation of any of the school laws of this Commonwealth, or other improper conduct.

Plaintiff contends that he was an appointee of the School District and accordingly entitled to due process under the Public School Code.

Plaintiff's amended complaint consists of six counts against Defendants: 42 U.S.C. § 1983, conspiracy, intentional infliction of emotional distress, interference with a contractual relationship, wrongful discharge, and invasion of privacy. On each count, Plaintiff seeks relief against Defendants "individually, jointly and severally" in the form of compensatory and punitive damages in excess of eighty thousand dollars.

In his objections, Plaintiff asserts that the Magistrate Judge improperly dismissed his invasion of privacy claim using a balancing test of reasonableness. Plaintiff cites to *Wilcher v. City of Wilmington*, 139 F.3d 366 (3d Cir.1998), a Third Circuit Court of Appeals case, and appears to argue that factual determinations which should have been left to a jury were erroneously decided by the Magistrate Judge in his report. We disagree with Plaintiff and are in agreement with the Magistrate Judge that Plaintiff has failed to state a claim for invasion of privacy, for the reasons that follow.

The Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated ..." U.S. Const. Amend. IV. "The Amendment guarantees the privacy, dignity, and security of persons against certain arbitrary and invasive acts by officers of the Government or those acting at their direction." *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602, 613-14, 109 S.Ct. 1402, 103 L.Ed.2d 639 (1989) (citing *Camara v. Mun. Ct. of San Francisco*, 387 U.S. 523, 528, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967)). As the Magistrate Judge notes, generally the Fourth Amendment is implicated in law enforcement searches for which a warrant issued subsequent to individualized suspicion that reaches the level of probable cause is required. *Nat'l Treasury Employees Union v. Von Raab*, 489 U.S. 656, 665, 109 S.Ct. 1384, 103 L.Ed.2d 685 (1989). However, there are occasions "where a Fourth Amendment intrusion serves special government needs, beyond the normal need for law enforcement." *Id.* at 665-66, 109 S.Ct. 1384. On those occasions, the Supreme Court has instructed that it is necessary to balance the individual's privacy expectations against the Government's interests to determine whether it is impractical to require a warrant or some level of individualized suspicion in the particular context. *Id.*

As the Magistrate Judge aptly stated, the crux of this balancing test is reasonableness. *Wilcher v. City of Wilmington*, 139 F.3d 366, 373-74 (3d Cir.1998). Applicable precedents instruct us to consider the following three factors in judging reasonableness: (1) whether the plaintiff's privacy interest is objectively legitimate as recognized by society; (2) the nature and extent of the intrusion; and (3) whether the government has a compelling interest in intruding upon the plaintiff's privacy. *Id.* at 374-78 (citing *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 115 S.Ct. 2386, 132 L.Ed.2d 564 (1995)). The third factor is not considered under the compelling interest standard used in other areas of constitutional law; instead, "the phrase describes an interest which appears important enough to justify the particular search at

hand, in light of other factors which show the search to be relatively intrusive upon a genuine expectation of privacy.” *Id.* at 377.

Under the reasonableness test, we agree with the Magistrate Judge that Plaintiff’s allegations in the amended complaint fail to state a claim for invasion of privacy in violation of the Fourth Amendment. As a school bus driver, Plaintiff enjoyed a diminished expectation of privacy. Plaintiff drove children, for whom society has a special interest to protect from any misdeeds by the bus driver and from whose misdeeds society likewise has a special interest to protect the bus driver. In addition, we find an onboard video camera to be an insignificant intrusion upon Plaintiff’s privacy. Plaintiff was not located in a private area; he was in a public conveyance surrounded by others and in view of the public through the bus’s windows. Moreover, the video camera captures the entire activity of the bus as it shuttles children to and from school, it does not capture Plaintiff engaged in acts of a private nature. Finally, the government has a compelling interest in protecting children entrusted to it, as well as in protecting the bus driver from the children. Accordingly, Plaintiff has not suffered an unreasonable deprivation of his Fourth Amendment right to privacy.

Taking all of Plaintiff’s allegations in the amended complaint as true, as we must, there was no intrusion upon Plaintiff’s seclusion because he, as a bus driver, on a public bus with students and at least one other adult present, did not have a protected privacy interest in his actions. Additionally, the alleged intrusion was conducted by a recording device, a video camera, and not by a person. Therefore, even assuming arguendo that the statute of limitations has not expired on Plaintiff’s invasion of privacy claim, Plaintiff has failed to state an invasion of privacy claim upon which relief can be granted.