Edgerton v. City of St. Augustine

United States District Court for the Middle District of Florida, Jacksonville Division

March 20, 2023, Decided; March 20, 2023, Filed

Case No. 3:20-cv-941-BJD-PDB

Reporter
2023 U.S. Dist. LEXIS 48036 *

H. K. EDGERTON et al., Plaintiffs, v. CITY OF ST. AUGUSTINE, FLA., Defendant.

Counsel: [*1] For City of St. Augustine FLA., a Municipality, Defendant: Susan S. Erdelyi, Marks Gray PA, Jacksonville, FL.

For H. K. Edgerton, James Parham, Jill Pacetti, William C. McCrae, also known as, William C. McCrae, William Mayhem The Pirate Magician of St Augustine, Plaintiffs: David Rhodes McCallister, David Rhodes McCallister Attorney at Law, Wesley Chapel, FL.

For Wade Ross, Plaintiff: David Rhodes McCallister, LEAD ATTORNEY, David Rhodes McCallister Attorney at Law, Wesley Chapel, FL.

Judges: BRIAN J. DAVIS, United States District Judge.

Opinion by: BRIAN J. DAVIS

Opinion

ORDER

THIS CAUSE is before the Court on the Report and Recommendation (Doc. 67; Report) entered by the Honorable Patricia D. Barksdale, United States Magistrate Judge; Plaintiffs' Objections (Doc. 70); and Defendant's Response (Doc. 71). In the Report, the Magistrate Judge considered Defendant's Motion to Dismiss Plaintiffs' Third Amended Complaint with Prejudice (Doc. 63) and Plaintiffs' Response in Opposition (Doc. 65). The Magistrate Judge recommended Defendant's Motion to Dismiss be granted. Report at 92. Plaintiffs objected and the matter is now ripe for review.

The Court "may accept, reject, or modify, in whole or in part, the findings or recommendations [*2] made by the magistrate judge." 28 U.S.C. § 636(b). If no specific objections to findings of fact are filed, the district court does not have to conduct de novo review of those findings. See Garvey v. Vaughn, 993 F.2d 776, 779 n.9 (11th Cir. 1993); 28 U.S.C. § 636(b)(1).

If, on the other hand, a party files an objection, the district judge must conduct a de novo review of the portions of a magistrate judge's report and recommendation to which the party objects. Kohser v. Protective Life Corp., 649 F. App'x 774, 777 (11th Cir. 2016); 28 U.S.C. § 636(b)(1); see also Fed. R. Civ. P. 72(b)(3) (explaining that on dispositive matters, "the district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to"). The Court reviews de novo the Magistrate Judge's proposed legal conclusions to which Plaintiff objected. 28 U.S.C. § 636(b)(1).

A. Background Summary

This case is about Defendant City of St. Augustine's (City's) decision to relocate a monument from a City park. The monument was placed in the City park to honor those who fought and died in service of the confederate army. (See Doc. 57 at ¶¶43-48).

Plaintiffs raise several claims related to the City's decision. The Report accurately describes the claims:

> All plaintiffs contend the city violated § 1983 and the Fourteenth Amendment's Equal Protection Clause by placing the contextualization footstones near the monument. [*3] Id. ¶¶75-80.
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> All plaintiffs contend the city violated § 1983 and the Fourteenth Amendment's Equal Protection Clause by removing the monument from the plaza and relocating it to the fish camp. Id. ¶¶75-80.
>
> All plaintiffs except Mr. McRae contend the city violated § 1983 and the First Amendment's Establishment Clause by removing the monument from the plaza and relocating it to the fish camp. Id. ¶82.
>
> All plaintiffs except Mr. McRae contend the city violated § 1983 and the First Amendment's Free Exercise Clause by removing the monument from the plaza and relocating it to the fish camp. Id. ¶¶81, 83.

All plaintiffs except Mr. McRae contend the city violated § 1983 and the First Amendment's Free Speech Clause by removing the monument from the plaza and relocating it to the fish camp. Id. ¶¶84-91.

Mr. Edgerton, Ms. Pacetti, and Mr. Parham contend the city violated § 1983 and the First Amendment's Free Exercise Clause by placing the contextualization footstones near the monument. Id. ¶92.

All plaintiffs contend the city violated § 1983 and the First Amendment's Free Speech Clause (specifically, their "freedom to express core political speech") by placing the contextualization footstones near the monument. Id. ¶93.

All plaintiffs contend the city violated 54 U.S.C. § 306108 (§ 106 of the National Historic Preservation Act of 1966) by failing to undertake required assessments before placing the contextualization footstones near the monument. Id. ¶94.

Finally, all plaintiffs contend the city violated § 106 by failing to undertake required [*4] assessments before removing the monument from the plaza. Id. ¶94.

(Report at 24-26).

B. Analysis

Plaintiffs object to the Report, arguing the Magistrate Judge erred by applying the incorrect legal standard to Defendant's motion to dismiss, the Magistrate Judge's three final conclusions are erroneous as a matter of law, and all five plaintiffs have standing. (See generally Doc. 70). The Court first reviews the standing claims, then the motion to dismiss analyses. See Lewis v. Governor of Ala., 944 F.3d 1287,1296 (11th Cir. 2019) (en bane) ("Because standing to sue implicates jurisdiction, a court must satisfy itself that the plaintiff has standing before proceeding to consider the merits of her claim, no matter how weighty or interesting.").

a. No Plaintiff has standing to bring a claim regarding the contextualization footstones.

Plaintiffs object to the Report's conclusion that no Plaintiff has stated a claim related to the contextualization footstones the City affixed to the monument. (Doc. 70 at 9-17).

As the Report details, there are three recent cases from the Eleventh Circuit involving "claims and arguments similar to those made" in this case. Report at 64-72; see also Gardner v. Mutz, 962 F.3d 1329 (11th Cir. 2020) (Gardner I); Ladies Mem'l Ass'n, Inc. v. City of Pensacola, 34 F.4th 988 (11th Cir. 2022); Gardner v. Mutz, 857 F. App'x 633 (11th Cir. 2021), cert. denied, 142 S. Ct. 762 (2022) (Gardner II). The Gardner case involved a Confederate monument [*5] formerly located in Lakeland, Florida. Gardner II, 857 F. App'x at 634. Plaintiffs present Gardner II to assert that all five plaintiffs have standing. (See Doc. 70 at 4-5).

To establish standing, a plaintiff must allege that (1) he suffered an 'injury in fact,' which means 'an invasion of a legally protected interest that is both (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical;" (2) there is "a 'causal connection' between the 'injury and the challenged action of the defendant,' and (3) there is "a likelihood that a favorable judgment will 'redress [the] injury.'" Gardner II, 857 F. App'x at 635 (quoting Lewis, 944 F.3d at 1296).

"To pass Article III muster," and to therefore have standing, "a plaintiffs alleged injury must be *both* concrete and particularized." Gardner I, 962 F.3d at 1341 (emphasis in original). "[T]o be concrete, an alleged injury must be *'de facto'* and 'real'—and just as importantly, 'not abstract." Id. (quoting Spokeo, Inc. v. Robins, 578 U.S. 330, 340 (2016)). "[W]hile a concrete injury needn't be 'tangible,' [Spokeo, Inc., 578 U.S. at 340], the Court has consistently held that purely psychic injuries arising from disagreement with government action—for instance, 'conscientious objection' and 'fear'—don't qualify." Gardner I, 962 F.3d at 1341.

"An injury may be real even when it injures only the plaintiff's interest in observing or using something." [*6] Gardner II, 857 F. App'x at 635. "If a plaintiff seeks injunctive relief, like here, the plaintiff must demonstrate a plan to observe or use that space in the near future that is obstructed by the challenged action." Id. "An injury is 'particularized' when it 'affects the plaintiff in a personal and individual way.'" Id. (quoting Lujan v. Defs. Of Wildlife, 504 U.S. 555,560 n.1 (1992). The injury "must be distinct to the plaintiff rather than 'undifferentiated.'" Gardner II, 857 F. App'x at 635 (quoting Gardner I, 962 F.3d at 1342).

The Report did not find that Plaintiffs had standing for their challenges to the contextualization footstones, Report at 75-82, and Plaintiffs object to this finding. (Doc. 70 at 4-5). This Court, on de novo review, does not find error in the Report's conclusion that Plaintiffs lack standing on challenging the contextualization footstones.

To have standing, a plaintiffs injury must be both (1) concrete and particularized and (2) actual or imminent. See Lewis, 944

F.3d at 1296. Here, Plaintiffs' fail to allege in their Third Amended Complaint how the contextualization footstones will pose an actual or imminent threat. Given the monument has been removed and given Plaintiffs' main arguments and allegations center on the removal of the monument, it is unclear how the contextualization footstones stand to harm Plaintiffs imminently [*7] or actually. Because Plaintiffs cannot meet this standard, the Court need not go further in the standing analysis. Gardner I, 962 F.3d at 1341-43; see also Lujan, 504 U.S. at 564 ("That [claimants] lad visited' the areas of the projects before the projects commenced proves nothing. As [the Court has explained], 'Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief ... if unaccompanied by any continuing, present adverse effects.") (quoting City of Los Angeles v. Lyons, 461 U.S. 95,102 (1983)).

b. Plaintiffs did not state a claim upon which relief could be granted on either their § 1983 or § 106 claims.

Plaintiffs object to the Report, arguing the Magistrate Judge recommended dismissing their claims contrary to the legal standard to be applied in analyzing motions to dismiss. (Doc. 70 at 5-9).

The Federal Rules of Civil Procedure require that a complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). An action fails to state a claim for which relief may be granted, and might be dismissed, if it fails to include such a short and plain statement. See Harper v. Lawrence Cnty., Ala., 592 F.3d 1227, 1232-33 (11th Cir. 2010) (citing Fed. R. Civ. P. 8(a)(2), 12(b)(6)).

A complaint must contain "sufficient factual matter, accepted as true, to 'state a claim for relief that is plausible on its face." [*8] Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp v. Twombly, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 566 U.S. at 678. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." Id.

Under Federal Rule of Civil Procedure 12(b)(6), a district court may dismiss a complaint for "failure to state a claim upon which relief can be granted." When reviewing a motion to dismiss, the Court must take the complaint's allegations as true and construe them in the light most favorable to the plaintiff. Rivell v. Private Health Care Sys., Inc., 520 F.3d 1308, 1309 (11th Cir. 2008). The Court must accept well-pleaded facts as true at this stage, but it does not have to accept a plaintiffs legal conclusions. Chandler v. Sec'y of Fla. Dep't of Transp., 695 F.3d 1194, 1199 (11th Cir. 2012). It is insufficient for a plaintiffs complaint to put forth merely labels, conclusions, and a formulaic recitation of the elements of the cause of action. Bell Atlantic Corp v. Twombly, 550 U.S. 544, 555 (2007).

i. Plaintiffs' Equal Protection Claim

"Equal protection jurisprudence is typically concerned with governmental classification and treatment that affects some discrete and identifiable group of citizens differently from other groups." Corey Airport Servs, Inc. v. Clear Channel Outdoor, Inc., 682 F.3d 1293, 1296 (11th Cir. 2012). "Defining an 'identifiable group' that has been [*9] discriminated against is critical to establishing a claim under the Equal Protection Clause." Id. at 1296-97. "[P]roof of discriminatory intent or purpose is a necessary prerequisite to any Equal Protection Clause claim." Parks v. City of Warner Robins, 43 F.3d 609, 616 (11th Cir. 1995). "The idea of intention or purpose means that the decisionmaker. . . . selected or reaffirmed a particular course of action at least in part "because of" not merely "in spite of," its adverse effects upon an identifiable group.'" Corey Airport Servs. Inc., 682 F.3d at 1297 (quoting Pers. Adm'r of Mass. v. Feeney, 442 U.S. 256, 258 (1979)).

Here, Plaintiffs claim the City discriminated against them based on several group classifications: Mr. Edgerton, Ms. Pacetti, and Mr. Parham identify as descendants of confederate soldiers, (Doc. 57 at ¶76); Mr. Edgerton, Ms. Pacetti, and Mr. Parham identify as those who wish to associate with the confederacy, Id.; and Mr. Edgerton, Ms. Pacetti, Mr. Ross, and Mr. Parham identify as those who use the monument as a place of worship, Id. at ¶78.[1] (Doc. 57 at ¶76). Assuming Plaintiffs have identified a "discrete and identifiable group of citizens" from any of the proffered classifications, Plaintiffs failed to allege that the City decided to relocate the memorial "at least in part 'because of,' [and] not merely 'in spite of,' its adverse effects upon" any of the identifiable groups. Corey Airport Servs. Inc., 682 F.3d at

[1] Plaintiffs argue that they belong to other general categories elsewhere in their Third Amended Complaint, including being veterans, being Christian, earning income or other benefits from the monument being placed in the City park—including earning income from living history and tour guide presentations, being a resident taxpayer, and being an artist. (Doc. 57 at 3-15).

1297 (quoting [*10] Feeney, 442 U.S. at 258).

Plaintiffs allege the City's removal of the monument "communicates that Southerners are not welcome in the [c]ity and that the group is 'devalued' and 'stigmatized'[—]its cultural heritage no longer accepted." (Doc. 57 at ¶12). Plaintiffs further allege that when the monument was removed and relocated, that the City gave pieces of the monument to a third party who used the pieces in a demeaning fashion. Id. at ¶62. Finally, Plaintiffs allege the City's removal of the monument "communicates that Southerners who memorialize the history of the South and how religion played a part are not welcome in the [c]ity." Id. at ¶78. No allegations state how the City's decision to relocate the monument was "at least in part 'because of,' [and] not merely 'in spite of,' its adverse effects upon" any of the classifications Plaintiffs use to identify as. See Corey Airport Servs. Inc., 682 F.3d at 1297 (quoting Feeney, 442 U.S. at 258). At best, Plaintiffs' allegations show their injuries, but do not delve into how the City set upon intentionally or purposely discriminating against any of the Plaintiffs because of the classifications they provide. Further, Plaintiffs' Objection does not explain where in their Third Amended Complaint they alleged any discriminatory [*11] intent or purpose. See Parks, 43 F.3d at 616. This Court dismisses Plaintiffs' Equal Protection claims for failing to state a claim upon which relief could be granted. See Fed. R. Civ. P. 12(b)(6).

ii. Plaintiffs' First Amendment Establishment, Free Exercise, and Free Speech Claims

Establishment Clause claims "must be interpreted by 'reference to historical practices and understandings." Kennedy v. Bremerton Sch. Dist., 142 S. Ct. 2407, 2428 (2022).

Regarding Free Speech claims and monuments: "[p]ermanent monuments displayed on public property typically represent government speech." Pleasant Grove City v. Summum, 555 U.S. 460, 470 (2009). "The Free Speech Clause restricts government regulation of private speech; it does not regulate government speech." Id. at 467. "A government entity has the right to 'speak for itself." Id. (quoting Bd. of Regents of Univ. of Wis. Sys. V. Southworth, 529 U.S. 217,229 (2000)). "Government speech doesn't violate the Free Speech Clause of the First Amendment." Gardner II, 857 F. App'x at 635-36.

The Free Exercise Clause "protects not only the right to harbor religious beliefs inwardly and secretively. It does perhaps its most important work by protecting the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through the performance of (or abstention from) physical acts.' Id. (quoting Emp. Div., Dept. of Human Res. of Ore. v. Smith, 494 U.S. 872,877 (1990)). "[A] plaintiff may carry the burden of proving a free exercise violation in various ways, including by showing that a government entity has burdened his sincere religious practice pursuant to a policy that is not [*12] 'neutral' or 'generally applicable.'" Kennedy, 142 S. Ct. at 2421-422 (quoting Smith, 494 U.S. at 879-881).

Here, Plaintiffs failed to state a claim under the Establishment Clause. Plaintiffs allege that "the message [the monument] conveyed has changed over time[,] which demonstrates why the removal of it. . . appears hostile and offensive to those who use it for moments of respect, prayer, and remembrance of those long gone." (Doc. 57 at ¶83). Accepting this allegation as true, and considering the full Third Amended Complaint, Plaintiffs do not allege the City considered any of Plaintiffs' religious beliefs when it decided to remove and relocate the monument. Additionally, Plaintiffs provide no allegations of historical practices or understandings of similar instances of a city removing a monument, and such removal amounting to an Establishment Clause violation.

Finally, as government speech cannot violate the Free Speech Clause, this Court reviews Plaintiffs' Free Exercise claim. Mr. Edgerton "expressed his religious beliefs by paying respect to the dead [soldiers] by praying at and protecting the 'empty tomb' of his 'Southern family[.]" (Doc. 57 at ¶7). Mr. Ross alleges that he "had participated in prayer at the site" of the monument, but since it has been relocated, his ability to continue doing [*13] so is "nearly impossible." Id. at ¶15). Ms. Pacetti alleges that she "has freely exercised her right to Christian memorial expression of her deceased family member at the Plaza next to the [m]onument[.]" Id. at ¶20. Mr. Parham alleges that he "continued to visit the [m]onument after his father's death . . . exercising his religious memorial expressions." Id. at ¶25.

Accepting these allegations as true, Plaintiffs do not state a plausible violation of their Free Exercise rights. Plaintiffs can still exercise any and all of the beliefs they have alleged. The Free Exercise Clause protects against "indirect coercion or penalties on the free exercise of religion, not just outright prohibitions." Lyng v. Northwestern Indian Cemetery Prot. Ass'n., 485 U.S. 439, 450 (1988). Just as Plaintiffs fail to allege an Equal Protection claim, so too do they fail to allege a Free Exercise claim. Plaintiffs do not allege facts that the City relocated the monument because of Plaintiffs' religious beliefs. See Everson v. Bd. of Ed. Of Ewing, 330 U.S. 1, 16 (1947) (explaining a State "cannot exclude" individuals "because of their faith, or lack of it, from receiving the

benefits of public welfare legislation"). Accordingly, Plaintiffs' First Amendment claims will be dismissed for failing to state a claim upon which relief could be granted. See Fed. R. Civ. P. 12(b)(6).

iii. Plaintiffs' § 106 Claim [*14]

Plaintiffs argue in their Objection that the Magistrate Judge erred in applying the wrong review standard when she recommended dismissing Plaintiffs' § 106 claim. (Doc. 70 at 7-9). However, on the contrary, the Report explained the Administrative Procedure Act (APA) and the procedures required under the National Historic Preservation Act of 1966 (NHPA) "apply only to federal agencies and [Plaintiffs] make no allegation a federal agency carried out the contextualization, removal, or relocation" of the monument. Report at 90. Plaintiffs neither allege nor argue that a claim arising under the APA can be applied to actions by a city government. Accordingly, Plaintiffs' argument fails. See Report at 60-63,90-91 (explaining the NHPA and the APA and collecting cases interpreting the statutes).

Accordingly, after due consideration, it is

ORDERED:

1. Plaintiffs Objection (Doc. 70) is **OVERRULED**.

2. The Report and Recommendation (Doc. 67; Report) is **ADOPTED as supplemented** as the opinion of the Court.

3. Defendant's Motion to Dismiss (Doc. 63) is **GRANTED to the extent**:

a. Plaintiffs' § 193 claims challenging the removal and relocation of the monument are **DISMISSED with prejudice** for failing to state a claim on which relief can be granted;

b. Plaintiffs' § 106 claims [*15] are **DISMISSED with prejudice** for failing to state a claim on which relief can be granted; and

c. Plaintiffs' § 1983 claims challenging the placement of the contextualization footstones at the monument's base are **DISMISSED without prejudice** for lack of jurisdiction.

4. The Clerk of the Court is **DIRECTED** to close this file and terminate any remaining motions and deadlines.

DONE and **ORDERED** in Jacksonville, Florida this 20th day of March 2023.

/s/ Brian J. Davis

BRIAN J. DAVIS

United States District Judge

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