

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

SONS OF THE SOUTHERN CROSS, INC.
and JAMES BIBLE

PLAINTIFFS

v.

No. 2:21-CV-02019

JOE HURST, in his official capacity as
Mayor of Van Buren, Arkansas; OLD
TOWN MERCHANTS ASSOCIATION,
INCORPORATED OF VAN BUREN; and
CITY OF VAN BUREN ARKANSAS

DEFENDANTS

OPINION AND ORDER

This is a 42 U.S.C. § 1983 action claiming a violation of Plaintiffs’ First Amendment rights as incorporated against the states by the Fourteenth Amendment. Plaintiffs seek damages against Defendants Joe Hurst and the City of Van Buren Arkansas (collectively, “the City”) and injunctive relief against the City and Defendant Old Town Merchants Association, Incorporated of Van Buren (“TOTMA”¹). Before the Court is the City’s motion (Doc. 22) for summary judgment. The City filed a brief (Doc. 23) and statement of facts (Doc. 24) in support. Plaintiffs filed a response (Doc. 27), brief (Doc. 28), and statement of facts (Doc. 29) in opposition. The City filed a reply (Doc. 30). The motion for summary judgment will be granted.

I. Standard of Review

On a motion for summary judgment, the Court views the record in the light most favorable to the nonmoving party, grants all reasonable factual inferences in the nonmovant’s favor, and grants summary judgment “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to summary judgment as a matter of law.” Fed. R. Civ. P. 56(a);

¹ “TOTMA” stands for “The Old Town Merchants Association,” the name by which Defendant Old Town Merchants Association, Incorporated of Van Buren is commonly known.

Haggenmiller v. ABM Parking Servs., Inc., 837 F.3d 879, 884 (8th Cir. 2016). Facts are material when they can “affect the outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Disputes are genuine when “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* “While the burden of demonstrating the absence of any genuine issue of material fact rests on the movant, a nonmovant may not rest upon mere denials or allegations, but must instead set forth specific facts sufficient to raise a genuine issue for trial.” *Haggenmiller*, 837 F.3d at 884 (quotations omitted).

II. Facts

For many years, TOTMA has applied for and received a permit from the City of Van Buren to hold an evening Christmas parade on Main Street in downtown Van Buren, Arkansas. Historically, parade participants constructed parade floats and drove them down a portion of Main Street as parade attendees lined the street. TOTMA would place temporary roadblocks on cross streets and Van Buren police officers directed traffic away from and around the parade.

Plaintiff James Bible has lived in Crawford County, Arkansas for approximately fifteen or twenty years. He is the founder, president, and national commander of Plaintiff Sons of the Southern Cross, Inc., a national Confederate heritage organization headquartered in Crawford County. Plaintiffs have participated in the TOTMA Christmas parade for approximately 10 years. During that time, Plaintiffs regularly (and perhaps always) flew a Confederate battle flag² from their float.

In January 2020 TOTMA received a permit from the City for its 2020 Christmas parade,

² Throughout litigation the attorneys and most witnesses have referred to this flag as the Confederate flag, perhaps because it is the most popularly known flag associated with the Confederate States of America. Unless otherwise noted, the Court similarly identifies this flag as the Confederate flag.

to be held on December 12, 2020. The City added the parade to the calendar of events on the City's website. As various public health responses such as masking and social distancing were deployed in 2020 in response to the COVID-19 pandemic, TOTMA decided to hold a "reverse Christmas parade" in which floats would remain stationary along the Main Street parade route and parade attendees would drive down Main Street to view the stationary floats in the evening. TOTMA board member Lindsey Dodson acted as parade organizer and chair and unilaterally drafted rules that parade participants agreed to follow as part of their applications. Later in the year and nearer in time to the parade, Lindsey Dodson contacted Mayor Hurst for confirmation that the reverse parade should not be canceled in light of ongoing COVID-19-related restrictions. Lindsey Dodson also contacted the Van Buren Police Department to discuss differences in the logistics of traffic direction for a reverse parade.

Among the rules created by Lindsey Dodson for TOTMA's 2020 reverse Christmas parade participants was a prohibition on floats displaying any flag other than the flag of the United States of America. Bible heard these rules read aloud at a Crawford County Republican Committee meeting before Plaintiffs submitted their application for the 2020 reverse parade. The application also identified TOTMA member Joy Holman as a parade organizer and listed her contact information, but Holman had no decisionmaking authority over TOTMA's parade, and, apart from her duties as a point of contact, Holman only helped Lindsey Dodson place floats on Main Street. Because Plaintiffs previously had displayed a Confederate flag on their float without issue, approximately one month before the parade Bible's daughter placed a call to Holman. Bible's daughter explained that Plaintiffs had always displayed their Confederate flag in the past, mentioned the 2020 "American flags only" rule, and asked whether Plaintiffs would be allowed to display the Confederate flag from their float during TOTMA's 2020 reverse parade. Holman was

familiar with the Sons of the Southern Cross organization and told Hickerson she was fine with the Confederate flag and with Plaintiffs displaying the Confederate flag from their float. Subsequently, one of the treasurers for Sons of the Southern Cross filled out and submitted an application for the parade.

Bible, his family, and members of Sons of the Southern Cross then spent time and money preparing their float. The float displayed silhouettes of two American Civil War soldiers kneeling on either side of a fabric-draped cross. Below the cross was a manger and a lit sign reading “Under One God.” Tents were erected on either side of the float behind the soldier silhouettes. One tent was labeled “US” and an American flag was posted behind it. The other tent was labeled “CS” and a Confederate flag was posted behind it. Plaintiffs intended their float to communicate that Union soldiers and Confederate soldiers both worshipped one god and that Confederate soldiers and the Confederate flag were not evil.

Eight days before the parade, Bible called Holman to again communicate Plaintiffs’ intent to display the Confederate flag from their float, and Holman told Bible that Sons of the Southern Cross had participated in the parade for a decade without issue and flying the Confederate flag would be fine. After one of the calls with Bible or his daughter, Holman told Lindsay Dodson about the conversation. Lindsey Dodson explained that the rule was clear in the application that only the American flag could be displayed on a float. Holman did not call Plaintiffs back to correct her misstatement of the rules.

On the morning of TOTMA’s reverse parade, Plaintiffs set up their float on Main Street. After setting up the float, Bible and those who assisted him in setting up Plaintiffs’ float left. In the early afternoon, a few hours before the reverse parade was set to begin, a member of the public drove through the parade route and noticed the Confederate flag displayed on Plaintiffs’ float. The

member of the public was bothered by the Confederate flag's presence in a Christmas parade and, believing it was divisive, contacted Mayor Hurst with her complaint using Facebook Messenger. Mayor Hurst responded that he understood her concerns but that the parade was organized and run by TOTMA, so she then sent a Facebook message to TOTMA. Lindsey Dodson saw the complaint but did not respond, and so the member of the public messaged Mayor Hurst to tell him TOTMA had not responded. A bit later, Mayor Hurst responded to her "I just talked to TOTMA, and this is supposed to be removed . . . no flags." (Doc. 24-7, p. 7 (Deposition of Starlene Dugan, p. 26:5-11)).

That same afternoon, Holman was in Lindsey Dodson's store on Main Street. Lindsey Dodson was busy managing last-minute parade details, including cancellations due to COVID-19, when she received the member of the public's Facebook complaint. Matt Dodson (a member of both TOTMA and the Van Buren City Council, and Lindsey Dodson's husband) entered the store holding his phone and told Lindsey Dodson "[Mayor Hurst]'s been getting multiple calls and texts on his business and personal phone and – about the Confederate flag being displayed, and we needed to have them take it down."³ (Doc. 24-5, p. 16 (Deposition of Joy Holman, p. 63:3-9)). Lindsey Dodson walked down to Plaintiffs' float to confirm the presence of the Confederate flag and direct Plaintiffs to remove it, but no one was there, so she returned to her store to deal with other parade business. Matt Dodson called Mayor Hurst to tell him TOTMA was having the Confederate flag removed.

At some point another TOTMA board member, Daniel Perry, went to Lindsey Dodson's

³ The Dodsons are friendly with Mayor Hurst and his wife and attend the same church. Lindsey Dodson testified that Matt Dodson and Mayor Hurst have known one another for approximately 30 years, and that it was the Dodsons and Hursts' habitual practice that the husbands communicated with one another or the wives communicated with one another.

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