

Background

This case arises out of Plaintiff's demotion following his posting of an image of the Confederate flag accompanied by the phrase, "It's time for the second revolution," on the social media website Facebook. At the time of the November 2012 posting, Plaintiff Rex Duke was a police officer with over thirty years of experience. (Compl., Dkt. [1] ¶ 7.) In 2008 he achieved the rank of Captain and became the Deputy Chief of Police of the Clayton State University Police Department ("CSU Police Department" or "Department"), where had been employed since May 1, 2004. (Id. ¶¶ 7-8.) In his eight years at the Department, he received positive performance reviews, had no significant history of discipline, and even served as Interim Chief of Police for eleven months in 2007. (Id. ¶¶ 9-10.)

On November 6, 2012, shortly after the conclusion of the 2012 presidential election, Plaintiff posted the aforementioned image and statement on his personal Facebook page. (Id. ¶ 11.) Plaintiff intended only those with direct access to his page, such as close friends and family, to view the post. (Id.) He was not on duty at the time, and neither the post nor Plaintiff's Facebook profile referenced his employment at the CSU Police Department or

his job as a police officer. (Id. ¶ 13.) He expressed no grievances related to the Department’s policies or his colleagues; instead he claims that “the intention behind the post was to express his general dissatisfaction with Washington politicians.” (Id. ¶ 12.) At the time, the Department had no social media policy that would have prevented the post. (Id. ¶ 15.)

Plaintiff took down the post within an hour, but during that period someone provided an image of the post to Atlanta television station WSB. (Id. ¶¶ 16-17.) A reporter contacted Plaintiff and CSU officials, and the station subsequently ran an evening news story discussing both the Facebook post and Plaintiff’s position as Deputy Chief the CSU Police Department. (Id. ¶ 17.) The Department received anonymous complaints against Plaintiff, prompting CSU officials to commence an official investigation. (Id. ¶ 18.) In the ensuing official report, Defendant Bobby Hamil, the Chief of Police of the CSU Police Department, recommended Plaintiff’s demotion and stated that the post “was inappropriate for someone in [Plaintiff’s] position[,] . . . [and] officers . . . should not espouse political beliefs in public.” (Id. ¶¶ 20-22.) Accordingly, on January 7, 2013, Plaintiff was demoted from the rank of Captain to Detective and was stripped of his duties as Deputy Chief, resulting in a \$15,000 cut in

pay. (Id. ¶ 20.) Finally, on April 22, 2013, Defendant Hamil reassigned Plaintiff from his day-shift patrol duties to the less desirable morning shift, which is typically assigned to less experienced officers, “in contravention of well-established customs and practices that seniority is a major factor in determining shift assignments.” (Id. ¶ 25.)

On May 16, 2013, Plaintiff filed this action against Defendant Hamil in his official and individual capacities and against the Board of Regents of the University System of Georgia (“Board of Regents”), the state entity that operates CSU and other public universities in Georgia, alleging that they demoted Plaintiff in violation of the First Amendment as a means “to punish [him] for privately advocating for his personal political beliefs, and sought to restrain his ability to privately advocate for those personal beliefs.” (Id. ¶ 28.) Plaintiff states that his speech caused no disruption to the CSU Police Department’s law enforcement purposes or the educational purposes of CSU as a whole. (Id. ¶ 29.) Furthermore, Plaintiff alleges that Defendants’ actions have had “a chilling effect upon expression in general” at the Department. (Id. ¶ 30.) As a result of his demotion and reassignment, Plaintiff experienced

significant emotional distress and financial hardship, which in turn impacted his health by exacerbating a pre-existing heart condition. (Id. ¶ 26.)

Plaintiff later filed an Amended Complaint [14] stating that he seeks relief against Hamil pursuant to both 42 U.S.C. § 1983 and the doctrine of Ex parte Young. (Am. Compl., Dkt. [14] ¶ 33.) Plaintiff also alleged for the first time that Defendants were liable for his ultimate termination, but Plaintiff subsequently clarified that he voluntarily resigned from the CSU Police Department after filing this action, and that the use of the word “termination” in the Amended Complaint [14] was a scrivener’s error. (Pl.’s Br. in Opp’n, Dkt. [20] at 3-4.) Thus, the only allegations of retaliation in this case pertain to Plaintiff’s demotion and reassignment.

Finally, Plaintiff seeks a declaratory judgment stating that his First Amendment rights were violated; an injunction reinstating him to his prior rank, title, and pay grade; an injunction barring infringement of Plaintiff’s or other employees’ First Amendment rights; an injunction requiring Defendants to implement new First Amendment policies and to provide training to all Board of Regents employees; and compensatory and punitive damages.

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