UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

DONALD LANTZ, RONNIE WRIGHT,	)	
Plaintiffs,	)	
v.	)	**No. 1:10 CV 340**
THE OFFICE OF THE JACKSON TOWNSHIP TRUSTEE, THE JACKSON TOWNSHIP ADVISORY BOARD, JACKSON TOWNSHIP, AND THE JACKSON TOWNSHIP VOLUNTEER FIRE CORPORATION OF DEKALB COUNTY,	)	
Defendants.	)	

OPINION AND ORDER

This matter is before the court on the township defendants' (the Office of the Jackson Township Trustee, the Jackson Township Advisory Board, and Jackson Township) motion for summary judgment (DE # 34) and the Jackson Township Volunteer Fire Corporation of DeKalb County's motion for summary judgment (DE # 36). For the reasons set forth below, those motions are granted in part, and the remaining claims are remanded to state court.

I. Facts and Background

The following facts are not genuinely disputed.[1] The Jackson Township

[1] The facts that follow are construed most favorably to plaintiffs, the non-moving parties. *Chmiel v. JC Penney Life Ins. Co.*, 158 F.3d 966, 968 (7th Cir. 1998). The facts are taken from defendants' separate statements of material facts (DE # 37 at 2; DE # 35 at 2),

Volunteer Fire Corporation ("the VFC") provides firefighting protection services for Jackson Township, which is located in Dekalb County, Indiana. All of the VFC's corporate powers are vested in the Fire Corporation Board. This Board oversees all of the VFC's operations. In 2009, the Jackson County Trustee entered into an agreement with the Fire Corporation Board. Under the agreement, Jackson Township paid the VFC $38,500 a year for fire protection services.

The Fire Corporation Board is made up of eleven individuals. The Jackson Township Trustee and the Fire Chief are both mandatory members of the Fire Corporation Board. The other nine members are elected. The Fire Corporation has its own set of bylaws. Each year, the Fire Corporation Board appoints a Fire Chief and an Assistant Fire Chief.

Plaintiff Donald Lantz began his tenure at the VFC after joining as a volunteer firefighter in 2000. From that time, until the date he was terminated in 2009, Lantz held several positions, including Assistant Chief. Plaintiff Ronnie Wright began working for the VFC in 1982. Wright also held various positions within the corporation, including Fire Chief from 1991 to 2005. As volunteer firefighters, Lantz and Wright received a yearly stipend for clothing and reimbursement for training and attendance on fire runs.

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and from the deposition of plaintiff Lantz. (DE # 35-1; DE # 37 -2; DE # 39-1; DE # 41-1.) Although plaintiffs have filed two lengthy statements of disputed facts, they have not disputed any of the facts set out in this fact section.

In their various submissions, the parties discuss numerous other facts relevant to plaintiffs' state-law claims. As discussed in more detail below, the court will not address those claims, and will therefore limits this fact section to the facts relevant to plaintiffs' federal claims.

In 2008, the VFC held a fundraiser at which alcohol was served. At some point prior to the date of the fundraiser, Lantz, while at a meeting of firefighters and Fire Corporation Board members, announced that he would not be attending the fundraiser because his religious beliefs would not allow him to participate in an event that served alcohol to the public. (DE # 37-2 at 5.) The VFC planned to hold the same fundraiser in 2009. When it was announced that the same fundraiser would be held, but this time, sex toys would be auctioned off, Lantz stated to his fellow firefighters that he "would not participate again in [the] fundraiser." (*Id.*; DE # 39-1 at 76.) Although Lantz was not penalized in any way for failing to participate in the fundraisers, other members of the VFC started to shun him after he announced he would not be attending the 2009 fundraiser.

Lantz was involved in another incident that caused tension at the VFC.[2] One of Lantz's fellow volunteer firefighters, Todd Helgesen, also worked at a nightclub in Fort Wayne. At some point, Helgesen told Lantz two stories about his employment at the nightclub that caused Lantz to become alarmed about Helgesen's well-being. First, Helgesen told Lantz that someone had pointed a gun at his face while he was working security at the nightclub one night. Additionally, Helgesen told Lantz that twelve of his coworkers at the nightclub had been arrested for drug possession. After hearing these stories, Lantz called the nightclub that Helgesen was working at out of a concern for Helgesen's well-being. Lantz ended up voicing his concerns to Helgesen's supervisor,

[2] It is not clear from the parties' filings when this incident took place.

and later, the owner of the nightclub. After learning about this incident, Matt Logsdon, the Fire Chief at the time, approached Lantz about the phone calls to the nightclubs. Lantz told Logsdon that he was concerned for Helgesen's well-being, apologized for making the calls, and promised not to make any additional phone calls to the nightclub.

On March 23, 2009, the Fire Corporation Board met and decided to terminate both Lantz and Wright.[3] On September 1, 2010, plaintiffs filed suit in Indiana state court against the Jackson Township Trustee, the Jackson Township Advisory Board, Jackson Township, and the Jackson Township Volunteer Fire Corporation of Dekalb County. In their complaint (DE # 1), plaintiffs allege federal claims under 42 U.S.C. § 1983 for violations of the first amendment, and state-law claims of breach of contract, wrongful termination, defamation, libel, and violations of the Indiana Open Door Law. (DE # 1.) Additionally, plaintiffs seek a declaration that the removal of the plaintiffs from their positions with the VFC was invalid and in violation of 42 U.S.C. § 1983. The township defendants and the VFC have both moved for summary judgment on all of plaintiffs' claims.

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[3] The parties do not agree on the reason that the plaintiffs were fired. For purposes of deciding the present motions, however, the court will assume that Lantz was fired for making his statement regarding the fundraiser and his statements regarding Helgesen. *Milwaukee Deputy Sheriff's Assoc. v. Clarke*, 574 F.3d 370, 377 (7th Cir. 2009) (employee has no cause of action for First Amendment retaliation if he or she is not speaking "'as a citizen on a matter of public concern.'" (quoting *Garcetti v. Ceballos,* 547 U.S. 410, 417 (2006))).

II. Legal Standard

FEDERAL RULE OF CIVIL PROCEDURE 56 requires the entry of summary judgment, after adequate time for discovery, against a party "who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett,* 477 U.S. 317, 322 (1986). "[S]ummary judgment is appropriate–in fact, is mandated–where there are no disputed issues of material fact and the movant must prevail as a matter of law. In other words, the record must reveal that no reasonable jury could find for the non-moving party." *Dempsey v. Atchison, Topeka, & Santa Fe Ry. Co.,* 16 F.3d 832, 836 (7th Cir. 1994) (citations and quotation marks omitted).

The moving party bears the initial burden of demonstrating that these requirements have been met; it may discharge this responsibility by showing that there is an absence of evidence to support the non-moving party's case. *Carmichael v. Village of Palatine, Ill.,* 605 F.3d 451, 460 (7th Cir. 2010) (citing *Celotex,* 477 U.S. at 323). To overcome a motion for summary judgment, the non-moving party must come forward with specific facts demonstrating that there is a genuine issue for trial. *Id.* (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 586 (1986)). The existence of a mere scintilla of evidence, however, is insufficient to fulfill this requirement. *Id.* (citing *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 251-52 (1986)). The nonmoving party must show that there is evidence upon which a jury reasonably could find for him. *Id.*

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