UNPUBLISHED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION

BETH ANN RASNICK, ET AL.,	)	
	)	
Plaintiffs,	)	Case No. 2:03CV00038
	)	
v.	)	**OPINION AND ORDER**
	)	
DICKENSON COUNTY SCHOOL BOARD, ET AL.,	)	By: James P. Jones
	)	United States District Judge
	)	
Defendants.	)	

Andrew E. Carpenter, Gentry Locke Rakes & Moore, Roanoke, Virginia, for Plaintiffs; Frank Kilgore, Kilgore and Kilgore, St. Paul, Virginia, for Defendant Judy Compton.

The three plaintiffs, elementary school students, claim that they were sexually harassed by their teacher. They have sued to recover damages under federal law against the teacher, the school principal, the school superintendent, and the local school board. The school principal has moved for summary judgment in her favor which, for the reasons hereafter given, will be granted.

I

Beth Ann Rasnick, Meghan Boyd, and Kayla Robbins were students at Clinchco Elementary School in Dickenson County, Virginia. They claim that

beginning in September of 2000 a teacher, Darrell Wayne Powers, began to sexually harass and abuse them. They contend that plaintiff Rasnick's mother, Tempa Rasnick, brought this to the attention of another teacher, who told the principal, Judy Compton. It is alleged that Compton called Mrs. Rasnick and promised that "she would take care of the situation." (Compl. ¶ 12.) However, it is claimed that beginning in November of 2000 the harassment and abuse began again and continued until April 26, 2001, when Mrs. Rasnick filed criminal charges against Powers. He was subsequently convicted of misdemeanor charges and forced to resign as a teacher. Thereafter, the three students, by their respective parents, filed the present action seeking compensatory damages against Powers, Compton, the Dickenson County school superintendent, and the school board.

The plaintiffs, basing their action on 42 U.S.C.A. § 1983 (West 1994 & Supp. 2003), claim that the defendants are liable to them for violating their rights to equal protection (Count I) and due process (Count III) as guaranteed by the Constitution.[1] They assert that the defendants failed to report the allegations of abuse to the appropriate authorities and were "deliberately indifferent to the high risk of harm" posed by Powers. (Compl. ¶ 26.) According to the plaintiffs, the defendants "knew

[1] The plaintiffs also assert a claim (Count II) against the school board under Title IX of the Education Amendments of 1972, 20 U.S.C.A. §§ 1681-1688 (West 2000 & Supp. 2003), but that claim is not involved in the present motion by defendant Compton.

or should have known of facts indicating that . . . Powers was sexually harassing and abusing students at Clinchco Elementary School, including the Plaintiffs." (Compl. ¶ 44.)

Judy Compton, the principal, has filed a motion for summary judgment pursuant to Rule 56 of the Federal Rules of Criminal Procedure.[2] In support of her motion, she has filed an affidavit in which she asserts that when she first received an indication that Powers had acted inappropriately towards Beth Ann Rasnick she called Mrs. Rasnick and asked to talk with Beth Ann in order to confirm the claim. Mrs. Rasnick refused to allow Compton to speak to her daughter or to mention the allegations to anyone else. Compton advised Mrs. Rasnick that if she changed her mind, or if further problems arose, to notify Compton at once. She also reviewed Powers' personnel file, but found no mention of any similar allegations. She then talked directly to Powers but did not mention Beth Ann's name, as she had been instructed by Mrs. Rasnick. Powers adamantly denied any inappropriate behavior toward any child. Compton also warned other teachers to notify her if they noticed any behavioral changes by female students or any suspicious behavior by Powers.

[2] The defendant has filed a motion for summary judgment before answering, which is permissible. *See* Fed. R. Civ. P. 14(a)(4) (service of a motion permitted under the rules extends the time for serving an answer); *INVST Fin. Group, Inc. v. Chem-Nuclear Sys., Inc.*, 815 F.2d 391, 404 (6th Cir. 1987) ("[N]o answer need be filed before a defendant's motion for summary judgment may be entertained.").

Compton received no further notice of any such behavior by Powers until May of 2001, when she learned that Powers had sent an inappropriate email to Beth Ann at her home. Compton then confiscated Powers' computer and he left the school and did not return.

No declarations or affidavits have been filed in opposition to the Motion for Summary Judgment.[3] However, the parties have briefed the motion and it is ripe for decision.[4]

II

Based on her affidavit filed in support of her motion, the defendant Compton contends that she is entitled to qualified immunity in this case. A public official such as the defendant is entitled to immunity from a damage suit under § 1983 "insofar as [the official's] conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457

[3] Pursuant to the Scheduling Order, any response to a motion for summary judgment must be filed prior to the date of the hearing or, in any event, no later than fourteen days after service of the motion. In their brief, the plaintiffs suggest that they have solicited affidavits from witnesses. (Pls.' Brief 6 n.1.) However, no such affidavits have been filed and no motion for extension of time has been submitted.

[4] No party has requested oral argument and I will dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not significantly aid the decisional process.

U.S. 800, 818 (1982). Public officials lose this immunity "if they violate a constitutional or statutory right of the plaintiff and the right was clearly established at the time of the alleged violation such that an objectively reasonable official in the defendants' position would have known of it." *Porterfield v. Lott*, 156 F.3d 563, 567 (4th Cir. 1998).

In analyzing the present question, I assume that a supervisory public school official such as Compton can be held personally liable under § 1983 for a teacher's sexual abuse of a student where it can be shown that the supervisor (1) learned of facts leading to a conclusion that the teacher was abusing the student and (2) demonstrated deliberate indifference toward the rights of the student by failing to take action to prevent or stop the abuse. *See Doe v. Taylor Indep. Sch. Dist.*, 15 F.3d 443, 454 (5th Cir. 1994).[5]

Summary judgment is appropriate only if there are no material facts in dispute and the moving party is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). All reasonable inferences are "viewed in the light most favorable to the party opposing the motion." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Although the

[5] These same elements apply whether due process or equal protection is the constitutional basis for the claim. *See id.* at 458.

moving party must provide more than a conclusory statement that there are no genuine issues of material fact to support a motion for summary judgment, she "'need not produce evidence, but simply can argue that there is an absence of evidence by which the nonmovant can prove his case.'" *Cray Communications, Inc. v. Novatel Computer Sys., Inc.*, 33 F.3d 390, 393-94 (4th Cir. 1994) (citation omitted). Once the moving party has met her burden, "the nonmoving party must come forward with 'specific facts showing that there is a *genuine issue for trial.*'" *Matsushita*, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)). The nonmoving party may not simply rely upon the allegations of the pleadings, but must present probative evidence. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). Summary judgment is not "a disfavored procedural shortcut," but an important mechanism for weeding out "claims and defenses [that] have no factual basis." *Celotex Corp.* 477 U.S. at 327. Where the defense of qualified immunity is raised in a summary judgment motion, the normal rules of summary judgment apply "and the court must consider the evidence on the motion in evaluating the immunity defense." 1B Martin A. Schwartz, *Section 1983 Litigation* § 9.34, at p. 494-95 (3d ed. 1997).

Based on the affidavit of defendant Compton, which is the only evidence before me, it is clear that she is entitled to judgment in her favor. She was prevented from corroborating the claim of sexual abuse by Mrs. Rasnick's refusal to allow her

to speak to or about her daughter. Compton did take other steps to prevent abuse by warning teachers and admonishing the teacher involved, as well as by reviewing the teacher's personnel record. Compton was faced with violating a parent's demand for privacy or limiting the investigation. Under these circumstances, I find that Compton did not exhibit deliberate indifference to the violation of the plaintiffs' rights.

Even if there was such a violation, however, I find that Compton is entitled to qualified immunity. In hindsight, perhaps it would have been better for the principal to have disregarded Mrs. Rasnick's direction and reported Powers to the authorities. However, qualified immunity is meant to protect public officials who make "bad guesses in gray areas," *Maciariello v. Sumner*, 973 F.2d 295, 298 (4h Cir. 1992), and Compton is so protected in this case.

The plaintiffs argue that summary judgment should not be granted because they have not yet had an opportunity to take discovery in the case. While a motion for summary judgment is often filed after discovery in a case is completed, Rule 56 permits a motion for summary judgment by a defendant "at any time." *See* Fed. R. Civ. P. 56(b); *Banks v. Mannoia*, 890 F. Supp. 95, 98 (N.D.N.Y. 1995) (stating that "summary judgment can and often should be granted without discovery"). However, the rule provides protection for a party who is not prepared to oppose summary judgment. Rule 56(f) states as follows:

> Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

Fed. R. Civ. P. 56(f). The party opposing summary judgment bears the burden of showing what specific facts she hopes to discover that will raise an issue of material fact. *See Nguyen v. CNA Corp.*, 44 F.3d 234, 242 (4th Cir. 1995). "Vague assertions" that more discovery is needed are insufficient. *Id.*

The plaintiffs have filed no affidavit in compliance with Rule 56(f) nor have they identified the facts they expect to uncover by any such discovery. Accordingly, there is no proper ground for delaying resolution of the present motion.

III

For the reasons stated, it is **ORDERED** that the Motion for Summary Judgment by Judy Compton [Doc. No. 4] is granted and judgment is hereby entered in favor of said defendant and she is dismissed as a party to this case.

ENTER: June 12, 2003

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United States District Judge