NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 CA 1695

RANDALL HARVEY TRANTHAM

VERSUS

CITY OF BAKER; CHIEF SID GAUTREAUX IN HIS OFFICIAL CAPACITY; OFFICER JASON SHOWS; OFFICER JAMES BROUSSARD; OFFICER GREG BROWN; OFFICER DARRYL RAINWATER; OFFICER JASON RANSOME; OFFICER CHRISTOPHER DANIELS; OFFICER TANZANIA ENNIS; RANDALL STEVEN TRANTHAM; AND KARLA MESSENGER MADDOX

Judgment Rendered: MAR 2 5 2011

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On Appeal from the
19th Judicial District Court,
In and for the Parish of East Baton Rouge,
State of Louisiana
Trial Court No. 560829

Honorable Janice G. Clark, Judge Presiding

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Randall Harvey Trantham
Baker, LA

Plaintiff-Appellant,
In Proper Person

Bradley C. Myers
Katie D. Bell
Baton Rouge, LA

Attorneys for Defendants-Appellees,
Sid Gautreaux, Jason Shows, James Broussard, Greg Brown, Darryl Rainwater, Christopher Daniels, Tanzania Ennis, and Andrew Murphy

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BEFORE: KUHN, PETTIGREW, AND HIGGINBOTHAM, JJ.

HIGGINBOTHAM, J.

This is an appeal from the trial court's grant of summary judgment based on qualified immunity. We affirm.

BACKGROUND

Randall Harvey Trantham filed this *pro se* and *in forma pauperis* suit pursuant to 42 U.S.C. § 1983 against Chief Sid Gautreaux and Officers Jason Shows, James Broussard, Greg Brown, Darryl Rainwater, Jason Ransome, Christopher Daniels, Tanzania Ennis, and Andrew Murphy (hereafter referred to as "the Baker defendants"), both in their individual and official capacities for the City of Baker Police Department.[1] Trantham alleged he suffered damages when his home was unconstitutionally searched on November 6, 2006, resulting in an unlawful arrest and unlawful seizure of evidence, including marijuana, cash, a ledger, and two handguns. The search of Trantham's home was conducted pursuant to a search warrant signed by a Baker City Court judge, and the warrant was based on a police officer's sworn affidavit outlining detailed and particular information that had been received from a confidential informant. Criminal charges against Trantham were dismissed approximately sixteen months after his arrest,

[1] Trantham also sued the City of Baker in his original petition, but this court dismissed the City of Baker in a separate writ action on April 12, 2010. See **Trantham v. City of Baker**, 2010-0252 (La. App. 1st Cir. 4/12/10) (unpublished). Officer Andrew Murphy was added as an additional defendant in Trantham's supplemental and amending petition. In his original petition, Trantham also named his son, Randall Steven Trantham, and his ex-wife, Karla Messenger Maddox, as defendants; however, those particular defendants are not part of this appeal. Thus, the only defendants involved in this appeal are the former Chief of Police for the City of Baker, Gautreaux, and the various named officers of the City of Baker Police Department, Shows, Broussard, Brown, Rainwater, Daniels, Ennis, and Murphy, in their individual and official capacities. The record reflects that Officer Jason Ransome was never served.

following the suppression of the seized evidence in a separate criminal court proceeding.[2]

In addition to his Fourth Amendment claims for asserted violations of his constitutional rights against unreasonable searches and seizures and invasion of privacy, Trantham also alleged constitutional violations of his due process and equal protection rights. Trantham further alleged state law tort claims for assault, false arrest, and intentional and/or negligent infliction of emotional distress. The Baker defendants denied all of Trantham's allegations and raised the affirmative defense of qualified immunity from liability.[3]

Trantham filed two separate motions for partial summary judgment, maintaining that the Baker defendants had violated his Fourth Amendment protections by sending a "wired-supervised-government agent" into his house to conduct a search, and that the affidavit for a search warrant relied upon by the Baker defendants was insufficient and failed to establish probable cause. Trantham's motions for partial summary judgment referenced the affidavit for the search warrant and the transcript for the criminal court's suppression of the evidence hearing, but the documents were not authenticated or sworn to in any way, and the referenced documents were not attached to Trantham's memorandum in support of his

[2] The record contains a certified copy of the district attorney's October 28, 2008 compliance with a district court order to expunge all records and reports connected with the criminal charges against Trantham.

[3] The Baker defendants raised several other affirmative defenses that are not at issue in this appeal.

motions. Trantham noted, however, that the documents had been previously filed into the trial court record.[4]

The Baker defendants filed an opposition to Trantham's motions for partial summary judgment and filed their own cross-motion for summary judgment, asserting that Trantham's Fourth Amendment constitutional claims must also fail because the search of Trantham's residence was conducted pursuant to a valid search warrant and that the Baker defendants are entitled to qualified immunity. The Baker defendants further maintained that Trantham's remaining constitutional and state law claims must fail because Trantham presented no evidence to support nor can he prove those claims.

In support of its motion for summary judgment and in opposition to Trantham's motions for partial summary judgment, the Baker defendants submitted an affidavit of the investigating police officer, Andrew Murphy, along with certified copies of various items from the police investigation file, including the search warrant signed by a Baker City Court judge, Murphy's affidavit for the search warrant, the return of search warrant form, the arrestee information form, the statement of rights form, and the incident report. Trantham filed a memorandum in opposition to the Baker defendants' motion for summary judgment, along with his own affidavit stating he had no knowledge of a search warrant prior to his arrest. Trantham also attached several unverified documents from the police department's investigative file to his opposition memorandum.

[4] The record reflects that Trantham had made several "submissions" of exhibits into the trial court record, "subject to later authentication."

Following a hearing where Trantham did not introduce any evidence and the Baker defendants introduced all of their supporting documents into evidence, the trial court denied Trantham's motions for partial summary judgment and granted the Baker defendants' cross-motion for summary judgment. On August 3, 2010, the trial court signed a judgment granting summary judgment in favor of the Baker defendants and dismissing all of Trantham's claims against the Baker defendants, with prejudice. Trantham requested written reasons for judgment and appealed, urging that the trial court erred in granting summary judgment in favor of the Baker defendants on the grounds of qualified immunity. Trantham also maintains that the trial court erred in limiting his discovery and in failing to provide the requested written reasons for granting the summary judgment in favor of the Baker defendants.[5]

DISCUSSION

Initially, we note that when the trial court fails to comply with a timely request for written findings of fact and reasons for judgment pursuant to LSA-C.C.P. art. 1917, the proper remedy for the aggrieved party is to apply for supervisory writs or move for a remand for the purpose of requiring or affording the trial court an opportunity to comply with the request. **Davis v. Specialty Diving, Inc.**, 98-0458 (La. App. 1st Cir. 4/1/99), 740 So.2d 666, 668 n. 4, writ denied, 99-1852 (La. 10/8/99), 750 So.2d 972. In the instant case, Trantham did not utilize either remedy.

[5] Because none of Trantham's assignments of error address the trial court's denial of his motions for partial summary judgment, we will only review the trial court's grant of the Baker defendant's cross-motion for summary judgment. See Uniform Rules – Courts of Appeal, Rule 2-12.4.

Therefore, we shall review the matter as in any other case where the record contains no reasons for judgment. **Id.**

An appellate court reviews a trial court's decision to grant a motion for summary judgment *de novo*, using the same criteria that govern the trial court's consideration of whether summary judgment is appropriate. **Smith v. Our Lady of the Lake Hosp., Inc.**, 93-2512 (La. 7/5/94), 639 So.2d 730, 750. Summary judgment shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and the mover is entitled to judgment as a matter of law. LSA-C.C.P. art. 966B. The initial burden of proof remains with the movant. However, if the movant will not bear the burden of proof at trial, he need not negate all essential elements of the adverse party's claim, but he must point out that there is an absence of factual support for one or more elements essential to the claim. If the adverse party fails to produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial, there is no genuine issue of material fact, and the mover is entitled to summary judgment. The adverse party may not rest on the mere allegations or denials of his pleading. His response, by affidavits or otherwise provided by law, must set forth specific facts showing that there is a genuine issue for trial. See LSA-C.C.P. art. 966C(2); LSA-C.C.P. art. 967B; **Robels v. ExxonMobile**, 02-0854 (La. App. 1st Cir. 3/28/03), 844 So.2d 339, 341.

We have thoroughly reviewed the evidence in the record and we agree with the trial court's conclusion that summary judgment in favor of the Baker defendants was appropriate in this case. The Baker defendants supported their motion for summary judgment with an affidavit of the police

officer that was involved in the investigation of the suspected drug activity at Trantham's residence, resulting in the search and seizure of marijuana, money, ledger, and guns at the residence, and the subsequent arrest of Trantham. Sergeant Murphy swore that he and the other officers executed the search warrant based on probable cause and that the search warrant was signed by a Baker City Court judge. Certified true copies of the search warrant as well as Officer Murphy's affidavit that he had executed in support of the search warrant were introduced into evidence. The Baker defendants relied on this evidence, maintaining that all of Trantham's claims under federal, constitutional, and state law, should be dismissed on the basis of qualified immunity, and because Trantham lacked factual support for his claims against the Baker defendants.

Trantham failed to bring forth any evidence to show that his arrest was not made pursuant to a valid search warrant or that he would be able to satisfy his evidentiary burden of proof at trial that the officers had not reasonably relied on a valid search warrant. His unsubstantiated arguments and conclusory allegations to the contrary are without merit.[6] We also find no merit to Trantham's assertion that the trial court erred by not allowing him to complete his discovery. A trial court does not abuse its wide discretion when it grants a motion for summary judgment before discovery has been completed, because a defendant's motion for summary judgment may be made at any time. See LSA-C.C.P. art. 966A(1); See **Simoneaux v.**

[6] By choosing to represent himself, a litigant assumes the responsibility of familiarizing himself with applicable procedural and substantive law, and he further assumes all responsibility for his own lack of knowledge of the law. A *pro se* litigant's failure to comply with applicable procedural and substantive law does not give him any greater rights than a litigant represented by an attorney. **Britton v. Hustmyre**, 09-0847, p. 13 (La. App. 1st Cir. 3/26/10) (unpublished), 30 So.3d 1183 (table); **Hudson v. East Baton Rouge Parish Sch. Bd.**, 02-0987 (La. App. 1st Cir. 3/28/03), 844 So.2d 282, 285 n. 2.

E.I. du Pont de Nemours and Co., Inc., 483 So.2d 908, 912 (La. 1986); See **Brooks v. Minnieweather**, 44,624 (La. App. 2d Cir. 8/19/09), 16 So.3d 1244, 1248; See **Humphries v. Cooper Truck Center**, 40,586 (La. App. 2d Cir. 3/8/06), 923 So.2d 940, 944. There is no absolute right to delay an action on a motion for summary judgment until discovery is completed. **Brooks**, 16 So.3d at 1248; **Peterson v. City of Tallulah**, 43,197 (La. App. 2d Cir. 4/23/08), 981 So.2d 192, 196.

While the bulk of § 1983 cases are brought in federal court, state courts may also exercise jurisdiction over § 1983 cases pursuant to the principle of concurrent jurisdiction. **Richard v. Bd. of Sup'rs of Louisiana State University and A & M College**, 06-0927 (La. App. 1st Cir. 3/28/07), 960 So.2d 953, 961. Additionally, the same body of § 1983 federal law governs these actions in state and federal courts, but state courts are not obligated to follow the law of their federal circuit. **Id.**

Qualified immunity protects an individual state official from liability for civil damages where the defendant acts within the course of his official capacity in a manner that is objectively reasonable and in good faith, even if the conduct or action in and of itself violates a plaintiff's constitutional rights. **Id.** Qualified immunity shields government officials from individual liability for performing discretionary functions, unless their conduct violates clearly established statutory or constitutional rights of which a reasonable person would have known. **Harlow v. Fitzgerald**, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738, 73 L.Ed.2d 396 (1982); **Colston v. Barnhart**, 130 F.3d 96, 99 (5th Cir. 1997). Claims brought under § 1983 against a defendant in his individual capacity require a showing that the official, acting under color of state law, deprived the plaintiff of a federal right. **Kentucky v. Graham**,

473 U.S. 159, 166, 105 S.Ct. 3099, 3105, 87 L.Ed.2d 114 (1985). When bringing suit against persons in their official capacity, a plaintiff must make a more significant showing than when he sues an individual defendant, showing that the governmental entity's policy or custom played a part in the violation of federal law. **Id.**

Once a public official raises the defense of qualified immunity, the burden rests on the plaintiff to rebut it. **Zarnow v. City of Wichita Falls**, 500 F.3d 401, 407 (5th Cir. 2007). Consequently, in this motion for summary judgment Trantham had the burden to produce evidence showing two things: (1) that the Baker defendants violated his constitutional rights and (2) that the violation was objectively unreasonable. See **Anderson v. Creighton**, 483 U.S. 635, 640, 107 S.Ct. 3034, 3039, 97 L.Ed.2d 523 (1987); See **Malley v. Briggs**, 475 U.S. 335, 341, 106 S.Ct. 1092, 1096, 89 L.Ed.2d 271 (1986); See **Terry v. Hubert**, 609 F.3d 757, 761 (5th Cir. 2010); See **Zarnow**, 500 F.3d at 407-408. While Trantham alleged constitutional violations, he did not come forth with any evidence to support the essential elements of any of his claims. Furthermore, Trantham has pointed to nothing that might indicate the City of Baker Police Department was behind the alleged constitutional violations or that any of the police officers were final policy makers for the police department. Because the record contains nothing to this effect, the Baker defendants are entitled to summary judgment on all claims in their official capacities.

Based on the undisputed facts in the record, a court can determine as a matter of law whether the Baker defendants are entitled to qualified immunity and, specifically, whether their conduct was objectively reasonable under existing clearly established law. See **Scott v. Harris**, 550

U.S. 372, 381 n. 8, 127 S.Ct. 1769, 1776, 167 L.Ed.2d 686 (2007). The inquiry into reasonableness asks whether the contours of the constitutional right are sufficiently clear that a reasonable official would understand that what he is doing violates the right. **Zarnow**, 500 F.3d at 407-408. If reasonable public officials could differ as to whether the actions were lawful, qualified immunity applies. **Id.** Even if the conduct actually violates a plaintiff's constitutional rights, the public official is entitled to qualified immunity if the conduct was objectively reasonable. **Id.**

The undisputed facts show that the Baker defendants' conduct was objectively reasonable, because they were acting pursuant to a valid search warrant that had issued on the necessary probable cause under clearly established law at the time of the incident. The search warrant was issued after the Baker defendants obtained information implicating Trantham from a confidential informant. The Baker defendants then took the information to the Baker City Court judge who determined that the necessary probable cause existed for the issuance of the search warrant. Trantham did not show evidence that the search warrant was illegal or that the Baker defendants lacked probable cause for the search warrant. The fact that the evidence seized pursuant to the search warrant was later suppressed in a separate criminal court proceeding against Trantham does not support Trantham's claim that the search was illegal and in violation of his constitutional rights in this civil case.

Even if an officer erred in concluding probable cause existed for an arrest or the issuance of a search warrant, he is entitled to qualified immunity if his decision was reasonable, albeit mistaken. See **Lampkin v. City of Nacogdoches**, 7 F.3d 430, 435 (5th Cir. 1993), cert. denied, 511

U.S. 1019, 114 S.Ct. 1400, 128 L.Ed.2d 73 (1994). See also **Breaux v. Jefferson Davis Sheriff's Dept.**, 96-944 (La. App. 3d Cir. 2/5/97), 689 So.2d 615, 617, writ denied, 97-0549 (La. 4/18/97), 692 So.2d 452. We also note that neither the Fourth Amendment nor Louisiana law requires that a copy of the search warrant be served before the warrant is executed. **State v. Maxwell**, 09-1359 (La. App. 1st Cir. 5/10/10), 38 So.3d 1086, 1091, writ denied, 10-1284 (La. 9/17/10), 45 So.3d 1056. Thus, although Trantham allegedly had no knowledge of the search warrant prior to the search and seizure and his subsequent arrest, that is not evidence of a constitutional violation. If reasonable officers could have believed that the arrest was lawfully based on probable cause, the officers retain qualified immunity. See **Anderson**, 483 U.S. at 641, 107 S.Ct. at 3040. The issue is whether the totality of the circumstances justify the actions of the defendants. **Tennessee v. Garner**, 471 U.S. 1, 8-9, 105 S.Ct. 1694, 1700, 85 L.Ed.2d 1 (1985). Trantham failed to establish that a federal right was violated or that the Baker defendants acted in an objectively unreasonable manner. Accordingly, the Baker defendants are entitled to qualified immunity, shielding them from liability in this case.[7]

With respect to the remaining constitutional and state law tort claims, the undisputed facts in the record show that Trantham did not provide any evidence of due process or equal protection violations or evidence of assault, false arrest, or intentional and/or negligent infliction of emotional distress. Trantham failed to produce any factual support sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial for those

[7] We reach the same conclusion under an analysis of the discretionary function immunity provided by Louisiana state law in LSA-R.S. 9:2798.1.

remaining claims. Trantham may not rest on the mere allegations of his pleadings. LSA-C.C.P. arts. 966C(2) and 967B. Thus, there is no genuine issue of material fact and summary judgment was proper. See **Penn v. St. Tammany Parish Sheriff's Office**, 02-0893 (La. App. 1st Cir. 4/2/03), 843 So.2d 1157, 1160-1161.

CONCLUSION

For the outlined reasons, the trial court's judgment granting summary judgment in favor of the Baker defendants is hereby affirmed. All costs of this appeal are assessed to Randall Harvey Trantham.

AFFIRMED.