

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

Anmarie Calgaro,

Plaintiff,

v.

St. Louis County et al.,

Defendants.

Case No. 16-cv-3919 (PAM/LIB)

**ST. LOUIS COUNTY AND LINNEA MIRSCH'S REPLY  
MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR  
JUDGMENT ON THE PLEADINGS AND SUMMARY JUDGMENT**

**INTRODUCTION**

Anmarie Calgaro's memorandum of law in opposition to the defendants' dispositive motions says very little about St. Louis County and Linnea Mirsch and almost nothing about the specific defenses we raised and supported in our motion papers. As we explain below, the minimal commentary that is relevant to our defenses casts no doubt on the validity of our positions that the county is entitled to summary judgment on Calgaro's due-process claim relating to J.D.K.'s medical assistance and that the complaint fails to state any other plausible claim against the county or Mirsch.<sup>1</sup>

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<sup>1</sup> We also join and incorporate by reference the reply arguments made by the other defendants to the extent they apply to the claims against us, including, without limitation, their arguments regarding the scope of the Due Process Clause in this context.

## ARGUMENT

### **I. THE COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED AGAINST MIRSCH IN HER INDIVIDUAL CAPACITY.**

In Part II of our initial papers, we argued that Calgaro’s individual-capacity claims against Mirsch, the alleged interim director of the St. Louis County Department of Public Health and Human Services, should be dismissed because the complaint contains no specific factual allegations indicating that Mirsch had personal involvement in, or direct responsibility for, any claimed violation of Calgaro’s due-process rights. (Docket No. 37 at 1, 6–8.) Calgaro’s response to this argument alludes to the second sentence of paragraph 8 of the complaint, which merely alleges, “The director . . . is the final decision and policy maker for the Department.” (Docket No. 65 at 22–23; Docket No. 1 ¶ 8.)

This allegation is not enough to allow Calgaro to maintain her claims against Mirsch, particularly since it is not accompanied by any factual allegations that Mirsch made any decision concerning Calgaro or J.D.K. or put in place any county policy that bears on Calgaro’s claims.<sup>2</sup> (Docket No. 1.) Moreover, as we noted in our opening brief (Docket No. 37 at 8 n.4), the complaint does not even allege that Mirsch was the director or interim director of the department—i.e., that she was “the [department’s] final decision and policy maker” (*id.* ¶ 8)—when the acts and omissions alleged in the complaint occurred. (*See id.* (“Defendant Linnea Mirsch is the interim director of the

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<sup>2</sup> To the extent Calgaro believes that Mirsch is liable for the conduct of her subordinates in the department, her claim fails because that is not a viable legal theory. Under 42 U.S.C. § 1983, “masters do not answer for the torts of their servants”; “[e]ach Government official, his or her title notwithstanding, is only liable for his or her own misconduct.” *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009).

[department].”) (emphasis added).) The complaint therefore fails to state a claim upon which relief can be granted against Mirsch in her individual capacity.

**II. THE COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED AGAINST ST. LOUIS COUNTY RELATING TO J.D.K.’S GENERAL ASSISTANCE.**

As we explained in Part III our opening memorandum, the general-assistance portion of Calgaro’s claims against the county should be dismissed because (1) under state law, the county must follow state statutes and rules adopted by the Minnesota Department of Human Services (“MnDHS”) in administering the general-assistance program, (2) the statutes and rules provide for notice and a hearing in many circumstances, but not when the county determines that a person under the age of eighteen like J.D.K. is eligible for general assistance, and (3) if the alleged lack of notice and a hearing violated Calgaro’s due-process rights in this case, the moving force behind the violation was state law, as opposed to an actionable county “policy or custom” within the meaning of *Monell v. Department of Social Services*, 436 U.S. 658 (1978), and related cases. (Docket No. 37 at 2, 8–13.)

It appears that Calgaro does not disagree with the first or second step of our reasoning regarding this claim. She does not argue, for example, that the county is free to disregard state statutes and MnDHS rules governing general assistance, including the comprehensive scheme of procedural provisions that address whether a person is entitled to notice and a hearing. (Docket No. 65.) Nor could she make such an argument (at least not with a straight face), as Minn. Stat. § 256D.03, subd. 1 (2016), says just the opposite. In addition, she does not argue that the applicable statutes and rules authorized notice and

a hearing in connection with the county's alleged determination that J.D.K. was eligible for general assistance. (Docket No. 65.) To the contrary, the gist of her claim is that Minnesota law affords no process for parents in this scenario. As far as we can tell, then, Calgaro and the county agree on the legal propositions that the county is required to follow state statutes and MnDHS rules in this area, and that the county's alleged failure to provide notice and a hearing to Calgaro in connection with J.D.K.'s general assistance was in accordance with the statutes and rules.

With respect to the last step in our reasoning, Calgaro's response does include the conclusory assertion that the alleged lack of process was the result of "*the policy and custom of the County.*" (Docket No. 65 at 15.) But she did not point to any legal authority suggesting that the county's compliance with state law that it is legally obligated to follow through no choice of its own constitutes an actionable policy or custom for purposes of municipal liability under section 1983. (Docket No. 65.) She did not offer any rationale—weak, strong, or in between—for that proposed rule. (*Id.*) And she did not discuss or try to distinguish any of the cases we cited—decisions from four federal courts of appeals, several district courts in this circuit, and the state court of appeals (Docket No. 37 at 9–11)—in support of our view that the law of the state, rather than a policy or custom of the county, caused the due-process violation, if any, asserted in the complaint. (Docket No. 65.)

In short, Calgaro's response offers no good basis for denying the county's motion for judgment on the pleadings with respect to her claim relating to J.D.K.'s general

assistance. There is no county policy or custom at issue here, and the Court should dismiss the claim on that basis.

**III. THE COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED AGAINST ST. LOUIS COUNTY RELATING TO CALGARO'S DATA REQUESTS.**

Moving on to Calgaro's claim that the county deprived her of due process in connection with its alleged denials of her requests for information concerning J.D.K., we explained in Part IV of our opening brief that this claim should be dismissed for four reasons:

- First, the limited liberty interest arising from the parent-child relationship does not extend to a parent's request for access to government data concerning her child. (Docket No. 37 at 2, 14.)
- Second, the complaint contains no factual allegations regarding the existence of an applicable county policy or custom in any event. (*Id.* at 2, 14–15.)
- Third, even if the Due Process Clause were implicated here, the state statutes addressing access to government data provides multiple processes of administrative and judicial review that are more than sufficient from a constitutional perspective. (*Id.* at 2, 15–16.)
- Fourth, the complaint does not allege that Calgaro initiated, let alone exhausted, any of the available state-law processes before she launched this action, as required under Eighth Circuit precedents. (*Id.* at 2, 15–16.)

Calgaro has not offered a meaningful response to any of these points. (Docket No. 65.) As a result, there is no need for us to add anything to the arguments set forth in our opening brief, all of which present valid grounds for dismissing this implausible claim.

**IV. ST. LOUIS COUNTY IS ENTITLED TO SUMMARY JUDGMENT ON CALGARO'S CLAIM RELATING TO J.D.K.'S MEDICAL ASSISTANCE.**

We argued in Part V of our initial papers that we are entitled to summary judgment on the medical-assistance portion of Calgaro's claims because the materials in the record establish that the county had nothing to do with J.D.K.'s receipt of medical assistance. (Docket No. 37 at 3, 16–18.) In support of this argument, we referred to the declaration executed by Deborah Waldriff, the Director of the pertinent division of the St. Louis County Department of Public Health and Human Services, which shows that the county was not involved in approving J.D.K.'s medical-assistance application in November 2015 or approving or making any resulting medical-assistance payments to Fairview Health Services, Park Nicollet Health Services, or anyone else for gender-transition services or any other medical care. (*Id.* at 16–18; Docket No. 39 ¶¶ 1–9.)

Calgaro did not speak to this aspect of our motion in her response.<sup>3</sup> (Docket No. 65.) That is, she did not make any argument challenging the factual assertions in Waldriff's declaration or cite any contrary materials in the record creating a genuine issue with respect to the existence of some relationship between the county and J.D.K.'s medical assistance.<sup>4</sup> (*Id.*) Thus, for purposes of our motion, it is not genuinely disputed

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<sup>3</sup> Nor did she seek any relief under Fed. R. Civ. P. 56(d). (Docket No. 65.)

<sup>4</sup> Several paragraphs of the verified complaint and paragraph 31 of Calgaro's declaration contain statements indicating that the county was responsible for J.D.K.'s medical assistance (Docket No. 1 at 2–3 & ¶¶ 4, 6, 24–25, 102, 122, 131, 133, 188, 197–99; Docket No. 66 ¶ 31), but the statements should be given no weight here for several reasons. First, Calgaro did not cite the statements in her response to our request for summary judgment, which means the Court need not consider them under Fed. R. Civ. P. 56(c)(3). *See Gilbert v. Des Moines Area Cmty. Coll.*, 495 F.3d 906, 915 (8th Cir. 2007)

that, in Waldriff’s words, “St. Louis County played no role in determining that J.D.K. was eligible for medical assistance or in approving or making any medical-assistance payments relating to J.D.K.” (Docket No. 39 ¶ 8.) In light of this, we are entitled to judgment as a matter of law on Calgaro’s claim that the county deprived her of due process in connection with J.D.K.’s medical assistance.<sup>5</sup>

### CONCLUSION

For the reasons set forth above and in our initial papers, St. Louis County and Mirsch respectfully request that the Court enter an order (1) granting their motion for judgment on the pleadings with respect to all claims against Mirsch in her individual capacity and the claims against St. Louis County relating to J.D.K.’s general assistance and Calgaro’s data requests and (2) granting their motion for summary judgment with respect to the remaining claim against St. Louis County relating to J.D.K.’s medical assistance.

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(“A district court is not required to speculate on which portion of the record the nonmoving party relies, nor is it obligated to wade through and search the entire record for some specific facts that might support the nonmoving party’s claim.”). Second, the statements in the verified complaint are of no consequence at the summary-judgment stage because Calgaro did not demonstrate or allege that she has personal knowledge of the alleged facts regarding the county’s involvement, as required under Rule 56(c)(4). *See Murphy v. Missouri Dep’t of Corr.*, 372 F.3d 979, 982 (8th Cir. 2004) (explaining that, at summary-judgment stage, courts “disregard portions of . . . affidavits and depositions that were made without personal knowledge”). Third, paragraph 31 of the declaration—in which Calgaro reports that J.D.K. told her that the county had made medical-assistance payments—constitutes inadmissible hearsay and therefore cannot be used to avoid summary judgment under Rule 56(c)(4). *See Brunsting v. Lutsen Mountains Corp.*, 601 F.3d 813, 817 (8th Cir. 2010) (stating that “inadmissible hearsay evidence cannot be used to defeat summary judgment”).

<sup>5</sup> As we said before, this argument also applies to Mirsch. (Docket No. 37 at 18 n.8.)

Dated: January 12, 2017

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE UNDER D. MINN. LR 7.1(f)(2)**

I, Nick D. Campanario, affirm that St. Louis County and Linnea Mirsch's Reply Memorandum of Law in Support of Their Motion for Judgment on the Pleadings and Summary Judgment complies with the word-count limits in D. Minn. LR 7.1(f) and the type-size limits in D. Minn. LR 7.1(h). St. Louis County and Linnea Mirsch's Memorandum of Law in Support of Their Motion for Judgment on the Pleadings and Summary Judgment (Docket No. 37) and the reply memorandum contain, cumulatively, 7,157 words. In calculating the number of words in the memorandums, I relied on the word-count function of my word-processing software, Microsoft® Office Word 2007. I certify that the function was applied specifically to include all text, including headings, footnotes, and quotations.

Dated: January 12, 2017

Respectfully submitted,

s/ Nick D. Campanario

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