

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

MICHELLE BLANKENSHIP JORDAN,

Plaintiff,

v.

CASE NO. 4:17cv473-RH/CAS

LORA C. BELL,

Defendant.

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ORDER GRANTING SUMMARY JUDGMENT ON LIABILITY

The defendant Lora C. Bell is the clerk of court of Washington County, Florida. She maintained a clerk's office Facebook page on which members of the public could post comments. She responded approvingly to a post that was favorable to the clerk's office but struck the plaintiff Michelle Blankenship Jordan's unfavorable post on the same subject. Ms. Bell blocked Ms. Jordan from posting any further comments on the site. Ms. Bell has more recently taken down, and she has no plans to reestablish, the clerk's office Facebook page.

Ms. Jordan filed this action for damages against Ms. Bell in her official and individual capacities. The parties filed cross-motions for summary judgment. This

order confirms and briefly summarizes the ruling set out on the record of the summary-judgment hearing on August 24, 2018.

The Facebook page was a limited public forum. *See, e.g., Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 135 S. Ct. 2239, 2250-51 (2015); *Barrett v. Walker Cty. Sch. Dist.*, 872 F.3d 1209, 1223-24 (11th Cir. 2017). The First Amendment prohibits viewpoint discrimination in a limited public forum and even in a less-protected nonpublic forum. *See, e.g., Atlanta Journal & Constitution v. City of Atlanta Dep't of Aviation*, 322 F.3d 1298, 1306 (11th Cir. 2003) (en banc); *Cook v. Gwinnett Cty. Sch. Dist.*, 414 F.3d 1313, 1321 (11th Cir. 2005).

In establishing and managing the Facebook page, Ms. Bell acted as an official of the county, not as an official of the state. *See, e.g., Manders v. Lee*, 338 F.3d 1304, 1308 (11th Cir. 2003) (en banc) (establishing a four-factor test to determine whether an officer acts for the state). As a county official, Ms. Bell does not have Eleventh Amendment immunity. *See, e.g., Stanley v. Israel*, 843 F.3d 920, 924 (11th Cir. 2016) (recognizing that an official-capacity defendant has Eleventh Amendment immunity when acting for a state but not when acting for a county).

A county, like a city, is liable under § 1983 for an official's constitutional violation only if the violation was based on the county's policy or custom or if the official is one whose edicts or acts may fairly be said to represent official policy. *See, e.g., Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978). Ms. Bell, as the

clerk of court, is one whose edicts or acts may fairly be said to represent official policy. She is liable in her official capacity for the violation of Ms. Jordan's First Amendment rights.

Qualified immunity applies to damages claims against public officers in their individual capacities and protects "all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 341 (1986). *See generally Carroll v. Carman*, 135 S. Ct. 348 (2014); *Hope v. Pelzer*, 536 U.S. 730 (2002); *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). Thus a public officer may be held individually liable only if the officer's conduct violated clearly established law. Viewpoint discrimination of this kind violates clearly established law. *See, e.g., Cook v. Gwinnett Cty. Sch. Dist.*, 414 F.3d 1313, 1321 (11th Cir. 2005). Ms. Bell clearly and intentionally engaged in viewpoint discrimination, so she is not entitled to qualified immunity.

For these reasons,

IT IS ORDERED:

1. Ms. Jordan's motion for summary judgment on liability, ECF No. 25, is granted.

2. Ms. Bell's summary-judgment motion, ECF No. 23, is denied.

3. A bench trial on damages will go forward on September 5, 2018, at 9:00 a.m.

SO ORDERED on August 28, 2018.

s/Robert L. Hinkle

United States District Judge