

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

James Gray, IV	:	
	:	
Plaintiff,	:	Case No. 2:09-cv-868
	:	
vs.	:	District Judge Marbley
	:	
Village of Middleport, Ohio, et al.,	:	Magistrate Judge King
	:	
Defendants.	:	

**REPLY MEMORANDUM IN SUPPORT OF THE MOTION FOR SUMMARY  
JUDGMENT FILED BY THE VILLAGE OF MIDDLEPORT**

**I. To the extent they are brought against Middleport, Gray’s claims under state law and for punitive damages must be dismissed.**

In his response, Plaintiff James Gray, IV agrees that the Village of Middleport and its police department (together, “Middleport”) are immune to his state-law claims. Doc. 48 at 20. And by his silence, he further concedes that Middleport cannot be subject to punitive damages under either state or federal law. *See id.* at 23.

**II. Middleport cannot be liable unless it is first determined that Defendant Koebel violated Plaintiff’s constitutional rights.**

As the Sixth Circuit stated in *Scott v Clay County*, 205 F.3d 867, 879 (6th Cir. 2000), the “conclusion that no officer-defendant ha[s] deprived the plaintiff of any constitutional right a fortiori defeats [a] claim against the [municipality] as well.” *Id.* at 879 (citing *City of Los Angeles v. Heller*, 475 U.S. 796, 799). For these reasons, Middleport adopts the arguments made by Defendant Koebel in his separate motion and reply and urges the Court to find them well-taken. Doc. 39.

**III. Gray's arguments concerning his *Monell* claims need not be considered, yet.**

Middleport did not move for summary judgment with respect to Gray's claims that it is liable under a *Monell* theory. Gray's arguments concerning Middleport's alleged liability under § 1983 are premature and unnecessary to the Court's determination of the pending motions. As a result, Section C of Gray's memorandum in opposition (from pages 16 to 20) may be disregarded. Furthermore, Middleport does not concede that Gray has correctly stated the law with respect to his theories of liability under *Monell*. Gray's theory that Middleport is liable for having ratified Koebel's allegedly unconstitutional conduct is particularly objectionable because it confuses both the law and the facts in this case.

Respectfully submitted,

/s/ W.Charles Curley  
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/s/ J.Quinn Dorgan  
J. Quinn Dorgan (0076780)

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**CERTIFICATE OF SERVICE**

This is to certify that the foregoing was filed electronically this 7th day of March 2011. Notice of this filing will be sent to all counsel by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ J.Quinn Dorgan  
J.Quinn Dorgan (0076780)