

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-1880

KRISTINA G. MCMICHAEL; WILSON MCMICHAEL,

Plaintiff – Appellants,

v.

JAMES ISLAND CHARTER SCHOOL; CITY OF CHARLESTON; OFFICER
THEODORE RYAN BROWN, individually, and acting in his Official Capacity,

Defendant – Appellees.

Appeal from the United States District Court for the District of South Carolina, at
Charleston. Richard Mark Gergel, District Judge. (2:18-cv-00816-RMG)

Submitted: November 2, 2020

Decided: December 31, 2020

Before KING and DIAZ, Circuit Judges, and Stephanie A. GALLAGHER, United States
District Judge for the District of Maryland, sitting by designation.

Affirmed by unpublished opinion. Judge Diaz wrote the opinion, in which Judge King and
Judge Gallagher joined.

William E. Hopkins, Jr., Joseph C. Hopkins, HOPKINS LAW FIRM, LLC, Pawleys Island,
South Carolina, for Appellants. Christopher T. Dorsel, SENN LEGAL, LLC, Charleston,
South Carolina; Jonathan J. Anderson, Jonathan L. Anderson, ANDERSON REYNOLDS
& STEPHENS, LLC, Charleston, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

DIAZ, Circuit Judge:

James Island Charter High School (“JICHHS”) terminated Kristina McMichael when it eliminated the finance department where she worked. At JICHHS’s principal’s request, Officer Theodore Ryan Brown arranged for continued security to prevent any retaliation by former employees against the school. Brown obtained photos of Kristina and her husband, Wilson McMichael, from the South Carolina Department of Motor Vehicles (“DMV”) so security officers could recognize them if they returned to campus uninvited. The McMichaels sued JICHHS, the City of Charleston, South Carolina, and Brown, and the district court granted summary judgment to the Defendants. We affirm.

I.

We review a district court’s summary judgment order de novo. *Reyazuddin v. Montgomery County*, 789 F.3d 407, 413 (4th Cir. 2015). In doing so, we apply the same legal standards as the district court, viewing all facts and drawing all reasonable inferences in favor of the non-moving party—in this case, the McMichaels. *Dulaney v. Packaging Corp. of Am.*, 673 F.3d 323, 330 (4th Cir. 2012). We do not, however, weigh conflicting evidence or make credibility determinations. *Reyazuddin*, 789 F.3d at 413. If the nonmoving party can demonstrate the existence of genuine issues of material fact that can only be resolved by a factfinder, those issues must proceed to trial. *Id.* Genuine questions of material fact exist “where, after reviewing the record as a whole, a court finds that a reasonable jury could return a verdict for the nonmoving party.” *Dulaney*, 673 F.3d at 330.

II.

A.

On July 6, 2017, JICHS eliminated its finance department for budgetary reasons and terminated the department's three employees, including Kristina McMichael. Since it was July, and the students were on summer vacation, JICHS had no regular security staff on campus that day. As a safety precaution, JICHS's principal, Tim Thorn, asked Brown, JICHS's school resource officer, to report to campus to supervise the finance department's termination.¹

Kristina's termination letter stated that JICHS would no longer allow her on campus without an appointment and school escort. After she received the letter, she called her husband, Wilson McMichael, to help take her belongings home. Wilson, who wasn't a school employee, eventually arrived to help his wife clear out her desk. Brown recalled that the McMichaels were "hostile" and "angry" while they were leaving campus. He remembered Kristina being "verbally abusive" to school staff and Wilson saying that the school "would be sorry" for terminating Kristina. J.A. 384:10–387:9.

Thorn asked Brown to coordinate off-duty officers to remain at the school for the duration of the summer to guard against any retaliation by angry former employees. Brown testified that, at the time, he wasn't aware that the McMichaels posed any specific or imminent threat to campus safety, but he also made clear that his "number one job" is

¹ The McMichaels object to this and other evidence as hearsay. We address their objections as necessary below.

to prevent violence at the school and that, “with the trend in workplace violence, you don’t know who is going to do what when you let somebody go.” J.A. 413:3–414:16.

Because the off-duty officers were not familiar with the school, its students, or its employees, Brown created an information packet that identified and described individuals not allowed on campus. It summarized the finance department’s elimination, the McMichaels’ response to Kristina’s termination, and the fact that their son T.M. was also banned from campus after his recent expulsion and arrest for marijuana possession. The packet also noted that other “students have disclosed that [T.M.] sells narcotics at JICHHS” and that “allegedly [T.M.] in June 2017 attempted to purchase a firearm but due to currently being out on [b]ond for the [marijuana] charges,” the “purchase was denied.” J.A. 144–45.

But names and narratives alone wouldn’t give the officers all the information they needed. Brown also included pictures of the McMichaels and the other former finance department employees in the information packet so that the officers could identify them. He obtained each photo (except for T.M.’s) from the South Carolina DMV website.² Brown placed the photos on a desk in the security officers’ makeshift office inside the school.³

² Brown obtained T.M.’s photo from the website of a juvenile detention center.

³ The McMichaels argued before the district court that a sign saying “do not let these people in” accompanied the photos on the desk. But the district court ruled that only inadmissible hearsay supported that claim, whereas admissible evidence showed that no such sign existed. The McMichaels don’t dispute that ruling on appeal.

Several days after Kristina's termination, Marty Monette, JICHS's facilities director, was repairing an air conditioning unit in the security office when he spotted the photographs. He took a picture of the photos with his phone and sent the picture to his wife, Celeste Monette (also a JICHS employee), and Bill Koll (a former finance department employee). Marty then asked Brown about the pictures, and he explained that they were there so security officers could identify anyone on campus without permission.

News of the photographs reached the McMichaels through the gossip grapevine. Marty told Celeste about his conversation with Brown, and then Celeste showed Kristina the picture of the photographs while Celeste and Kristina were out at dinner shortly after Kristina's termination.

B.

The operative Second Amended Complaint, which abandoned Kristina's 18 U.S.C. § 1983 claim and added Wilson McMichael as a plaintiff, alleges claims against: (1) Brown, JICHS, and the City of Charleston for violating the federal Driver's Privacy Protection Act; (2) JICHS for defamation; and (3) Brown, JICHS, and the City for invasion of privacy. The Defendants filed separate motions for summary judgment, which the district court granted in full.

This appeal followed.

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