

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

DANIEL L. SMITH,

Plaintiff,

v.

CIVIL ACTION NO. 2:19cv559

KELVIN L. WRIGHT,

and

CITY OF CHESAPEAKE,

Defendants.

ORDER

This matter comes before the court on the Defendants' Motion to Dismiss the Complaint ("Motion"), filed on December 17, 2019. ECF No. 8. The Complaint contains two counts. ECF No. 1. Count One asserts a claim against both Defendants for violation of the Plaintiff's due process rights. Id. ¶¶ 117-145. Count Two asserts a claim for tortious interference with contract against Defendant Wright only. Id. ¶¶ 146-159.

After briefing on the Motion, on January 14, 2020, this court referred the Motion to United States Magistrate Judge Robert J. Krask pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b), to conduct hearings, including evidentiary hearings, if necessary, and to submit to the undersigned district judge proposed

findings of fact, if applicable, and recommendations for the disposition of the Motion. ECF No. 14.

The Magistrate Judge filed the Report and Recommendation ("R&R") on May 6, 2020. ECF No. 17. The R&R recommends granting the Motion in part and denying in part. Id. By copy of the R&R, the parties were advised of their right to file written objections to the findings and recommendations made by the Magistrate Judge. See id. at 33. The Plaintiff and Defendants filed Objections to the R&R on May 20, 2020. ECF Nos. 18, 19. The Defendants object to the R&R's conclusion that the Defendant has a property interest in his position, ECF No. 18 at 7, that the claim for deprivation of a liberty interest should survive, id. at 11, and that the Motion to Dismiss fails with respect to issue preclusion, id. at 12. The Plaintiff objects to the R&R's conclusions that Plaintiff cannot pursue an action based on the property interest in his employment, ECF No. 19 at 8, and that certain claims are barred by the relevant statute of limitations, id. at 17. Neither party filed responses to the Objections.

The court, having reviewed the record in its entirety and having examined the Objections and made de novo findings with respect thereto, does **ADOPT AND APPROVE IN FULL** the findings and recommendations set forth in the R&R of the United States Magistrate Judge, filed on May 6, 2020, ECF No. 17. Accordingly,

the Defendants' Motion to Dismiss, ECF No. 8, is **GRANTED** in part and **DENIED** in part, such that:


- The Defendants' Motion to Dismiss Count One's 42 U.S.C. § 1983 claim against Defendant City of Chesapeake is **DENIED** as **MOOT**, because the Plaintiff has agreed to withdraw that claim.
- Likewise, the Defendants' Motion to Dismiss Count One's official capacity claim, as duplicative of the § 1983 claim against the City, against Defendant Wright is **DENIED** as **MOOT**.
- The Defendants' Motion to Dismiss Count One as barred by the doctrine of collateral estoppel is **DENIED**.
- The Defendants' Motion to Dismiss Count One as barred by the statute of limitations is **DENIED** as to Wright's October 2017, January 2018, June 2018, and September 2018, refusals to consider the Plaintiff for promotion, and **GRANTED** as to actions occurring prior to the August 31, 2015, grievance panel decision and as to Defendant Wright's placement of the Plaintiff on restricted duty on May 27, 2016.
- The Defendants' Motion to Dismiss Count One for failure to allege a valid property interest is **GRANTED**.

- Defendant Wright's Motion to Dismiss Count Two's tortious interference with a business expectancy claim is **GRANTED**.

Accordingly, the only remaining claim is for deprivation of a liberty interest in Count One, with respect to the October 2017, January 2018, June 2018, and September 2018, refusals to consider the Plaintiff for a promotion.

The Clerk is **DIRECTED** to send a copy of this Order to the parties.

IT IS SO ORDERED.

/s/ 
Rebecca Beach Smith
Senior United States District Judge

REBECCA BEACH SMITH
SENIOR UNITED STATES DISTRICT JUDGE

July 1, 2020