UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

LORI TURNER,
Plaintiff,

v. **Case No. 18-C-0815**

MARK FERGUSON, et al.,
Defendants.

DECISION AND ORDER

Lori Turner brings this action under 42 U.S.C. § 1983 against five members of the City of Glendale Police Department. She alleges a "class of one" equal-protection claim based on the officers' treatment of her after she was attacked by her neighbor's dog. Before me now is the defendants' motion for summary judgment.

I. BACKGROUND

On March 5, 2017, Lori Turner was standing on the sidewalk near her house with her neighbor John Whitehead and her friend Brian Hollenbeck when a large, collarless dog named Anubis came down the driveway of the house next to Lori's.[1] The dog belonged to Michael Arndt, who resided next door to Lori. After urinating on two trees, the dog came over to Lori on the sidewalk. She pet the dog and talked nicely to it.

At this point, Arndt hurried down the driveway to retrieve his dog. Initially, he put his hands on the dog's sides to guide it towards the driveway, but the dog did not cooperate. He then grabbed the loose skin on the back of the dog's neck to move it towards the driveway. Without warning, the dog left Arndt and attacked Lori. The dog

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[1] In her brief, Lori Turner refers to herself as "Lori," and therefore I will do the same.

forced her to the ground and bit her many times before the dog's owner and Whitehead were able to get the dog off her. Because Lori appeared to be severely injured, Whitehead called 911. After the dog calmed down, Arndt carried it into his house. He came back outside to apologize.

Glendale police officers Joshua Ruppel and Brian Galbraith responded to the 911 call. They observed Lori lying in the front yard of Arndt's house. Her head and hands were blood soaked. The officers called for an ambulance and for a response from the Milwaukee Area Domestic Animal Control Commission ("MADACC"). By the time the officers arrived, Arndt had already taken his dog into the house. Thus, the officers did not need to bring the dog under control or otherwise interact with it. The only time they saw the dog was when Arndt escorted it out of the house to a van belonging to MADACC.

Eventually, an ambulance arrived and Lori was taken to the emergency room, where she received 11 staples to close a wound on her scalp, treatment for dog-bite wounds on her shoulder, and treatment for a wrist injury that would later require surgery. Officer Ruppel met with Lori at the hospital and obtained a statement from her. Lori does not remember speaking to the officer at that time.

Pursuant to local regulations, Arndt's dog was quarantined for a ten-day period following the attack. During this period, Lori asked to speak with police officers. On March 8, 2017, Officer Ruppel and a detective came to Lori's home. According to Lori, when she began explaining what happened during the attack, Officer Ruppel interrupted her and said, "that is exactly what you told us at the hospital." Pl. Prop. Finding of Fact ("PFOF") ¶ 16. Lori thought Officer Ruppel sounded irritated. She asked him why the

dog was not euthanized, and he did not have an answer. Lori also showed Ruppel a copy of a Glendale ordinance relating to vicious dogs and asked whether Ruppel would make Arndt "aware" of the ordinance before the quarantine ended. *Id.* The City of Glendale had recently enacted this ordinance after a dog attacked and seriously injured a different resident, Dawn Sorenson Brown. It allowed a police officer to "declare" a dog "vicious," which is a defined term in the ordinance. *See* City of Glendale Code of Ordinances § 7.1.9(b)(1) & (b)(3). Once a dog is declared vicious, its owner is subject to certain requirements, including keeping the dog in a secure kennel when it is outdoors and maintaining liability insurance for dog bites. *See id.* § 7.1.9(b)(4)–(10). Ruppel told Lori that he did not know whether Arndt would be made aware of the ordinance.

As part of his investigation, Officer Ruppel spoke with Arndt, who told him that the house in Glendale was not his permanent residence. Arndt said that the house belonged to a friend, and that Arndt's permanent residence was in Oconomowoc, Wisconsin. Arndt told Ruppel that when the quarantine period was over, he intended to take Anubis back to his home in Oconomowoc.

On March 14, 2017, Officer Ruppel issued Arndt a citation under a Glendale ordinance for damage caused by dogs. *See* City of Glendale Code of Ordinances § 7.1.6(d). This was not the Glendale vicious-dog ordinance, which does not have a civil-forfeiture provision. Instead, it was an ordinance that incorporated a state law regarding injuries caused by dogs. *See* Wis. Stat. § 174.02. Under that law, the maximum penalty for a first-time dog bite is $2,500. *Id.* § 174.02(2). Ruppel issued Arndt a citation for $2,500. However, he did not separately "declare" the dog vicious under the Glendale vicious-dog ordinance. At his deposition, Ruppel said that he did not

do so because the ordinance provides that a dog could be declared vicious only if it caused injury "when unprovoked." *See id.* § 7.1.9(b)(1)a. Ruppel testified that he considered Arndt's action in grabbing the dog by the neck to be a form of provocation, and that he also considered Lori's walking up to the dog and petting it to be a form of provocation. Ruppel Dep. at 42:10–42:19, 59:16–60:15. Regarding the latter reason, Ruppel testified that witnesses reported seeing Lori on the front lawn of Arndt's property while she was petting the dog, and that therefore he believed she was trespassing at the time of the attack. *Id.* at 43:9–44:3, 45:18–45:22.

On March 20, 2017, Lori talked to Glendale's mayor, Bryan Kennedy. She showed him a copy of the vicious-dog ordinance and asked why the ordinance was not being enforced. Kennedy told her that the dog's owner received a citation for $2,500, the maximum penalty. Lori said that she did not care how large the citation was and that she wanted to know why the vicious-dog ordinance was not being enforced to keep her safe. Kennedy told Lori to "keep an eye on the dog and the owner." Pl. PFOF ¶ 23.

On March 25, 2017, Mayor Kennedy left a voicemail message for Lori in which he said that he talked to Glendale's chief of police, Thomas Czarnyszka, and learned that the dog was "not supposed to be in Glendale." *Id.* ¶ 24. The mayor told Lori to "call the police immediately" if she saw the dog. *Id.*

On April 15, 2017, Lori saw Arndt's dog on his property. This was the only time Lori would see the dog after the date of the attack. (However, one of her neighbors saw the dog at the house on March 22, 2017.) Following the mayor's instructions, Lori called the police. Officer Jeffrey Musialowski came to her house in response to the call. According to Lori, Musialowski listened to the mayor's voicemail message and then

called his sergeant, William “Kip” Butler. Lori states that after Musialowski talked with Butler he told her that the mayor’s statement was “a lie.” Pl. PFOF ¶ 27. Musialowski, however, does not remember listening to a voicemail message. *See* Musialowski Dep. at 36:21–36:24. Instead, he remembers Lori telling him that the mayor had told her that there was a court order preventing the dog from being in Glendale. *Id.* at 7:5–7:19. Musialowski then called his supervisor, Sergeant Butler, who told him that there was no such court order. *Id.* However, Musialowski also went to Arndt’s house and knocked on the door, but no one answered. He did not see the dog on the premises. Before he left, Musialowski told Lori that there was no court order preventing the dog from being at the house and that, in any event, no one answered when he knocked. *Id.* at 8:6–9:3.

On May 4, 2017, Lori sent a text message to Mayor Kennedy informing him that the police did not believe that the dog was banned from Glendale. In response, Mayor Kennedy texted that he had talked to Chief Czarnyszka about the situation “to make sure that his officers know what’s going on.” Pl. PFOF ¶ 29.

At some point after Officer Musialowski’s visit, Lori called the police station and left a message for Sergeant Butler. On May 21, 2017, Butler returned her call. At the time, Lori was with other people, and she put the call on speaker phone so the others could hear it. According to Lori and those who were listening, Sergeant Butler was rude to her on the call. He told her to stop talking and made statements such as “I’m not going to answer any of your questions,” “I don’t want to talk to you,” “Don’t call the police department again,” and “If you don’t like the way we handled this, get yourself an attorney and sue us.” Pl. PFOF ¶ 30. Butler eventually hung up on her. Sergeant Butler

admits to hanging up on Lori and to telling her that if she was not satisfied to sue the police department. However, at his deposition, he added the following:

> Yeah, but there is a bigger picture to that. She was obviously frustrated by the investigation. You know, she had been bitten by a dog. I believe, if I recall the conversation correctly, that the ultimate disposition of the dog did not satisfy her. So when, you know, that was explained that—I found out that the case had already been disposed of in municipal court. I as a patrol sergeant don't have any power to do anything with a closed case. She was adamant about wanting to have other avenues to seek out to get the resolution to this case that she wanted, and I gave her those avenues. I told her that if—and it wasn't meant to be derogatory at all. It's like, you have an opportunity to litigate, to sue the dog owner. If you think that the city has failed you in some way, if we haven't done anything right, then you have a legal right to sue us, to file a case against us, which she took my advice because I'm guessing that's why she did this. It was not intended to be facetious or derogatory. It was giving her other opportunities or other channels to pursue with regard to this dog bite case.

Butler Dep. at 10:6–11:6.

Lori did not see Anubis at Arndt's house after April 15, 2017. She agrees that Arndt and Anubis moved out of the house on July 1, 2017. However, on June 16, 2017, Lori was outside her home when a loose pit bull named Mello approached her. Lori was scared, and her neighbor John Whitehead called 911. Glendale police responded to the call. On July 6, 2017, a different pit bull was loose near Lori's house. She was scared and called the police. Again, the police responded to the call.

On August 30, 2017, Mello was on the loose again, and Lori called the police. Officer Ruppel responded to this call. Lori told him that she felt like she had "no protection" and that she did not feel safe. Pl. PFOF ¶ 39. One of Lori's friends was present at the time, and this friend asked Officer Ruppel what it was going to take for him "to do something about it." Ruppel looked at Lori and said, "For someone to get hurt." *Id.*

In September 2017, Lori met with Glendale Police Captain Mark Ferguson. She asked him whether he thought it was appropriate for Sergeant Butler to have told her not to call the police department and to hang up on her. According to Lori, Ferguson laughed and then told her that Butler's actions were appropriate. At his deposition, Ferguson admitted that he told Lori that Butler's actions were appropriate, but he added the following:

> If Ms. Turner repeatedly is calling the police department wanting to reopen the investigation or—obviously, Ms. Turner believes this dog should have been labeled as a vicious dog. . . . She's upset about that. Our investigation determined it was not a vicious dog by the ordinance. Our investigation was completed. She repeatedly called to complain about how the investigation went. At some point, there is nothing else we can do, and so it's okay to tell someone, "You know what, we have done all we can. I'm sorry you don't like how it turned out, but you can't keep calling here You are wasting everybody's time and it's going nowhere." Those are times to tell someone you can't call back here for this case anymore.

Ferguson Dep. at 35:3–36:5.

On November 8, 2017, the Glendale Police Department responded to Lori's residence for an allegation of a possible suicide attempt. Lori was administered Narcan and was transported to Aurora Sinai Hospital. Lori claimed she was not trying to commit suicide but had taken a sleeping pill.

Also in November 2017, a new dog owner, Jesus Rodriguez, moved into the house where Arndt and Anubis previously lived. Rodriguez owned a 60-pound bulldog. On November 25, 2017, the bulldog attacked another neighborhood dog. On December 2, 2017, Lori saw the dog attacking a different neighborhood dog. Lori had two dogs of her own, and she was scared to let them outside in her yard. On December 3, 2017, she asked Whitehead if she could let her dogs out in his yard, which was fenced in. He

agreed. After Lori left her dogs in Whitehead's yard, she went back to her own house. She then heard a dog growling. Lori looked outside and saw that the bulldog had gotten loose and was at Whitehead's fence, growling at Lori's dogs. Rodriguez then appeared and yelled "Fuck you, Lori, you bitch! Shut the fuck up." Pl. PFOF ¶ 52.

Lori asked Whitehead to call 911, telling him that she believed that, if she called, the police "would not do anything to protect her." *Id.* ¶ 53. Officer Musialowski responded to Whitehead's call. At some point, Musialowski saw Lori and recognized her from when he responded to her call about Anubis in April 2017. According to Lori and Whitehead, Musialowski immediately and rudely told Lori to leave and that he did not want to talk to her. Lori then insisted that Musialowski talk to her because she had seen the bulldog attack another dog the day before and had a video of the attack. However, Musialowski continued to ignore Lori while he talked nicely to Whitehead and other neighbors. According to Musialowski, however, Lori interrupted his conversation with Whitehead and began talking about Anubis. Musialowski Dep. at 21:16–22:16. Musialowski states that he told Lori that he did not want to talk to her about the dog that had attacked her because he was responding to a different matter. *Id.* Eventually, Musialowski walked to Rodriguez's house to talk to him about his loose dog, but Rodriguez refused to talk to Musialowski and told him only that his name was Jesus Christ. Musialowski told Whitehead that he could not issue a citation to the dog's owner without knowing his name. Lori points out that she could have told Musialowski his name if he would have listened to her.

In December 4, 2017, Lori received what she perceived to be threatening Facebook messages from Rena Hilsborough, who also resided in the house with the

bulldog. In her messages, Hilsborough said things that led Lori to believe that Hilsborough saw Officer Musialowski ignore her. Lori interpreted these messages to mean that Hilsborough believed that the police would not protect Lori against Rodriguez or his bulldog. Pl. PFOF ¶ 60.

Also on December 4, Lori saw a Glendale police officer on her street and asked if he was here "because of what happened on December 3, 2017." Pl. PFOF ¶ 61. The officer said that he was. Lori told the officer that she was "afraid to live here," telling him about Jesus Rodriguez's threats, his bulldog who attacked another dog, and the threatening messages from Rena Hilsborough. *Id.* The officer told Lori to contact the officer who responded to the call, but Lori explained that the officer, Musialowski, made it clear he would not talk to her. The officer said to Lori, "he has to talk to you." *Id.* The officer said he would email Musialowski and that Lori would be hearing from him. However, Musialowski never contacted Lori.

At the end of 2017, Lori decided that the Glendale Police Department would not protect her if she called for help. For this reason, she decided to leave Glendale and listed her house for sale. Turner Aff. ¶ 40.

In January 2018, Lori received what she describes as "vulgar text messages" from a phone number she believed was associated with her neighbors who owned the bulldog. Pl. PFOF ¶ 65. Lori states that she was scared of the text messenger but decided not to call Glendale police because she felt like the police would not protect her. So instead, she drove down the streets of Milwaukee until she found a Milwaukee police squad car and talked to Milwaukee police officers about the text messages she received. The officers did not do anything in response to Lori's complaint other than tell

her to use her phone to block incoming texts from that number. Turner Dep. 267:21–268:23. On January 28, 2018, Lori received additional vulgar text messages from the same phone number.

In March 2018, Lori sold her home and moved out of Glendale. On May 25, 2018, she commenced this action against the officers she interacted with over the course of the prior year (Ruppel, Musialowski, Butler, and Ferguson) as well as the chief of police, Thomas Czarnyszka. Her complaint alleges claims for damages under 42 U.S.C. § 1983 based on her belief that the officers denied her equal protection of the laws by refusing to declare Arndt's dog vicious under the vicious-dog ordinance and by failing to protect her from loose dogs in her neighborhood.

After this action was filed, a local television station aired a segment about Lori's allegations. Lori claims that the reporter who prepared the story told her that Chief Czarnyszka told the reporter that Lori was trespassing at the time she was attacked. Turner Aff. ¶ 48. Lori claims that Czarnyszka's statement was false because she was standing on the city sidewalk when she was attacked. However, the segment that aired did not report that Chief Czarnyszka said that Lori was trespassing. Instead, the reporter said that the Glendale Police Department could not comment on the story because litigation was pending. But the segment also reproduced a portion of an email from the Glendale City Attorney that stated: "She went into the dog's yard and approached the dog. Most of these processes pertain to dogs at large, not to people who enter upon the premises of another and engage the dog." *See* ECF No. 37-1 (flash drive containing video file of news segment). After the segment aired, Lori read comments on the station's website written by members of the public. Some commentators thought that it

was Lori's fault that she was attacked because she was a trespasser. Lori found this upsetting.

The defendants now move for summary judgment on Lori's claims.

II. DISCUSSION

Summary judgment is required where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). When considering a motion for summary judgment, I view the evidence in the light most favorable to the non-moving party and must grant the motion if no reasonable juror could find for that party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 255 (1986).

Lori's claims arise under the Equal Protection Clause of the Fourteenth Amendment, which protects individuals from governmental discrimination. *See, e.g., Swanson v. City of Chetek*, 7189 F.3d 780, 783 (7th Cir. 2013). The typical equal-protection case involves discrimination by race, national origin, or sex. *Id.* However, the Clause also prohibits the singling out of a person for different treatment for no rational reason. *Id.* To succeed on a class-of-one equal protection claim, an individual must prove that he or she was "intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000).

"The classic class-of-one claim is illustrated when a public official, 'with no conceivable basis for his action other than spite or some other improper motive . . . comes down hard on a hapless private citizen.'" *Swanson*, 719 F.3d at 784 (quoting *Lauth v. McCollum*, 424 F.3d 631, 633 (7th Cir. 2005)). For example, a class-of-one

violation will occur when a plaintiff seeks a license to operate a bar or restaurant or other business and a governmental official, out of spite, refuses to grant him the license but grants one to an identically situated citizen toward whom the official bears no ill will. *See Lauth*, 424 F.3d at 633.

The present case does not involve the denial of a license or a similar interference with the plaintiff's property rights. Instead, it involves an alleged denial of police protection. But the Seventh Circuit has held that "the right to even-handed police protection"—or, stated differently, the "right to police protection uncorrupted by personal animus"—is clearly established. *Frederickson v. Landeros*, 943 F.3d 1054, 1061 (7th Cir. 2019).

Here, Lori argues that the Glendale police officers with whom she dealt treated her with animus. Based on some of the comments Lori attributes to the officers, I will assume without deciding that a reasonable jury could find that at least some of the officers treated her with some degree of animosity during their conversations. However, to prevail on her equal-protection claim, Lori must prove more than that some officers treated her with disrespect or hostility when they interacted with her. She must also show that the officers' animosity caused them to intentionally treat her differently than they would have treated another, similarly situated citizen, and that no rational basis can be conceived of that justifies the difference in treatment. *See Fares Pawn, LLC v. Ind. Dep't of Fin. Insts.*, 755 F.3d 839, 845 (7th Cir. 2014) ("[A] given action can have a rational basis and be a perfectly logical action for a government entity to take even if there are facts casting it as one taken out of animosity. If [the court] can come up with a rational basis for the challenged action, that will be the end of the matter—animus or

no."); *D.B. ex rel. Kurtis B. v. Kopp*, 725 F.3d 681, 682 (7th Cir. 2013) ("Allegations of improper subjective motive are not enough to state a class-of-one equal-protection claim. The complaint must allege sufficient facts to plausibly show that the plaintiff was treated differently from others similarly situated and that the discriminatory treatment was wholly arbitrary and irrational.").[2]

The first challenged action at issue in this case is Officer Ruppel's failure to declare Anubis "vicious" under the vicious-dog ordinance, Glendale Code of Ordinances § 7.1.9(b). Lori argues that because the dog attacked her and caused serious injuries, it met the definition of "vicious" in the ordinance. *See id.* § 7.1.9(b)(1) (defining as "vicious" "[a]ny dog which, when unprovoked, bites or otherwise causes bodily injury to a person or a domestic pet or animal, whether on public or private property."). However, even if the dog met the definition of "vicious," it would not follow that no rational basis could be conceived of to explain why Ruppel did not declare the dog vicious. And here there are several rational explanations. First, Officer Ruppel's own testimony provides a rational basis for his decision: he thought that the dog did not meet the definition of "vicious" because, during his investigation, he learned facts suggesting that the dog was "provoked" prior to the attack. In his view, one form of provocation was Arndt's grabbing

[2] There is some uncertainty in the case law regarding whether, to succeed on a class-of-one equal-protection claim, a plaintiff must prove not only the lack of a rational basis for the intentional discrimination at issue, but also that the government official acted with animus or subjective ill will. *See generally Del Marcelle v. Brown County Corp.*, 680 F.3d 887 (7th Cir. 2012) (en banc); *see also Frederickson*, 943 F.3d at 1061–62. Here, however, the plaintiff does not contend that she may succeed on her claim without proving animus. Moreover, as explained in the text, even if the plaintiff could prove animus, her claim would fail because she has not shown the lack of a rational basis for any difference in treatment. Thus, for purposes of this case, it is unnecessary to determine whether a class-of-one plaintiff must always prove that a difference in treatment was motivated by animus.

the dog by the neck, and the other was Lori's entering onto Arndt's property to pet the dog. Lori argues that neither of these actions qualifies as provocation as that term is used in the ordinance, and she also denies that she entered onto Arndt's property to pet the dog. But even if she is correct on these points, it would not render Officer Ruppel's decision irrational. As far as the record reveals, Officer Ruppel believed in good faith that the dog was not "unprovoked" when it attacked Lori. His belief rationally explains his decision not to declare the dog vicious, even if it may have been based on a legal error (the meaning of "unprovoked" in § 7.1.9(b)(1)a.) or a factual error (whether Lori was on Arndt's property at the time of the attack).[3]

Moreover, I can conceive of a second rational basis to explain Ruppel's decision. During Ruppel's investigation, Arndt told Ruppel that he would be voluntarily removing the dog from Glendale after the mandatory quarantine period was over. If Arndt planned to remove the dog from Glendale, then there would have been little reason to declare the dog vicious under the ordinance. The purpose of declaring a dog vicious is to impose certain requirements on the dog owner that are designed to protect other

[3] In her brief, Lori notes that "there are no contemporaneous 2017 documents or statements from Defendants suggesting that Arndt's dog is not 'vicious' and the ordinance did not apply." Br. in Opp. at 21, ECF No. 30. She seems to suggest that the absence of such documents or statements is suspicious and that therefore Ruppel may be lying when he says he believed that the dog did not meet the definition. However, the absence of a contemporaneous record would be suspicious only if Ruppel should have prepared a record of his decision to not declare the dog vicious or if he prepared such a record and listed a different reason. Lori points to no evidence suggesting that officers ordinarily document their reasons for not declaring a dog vicious or that Ruppel created a record listing a different reason. Thus, the lack of a contemporaneous record is not suspicious and would not allow a reasonable trier of fact to conclude that Ruppel is lying about his reasons for not declaring the dog vicious. *See Springer v. Durflinger*, 518 F.3d 479, 484–85 (7th Cir. 2008) (nonmovant cannot avoid summary judgment by speculating that defendant's witnesses are lying).

Glendale residents and domestic animals from harm. *See* Glendale Ordinances § 7.1.9(b)(4)–(10). If Arndt was going to remove Anubis from Glendale, then Officer Ruppel could have rationally concluded that there was no need to formally declare the dog "vicious," for the dog's removal from the city would have made the ordinance's protective provisions unnecessary.

Lori notes that the dog was seen in Glendale on two occasions after the quarantine period was over. She thus suggests that Arndt did not follow through on his promise to remove the dog from Glendale. However, what matters is not whether Arndt in fact removed his dog from Glendale, but whether Arndt told Ruppel that he planned to remove his dog from Glendale. It is Arndt's statement to Ruppel that he planned to remove the dog that supplies a rational basis for Ruppel's decision not to declare the dog vicious. Moreover, the fact that Ruppel did not offer this reason at his deposition to explain why he did not declare the dog vicious is irrelevant. "[T]he test for rationality does not ask whether the benign justification was the *actual* justification." *D.B.*, 725 F.3d at 686. Instead, "[a]ll it takes to defeat the plaintiffs' claim is a *conceivable* rational basis for the difference in treatment." *Id.* at 687.

Because rational grounds support Officer Ruppel's decision to not declare the dog vicious, Lori's claim against him must be dismissed regardless of whether she can prove that he acted out of animus. However, I also note that there is little evidence suggesting that, at the time Officer Ruppel made the decision not to declare the dog vicious, he harbored animus or ill will towards Lori. Ruppel did not know Lori prior to the attack and thus could not have had any reason to dislike her during the initial stages of his investigation. Still, Lori claims that Ruppel displayed "irritation" with her when he

responded to her request that officers come to her house during the quarantine period. Turner Aff. ¶ 11. According to Lori, once she started telling the officers about what happened, Ruppel interrupted with irritation to say that she had already told him the same information at the hospital. Based on this single remark, however, a reasonable jury could not conclude that Ruppel disliked Lori or allowed his dislike of her to corrupt his investigation. Indeed, even after this allegedly hostile interaction, Ruppel issued Arndt the maximum possible fine for allowing his dog to injure Lori, which suggests that Ruppel did not wish to spite Lori by letting Arndt off easy.

Lori points out that, five months after her attack, Ruppel said in Lori's presence that he would not punish the owner of a different loose dog unless someone "got hurt." Lori thought that this statement was insensitive, given that Ruppel knew that she had been hurt by a loose dog. She views this statement as evidence of Ruppel's animus towards her. However, even if this statement could be construed as evidence of animus, it did not occur until months after Ruppel had determined that Anubis was not vicious. It is not evidence that Ruppel disliked Lori at the time that he made that determination.

For the above reasons, Lori's equal-protection claim against Ruppel based on his failure to declare Anubis vicious must fail. Lori also contends that the defendants who supervised Ruppel—Sergeant Butler, Captain Ferguson, and Chief Czarnyszka—violated the Equal Protection Clause by failing to "override" Ruppel's decision not to declare Anubis vicious. *See* Pl. PFOF ¶ 94. However, the same rational grounds that support Ruppel's initial decision support the supervisors' decisions. That is, because Ruppel's initial decision was rational, the supervisors could not have acted irrationally in failing to override it. Moreover, none of these supervisors reviewed Ruppel's decision at

the time it was made. By the time Lori brought the decision to their attention, Arndt's citation had already been adjudicated in municipal court, and the police department considered the matter closed. The supervisors' not wanting to reopen a closed case provides yet another rational basis for their decision not to "override" Ruppel's decision. Thus, Lori's claims against the supervisors based on their failure to declare the dog vicious must also fail.

I also understand Lori to be claiming that the Glendale Police Department deprived her of equal protection by failing to protect her from loose dogs during the period between her attack and when she moved out of Glendale. In general, a citizen has no due-process right to adequate police protection. *See DeShaney v. Winnebago County Dep't of Soc. Servs.*, 489 U.S. 189, 195–96 (1989). But, as indicated above, the Seventh Circuit has determined that a citizen has an equal-protection right to "even-handed police protection" that is "uncorrupted by personal animus." *Frederickson*, 943 F.3d at 1061. Thus, I consider whether Lori's evidence would allow a reasonable finder of fact to determine that the Glendale Police Department withdrew evenhanded protection from her out of personal animus.[4]

[4] Here, I note that it is not clear who the intended defendants to the failure-to-protect claim are. Lori has sued all defendants in both their individual and official capacities. The official-capacity claims against the officers amount to a single claim against the City of Glendale. *See, e.g., Walker v. Sheahan*, 526 F.3d 973, 977 (7th Cir. 2008). Because Lori claims that the police department in general failed to protect her, it appears that she brings this claim against the City itself. To succeed on a claim against the City, Lori must satisfy the standards of *Monell v. Department of Social Services*, 436 U.S. 658 (1978), which requires showing that the constitutional violation was caused by a municipal policy. But Lori has not attempted to show that any failure to protect was the result of an official policy. In any event, I need not determine whether Lori's claim for failure to protect runs against the officers personally or against the City under *Monell*,

In her brief, Lori states that the actions of the Glendale police officers who responded to her complaints about loose dogs (Ruppel and Musialowski) and the statements made by the officers to whom she voiced her concerns (Sergeant Butler and Captain Ferguson) caused her to feel like the Glendale Police Department "deliberately would not protect her if she called for help." Br. in Opp. at 10, ECF No. 30. However, Lori's subjective belief that the police would not protect her if she called for help does not establish a claim for relief. What matters is whether the police intentionally failed to provide her with the same police protection that they would have provided to other, similarly situated citizens, and whether they did so out of personal animus. *See Frederickson*, 943 F.3d at 1061. Here, I will assume without deciding that Lori can prove that at least some Glendale police officers harbored some degree of personal animus towards her. Still, no evidence in the record suggests that Glendale police officers responded to her complaints differently than they would have responded to similar complaints by other citizens.

It is undisputed that every time Lori called the Glendale police for assistance, an officer responded to her call. Even after Sergeant Butler allegedly told her to stop calling the police department, officers continued to respond to her calls. Lori's conversation with Sergeant Butler occurred on May 21, 2017. On July 6, 2017, Lori called the police to complain about a loose pit bull, and officers responded. Pl. PFOF ¶ 38. On August 30, 2018, Lori called the police to complain that the pit bull Mello was loose, and Officer Ruppel responded. Pl. PFOF ¶ 39. On November 8, 2017, officers responded to Lori's

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for, as explained in the text, Lori's evidence does not create a triable issue of fact over whether the police deprived her of evenhanded police protection.

house to assist her after she took a sleeping pill and was thought to have attempted suicide. Def. PFOF ¶ 43.

Lori disagrees with how some of the officers investigated or disposed of her complaints, but nothing in the record suggests that any officer treated her complaints differently than they would have treated similar complaints by other citizens. The record does not, for example, suggest that Glendale police officers were extremely vigilant in protecting other citizens from loose dogs but turned a blind eye when they responded to Lori's calls. To the contrary, Lori's evidence of how Musialowski responded to both her call about Anubis and John Whitehead's call about the bulldog suggests that the department's response to complaints about dogs was evenhanded. When Lori called about seeing Anubis at her neighbor's property, Musialowski talked to her and then investigated further by knocking on Arndt's door to determine whether the dog was present. Similarly, when Musialowski responded to Whitehead's call about the bulldog, Musialowski talked to Whitehead and then investigated further by knocking on Rodriguez's door. When Rodriguez refused to give Musialowski his true name, Musialowski ended his investigation. He did not try to learn Rodriguez's name or write him a citation. Thus, Musialowski's responses to both calls were largely the same—he did not go to great lengths to protect Whitehead but do nothing to protect Lori.[5]

[5] In her brief, Lori contends that, during his investigation of her call about Anubis, Officer Musialowski told her that the mayor's statement about Anubis being banned from Glendale was "a lie." Br. in Opp. at 15, ECF No. 30. Lori seems to imply that this statement was evidence of animus towards her. However, to the extent the statement reflects animus at all, it reflects animus towards the mayor rather than towards Lori, as the mayor is the person being called a liar. In any event, as discussed in the text, even if a reasonable jury could find that Musialowski harbored animus towards Lori, it could not also find that his animus caused him to investigate her complaint differently.

Lori, of course, was present during the bulldog investigation and claims that Musialowski talked more respectfully to Whitehead than he did to her. However, no evidence suggests that Musialowski would have conducted a more thorough investigation had Lori not been present. Moreover, the difference in how Musialowski spoke to her and how he spoke to Whitehead does not give rise to an equal-protection claim, even if a reasonable jury could construe Musialowski's comments to Lori as an expression of animus. So long as Musialowski investigated Lori's claims with the same thoroughness as he employed when he investigated the similar claims of others, any animosity he harbored towards her would not be actionable. *See Fares Pawn*, 755 F.3d at 845 (animus in the abstract does not violate the Equal Protection Clause; the animus must be associated with a difference in treatment unsupported by a rational basis); *D.B.*, 725 F.3d at 682 ("Allegations of improper subjective motive are not enough to state a class-of-one equal-protection claim."). Finally, a rational basis can be conceived of for why Musialowski talked to Whitehead differently than he talked to Lori. Whitehead was the person who called for assistance, not Lori. It was thus rational for Musialowski to be focused on obtaining Whitehead's statement and to tell Lori that he did not want to talk to her. Perhaps Musialowski's investigation would have been more thorough had he interviewed Lori as well as Whitehead, but the Equal Protection Clause does not guarantee thorough investigations; it guarantees equal treatment. *See Hilton v. City of Wheeling*, 209 F.3d 1005, 1008 (7th Cir. 2000) (noting that class-of-one claim will not lie simply because the police are "inept" in their investigations). Musialowski's alleged failure to thoroughly investigate Whitehead's loose-dog complaint harmed both

Whitehead and Lori equally (and also harmed any other neighbors affected by the loose bulldog). Thus, Musialowski did not single Lori out for unfavorable treatment.

Lori also contends that the Glendale Police Department intentionally treated her differently than Dawn Sorenson Brown, the Glendale resident who was severely injured in a dog attack that occurred two years before the attack that injured her, and whose injuries prompted Glendale to enact the vicious-dog ordinance. Lori points out that "the dog who seriously injured Brown's leg was shot and killed by police." Br. in Opp. at 24, ECF No. 30. She contends that because the police officers who responded to Brown's 911 call shot the dog who harmed her, the department treated her less favorably than Brown by not declaring Anubis vicious. However, in Brown's case, the officers shot the dog because, after it attacked Brown, it remained loose and was exhibiting violent behavior, and because the officers could not bring it under control using non-lethal force. *See* Baynard Supp. Decl. Ex. T, ECF No. 37-4. They did not euthanize the dog to prevent it from attacking other citizens in the future. In Lori's case, by the time police arrived, Anubis was no longer loose—Arndt had brought him inside the house. Thus, the officers who responded to Lori's attack had no need to kill Anubis to protect themselves or others at the scene. Moreover, under state and local law, the officers could not have destroyed a subdued dog as a preventative measure unless they had a court order, which they could not have obtained unless the dog caused serious injury to a person or domestic animal on at least two separate occasions. *See* Wis. Stat. § 174.02(3); Glendale Ordinances § 7.1.9(c). Here, there is no evidence that Anubis caused serious injury to a person other than Lori or to a domestic animal, and therefore

the police could not have obtained a court order to destroy Anubis. Accordingly, the police did not treat Brown more favorably than Lori under similar circumstances.

Finally, Lori contends that Chief Czarnyszka treated her with animus when he told a local television news reporter that Lori had been trespassing when she was attacked by Anubis. Br. in Opp. at 20, ECF No. 30. Again, however, even if this were evidence of animus towards Lori, it could amount to an equal-protection violation only if it was associated with an irrational difference in treatment. But Czarnyszka did not deal with Lori directly. Although Lori contends that he could have overridden Ruppel's decision not to declare Anubis vicious, Ruppel's decision was rational, as I have discussed, and therefore Czarnyszka did not act irrationally in failing to override it. In any event, Lori has no admissible evidence showing that Czarnyszka told the reporter that Lori was trespassing. Lori cites only her own affidavit, in which she states that the reporter told her that Czarnyszka made the statement. Turner Aff. ¶ 48. But, in this form, the evidence about the statement is inadmissible hearsay—Lori is offering the reporter's statement for the truth of the matter asserted (that Czarnyszka told her that Lori was trespassing), and the statement does not qualify for a hearsay exception. For the statement to be admissible, the reporter would have to submit her own affidavit in which she states that Czarnyszka told her that Lori was trespassing at the time of the attack. (If the reporter submitted her own declaration, Czarnyszka's statement would not be hearsay because it would be an admission by a party opponent. *See* Fed. R. Evid. 801(d)(2).) Thus, for purposes of summary judgment, I must assume that Czarnyszka did not make the statement. *See* Fed. R. Civ. P. 56(c)(4) (affidavit used to oppose summary judgment must "set out facts that would be admissible in evidence").

In short, the evidence in the record does not support a class-of-one equal-protection claim. A rational basis supported Ruppel's decision not to declare Anubis vicious, and no evidence suggests that the Glendale Police Department intentionally and irrationally treated Lori's complaints about loose dogs differently than it treated similar complaints by other citizens. Accordingly, even if officers at times made statements that could be construed as expressions of animosity towards her, she would have no right to relief under federal law.

III. CONCLUSION

For the reasons stated, **IT IS ORDERED** that the defendants' motion for summary judgment (ECF No. 26) is **GRANTED**.

Dated at Milwaukee, Wisconsin, this 7th day of January, 2020.

s/Lynn Adelman_____
LYNN ADELMAN
United States District Judge