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FILED

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

2008 MAR 28 PM 4:11

EUNA ROBINSON,

Plaintiff,

v.

PAULY S. GATSON, CLERK
Civil Action No.: 03-C-847
(Honorable Paul Zakaib)

JAMES PACK,

Defendant.

CERTIFICATION ORDER

On the 29th day of November, 2007, came the parties, by counsel, pursuant to "Defendant James Pack's Motion for Certification." Following oral argument and upon review of the pertinent legal briefs and legal precedent, the Court granted the Motion, over plaintiff's objection, and hereby certifies to the Supreme Court of Appeals of West Virginia, the following questions.

Questions of Law

- a. Is a governmental official entitled to an immediate appeal of the denial of a motion for summary judgment that is based upon qualified immunity? Answer: Yes.
- b. Are the alleged subjective motivations of a police officer relevant to an analysis of the reasonableness of an entry into a residence, the detention of the occupant of the residence, and the alleged use of force upon the occupant? Answer: Yes.
- c. Is a supervising police officer civilly liable for the alleged wrongful conduct of his or her subordinate officers? Answer: Yes.

R. App. Pro. 13(b)

Question a. arises, in accordance with the provisions of W. Va. Code § 58-5-2, upon the jurisdiction of the circuit court of the subject matter. Questions b. and c. arise, in accordance with the provisions of W. Va. Code § 58-5-2, upon the sufficiency of a motion for summary judgment where such motion has been denied.

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Relevant Undisputed Facts

Plaintiff Euna Robinson has been suffering from and seeking treatment for mental illness for the past 35 years. On April 4, 2002, plaintiff telephoned a counselor with Logan-Mingo Mental Health, an area mental health facility. Plaintiff said she needed help and was in distress.

The professional mental health counselor believed that plaintiff intended to do herself harm. The counselor called a Mingo County 911 dispatcher and requested assistance for plaintiff.

The "911" detail call sheet stated:

Called in by Tiffany Christenson [office worker at Logan-Mingo Mental Health], stated [plaintiff] Euna [Robinson] had indicated that she might have hurt herself, she advised mental health that she was in a lot of pain and hang [sic] up the phone. Mental health requested someone check on her well being and proceed as normal.

Mingo County deputies, including the chief deputy, Defendant James Pack, were dispatched to the plaintiff's residence. Notably, six months earlier, plaintiff pointed a shotgun at state troopers who arrested the plaintiff at her home for making harassing telephone calls. Plaintiff also claims that she previously had an extra-marital affair with a number of law enforcement officers, including Chief Pack. According to plaintiff, Chief Pack terminated the affair so plaintiff supposedly called Chief Pack's wife to tell her about the tryst.

Upon arriving at the plaintiff's residence on April 4, 2002, the police were confronted with a plaintiff who ignored repeated verbal requests to appear. The deputies advised plaintiff that they were there to check on her. The plaintiff never responded to the deputies' requests to unlock her front or back door.

Upon receiving no response from plaintiff, deputies, including Chief Pack, entered plaintiff's residence to ensure she was not in danger. Plaintiff claims Chief Pack directed the responding deputies to remove the plaintiff from the residence. Plaintiff continued to refuse to appear or respond to their inquiries.

Plaintiff hid in a small crawlspace in her residence and refused to respond to officers' request to come out. Plaintiff had been drinking alcohol to excess around the time of the incident and kept multiple loaded guns, swords, and knives in her residence. The deputies saw evidence of the drinking and some of the weapons. Being unable to visualize plaintiff to ensure she was not in possession of a weapon, a deputy advised that a police canine would be released if plaintiff did not show herself. Again, plaintiff did not respond. The canine located plaintiff in the attic's crawlspace, where she was hiding underneath comforters and blankets.

The dog, handled by a deputy not a defendant in this case, allegedly bit plaintiff on the head. However, plaintiff continued to refuse to leave the crawlspace or demonstrate that she did not possess a weapon. Deputies, not including Chief Pack, entered the tight quarters of the crawl space, but were unable to remove the plaintiff. When the deputies backed out of the crawl space, the plaintiff was told pepper spray would be administered if she did not show she was not in possession of a weapon and leave the crawl space. Once again, plaintiff refused to respond. A deputy directed pepper spray into the crawlspace, resulting in the successful extrication of plaintiff. She was then handcuffed and taken to an awaiting ambulance. Notably, defendant James Pack did not arrest the plaintiff or touch her in any offensive or harmful way on April 4, 2002.

Plaintiff was then taken to the Sheriff's office to await a mental hygiene evaluation. The examining physician, Dr. Carlos Rivas, found that plaintiff was mentally ill and a danger to herself or others. The doctor diagnosed plaintiff with major depressive disorder, psychotic features, suicidal ideations and threats, and substance abuse. Dr. Rivas determined that there was "reason to believe [plaintiff] IS mentally ill [and the plaintiff] IS likely to cause harm to []herself or others." However, the Mental Hygiene Commissioner opined that plaintiff did not require hospitalization at that particular time and could be managed with outpatient care.

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Plaintiff subsequently filed a civil lawsuit alleging that her arrest and brief detention were unlawful. Chief Pack filed a Motion for Summary Judgment stating that the alleged police conduct was lawful; that other police officers (not Chief Pack) arrested the plaintiff, handled the canine, administered the pepper spray and presented the plaintiff to the mental hygiene commissioner; and that Chief Pack was entitled to qualified immunity. The plaintiff said summary judgment should not be granted and that a jury should decide if the April 4 event occurred because the plaintiff called Chief Pack's wife after Chief Pack terminated his alleged affair with plaintiff. Chief Pack responded that any subjective motivation or intent of Chief Pack was completely irrelevant and not to be considered in the probable cause and use of force analysis. The circuit court disagreed. The Court denied the summary judgment motion basing its decision upon the alleged motivation or intent of Chief Pack.

West Virginia Code § 51-1A-4

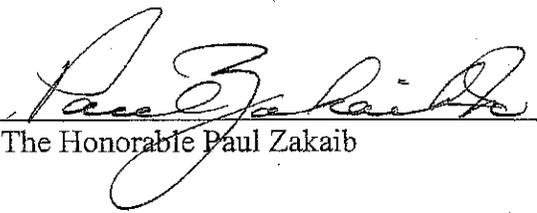
The Court and the parties acknowledge that the Supreme Court of Appeals of West Virginia may reformulate the certified questions.

Counsel

The plaintiff is represented by Mark E. Hobbs, P.O. Box 974, Chapmanville, West Virginia 25508, and Anthony F. Serreno, 713 Bigley Avenue, Suite 1000, Charleston, West Virginia 25301. The defendant is represented by Jeffrey K. Phillips and Teresa A. Kleeh, Steptoe & Johnson PLLC, P.O. Box 1588, Charleston, West Virginia 25326.

Entered this 28th day of MARCH ~~1998~~ 08

RECORDED


The Honorable Paul Zakaib

4-8-08
Date: _____
Certified copies sent to: M. Hobbs
 counsel of record
 parties A. Serreno
 other J. Phillips
By: J. Phillips (Initials)
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Other directives accomplished: _____
Depository Clerk: _____ 5563.1

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL ON SAID COURT THIS 26
DAY OF APRIL 2008
CATHY S. GATSON CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

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