IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-5087
Summary Calendar

JODY ELLEN MOODY

and

ANDREW MOODY,

Plaintiffs-Appellees,

VERSUS

TOWN OF FLOWER MOUND, et al.,

Defendants,

RONALD MCFADDEN,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
4:92 CV 142

May 27, 1993

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:[*]

Ronald McFadden appeals the denial of his motion for dismissal, on the ground of qualified immunity, of this lawsuit

[*] Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

brought by Jody Moody pursuant to 42 U.S.C. § 1983. Finding no error, we affirm.

I.

In her amended complaint, Moody alleges the following facts. In the early morning hours of July 8, 1990, the plaintiffs, Jody and Andrew Moody, were awakened by a knock at their front door. Moody's daughter-in-law was at the front door, and her son, handcuffed, was in the company of police officers. Moody observed police officers beating her son. She asked an officer what was going on, and the officer ordered her to return to her house or be arrested.

Moody approached two other officers, one being McFadden, and asked again as to the situation. She was told to go back into her house. She replied that she would if they would tell her what was happening. McFadden arrested her, informing her that the charge was public intoxication.

Moody alleged that she was denied permission to change into other attire from her nightgown and that the police prevented her husband and a neighbor from providing her with clothes. Moody was booked and detained overnight. She was charged with interference with a police officer, a charge dropped by the district attorney the morning of trial because of "faulty pleadings."

The amended complaint alleged McFadden violated Moody's constitutional rights by arresting and detaining her without probable cause. Further, the allegation asserted that the arrest

and detention were objectively unreasonable, amounting to denial of due process. Moody also pleaded state tort-law claims.

McFadden moved for dismissal based upon failure to plead facts alleging the federal constitutional violation named in the complaint and failure to plead facts which, if proved, would overcome his defense of qualified immunity. The district court denied the motion, stating that the amended complaint satisfied the heightened pleading requirements pursuant to Elliott v. Perez, 751 F.2d 1472 (5th Cir. 1985).

II.

McFadden argues that the district court erred in denying his motion to dismiss based upon qualified immunity. The "denial of a claim of qualified immunity, to the extent that it turns on an issue of law, is an appealable `final decision' . . . notwithstanding the absence of a final judgment." Mitchell v. Forsyth, 472 U.S. 511, 530 (1985). To the extent that McFadden and Moody argue the state-law malicious prosecution claim, this state-law issue is not before us on interlocutory appeal. See United States v. Miller, 952 F.2d 866, 874 (5th Cir.), cert. denied, 112 S. Ct. 3209 (1992).

Because McFadden's motion was brought pursuant to Fed. R. Civ. P. 12(b)(6), the allegations found in Moody's complaint are accepted as true. See Hobbs v. Hawkins, 968 F.2d 471, 480 (5th Cir. 1992). In light of McFadden's assertion of qualified immunity, Moody's section 1983 claim is first examined for

sufficiently "alleg[ing] the violation of a clearly established constitutional right." Siegert v. Gilley, 111 S. Ct. 1789, 1793 (1991).

The logic of McFadden's argument in this: Paragraph 21 of the amended complaint alleges a due process violation of Moody's liberty interest under the Fourteenth Amendment, while the factual allegations constitute a Fourth Amendment violation; therefore, Moody has waived her claim of a Fourth Amendment violation and cannot re-allege the Fourth Amendment claim because the statute of limitations has run. Paragraph 21 reads as follows:

> Defendant's arrest and detention of Plaintiff occurred without probable cause. At no time did Plaintiff engage in any conduct, nor did any facts exist, which constituted probable cause for Plaintiff's arrest upon any charge whatsoever. The facts recited above establish that Defendant's arrest and detention of Plaintiff was objectively unreasonable and that the circumstances surrounding the arrest and detention could not possibly justify a good faith belief in the validity of the arrest. The objectively unreasonable conduct of the Defendant violated Plaintiff's clearly established right to be free from a deprivation of her liberty without due process of law guaranteed by the Fourteenth Amendment . . . .

McFadden provides no authority for the proposition that a civil complaint should be evaluated in the technical manner he advocates. Cf. Fed. R. Civ. P. 1 ("These rules . . . . shall be construed to secure the just, speedy, and inexpensive determination of every action."); Fed. R. Civ. P. 8(a) ("A pleading . . . shall contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief . . . ."). Based upon her factual allegations taken as true and upon many of the phrases found in paragraph 21, including the asserting of lack of probable

cause to arrest, Moody has alleged a violation of the Fourth Amendment by McFadden. See Enlow v. Tishomingo County, Miss., 962 F.2d 501, 510 (5th Cir. 1992). As such, McFadden's argument on the running of limitations lacks merit.

Once the plaintiff has alleged a constitutional violation, the second step under Siegert is to determine whether the "allegations are sufficient to overcome a defendant's defense of qualified immunity." Siegert, 111 S. Ct. at 1793. McFadden argues that, under Elliott, 751 F.2d at 1482, Moody is required to allege facts with particularity that, if proved, will overcome McFadden's qualified immunity. McFadden argues that Moody has failed to do this.

This "heightened pleading standard" has been rejected in the context of a plaintiff suing a municipality under section 1983. Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 113 S. Ct. 1160, 1163 (1993). "[I]t is impossible to square the `heightened pleading standard' applied by the Fifth Circuit in this case with the liberal system of `notice pleading' set up by the Federal Rules. [Fed. R. Civ. P.] 8(a)(2) requires that a complaint include only `a short and plain statement of the claim showing that the pleader is entitled to relief.'" Id. The Court noted that Fed. R. Civ. P. 9(b) enumerates the actions requiring particularity in pleading and that this list does not include "complaints alleging municipal liability under § 1983." Id.

We need not decide whether the heightened pleading standard still applies as to individual defendants, for even if it still

applies, Moody has satisfied that standard. McFadden concedes that Moody has pleaded facts. He argues, however, that the facts require more specificity and detail, such as whether Moody had consumed alcohol that night, the distance between Moody, the officers, and others, and the actions of others present at the scene. "[G]overnment officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). The right of an individual to be free from an arrest made without probable cause was clearly established in 1990. See United States v. Maldonado, 735 F.2d 809, 815 (5th Cir. 1984).

In her complaint, Moody alleges facts that describe her actions and the situation around her at the time of her arrest. She asserts, based upon these alleged facts, that the arrest was objectively unreasonable and could not be justified by a "good faith belief in the validity of the arrest." These facts, if proved, would overcome McFadden's defense of qualified immunity. Cf. Duckett v. City of Cedar Park, Tex., 950 F.2d 272, 280 (5th Cir. 1992) (reversing denial of summary judgment based upon qualified immunity because, in light of the warrant that appeared facially valid, the officer's conduct was objectively reasonable). The district court's denial of McFadden's motion, accordingly, is AFFIRMED. We express no view as to the ultimate merits of this claim on remand.