IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10424
Conference Calendar

BARRY DWYANE JOHNSON,

Plaintiff-Appellant,

versus

ROY OSBORNE, Chief of Police,
City of Plainview Police Dep't,
ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:93-CV-170-C

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(November 16, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:*

Barry Dwyane Johnson appeals the summary judgment entered by the district court in favor of the defendants. On appeal from summary judgment, this Court examines the evidence in the light most favorable to the non-moving party. Salas v. Carpenter, 980 F.2d 299, 304 (5th Cir. 1992). This Court reviews a grant of summary judgment de novo. Abbott v. Equity Group, Inc., 2 F.3d 613, 618 (5th Cir. 1993), cert. denied, 114 S. Ct. 1219 (1994). Summary judgment is proper if the moving party establishes that

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* Local Rule 47.5 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. Campbell v. Sonat Offshore Drilling, Inc., 979 F.2d 1115, 1119 (5th Cir. 1992); Fed. R. Civ. P. 56(c). The party opposing a motion for summary judgment may not rely on mere allegations or denials set out in its pleadings, but must provide specific facts demonstrating that there is a genuine issue for trial. Campbell, 979 F.2d at 1119; Fed. R. Civ. P. 56(e). Johnson did not file any affidavits in opposition to the motion for summary judgment.

A plaintiff's verified complaint can be considered as summary judgment evidence to the extent that it comports with the requirements of Fed. R. Civ. P. 56(e). King v. Dogan, 31 F.3d 344, 346 (5th Cir. 1994). Although Johnson's original complaint was verified, the amended complaint was not. "An amended complaint supersedes the original complaint and renders it of no legal effect unless the amended complaint specifically refers to and adopts or incorporates by reference the earlier pleading." Id. Johnson's amended complaint does not specifically refer to and adopt or incorporate by reference his original complaint.

The defendants raised the issue of qualified immunity in their answer. Public safety officials are entitled to assert the defense of qualified immunity. Fraire v. City of Arlington, 957 F.2d 1268, 1273 (5th Cir.), cert. denied, 113 S. Ct. 462 (1992). Qualified immunity shields government officials performing discretionary functions from civil damages liability if their actions were objectively reasonable in light of clearly established constitutional law. Id.

A police officer is entitled to the protection of qualified immunity "if a reasonably competent law enforcement agent would not have known that his actions violated clearly established law." King v. Chide, 974 F.2d 653, 657 (5th Cir. 1992). Thus, even if an officer's conduct violated an individual's constitutional rights, the officer enjoys qualified immunity if the conduct was objectively reasonable. Fraire, 957 F.2d at 1273.

Evaluation of a defendant's right to qualified immunity necessitates a two-step inquiry. See King, 974 F.2d at 656-57. The first step is to determine whether the plaintiff has alleged the violation of a clearly established constitutional right. Siegert v. Gilley, 500 U.S. 226, 231, 111 S. Ct. 1789, 114 L. Ed. 2d 277 (1991); King, 974 F.2d at 656. The next step is to determine the reasonableness of the officer's behavior. See King, 974 F.2d at 657.

In considering the first prong of the qualified immunity standard, the officers' conduct is measured by "currently applicable constitutional standards." Rankin v. Klevenhagen, 5 F.3d 103, 106 (5th Cir. 1993). The next step of the qualified immunity inquiry is to consider the objective reasonableness of the officer's actions which must be measured with reference to the law as it existed at the time of the conduct in question. See King, 974 F.2d at 657.

The constitution requires that an arrest must be supported by a properly issued arrest warrant or probable cause. See Johnston v. City of Houston, 14 F.3d 1056, 1061 (5th Cir. 1994)

(warrantless arrest). An individual has a constitutionally protected right to be free from unlawful arrest and detention. Duckett v. City of Cedar Park, 950 F.2d 272, 278 (5th Cir. 1992) (warrantless arrest). "A police officer has probable cause to arrest if, at the time of the arrest, he had knowledge that would warrant a prudent person's belief that the person arrested had already committed or was committing a crime." Id.

Because Johnson has alleged that he was arrested without probable cause, Johnson's constitutional rights are implicated and the first prong of the qualified immunity inquiry is satisfied. The next step is to determine whether the officers' conduct was objectively reasonable at the time they arrested Johnson. At the time of the arrest, Officers May and Champion had reason to believe that Johnson was publicly intoxicated and that Johnson had been involved in an assault upon Margaret Parr and an 18-year-old male. Because the arrest of Johnson was objectively reasonable, May and Champion are entitled to qualified immunity as to the unlawful-arrest claim.

As a pretrial detainee, Johnson was protected by the Due Process Clause of the Fourteenth Amendment rather than by the Eighth Amendment's prohibition against cruel and unusual punishment. Morrow v. Harwell, 768 F.2d 619, 625-26 (5th Cir. 1985). "[P]retrial detainees are entitled to reasonable medical care unless the failure to supply it is reasonably related to a legitimate government objective." Fields v. City of South Houston, 922 F.2d 1183, 1191 (5th Cir. 1991) (quotation and citation omitted). Thus, Johnson's allegation that the

defendants failed to provide him with medical care is sufficient to state a constitutional claim.

The next inquiry "is whether the denial of medical care was objectively reasonable in light of the Fourteenth Amendment's guarantee of reasonable medical care and prohibition on punishment of pretrial detainees." Fields, 922 F.2d at 1191 (quotation and citation omitted). The unopposed summary judgment evidence was that Johnson's head injury did not appear to be severe, that Johnson was examined by several persons with some medical training, and that Johnson did not ask to see a physician. The defendants' failure to provide Johnson with additional medical care was reasonable. Because the individual defendants were qualifiedly immune from suit, the district court properly entered summary judgment in their favor.

The City of Plainview Police Department may be held liable for injuries under § 1983 only if official policy or governmental custom caused the deprivation of constitutional rights. Monell v. New York City Dep't of Social Services, 436 U.S. 658, 690-94, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978); Fraire, 957 F.2d at 1277. The first inquiry in any case alleging municipal liability under § 1983 is whether there is a direct causal link between a municipal policy or custom and the alleged constitutional deprivation. City of Canton v. Harris, 489 U.S. 378, 385, 109 S. Ct. 1197, 103 L. Ed. 2d 412 (1989). Johnson has not alleged or presented summary judgment evidence showing the existence of a municipal policy or custom which is causally connected to the alleged unlawful arrest and failure to provide reasonable medical

care. Therefore, the district court properly entered summary judgment in favor of the City of Plainview Police Department.

AFFIRMED.