

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40139

Summary Calendar

PATRICIA COLLEEN CARRINGTON,

Plaintiff-Appellee,

versus

CITY OF LUFKIN, ET AL.,

Defendants

JIMMY PORTER, City of Lufkin Police Officer,
and ROGER PARROTT, City of Lufkin Police Officer,

Defendants-Appellants.

Appeals from the United States District Court
for the Eastern District of Texas
(9:93-CV-68)

(August 31, 1994)

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Defendants Porter and Parrott appeal the denial of their motion to stay discovery and the denial of their motion to dismiss.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

We dismiss the appeal of the discovery order and affirm the denial of the motion to dismiss.

I.

Defendants argue that the district court erred in denying the motion to stay discovery prior to a final determination on qualified immunity. Generally, an order compelling discovery is interlocutory and not appealable under the final judgment rule. Gaines v. Davis, 928 F.2d 705, 706 (5th Cir. 1991). A defendant entitled to claim qualified immunity, however, is shielded from the burdens of broad-reaching discovery, allowing immediate appeal of discovery orders in qualified immunity cases that are either avoidable or overly broad. Id. at 706-07.

The procedure for taking an appeal from an appealable interlocutory order is precisely the same as that for taking an appeal from a final judgment. Kenyatta v. Moore, 744 F.2d 1179, 1186 (5th Cir. 1984), cert. denied, 471 U.S. 1066 (1985). A notice of appeal in a civil case must be filed with the clerk of the district court within 30 days after the entry of the judgment or order appealed from. Fed. R. App. P. 4(a). The district court denied Porter's motion to stay discovery and his request that the case not be assigned to a specific "Discovery Track" on July 19, 1993. The amended notice of appeal appealing that order was filed on April 7, 1994. Because the notice was not timely, this court lacks jurisdiction over this part of the appeal.

II.

Defendants argue that the district court erred in denying their motion to dismiss because the plaintiff's allegations do not meet the heightened pleading requirement for civil rights cases.

We do not have to decide whether the Supreme Court's opinion in Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 113 S. Ct. 1160 (1993), applies to a suit against an individual government official, because Carrington's complaint is adequate to meet the heightened pleading standard.

A police officer may arrest a person if he has probable cause to believe that person committed a crime. King v. Chide, 974 F.2d 653, 656-67 (5th Cir. 1992). The Fourth Amendment also requires that we examine not only whether probable cause existed, but also the reasonableness of the manner in which the seizure is conducted. Id. at 657. Even if an officer's determination of probable cause to arrest is objectively and legally reasonable, a warrant or exigent circumstances is required to enter the plaintiff's home to make a lawful arrest. See Payton v. New York, 445 U.S. 573, 589-90 (1980). The question, then, is whether a reasonable officer could have believed that exigent circumstances existed when the officers entered the plaintiff's home to make the arrest without a warrant. See Anderson v. Creighton, 483 U.S. 635, 641 (1987).

Carrington's complaint contained the following allegations. Carrington was at her home on September 8, 1992, and was upset because she had just been served with divorce papers. Officers Porter and Parrott came to Carrington's home without a warrant, "evidently at the request of" her spouse, and told Carrington that she must leave the house or that she would be arrested. Carrington showed the officers the divorce papers, which stated that a hearing had been scheduled for the purpose of determining whether she would

be required to leave the house. Officer Porter made some phone calls and then determined that Carrington was required to leave the house or be arrested. Carrington refused to leave her home and was promptly arrested by the officers. Nothing in Carrington's pleadings indicates that her husband was present, resided in the home, or gave valid consent to the officers' entry into Carrington's home. Carrington's allegations reflect that the officers arrested her without a warrant or probable cause, and that there were no existing exigent circumstances. Id. Carrington's allegations concerning the illegal arrest, if proved, show a violation of a clearly established constitutional right under the law in effect at the time of the arrest.

Carrington has also alleged that Officer Porter employed excessive force in the course of the arrest. Porter is entitled to qualified immunity if a reasonable police officer could conclude that Porter did not violate Carrington's right to be free from excessive force as that right was understood at the time of Carrington's arrest. Jackson v. City of Beaumont Police Dep't, 958 F.2d 616, 621 (5th Cir. 1992). At the time of the arrest, Johnson v. Morel, 876 F.2d 477 (5th Cir. 1989), was clearly established law about the use of excessive force by a police officer. This test required a showing of (1) a significant injury which (2) resulted directly and only from the use of force that was clearly excessive to the need and the excessiveness of which was (3) objectively unreasonable. Id. at 480.

Carrington's allegations can overcome a qualified immunity defense if proven. In her amended complaint, Carrington alleged that she and her son truthfully advised Porter that she was suffering from a serious pre-existing neck injury. Nevertheless, Porter handcuffed Carrington and dragged her to the police car. Porter lifted Carrington up from the ground by the handcuffs and intentionally dropped her on the ground when she refused to enter the automobile. Carrington was complaining of severe neck pain, but Porter continued to lift Carrington and to drop her intentionally. Porter also banged Carrington's head against the car. Carrington was unarmed and handcuffed and posed no threat to the arresting officers when Porter lifted her up by the handcuffs and dropped her to the ground. Carrington was transported to the police station despite her repeated requests for medical attention. An ambulance was finally called and Carrington was taken to the hospital where she remained for two days.

Carrington acknowledges that she resisted arrest. The allegations in her complaint, however, reflect that she was unarmed and not a physical threat to the officer. Carrington's specific factual allegations, if proved, demonstrate an objectively unreasonable use of force clearly excessive to the need which resulted in a significant injury.

AFFIRMED.