IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-60748

BOBBY GOFF, Administrator of the estate of Harold Goff, deceased,

Plaintiff-Appellee,

versus

THE CITY OF BOONEVILLE, ET AL.,

Defendants,

RODNEY WOOD, Individually and in his Official capacity and TIFTON "TIP" NORRIS, Individually and in his Official capacity,

Defendants-Appellants.

Appeal from the United States District Court
for the Northern District of Mississippi
(1:90-CV-243-D-D)

February 26, 1996

Before KING, STEWART, and PARKER, Circuit Judges.

PER CURIAM:*

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* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

Harold Goff died of heat stroke on August 20, 1990, in the custody of the Booneville police department. Goff's estate brought suit against the City of Booneville and various individuals, pursuant to 42 U.S.C. § 1983. Booneville police officers Rodney Wood and Tifton Norris appeal from a jury verdict awarding Goff's estate (the "Estate") $1,663,838 for Goff's funeral expenses, lost future earnings, and pain and suffering. We affirm in part, vacate in part, and remand.

Wood and Norris raise three issues on appeal--two issues relating to liability and one issue on damages. First, they challenge the sufficiency of the evidence to support the jury's verdict. Second, they contend that the district court abused its discretion by admitting into evidence Booneville's Police Officer's Manual (exhibit "P-10"). Finally, Wood and Norris argue that they are entitled to either a remittitur or a new trial on the issue of damages. We can address the two liability issues summarily. The damages issue requires a more thorough treatment.

Under the Due Process Clause of the Fourteenth Amendment, the State owes a duty to provide pretrial detainees with medical care and protection from harm during their confinement. Hare v. City of Corinth, No. 93-7192, slip op. at 1778 (5th Cir. Jan. 29, 1996). A state jail official may be held liable under the Due Process Clause if he had "subjective knowledge of a substantial risk of serious harm to a pretrial detainee but responded with deliberate indifference to that risk." Id. at 1776-79 (adopting this standard from Farmer v. Brennan, 114 S. Ct. 1970, 1984

(1994), which dealt specifically with the duty owed to a convicted inmate under the Eighth Amendment). The district court properly utilized this standard of liability in charging the jury.

As to the sufficiency of the evidence: After reviewing the record, we conclude that it contains sufficient evidence to support the jury verdict on liability. Although conflicting evidence was adduced at trial, the jury could conclude from the evidence presented that Wood and Norris knew that Goff was at serious risk and that they responded to that risk with deliberate indifference.[2]

As to the admission of P-10: We find that it was admitted solely as evidence that Wood and Norris subjectively knew that they were ignoring the risk to Goff's life. P-10 specified that police officers must take certain prisoners--those who are

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[2] Wood contends that he was entitled to qualified immunity as a matter of law. Analysis of this defense requires a three prong inquiry. "First, we determine whether the [Estate] has asserted a violation of a constitutional right at all. Second, we establish whether the law was clearly established at the time of [Wood's] conduct. Third, we evaluate the objective reasonableness of [Wood's] conduct as measured by reference to clearly established law." Brown v. Bryan County, 67 F.3d 1174, 1181 (5th Cir. 1995) (citations and quotation marks omitted), petition for cert. filed, 64 U.S.L.W. 3503 (U.S. Jan. 5, 1996) (No. 95-1100).

We find that all three prongs weigh against Wood: (1) The Estate properly asserted a violation of the Due Process Clause of the Fourteenth Amendment. Partridge v. Two Unknown Police Officers, 791 F.2d 1182, 1186 (5th Cir. 1986). (2) On August 20, 1990, the day that Goff died in custody, it was clearly established that Wood had a duty, at a minimum, not to be deliberately indifferent to the serious medical needs of a pretrial detainee. Id. at 1187. (3) The jury found that Wood's conduct was deliberately indifferent to Goff's serious medical needs. Under the circumstances, Wood is not entitled to qualified immunity as a matter of law.

unconscious, apparently ill, or unable to communicate for themselves--to the hospital rather than confining them in jail. We conclude that the district court did not abuse its discretion in admitting P-10 into evidence.

Regarding the damages issue: We have held that a jury verdict will not stand if it is so inordinately large as to be contrary to right reason or if it clearly exceeds the amount to which any reasonable person could believe that the claimant is entitled. Gough v. Natural Gas Pipeline Co., 996 F.2d 763, 767 & n.4 (5th Cir. 1993); Caldarera v. Eastern Airlines, Inc., 705 F.2d 778, 784 (5th Cir. 1983).

Where we determine that an award exceeds the limits of any reasonable recovery, we can either order a new trial on damages or we can allow plaintiffs the option of avoiding a new trial by agreeing to a remittitur of the excessive portion of the award. Osburn v. Anchor Labs., Inc., 825 F.2d 908, 919 (5th Cir. 1987), cert. denied, 485 U.S. 1009 (1988). Remittitur is calculated in accordance with the maximum recovery rule under which an award may be reduced only to "the maximum amount the jury could properly have awarded." Randall v. Chevron U.S.A., Inc., 13 F.3d 888, 901 (5th Cir.), cert. denied, 115 S. Ct. 498 (1994).

In this case, despite the general verdict, we can determine the amount that the jury awarded for each of the three categories of damages--funeral expenses, lost future earnings, and pain and suffering, by reference to the record. Wood and Norris acknowledge that the jury awarded the Estate $2,575 for funeral expenses, $161,263 for lost future earnings, and $1,500,000 for

pain and suffering. They contest the amount awarded for lost future earnings and pain and suffering.

In regard to the jury award for lost future earnings, Wood and Norris raise what amounts to a sufficiency-of-the-evidence argument. They contend that the testimony of the Estate's expert witness, Dr. Thompson, does not support a reasonable inference that the Estate was entitled to the amount that the jury awarded. Dr. Thompson testified that, if Goff had not been able to resume full-time employment but had continued to draw disability benefits, the present value of the economic loss to Goff's Estate would be $161,263. He based his calculations, in part, on Government studies that indicated that Goff "would have spent 30.16 percent of everything that he earned on things that would not have survived his death." The Supreme Court has made clear that a jury verdict cannot be based on "an expert opinion [that] is not supported by sufficient facts to validate it in the eyes of the law, or when indisputable record facts contradict or otherwise render the opinion unreasonable." Brook Group v. Brown & Williamson Tobacco, 113 S. Ct. 2578, 2598 (1993). The testimony of an expert must be supported by facts in evidence supporting his opinion; it "cannot be the basis of speculation or conjecture." Lewis v. Parish of Terrebonne, 894 F.2d 142, 146 (5th Cir. 1990).

After reviewing the record, we find that sufficient evidence was presented from which the jury could determine Goff's lost future earnings. Dr. Thompson's testimony, taken in conjunction

with the testimony of Goff's parents,[3] supports the amount awarded. Expressed differently, a jury award of $161,263 for lost future earnings is not so inordinately large on this record as to run contrary to right reason, and it does not clearly exceed the amount to which any reasonable person could believe the Estate is entitled.

However, after careful consideration, we believe that the award for pain and suffering is excessive. "We recognize that our reassessment of pain and suffering damages cannot be supported entirely by rational analysis, but is inherently subjective, involving experience and emotions as well as calculation." Randall, 13 F.3d at 901 (quoting Dixon v. International Harvester Co., 754 F.2d 573 (5th Cir. 1985)) (quotation marks and brackets omitted). In addition, we may take into account the rough guidance provided by awards affirmed by this court for similar injuries. Gough, 996 F.3d at 767. Three recent cases are helpful in this regard: (1) Wellborn v. Sears, Roebuck & Co., 970 F.2d 1420 (5th Cir. 1992); (2) Randall; and (3) Dixon. In Wellborn, we affirmed a $1,000,000 award to the estate of a fourteen year-old boy who was pinned beneath an automatic garage door and may have remained conscious for several

[3] Although Wood and Norris's expert testified that it was unreasonable to believe that Goff could have lived on 30.16 percent of his disability payments--in other words, approximately $200 a month, the Estate offered evidence that Goff's parents provided for some of his essential needs. Goff's mother, Eula Mae Goff, testified that she prepared breakfast and supper for him every day. Goff's father, Bobby Goff, testified that Goff ate breakfast and supper with his mother seven days a week and that she "did his laundry, and what have you."

hours before dying. Wellborn, 970 F.2d at 1423, 1428. In Randall, where the deceased was battered against an oil drilling platform for twenty-five minutes before drowning, we ordered remittitur to $500,000 from a $1,000,000 award for pain and suffering. Randall, 13 F.3d at 891-92, 901. In Dixon, where a sapling breached the cab of a tractor, castrated the plaintiff, speared him through abdomen, and pinned him against the roof for forty minutes, we ordered remittitur to $500,000 for pain and suffering from a total award of $2.8 million. Dixon, 754 F.2d at 578, 590.

In this case, the deceased was a mature adult rather than a child. Moreover, the record does not indicate that Goff was conscious during the entire four hours that he was in custody and dying. Plaintiff's witness Stewart Livingston testified that Goff was moaning for about an hour and a half. Finding that Goff was at most semi-conscious for no more than ninety minutes, we believe that the instant case is comparable to Randall and Dixon, and distinguishable from Wellborn.

Based on the evidence in the record and the rough guidance of recent awards for similar injuries, we conclude that the maximum amount a jury could properly award for Goff's pain and suffering is $500,000. Accordingly, we order a new trial on the issue of damages for pain and suffering unless the Estate will agree to a remittitur to this amount.

For the foregoing reasons, we AFFIRM the district court in all respects except that we VACATE the damage award for pain and suffering ($1,500,000) and REMAND with instructions to grant a

new trial on the issue of pain and suffering damages unless plaintiff accepts the remittitur we order today.