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FEATURED CASE:

Eighth Circuit Rules Third-Party Consent Doctrine Applies to Pet Euthanasia

Bulfin v. Rainwater, No. 23-2357 (8th Cir. June 17, 2024)

On December 2019, a family dog named Daisy bit a child, leading to a series of events that culminated in the dog's euthanasia by St. Louis County Animal Care & Control ("ACC"). The child's father signed forms authorizing euthanasia, but the mother sued ACC and its employees, claiming a Fourth Amendment violation. The Eighth Circuit affirmed summary judgment for the defendants, ruling that the third-party consent doctrine applies to both searches and seizures under the Fourth Amendment, allowing officials to reasonably rely on a co-owner's apparent authority to consent to pet euthanasia. The court emphasized individual assessment of each defendant's actions for objective reasonableness and reaffirmed that municipal liability claims require an underlying constitutional violation by an individual defendant. This case highlights the high standard for establishing clearly established law in qualified immunity cases, particularly in novel situations involving animal control and euthanasia.

Background: On December 26, 2019, Erin Bulfin's ("Bulfin") dog Daisy bit Bulfin's daughter in the face, requiring hospitalization. The following day, Bulfin reported the incident to St. Louis County Animal Care & Control ("ACC"), informing employee Rebecca Rainwater ("Rainwater") that her husband, Edward Nea ("Nea"), would bring Daisy to ACC. At ACC, Nea interacted with employee Renita Hawkins and signed intake forms authorizing transfer of custody, relinquishment of rights, and euthanasia. While the specifics of Nea's conversations with ACC staff are contested, it is undisputed that he signed all three authorizations. ACC staff euthanized Daisy that same day. When Bulfin came to ACC the next morning intending to take Daisy home for quarantine, she learned that Daisy had been euthanized.

Bulfin sued St. Louis County, ACC employees, and a contract veterinarian under 42 U.S.C. § 1983, alleging Fourth Amendment violations for unlawful seizure of her property (Daisy). She also brought state law claims and municipal liability claims against the county. The district court granted summary

judgment to the defendants on the federal claims and declined to exercise supplemental jurisdiction over the state law claims. Bulfin appealed the dismissal of her federal claims to the Eighth Circuit Court of Appeals.

Questions of Law:

1. Did the euthanasia of Daisy constitute an unreasonable seizure under the Fourth Amendment?
2. Are the individual defendants entitled to qualified immunity?
3. Can St. Louis County be held liable for municipal liability claims when no individual defendant violated constitutional rights?

Holdings:

1. The euthanasia of Daisy did not constitute an unreasonable seizure under the Fourth Amendment because the defendants reasonably relied on Nea's apparent authority to consent to euthanasia.
2. The individual defendants are entitled to qualified immunity because their actions did not violate Bulfin's clearly established constitutional rights.
3. St. Louis County cannot be held liable for municipal liability claims because no individual defendant violated Bulfin's constitutional rights.

Analysis: The court first addressed whether the euthanasia of Daisy constituted an unreasonable seizure under the Fourth Amendment. The court applied the third-party consent doctrine, which allows government actors to rely on the consent of one who possesses common authority over the property. This doctrine is well-established in Fourth Amendment jurisprudence, as seen in *United States v. Matlock*, 415 U.S. 164 (1974). The court rejected Bulfin's argument that this doctrine applies only to searches and not seizures, citing precedent from other circuits such as *United States v. Stabile*, 633 F.3d 219 (3d Cir. 2011) and *United States v. James*, 571 F.3d 707 (7th Cir. 2009), which have applied the doctrine to both searches and seizures.

The court emphasized that even when a third party lacks actual authority, officers can rely on apparent authority to consent, citing to *United States v. Clutter*, 674 F.3d 980 (8th Cir. 2012). Applying this principle, the court found that Nea, as a co-owner of Daisy, had at least apparent authority to consent to her euthanasia.

The court then examined each individual defendant's actions to determine if they were objectively reasonable in relying on Nea's consent. For Hawkins, the court found no evidence that she was involved in the decision to euthanize Daisy or had authority to do so. The court cited *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to emphasize that liability under § 1983 is individual and based on each officer's own misconduct.

For Rainwater, the court found it objectively reasonable for her to believe Nea authorized euthanasia based on the signed form and the county's Animal Control Code. The court referenced *Georgia v. Randolph*, 547 U.S. 103 (2006), to support the principle that officials need not take affirmative steps to find a potentially objecting co-owner before acting on received permission.

The court also addressed Bulfin's argument about disputed facts, particularly regarding Nea's understanding of the form he signed. The court found these disputes immaterial, focusing instead on the objective reasonableness of the defendants' actions. This approach aligns with the Supreme Court's guidance in *Graham v. Connor*, 490 U.S. 386 (1989), which emphasizes that Fourth Amendment reasonableness is judged from the perspective of a reasonable officer.

On the question of qualified immunity, the court applied the two-prong test from *Pearson v. Callahan*, 555 U.S. 223 (2009): whether a constitutional right was violated and whether that right was clearly established. The court concluded that even if there had been a violation, Bulfin failed to demonstrate that the right was clearly established, citing no precedent that would have put the defendants on notice that their actions were unconstitutional.

Finally, the court dismissed the municipal liability claims against St. Louis County, citing *Moore v. City of Desloge*, 647 F.3d 841 (8th Cir. 2011), which holds that municipal liability generally requires individual liability on an underlying substantive claim. Because no individual defendant violated Bulfin's rights, there could be no basis for municipal liability.

The court's analysis consistently emphasized the objective reasonableness standard and the importance of clearly established law in qualified immunity cases, reflecting the Supreme Court's guidance in cases like *Mullenix v. Luna*, 577 U.S. 7 (2015), which protects all but the plainly incompetent or those who knowingly violate the law.

Bulfin v. Rainwater

SHORT SUMMARIES:

4th Circuit – Public Records – First Amendment – Federal Jurisdiction

I may have said this before, but if not will say it now- Raleigh has a great legal department. I this case a media company sought various records from the city involving traffic accidents, etc. The company claimed that NC law required disclosure. The City defended on among other bases that the Drivers Privacy Protection Act precluded disclosure. The media moved its case to federal court asserting jurisdiction because of the DPPA. The City sought to dismiss as no diversity was sought and the only basis for the media's claim of entitlement arose from the state law. The court dismissed. The complaint did not and could not identify a federal question; rather, the court noted that there may be a federal question but it is "lurking in the background". Congratulations also to the Cities of Kannapolis and Salisbury who were also named in the suit.

Capital Broadcasting Systems v. City of Raleigh

4th Circuit – Signs – Standing

In this case Adams Outdoor Advertising, a frequent litigant in the sign challenge arena, took umbrage with Beaufort County, SC over its application of its sign ordinance to its business. The County sought to phase out billboards in its jurisdiction by adopting ordinances that prohibited repairs to existing billboards and construction of new billboards. Like many jurisdictions, the Supreme Court's decisions in this area had jeopardized the legal basis for Beaufort County's sign law and the county sought to amend it. While a proposal was pending Adams filed several applications for new signs and was cited for repairing some existing signs. Adams sued, but the District Court dismissed based on the Younger Doctrine as to the criminal charges regarding the

repairs and on the basis of standing as to the remaining claims. Under SC law, a local government can deny applications for land uses that will contravene proposed ordinances (under certain circumstances). The lower court concluded that Adams' challenges to the existing ordinance were moot since the county had adopted a new sign ordinance and its challenges to the new law were made despite Adams' inability to allege injury based on the new ordinance. The lower court decision was upheld on appeal (except the panel reversed on the dismissal with prejudice concluding dismissals for standing should be without prejudice) in another nice decision by Judge Wilkinson who again pointed out that land use issues are uniquely local. Beaufort County used Scott Bergthold draft and to defend its ordinance. Scott has been a longtime supporter of IMLA and presenter on sign law issues. Congratulations to Scott and the County.

Adams Outdoor Advertising v. Beaufort County

4th Circuit – Excessive Force –Qualified Immunity- Discovery

Life is full of surprises. This case apparently involved one. A police officer receives a call about a "suspicious man with a gun" in a neighborhood near the police barracks. The officer responds and pulls into a driveway next to the location described in the call. He sees a man who points a gun at him and fires "at least 11 rounds" at him and apparently strikes him once. The man falls to his knees and the officer notices that he is holding a knife, when the man didn't drop the knife, the officer fired again wounding him several more times; wounds which proved mortal. Unbeknownst to the officer until after, the man was holding a replica Sig Sauer pistol, not a real gun. The estate sued and the lower court concluded that the officer had a reasonable basis to use the force employed under all the circumstances. The panel majority disagreed and remanded the case for the court to conduct discovery to further consider whether additional evidence might lead to a different conclusion. The dissent noted that regardless of additional discovery the facts material to the decision supported a conclusion that the officer did not use excessive force under all the circumstances.

Boyle v. Azzari

6th Circuit – Color of Law – State Action

In this case a dispute arose over claims made on social media about a city commissioner who took great umbrage over the content of those claims. Having had a few beers and having stewed over the implications of the claims on his private business, the commissioner called the poster's mother at 12:30AM allegedly because he did not have the poster's contact information. The parties disputed the content of the call. The mother alleged the commissioner in a profanity laced call threatened that somebody would be hurt if the son did not quickly remove the post. The commissioner on the other hand disputed his use of profanity or making threats, but the court took the poster's version as true in deciding the motion. The poster sued asserting that the then commissioner used his authority to threaten the poster's First Amendment rights and thereby retaliated against him. The commissioner sought and received a defense by the city's insurer. While the suit asserted that the commissioner acted under his authority as a commissioner, the commissioner testified that he acted as a private citizen when he sought to get the post removed. The lower court dismissed the suit and the panel affirmed. The panel's analysis is a nice discussion of "state action" and "under color of law". Just because a person holds office or works for the government, the person does not always act in an

official capacity and the question becomes one of the extent of authority invested in the person. The panel was also confronted with the argument that because the commissioner sought protection of the city's insurance, that he cold not thereafter claim to have acted in a private capacity. The court recognized that insurance is based on the complaint, not the facts. Thus, the court found no problem with the contradictory situation of claiming to have acted privately but being defending as a public official for activities occurring during employment.

Mackey v. Rising

7th Circuit – Probable Cause – Malicious Prosecution – False Arrest

In a really nice opinion by Judge Rovner, the court discusses probable cause in the context of a suit for false arrest and malicious prosecution from later developed facts. The court notes that probable cause means: "An officer has probable cause when, 'at the time of the arrest, the facts and circumstances within the [officer's] knowledge 'are sufficient to warrant a prudent person, or one of reason[1]able caution, in believing, in the circumstances shown, that the suspect has committed ... an offense.'" Madero v. McGuin[1]ness, 97 F.4th 516, 522 (7th Cir. 2024) (quoting Lawson v. Veruchi, 637 F.3d 699, 703 (7th Cir. 2011)). "This is a 'common-sense inquiry requiring only a probability of criminal activity,"' not certainty that a crime has occurred. Braun v. Vill. of Palatine, 56 F.4th 542, 548 (7th Cir. 2022) (quoting Leaver v. Shortess, 844 F.3d 665, 669 (7th Cir. 2016)); Moorer, 92 F.4th at 722." While these are 7th Circuit precedent, the law will likely be the same around the country. In this case, the Plaintiff was arrested for having a gun in possession and drug possession. In his complaint the Plaintiff asserted that conversations on body worn camera from the incident confirm that he did not have a gun. The city introduced the video in its response and the court relying on the video concluded that there was sufficient probable cause to justify the arrest and filing the charges against the Plaintiff. In concluding that it was immaterial whether the Plaintiff actually had a gun, the panel affirmed the District Court's conclusion that the officers had sufficient probable cause to arrest and pursue charges against the Plaintiff. As always, the City of Chicago's legal team did a masterful job of defending the City and the officers.

Esco v. City of Chicago

9th Circuit – Covid – Religious Accommodation – First Amendment

Applying strict scrutiny to the requirement by the city that all firefighter in the employ of the city be vaccinated against Covid (during the pandemic), the panel concluded that the city did not reasonably accommodate the religious objection of firefighters who were dismissed for failing to get vaccinated. A dissent reasoned that rational basis should have applied. The major hurdle for the city seemed to be that it continued to work with other fire departments that did not require vaccination of their employees and used the employees of those departments to fill the gaps created by the dismissed firefighters. More difficult to swallow was the panel's reasoning that the city could have adopted less restrictive means to protect health and safety by requiring masks and taking temperatures, etc. Certainly, easy to conclude thus now, but at the time of the pandemic, maybe not so easy to determine what policies were necessary for health and safety. But it's the 9th Circuit and as best I can tell those judges know better than any elected official how best to run a government.

Bacon v. Woodward

10th Circuit – Sheriffs – Color of Law – Policymaker – *Monell*

Not too long ago, we reported on a case of a city commissioner where the court properly considered whether the commissioner's private actions in threatening a poster on social media amounted to liability for the city. Discussing the "color of law" theory of imposing liability, that court concluded that a city commissioner can act in a private capacity while holding public office and not implicate liability for the city. In this case, the lower court dismissed claims against the county based on a Sheriff's conduct analyzing the conduct as against the policy of the department and therefor the county. The panel on appeal reversed. The facts are appalling and reaffirm concerns about whether counties should be hamstrung with liability for a person whose election makes them policymakers for a county but who cannot be controlled by the county due to constitutional authority of the office. In this case the Sheriff took a developmentally disabled prisoner form one jail to another. The sheriff had the inmate change into civilian clothing despite contrary policy and drove her to his home in his private car. While there he offered her $60 for sex, but when she refused he sexually assaulted her keeping his firearm in full view and then took her to the other jail. Fortunately, a deputy noticed something awry and the District Attorney investigated and eventually prosecuted the Sheriff. The guardian ad litem sued on behalf of the victim and a jury awarded $8.5 million against the Sheriff in both his individual and official capacity. The lower court dismissed the official capacity claims as not surviving the motion to dismiss the county. The panel reversed saying: "The central question before us is whether a final policymaker's assault of a county prisoner in the course of carrying out official duties for which he was charged with setting policy subjects the municipal defendants to liability. We answer yes."

Whitson v. County of Sedgwick