

May 10, 2021

Christopher M. Wolpert
Clerk of Court

PUBLISH

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

JANELLE BRIDGES, as special
administrator of the estate of Shane
Bridges, deceased,

Plaintiff - Appellant,

v.

No. 20-5037

KYLE WILSON, in his individual and
official capacity; BOARD OF COUNTY
COMMISSIONERS OF MAYES
COUNTY, OKLAHOMA; MIKE REED,
in his individual and official capacity,

Defendants - Appellees.

Appeal from the United States District Court
for the Northern District of Oklahoma
(D.C. No. 4:15-CV-00126-GKF-JFJ)

Thomas Mortensen, Mortensen & Associates, LLC, Tulsa, Oklahoma, for Appellant.

Jordan L. Miller (Stephen L. Geris and Michael L. Carr with him on the briefs), Collins
Zorn & Wagner, P.C., Oklahoma City, Oklahoma, for Appellees.

Before **HARTZ, KELLY, and PHILLIPS**, Circuit Judges.

HARTZ, Circuit Judge.

Early on January 1, 2014, Deputy Kyle Wilson of the Mayes County Sheriff's Office drove to the home of Shane Bridges in response to a call that Mr. Bridges was intoxicated and possibly suicidal. Within seconds of his arrival at the home, he had fired 13 rounds from his semiautomatic handgun at Mr. Bridges, hitting him twice and killing him. The shooting led to claims by Plaintiff Janelle Bridges, special administrator of Mr. Bridges's estate, against Deputy Wilson and the Board of County Commissioners of Mayes County. She sued Wilson under 42 U.S.C. § 1983 for allegedly violating Mr. Bridges's constitutional rights by using unreasonable force, and sued the Board under the Oklahoma Governmental Tort Claims Act (OGTCA), Okla. Stat. tit. 51, §§ 151–72, based on alleged negligence by Deputy Wilson.

The district court granted the Board summary judgment on the ground that the OGTCA did not waive the Board's immunity from suit because Wilson was acting "as a protector, not as a law enforcer." *Aplt. App.*, Vol. II at 506 (brackets and internal quotation marks omitted). The § 1983 claim against Wilson was then tried to a jury, which ruled in Wilson's favor. At trial Plaintiff contended that when Wilson drove up, Mr. Bridges had briefly opened the door to his home to look outside and had never fired a weapon, but that Wilson began firing at him after he had closed the door and gone inside, where he was hit by shots that pierced the door. Wilson's account was that Mr. Bridges began firing at him from the porch of the home after he had parked his vehicle, and that Wilson fired only in response to the shots from Mr. Bridges, who then retreated into his home and died.

On appeal Plaintiff does not dispute the jury verdict but challenges the summary judgment entered in favor of the Board. The original briefs of the parties focused on the propriety of granting immunity to the Board. At oral argument, however, we raised the issue of whether liability of the Board on the merits would be incompatible with the jury verdict; and the parties submitted supplemental briefing on the matter.

We have jurisdiction under 28 U.S.C. § 1291. After reviewing the briefs and the record, we affirm the summary judgment in favor of the Board on the ground suggested at oral argument. We do not address the immunity issue. We recognize that there may be cases where a negligence claim under the OGTCA can be sustained while a civil-rights claim under § 1983 could not be sustained on the same facts, and vice versa. But on the evidence and theories of liability in this case, we hold that a negligence claim under the OGTCA would be incompatible with the jury verdict. As explained below, Plaintiff could prevail on the merits on each claim if, and only if, Mr. Bridges did not initiate the gun battle by firing at Deputy Wilson from his porch. By rendering a verdict in Wilson's favor, the jury must have found that Mr. Bridges fired first. We are therefore highly confident that if the district court had not granted summary judgment on the OGTCA claim and it had gone to the jury, the jury would have found in favor of the Board. In other words, even if the Board was not entitled to immunity, any error in that ruling was harmless.

I. BACKGROUND

A. Factual Background

On the evening of December 31, 2013, Mr. Bridges, Mrs. Bridges, and their children did nothing special at their home except they engaged in their traditional celebration of the New Year by firing guns at midnight. Shortly thereafter, Mr. Bridges answered a call from Jennifer Crook, Mrs. Bridges's sister. After that conversation Ms. Crook called the Mayes County Sheriff's Office.¹ Deputy Wilson then heard a call from dispatch reporting that there was an intoxicated, possibly suicidal person named Shane Bridges at the Bridges's address. Wilson had met Mr. Bridges several times before and headed to Mr. Bridges's house to "talk to him and figure out what was going on." Dist. Ct. Doc. 294 at 378.

After a half-hour drive, Wilson arrived at the Bridges's house at 1:25 a.m. and got out of his patrol car. What happened next has been disputed by the parties. Wilson gave the following account at trial: Mr. Bridges stepped onto the porch and fired a gun into the night. Wilson then yelled, "Shane," and Mr. Bridges turned toward him and fired. *Id.* at 385. Wilson returned fire, and the two exchanged shots until Mr. Bridges retreated into the house; Wilson thought Mr. Bridges had fired a total of four rounds. Plaintiff's trial witnesses, in contrast, said that Mr. Bridges never fired a shot at Wilson. According to them, when Mr. Bridges heard Wilson's

¹ Ms. Crook, who did not testify at trial, testified at her deposition that she placed this call to the Sheriff because her conversation with Mr. Bridges had gotten heated and Mr. Bridges had threatened to kill himself and harm Ms. Crook's daughter, who lived with Mr. and Mrs. Bridges.

car arrive outside the house, he opened the door, looked out, and closed the door a second later, at which time Wilson opened fire. It is undisputed that Wilson fired 13 times, hit Mr. Bridges twice, and killed him.

After the shooting a handgun with three spent casings and three live rounds was found on the floor near Mr. Bridges's body. (Mrs. Bridges testified that he had fired the gun less than two hours earlier to celebrate the New Year.) Particles consistent with gunpowder residue were found on Mr. Bridges's hands. Wilson's expert at trial testified that Mr. Bridges's wounds indicated that he was shot while his arm was outstretched toward the oncoming bullet, as if it had been pointing at Wilson's gun.

B. Procedural History

The operative complaint in this case is Plaintiff's second amended complaint (the Complaint) filed in 2015 in the United States District Court for the Northern District of Oklahoma.² The claims relevant to this appeal are a claim against Deputy Wilson under 42 U.S.C. § 1983 for unreasonably using deadly force against Mr. Bridges in violation of his Fourth Amendment rights, and a claim against the Board under the OGTCA based on Wilson's alleged negligence.³

² The Complaint was mistakenly titled Plaintiff's "Third Amended Complaint."

³ The Complaint names Mrs. Bridges as plaintiff in three capacities—individually, as Mr. Bridges's surviving spouse, and as mother and next friend of her six children. But because she had been appointed special administrator of Mr. Bridges's estate, the district court permitted her to be substituted as plaintiff in that capacity. In addition, the court permitted Plaintiff to correct the Complaint by substituting the Board for the named defendant "Mayes County." *Aplt. App.*, Vol. I at 29. The Complaint also

The Board moved for summary judgment, arguing that it was immune from suit under Okla. Stat. tit. 51, § 155(6), which retains immunity for political subdivisions with respect to claims based on the “failure to provide, or the method of providing, police [or] law enforcement . . . protection.” In response to the Board’s summary-judgment motion, Plaintiff described Deputy Wilson’s alleged negligence as follows:

The Plaintiff’s [sic] contend that when Shane Bridges was shot and killed, he was unarmed, inside of his residence, and the front door to the residence was closed. The undisputed evidence . . . will show that Defendant Wilson emptied every bullet of his firearm into the front of Plaintiff’s residence killing the Decedent and coming within mere inches of killing a nine-year old child asleep on the living room couch. Plaintiffs contend that the indiscriminate and blind shooting into a residence, with the hopes of hitting the occupant inside, is unreasonable and unlawful.

Aplt. App., Vol. I at 285 (emphasis and original ellipsis omitted). Concluding that “Deputy Wilson, responding to the dispatch call, stood vis-à-vis Bridges as a protector, not as a law enforcer,” the district court held that the Board was immune from suit and granted the summary-judgment motion. Aplt. App., Vol. II at 506 (internal quotation marks omitted).

The excessive-force claim against Deputy Wilson proceeded to a jury trial. The trial presented no subtle issues of reasonableness to the jury. There was essentially only one issue to be resolved and that was the choice between two

named additional defendants—Deputy Wilson in his official capacity and Mayes County Sheriff Mike Reed in his individual and official capacities—but the court granted summary judgment against Plaintiff on those claims and they are not relevant to this appeal.

diametrically opposed accounts of events: did Deputy Wilson fire his gun in response to shots being fired by Mr. Bridges, or did he fire his gun without provocation while Mr. Bridges, who had never fired at him, was inside his home with the door closed, presenting no danger.

This dichotomy is reflected in the opening statements by counsel at trial. Plaintiff's attorney began by saying that the parties would not be arguing about how to apply the law and that no one would dispute liability if the jury found the facts alleged by Plaintiff:

[This is] a wrongful death matter. There was a law-enforcement officer that had used his firearm on an individual and that individual is now dead. What's not going to be argued in this case is whether or not what the law is. It's going to be particularly about what facts are present because there's a great dispute or disagreement about what those facts are. But I guess in saying that, regardless how you may feel about law enforcement, there is no dispute about if there was a certain action taken by a law-enforcement officer in this particular case, nobody's going to disagree that that would be unlawful.

Dist. Ct. Doc. 293 at 4–5. Counsel then went through undisputed facts before turning to where the parties differ:

[T]his is where the stories start to—start to stray. And when I say “stray,” I mean significantly. The deputy parks. He gets out of his vehicle. And by all accounts, within seconds he takes his firearm out—he has 13 shells inside of his gun—and he unloads all 13 into the side of the house.

. . . .

There is going to be a difference of opinion—I'll say that—about what happened at that particular point. I believe the defendant will present testimony in the form of, well, it was Shane Bridges that came out onto the porch, Shane Bridges had a firearm, and Shane Bridges started firing at Kyle Wilson, and only then did Kyle Wilson unholster his gun and return fire, all 13, into the side of the house. It was then, as alleged, that Shane Bridges went back into the house and shortly after

he got into the house he didn't make it much longer and he died shortly thereafter.

Id. at 8–9. But, he continued, there was “a great deal of evidence to suggest” the following contrary account:

[A]t the time that the gunshots were fired by Officer Wilson, Shane Bridges was not on the front porch, Shane Bridges did not have a firearm, and Shane Bridges was inside of his house.

What the evidence will show you was, he opened the door to see who was driving up and he closed the door. . . . He has to slam it so that the insulation stays shut so that it could fully shut. And it is then right around that time that there were 13 shells that were fired from Officer Wilson's gun into that house.

. . . [I]t appears as though the officer was trying to hit somebody behind the door because there was a pattern [of gunshots] from four or five feet outside of the door frame on either side and four in the door.

. . . [W]e have undisputable proof [Shane Bridges] was inside of that house and the door was closed at the time the shots were taken.

Id. at 9–10.

The opening statement of Wilson's attorney presented a contrasting theory of what happened after Wilson arrived at Mr. Bridges's house:

[Wilson] sees movement and he turns, and he sees Shane Bridges come onto the porch with a revolver and “bang,” fires off a round into the darkness.

Deputy Wilson is confused and he yells out to this person he knows, he says, “Shane.” At that time Shane turns and aims the gun right at Deputy Wilson, pulls the trigger. Deputy Wilson had nothing that he could do other than return fire. So he draws his weapon and an exchange of gunfire is had. Deputy Wilson fires 13 rounds at Shane Bridges and the entire time he's on the front porch pointing his gun firing his gun at the deputy, “bam.” The deputy empties what rounds he has in his gun, 13 rounds, the slide locks, and Shane Bridges goes back into the house.

Id. at 16–17.

At no time during the district-court litigation did Plaintiff suggest that Deputy Wilson could be liable even if Mr. Bridges fired first, nor did Deputy Wilson suggest that he would not be liable even if Mr. Bridges was shot while within his home.

After hearing these arguments and the evidence presented at trial, the jury found Wilson not liable. The district court entered judgment in favor of Wilson, stating that “the jury found in favor of defendant on [the excessive-force] claim, and therefore concluded that the force used by defendant Wilson was reasonable.” Dist. Ct. Doc. 269 at 1.

Plaintiff appealed only the summary judgment granted to the Board. The parties’ briefing focused on whether the district court had properly applied the exception in § 155(6) to the general waiver of immunity in the OGTCA. But at oral argument we asked whether the jury’s determination that Deputy Wilson had acted reasonably when he shot Mr. Bridges meant that he had not been negligent under the OGTCA. After oral argument we directed the parties to file supplemental briefing on this question.

II. DISCUSSION

Plaintiff asserted her negligence claim against the Board under the OGTCA, which generally waives the immunity of governmental entities for tort liability arising from the negligence of their employees. *See* Okla. Stat. tit. 51, § 153 (“The state or a political subdivision shall be liable for loss resulting from . . . the torts of its employees acting within the scope of their employment”); *see also Smith v.*

City of Stillwater, 328 P.3d 1192, 1198 (Okla. 2014). The district court, however, granted summary judgment to the Board under Okla. Stat. tit. 51, § 155(6), which contains an exception to the OGTCA’s waiver of immunity for claims based on “the failure to provide, or the method of providing, police [or] law enforcement . . . protection.” On appeal the parties dispute whether Deputy Wilson was engaged in providing protection on January 1, 2014. But we see no need to resolve this issue because, in light of the jury’s verdict in favor of Wilson, any error by the district court was harmless.

Under Fed. R. Civ. P. 61, “the court must disregard all errors and defects that do not affect any party’s substantial rights.” *See* 12 Moore’s Federal Practice - Civil § 61.02 at 61-4 (2021) (“[E]ven if the trial court is mistaken, it will not be reversed unless its ruling results in substantial prejudice, or had a substantial effect on the outcome of the case.”). “An error affecting a substantial right of a party is an error which had a substantial influence or which leaves one in grave doubt as to whether it had such an effect on the outcome.” *Hill v. J.B. Hunt Transp., Inc.*, 815 F.3d 651, 659 (10th Cir. 2016) (internal quotation marks omitted); *see Hinds v. Gen. Motors Corp.*, 988 F.2d 1039, 1049 (10th Cir. 1993) (error “can only be prejudicial if it can be reasonably concluded that . . . without such [error], there would have been a contrary result”). “In considering whether an error was harmless, the court necessarily must look to the circumstances of the particular case The entire record must be considered and the probable effect of the error determined in the light of all the evidence.” 11 Charles Alan Wright & Arthur R. Miller, *Federal Practice*

and Procedure § 2883 at 617 (3d ed. 2012). Harmless-error doctrine is not technical. The appellate court exercises common sense, trying to make a “realistic assessment” of the “practical likelihood” that the result in the district court would have been different had the error not occurred. *Wills v. Brown Univ.*, 184 F.3d 20, 30 (1st Cir. 1999).

Our opinion in *Abbasid, Inc. v. First Nat. Bank of Santa Fe*, 666 F.3d 691 (10th Cir. 2012), demonstrates the applicability of the harmless-error rule in a procedural context similar to that before us. The plaintiff’s ex-wife allegedly deposited checks generated by the plaintiff’s business into her cousin’s personal bank account (and used money from that account for personal expenses) without authorization. *See id.* at 693. The plaintiff sued the bank on claims of negligence and conversion for accepting the deposits. *See id.* at 694. Before trial the district court granted summary judgment to the bank on the plaintiff’s negligence claim, ruling that the claim was preempted by the Uniform Commercial Code. *See id.* at 696. The parties tried the conversion claim to a jury, which found that the bank did not convert any of the plaintiff’s checks. *See id.* at 694. The plaintiff then appealed the earlier grant of summary judgment to the bank on the negligence claim. *See id.* at 696. We ruled that we had no need to resolve whether the grant of summary judgment was proper because, given the jury verdict, any error was harmless. *See id.* at 696–97. We explained:

[W]e need not resolve whether a preverdict dismissal of a claim was proper if the jury’s verdict on the remaining claims shows that any error in failing to present the dismissed claim to the jury was harmless. . . .

The jury found that the Bank had not converted any checks, meaning that it found that there were no checks that satisfied all three elements of the conversion claim. But [the plaintiff's] negligence claim related only to checks that satisfied those three elements. . . . Because the jury found that no such checks existed, the negligence claim would necessarily fail. Thus, any error in dismissing the negligence claim turned out to be harmless.

Id.; see also *Eisenhour v. Weber Cty.*, 897 F.3d 1272, 1279 (10th Cir. 2018) (any district-court error in dismissing certain claims was harmless because “[n]o plausible view could reconcile [the jury’s] finding [at trial] with a finding” that the previously dismissed claims were meritorious).

The *Abbasid* approach resolves this case. “No plausible view could reconcile” the jury’s finding that Wilson did not employ excessive force with findings necessary to support Plaintiff’s claim under the OGTCA. *Eisenhour*, 897 F.3d at 1279.

Plaintiff points out that the Oklahoma Supreme Court has declared that “the ultimate inquiries” in Fourth Amendment excessive-force claims against law-enforcement officers and Oklahoma state-law claims for negligent use of excessive force by law-enforcement officers can “differ.” *Morales v. City of Oklahoma City ex rel.*

Oklahoma City Police Dep’t, 230 P.3d 869, 880 n.47 (Okla. 2010). This potential difference arises because the Fourth Amendment test, unlike the state-law negligence test, asks the court to “balance the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion.” *Id.* (internal quotation marks omitted). But such nuances are totally irrelevant here. Plaintiff’s claims against Wilson and the Board turn solely on a dispositive factual question: did Mr. Bridges initiate the

gunfight or did Deputy Wilson shoot Mr. Bridges without any provocation? And the jury answered the question in favor of Wilson.

Plaintiff argues that “without the benefit of any factual findings derived through the use of special jury interrogatories,” Aplt. Supp. Br. at 5 (emphasis omitted), the jury’s general verdict does not resolve all the factual questions necessary to apply *Abbasid* or *Eisenhour*. But she fails to identify any factual issue that could have made a difference in the state-law claim. Her supplemental brief on appeal does not suggest any theory of liability other than that Deputy Wilson shot Mr. Bridges without provocation.⁴ We therefore must conclude that even if the summary judgment was ill-advised (a matter we see no need to investigate), any error was harmless.

III. CONCLUSION

We **AFFIRM** the judgment of the district court.

⁴ Plaintiff also argues that we must resolve this case on immunity grounds because that was the issue presented in the parties’ initial round of briefing and the Board has waived any harmless-error defense. But “we have discretion to affirm a summary judgment on any ground adequately supported by the record, so long as the parties have had a fair opportunity to address that ground.” *Hasan v. AIG Prop. Cas. Co.*, 935 F.3d 1092, 1099 (10th Cir. 2019) (brackets and internal quotation marks omitted). Because we ordered supplemental briefing from the parties, allowing them to show that there were unresolved relevant factual issues and to explain any unfairness in resolving this appeal on harmless-error grounds, we see no obstacle to deciding this case on such grounds.