[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-14165
Non-Argument Calendar

D.C. Docket No. 2:17-cv-00112-RSB-BWC

ROXANNE KING,
STACY GRADY,
Individually and as Next of Friend of her Three Minor Children,

Plaintiffs-Appellants,

versus

PARKER MARCY,
DAVID HASSLER,
OFFICER COOPER,
GARRETT WRIGHT,
D. J. WALKER, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Georgia

(April 20, 2020)

Before WILLIAM PRYOR, JILL PRYOR, and LUCK, Circuit Judges.

PER CURIAM:

Roxanne King and Stacy Grady, individually and on behalf of her three minor children, appeal the district court's summary judgment for fifteen Glynn County police officers on King and Grady's claim that the officers violated their Fourth Amendment rights.[1] King and Grady contend that the district court erred in (1) finding they did not plead a Fourth Amendment warrantless-search claim under 42 U.S.C. section 1983, and (2) concluding there was no evidence creating an issue of fact that the police officers caused the Fourth Amendment violations King and Grady actually pleaded. We affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY[2]

On December 12, 2015, an armed robbery occurred at a convenience store in Brunswick, Georgia. Officer Parker Marcy, the primary investigator on the case, viewed surveillance footage from the armed robbery and identified Neal Cohen as the primary suspect. The clerk working at the convenience store on the night of the robbery also identified Cohen as the person who robbed him. Three days after the

[1] The officers were Parker Marcy, David Hassler, Hershell Garrett Wright, D.J. Walker, David Haney, Robert Corey Sasser, Ronnie Cooper, Butler (King and Grady were unable to identify Butler's first name), Jeremy Stagner, Timothy Hollingsworth, Cameron Arnold, Richard Leska, Clayton Palmer, Chris Lowther, and Resden Talbert.

[2] We view the "facts and draw all reasonable inferences in the light most favorable to the nonmoving party," King and Grady. Sconiers v. Lockhart, 946 F.3d 1256, 1262 (11th Cir. 2020).

robbery, police officers arrested Cohen at an apartment complex that was a "two-minute walk away" from King's home. Following the arrest, two officers interviewed Cohen at the police station. Officer Marcy, who was listening to the interview remotely from his desk, immediately began drafting an application for a search warrant after Cohen stated that he lived at "237 Cornwall Street with Roxanne King." The application listed items law enforcement believed would be in King's home, including the handgun used in the robbery. The police department's computer system showed that multiple known or suspected residents of the home had "alert codes . . . for being very antipolice." As a result, Officer Marcy also requested a "no-knock" provision in the warrant application and determined that he would need a SWAT team to execute the warrant. Once the application was completed, Officer Marcy drove to the home of the magistrate on duty that day, and the magistrate signed the warrant. Officer Marcy then began driving to King's home and, while en route, called other officers to alert them that the magistrate had signed the warrant and that the search could proceed.

When the SWAT team entered the home, King was in her bedroom, Grady's oldest daughter was walking from King's bedroom to the bathroom, and Grady's son and younger daughter were in the bathroom taking a bath. Three things then simultaneously occurred.

First, an unidentified officer entered King's bedroom with his gun drawn and demanded that King lay on her stomach and put her hands behind her back. King complied and the officer handcuffed her. When King complained that the handcuffs were too tight, the officer told her to "shut up." The officer escorted King outside and, after a few minutes, placed her in the back seat of a police cruiser.

Second, a different officer followed Grady's oldest daughter into a room. That officer instructed the oldest daughter to sit on a couch in the room and, shortly after, ordered her to stand up and put her hands behind her back. The officer handcuffed the oldest daughter and escorted her out of the home. The officer ultimately removed the handcuffs before placing her in the back seat of the same police cruiser as King.

Third, a female officer named Stacey[3] went to the bathroom, helped Grady's two other children out of the bathtub, and escorted them outside. At her deposition, King claimed that the two children were not wearing clothes when they were ushered out of the home and that they were standing on the porch for approximately ten or fifteen minutes before one of the officers covered them with a blanket. An officer eventually removed King's handcuffs and let her go inside the home to get clothes for the children.

Following the search, King and Grady sued fifteen police officers, alleging that they violated section 1983 by depriving King, Grady, and Grady's children of

[3] None of the officers that are a party to this action are female or named Stacey.

their rights under the Fourth, Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and that the officers' conduct constituted assault, battery, and willful infliction of extreme emotional distress under Georgia law.[4] At the conclusion of discovery, the officers moved for summary judgment.

In their motion, the officers first noted that King and Grady's complaint was unclear because it alleged only generally that their Fourth Amendment rights were violated. Based on the factual allegations in the complaint, King and Grady alleged that the warrant was facially invalid, the detentions were unlawful, and the officers used excessive force. The officers argued that, even if King and Grady's Fourth Amendment rights were violated, there was no evidence that they caused the violation. The officers alternatively argued that, even if one of the Fourth Amendment claims had some merit, they were entitled to qualified and official immunity. In response to the summary judgment motion, King and Grady suggested, for the first time, that their Fourth Amendment claim was based on a warrantless search. They contended that summary judgment was inappropriate because there was evidence that the officers conducted the search before the magistrate signed the warrant. The district court granted the officers' motion for

[4] The district court granted summary judgment against King and Grady on their Fifth, Sixth, and Fourteenth Amendment claims because the complaint did "not contain factual allegations in support thereof" and because those claims failed as a matter of law. King and Grady do not challenge this decision on appeal.

summary judgment because (1) King and Grady never pleaded a warrantless-search claim, (2) they could not prove that any of the officers caused the purported the alleged Fourth Amendment violations, and (3) the officers were entitled to official immunity under Georgia law. King and Grady appeal the summary judgment.

STANDARD OF REVIEW

We review an order granting summary judgment de novo. Vinyard v. Wilson, 311 F.3d 1340, 1346 n.7 (11th Cir. 2002). Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

DISCUSSION

On appeal, King and Grady contend that the district court erred by finding they did not plead a warrantless-search claim in their complaint and by concluding there was no evidence creating an issue of fact that the defendant officers named in the complaint caused King and Grady's Fourth Amendment injuries.[5] Their arguments lack merit.

The Warrantless-Search Claim

King and Grady argue that the district court erred when it found they did not plead a warrantless-search claim in their complaint. They argue that the district court

[5] They do not appeal the district court's summary judgment on their Georgia state law claims.

"did no[t] correctly understand" their complaint and that, even if they did not plead such a claim, the officers bear the burden of proving the legality of the search. The officers see no error. They contend that the complaint makes no reference to a search warrant or warrantless search, and King and Grady are foreclosed from raising a new theory of recovery in their response to the motion for summary judgment. We agree with the officers.

The purpose of the complaint is to give defendants "fair notice" of a plaintiff's claim "and the grounds upon which it rests." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). For this reason, we have consistently held that a party may not raise a new claim for the first time in response to a summary judgment motion. See, e.g., Miccosukee Tribe of Indians of Fla. v. United States, 716 F.3d 535, 559 (11th Cir. 2013) ("[A] plaintiff cannot amend his complaint through argument made in his brief in opposition to the defendant's motion for summary judgment."); Flintlock Constr. Servs., LLC v. Well-Come Holdings, LLC, 710 F.3d 1221, 1227–28 (11th Cir. 2013) (refusing to consider claims raised for the first time in a plaintiff's response to a motion for summary judgment because, "[a]t the summary judgment stage, the proper procedure for plaintiffs to assert a new claim is to amend the complaint"). Here, King and Grady's four-page, twelve-paragraph complaint provided:

> 5. On December 15, 2015, Parker Marcy, accompanied by several male Glynn County Police Officers, as well as at least one female Glynn County Police Officer, came to Plaintiff Roxanne King's residence.
>
> 6. At the aforesaid time and place, the door to the residence was busted down, and the Defendants entered the said residence brandishing firearms and making threats of death or serious bodily injury.
>
> 7. At the aforesaid time and place, [Grady's son and youngest daughter] were being bathed by Roxanne King.
>
> 8. The Plaintiff Roxanne King shows that she was hand-cuffed and held under arrest for a lengthy period of time, and the two minor children referred to in Paragraph 7 were removed from the residence naked and placed in a police vehicle.
>
> 9. The Plaintiff Roxanne King sustained injuries from the aforesaid conduct of the Defendants, and she suffered physical and mental suffering due to the injuries inflicted upon her.
>
> 10. The wrongful assault and battery committed upon the Plaintiff, together with the injury, inflicted upon the Plaintiff by the Defendant, was done under color of law and authority, and said wrongful acts were done intentionally, negligently, and with a complete and deliberate indifference to the Plaintiff's rights, and all of said wrongful conduct has caused the Plaintiff to be deprived of her constitutional rights, including but not limited to the Fourth and Fourteenth Amendments to the United States Constitution . . . .

Compl. ¶¶ 5–10.

Reviewing these allegations, we agree with the district court that King and Grady's section 1983 claim was not based on a warrantless-search theory. The complaint had no allegations as to the timing of the officers' search and that the search was executed before the magistrate signed the warrant. The complaint doesn't even mention that a search occurred or that a search warrant was issued.

Instead, it focuses on the officers' "threats of death or serious bodily injury," King's injuries arising from the tightness of the handcuffs, "[t]he wrongful assault and battery committed upon" King, and the way the officers removed Grady's children from the premises. Id. ¶¶ 6, 8–10. It was only in their response to the officers' motion for summary judgment that King and Grady first alleged that the officers conducted the search before the magistrate signed the warrant. This was too late to put the district court and the officers on notice of this claim. See Gilmour v. Gates, McDonald & Co., 382 F.3d 1312, 1315 (11th Cir. 2004) ("The central issue in this case is whether a non-moving party plaintiff may raise a new legal claim for the first time in response to the opposing party's summary judgment motion. We hold it cannot.").

The Causation Element

King and Grady contend that the district court erred by concluding they had failed to establish a causal connection between any specific officer's act and the purported constitutional violations because (1) "the officers were wearing protective head gear which obstructed the view of the faces of the wrongful actors," (2) "[i]t would have been easy for the [officers] to give an affidavit that they had no involvement with the illegal search and arrest if they could truthfully do so," and (3) the officers "failed to intercede to stop the illegal search." In response, the officers argue that King and Grady are trying to improperly shift the burden of proof

on them and that King and Grady's failure to establish causation is fatal to their Fourth Amendment claim. Again, we agree with the officers.

To prevail on their section 1983 claim, King and Grady must "establish an adequate causal link between the alleged harm and the alleged unlawful conduct." Dixon v. Burke Cty., 303 F.3d 1271, 1274–75 (11th Cir. 2002). The district court correctly explained that King and Grady did not "cite[] . . . any evidence tending to show that any particular [officer] handcuffed King, removed the children from the bathtub, or assisted with either act in any way." To establish causation, King and Grady could have, for example, deposed each officer or subpoenaed records from the police department. They cannot now, after a failure to gather enough evidence, put the onus on the officers to disprove the claim. See Gill ex rel. K.C.R. v. Judd, 941 F.3d 504, 522–23 (11th Cir. 2019) ("[I]n a § 1983 action, the plaintiff bears the burden of persuasion on every element." (alteration in original) (internal quotation marks omitted)). As for King and Grady's argument that the officers failed to intercede as others were violating their rights, they did not plead a failure-to-intercede claim, see Priester v. City of Riviera Beach, Fla., 208 F.3d 919, 924 (11th Cir. 2000) (reviewing section 1983 claim based on officer's failure to intervene

when another officer uses excessive force), and it is too late to do so on appeal. See Miccosukee, 716 F.3d at 559.[6]

CONCLUSION

Because King and Grady did not plead a warrantless-search claim and there was no evidence creating an issue of fact that the defendant officers caused the alleged violations to King and Grady's Fourth Amendment rights, we affirm.

AFFIRMED.

[6] King and Grady also maintain that the district court erred when it found that the officers were entitled to qualified immunity. But having concluded that King and Grady failed to prove that any of the officers committed a constitutional violation, we need not and do not address the merits of this defense. See Holmes v. Kucynda, 321 F.3d 1069, 1077 (11th Cir. 2003) ("If no constitutional violation is established, then the defendants prevail, and there is no necessity for further inquiries concerning qualified immunity." (citation and internal quotation marks omitted)).