United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
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Lyle W. Cayce
Clerk

No. 19-60677

AMANDA KAY RENFROE, INDIVIDUALLY, AS THE WIDOW OF MICHAEL WAYNE RENFROE, DECEASED; AND AS THE NATURAL MOTHER AND ADULT NEXT FRIEND OF S.W.R., HER MINOR CHILD, WHO ARE THE SOLE HEIRS AND WRONGFUL DEATH BENEFICIARIES OF MICHAEL WAYNE RENFROE, DECEASED,

Plaintiff—Appellant,

versus

ROBERT DENVER PARKER; RANDALL TUCKER,

Defendants—Appellees,

THE ESTATE OF MICHAEL WAYNE RENFROE, AND AMANDA KAY REFROE, IN HER OFFICIAL CAPACITY AS ADMINISTRATRIX OF THE ESTATE OF MICHAEL WAYNE RENFROE,

Plaintiff—Appellant,

versus

ROBERT DENVER PARKER, IN HIS OFFICIAL AND INDIVIDUAL CAPACITIES; SHERIFF RANDALL TUCKER, IN HIS OFFICIAL AND INDIVIDUAL CAPACITIES,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 3:18-CV-609
USDC No. 3:19-CV-396

Before KING, GRAVES, and OLDHAM, *Circuit Judges*.

JAMES E. GRAVES, *Circuit Judge*:

This qualified immunity case arises from the death of Michael Renfroe, who was shot to death by Madison County Sheriff's Deputy Robert Parker. Constrained by precedent and the failure of Mr. Renfroe's estate to offer any competent summary judgment evidence to contradict Deputy Parker's testimony, which is supported by video footage, we affirm the district court's grant of summary judgment in favor of all defendants.

I. BACKGROUND

On the evening of June 8, 2018, the Madison County Sheriff's Department ("MCSD") received a 911 call from an individual named Willard McDaniel, who reported an attempted burglary. Mr. McDaniel provided a description of the vehicle the suspects were driving to the 911 dispatcher, who then radioed all on-duty MCSD deputies. Deputy Parker responded to the call. The deputy, who was in his MCSD uniform and driving a marked MCSD vehicle, drove to Old Natchez Trace Road, where the events detailed below took place. His dash camera, which was engaged, shows some of the encounter, but not the fatal shooting.

Mr. Renfroe's wife Amanda witnessed the shooting. But she was not deposed, and she did not submit a sworn declaration or affidavit to the district court. Because she provided no competent summary judgment evidence, only the dash camera footage and Deputy Parker's testimony are available for our consideration.

A. Video Footage

The dash camera footage shows Deputy Parker parking some distance behind the Renfroes' truck and the driver-side door of the Renfroes' truck opening. Mr. Renfroe exits through that door and begins walking across the road and toward the police car, raising his arms slightly at his sides. Then, apparently without prompting from Deputy Parker, Mr. Renfroe kneels face-down on the ground. The passenger door of the truck opens, and Mrs. Renfroe begins walking toward her husband. Mr. Renfroe then gets up and begins running toward the police vehicle and, presumably, Deputy Parker, who by then was outside the vehicle. Deputy Parker tases Mr. Renfroe, who keeps running and appears to rip the taser darts off his chest. Mr. Renfroe then runs out of view of the dash cam. The video then reflects a collision, with someone grunting off-camera and the police vehicle swaying slightly. As Mrs. Renfroe runs toward the police vehicle, four gunshots can be heard in quick succession. Deputy Parker then radios to say "shots fired."

B. Deputy Parker's Testimony

According to Deputy Parker, who submitted a sworn declaration to the district court, Mr. Renfroe yelled "now, M . . F . . ., let's do this" as he ran toward the deputy. The video footage does not capture this alleged statement. However, the microphone for the dash camera is inside the police vehicle, and all voices outside the vehicle are muffled.

Deputy Parker also alleges that, after Mr. Renfroe ran out of view of the dash cam, he began to assault Deputy Parker. Deputy Parker testified that he tried to protect himself from Mr. Renfroe, but that Mr. Renfroe continued the assault by "placing his hands around [Deputy Parker's] throat" and "hitting [Deputy Parker] on the side of the head." Deputy Parker avers that he attempted to move down the side of his vehicle, but realized that he could

not escape Mr. Renfroe's attack. He then fired four shots toward Mr. Renfroe's upper torso.

Following Mr. Renfroe's death, Mrs. Renfroe brought a Section 1983 claim for excessive force as well as several state-law claims. She named as defendants Deputy Parker, Sheriff Randall Tucker, and "John Does 1-100." After the parties engaged in a brief period of immunity-related discovery, Deputy Parker and Sheriff Tucker (collectively, "Defendant-Appellees") moved for summary judgment on the claims brought against them in their individual capacities. The court granted that motion, finding that Mrs. Renfroe had "fail[ed] to create a material factual dispute," that there had been no constitutional violation, and that "even assuming a constitutional violation, [Mrs.] Renfroe ha[d] not identified a sufficiently relevant case that would have put [Deputy] Parker on notice that his actions violated [Mr. Renfroe's] rights."

In their summary judgment motion, Defendant-Appellees asked the district court to *sua sponte* address Mrs. Renfroe's claims against them in their official capacities. The district court rightly declined to do so, but—consistent with the mandates of Federal Rule of Procedure 56(f)—notified Mrs. Renfroe that it would consider Defendant-Appellees' summary judgment arguments on those claims. It gave Mrs. Renfroe fourteen days "to show cause why the official-capacity claims . . . should not be dismissed." Mrs. Renfroe responded by conceding those claims, and the district court granted summary judgment on them as well. The district court further declined to exercise supplemental jurisdiction over the state-law claims, dismissing them without prejudice. Mrs. Renfroe appealed.

II. DISCUSSION

On appeal, Mrs. Renfroe argues that (1) the qualified immunity doctrine violates the separation of powers and is therefore unconstitutional

and void; (2) the district court erred in excluding her expert report; (3) the district court erred in granting summary judgment to Defendant-Appellees on her Section 1983 claims; and (4) the district court should have allowed discovery on the official-capacity claims. Each argument fails.

A. The Separation of Powers

According to Mrs. Renfroe, "[q]ualified immunity is judge-made law that was created in the judicial branch," despite the fact that, "[u]nder the separation of powers, only the legislative branch makes law." Both the Supreme Court and this circuit, however, have consistently recognized the doctrine of qualified immunity for over 50 years. *See Pierson v. Ray*, 386 U.S. 547, 557 (1967). While qualified immunity has its critics, this panel is bound by previous decisions of the Fifth Circuit and the Supreme Court. Until and unless the Supreme Court or Congress alters the status of the doctrine, Mrs. Renfroe's argument must fail.

B. The Expert Report

In her response to Defendant-Appellees' summary judgment motion, Mrs. Renfroe submitted an expert report by Capitol Special Police Chief Roy Taylor. The district court found that it could not consider the report because it addressed an issue of law and did not "create an issue of fact as to what occurred on the night of the shooting." On appeal, Mrs. Renfroe challenges the district court's exclusion of the report. That challenge is unavailing.

Experts cannot "render conclusions of law" or provide opinions on legal issues. *Goodman v. Harris Cnty.*, 571 F.3d 388, 399 (5th Cir. 2009). "Reasonableness under the Fourth Amendment or Due Process Clause is a legal conclusion." *United States v. Williams*, 343 F.3d 423, 435 (5th Cir. 2003) (citation omitted). It is therefore error to allow expert testimony on whether an officer used unreasonable force. *See id.*

In his report, Mr. Taylor primarily recited the facts of the incident and briefly commented on the MCSD's use-of-force policy. He concluded by stating:

> It is my opinion [that] Deputy Parker's use of deadly force . . . was unnecessary and objectively unreasonable and resulted in his death. Deputy Parker's decision to shoot violated well-established law enforcement use of force training and standards and was a greater level of force than any other reasonable officer would have used under the same or similar circumstances in 2018.

"Material that is inadmissible will not be considered on a motion for summary judgment because it would not establish a genuine issue of material fact if offered at trial[.]" *Geiserman v. MacDonald*, 893 F.2d 787, 793 (5th Cir. 1990) (quotation marks and citation omitted). Mrs. Renfroe does not challenge the applicability of that rule to this issue. Instead, she emphasizes that Defendant-Appellees did not object to the expert report or move to strike it from the record. But that contention is incorrect: Deputy Parker objected to the expert report in his reply to Mrs. Renfroe's summary judgment response.

We therefore affirm the district court's exclusion of the expert report.

C. Summary Judgment

Mrs. Renfroe advances many claims on appeal, several of which can be viewed collectively as a challenge to the district court's grant of summary judgment in favor of Defendant-Appellees. Given her failure to offer competent summary judgment evidence, we find these arguments without merit.

This court reviews a grant of summary judgment de novo, applying the same standard as the district court. *Austin v. Kroger Tex., L.P.*, 864 F.3d 326, 328 (5th Cir. 2017); *Miss. River Basin All. v. Westphal*, 230 F.3d 170, 174 (5th Cir. 2000). 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). "A genuine issue of material fact exists when the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Austin*, 864 F.3d at 328 (internal quotation marks and citation omitted). All facts and reasonable inferences are construed in favor of the nonmovant, and the court should not weigh evidence or make credibility findings. *Deville v. Marcantel*, 567 F.3d 156, 163–64 (5th Cir. 2009). The resolution of a genuine issue of material fact "is the exclusive province of the trier of fact and may not be decided at the summary judgment stage." *Ramirez v. Landry's Seafood Inn & Oyster Bar*, 280 F.3d 576, 578 n.3 (5th Cir. 2002).

"A qualified immunity defense alters the usual summary judgment burden of proof." *Brown v. Callahan*, 623 F.3d 249, 253 (5th Cir. 2010). Once an officer invokes the defense, the plaintiff must rebut it by establishing (1) that the officer violated a federal statutory or constitutional right and (2) that the unlawfulness of the conduct was "clearly established at the time." *District of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018) (quoting *Reichle v. Howards*, 566 U.S. 658, 664 (2012)); *see Gates v. Tex. Dep't of Protective & Regul. Servs.*, 537 F.3d 404, 419 (5th Cir. 2008). "[A]ll inferences are drawn in [the plaintiff's] favor." *Brown*, 623 F.3d at 253. But "a plaintiff's version of the facts should not be accepted for purposes of qualified immunity when it is 'blatantly contradicted' and 'utterly discredited' by video

recordings." *Hanks v. Rogers*, 853 F.3d 738, 744 (5th Cir. 2017) (citation omitted); *see also Scott v. Harris*, 550 U.S. 372, 380–81 (2007).

On appeal, Mrs. Renfroe states broadly that "[t]here are genuine issues of material fact about the reasonableness of Deputy Parker's use of deadly force against Michael Renfroe"; that because Mr. Renfroe was "unarmed, shoeless, and clad only in pajama bottoms," he "could not objectively have put Defendant Parker in fear of an immediate substantial risk of death or serious bodily injury"; and that the district court erroneously "resolved conflicting facts in favor of Defendant Parker."

The district court cannot be said to have resolved conflicting facts in favor of Deputy Parker, however, because Mrs. Renfroe did not offer any competent evidence of her own alleged facts. Despite being present, Mrs. Renfroe did not submit an affidavit describing what she saw as the shooting unfolded. And the allegations in her complaint are insufficient. *See Nat'l Ass'n of Gov't Emps. v. City Pub. Serv. Bd. of San Antonio, Tex.*, 40 F.3d 698, 713 (5th Cir. 1994) ("Conclusory allegations unsupported by specific facts . . . will not prevent an award of summary judgment; the plaintiff [can]not rest on his allegations . . . to get to a jury without any significant probative evidence tending to support the complaint.") (quotation marks and citation omitted). Instead, "Rule 56(e) . . . requires the nonmoving party to go beyond the pleadings and by her own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986) (quotation marks omitted).

The evidence properly before the district court shows that Deputy Parker was responding to a call from dispatch reporting that a truck similar to the Renfroes' was present during an attempted burglary. Mr. Renfroe ran toward Deputy Parker, unaffected by the deputy's use of a taser. According

to the unrebutted testimony of Deputy Parker, Mr. Renfroe began assaulting him as soon as he disappeared from the dash camera. And that unrebutted testimony is supported by video, which shows the body of the police vehicle jostling and shaking.

Mrs. Renfroe emphasizes that Mr. Renfroe was not armed at the time of the shooting and that Deputy Parker did not warn him before using lethal force. But this court has previously found that an individual need not be armed for a law enforcement officer to believe that he is in danger of serious physical harm. *See, e.g.*, *Colston v. Barnhart*, 130 F.3d 96, 99–100 (5th Cir. 1997). And as this court recognized in *Colston*, an officer's duty to warn a suspect before using deadly force depends on whether that officer has time to do so. *Id.* at 100. The video footage reflects that, given Mr. Renfroe's swift approach, it was not feasible for Deputy Parker to issue a warning.

Mrs. Renfroe seeks to rely on *Flores v. City of Palacios*, 381 F.3d 391 (5th Cir. 2004). But *Flores* can be easily distinguished, as that case involved an officer who shot at a suspect's fleeing car to prevent escape. *Flores*, 381 F.3d at 393. There, the officer shot at a sixteen year-old who was driving away in her car. *Id.* at 394. Here, Deputy Parker shot at a man who was actively assaulting him and who had previously been tased with no effect.

Mrs. Renfroe has not demonstrated the existence of a genuine dispute as to material facts bearing on whether Deputy Parker violated a federal right. We therefore affirm the district court's grant of summary judgment against her.[1]

[1] As noted above, the district court also granted summary judgment in favor of Sheriff Randall Tucker. We agree with that court's analysis of the individual-capacity claims brought against Sheriff Tucker and affirm its grant of summary judgment with respect thereto.

D. Discovery

After the district court granted Defendant-Appellees summary judgment on the individual-capacity claims based on qualified immunity, it entered a show cause order requiring Mrs. Renfroe to address whether her official-capacity claims could proceed despite the court's finding that there had been no constitutional violation. Instead of responding to that order, Mrs. Renfroe filed a motion seeking a continuance and additional discovery to develop her claims under Federal Rule of Civil Procedure 56(d). That rule provides that"[i]f a [summary judgment] nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may . . . allow time to . . . take discovery." Fed. R. Civ. P. 56(d). The district court found that Mrs. Renfroe had failed to satisfy the requirements of Rule 56(d), denied discovery as to the official-capacity claims, and ruled in favor of Defendant-Appellees as to those claims. Mrs. Renfroe appeals that ruling.

This court reviews a district court's denial of a Rule 56(d) motion for abuse of discretion. *Am. Fam. Life Assurance Co. of Columbus v. Biles*, 714 F.3d 887, 894 (5th Cir. 2013) (citation omitted). Motions made under Rule 56(d) "are broadly favored and should be liberally granted," but a nonmovant "may not simply rely on vague assertions that additional discovery will produce needed, but unspecified, facts." *Id.* (internal quotation marks and citations omitted). "Rather, a request to stay summary judgment under Rule 56([d]) must set forth a plausible basis for believing that specified facts, susceptible of collection within a reasonable time frame, probably exist and indicate how the emergent facts, if adduced, will influence the outcome of

the pending summary judgment motion." *Raby v. Livingston*, 600 F.3d 552, 561 (5th Cir. 2010) (internal quotation marks and citation omitted).

Mrs. Renfroe's motion did not meet even this unexacting standard. It argued only that "[g]iven that the court specifically stayed all discovery that is not related to qualified immunity [an individual capacity claim], the court, as a matter of course, should now allow discovery on the official capacity claims prior to ruling on the defendants' motion for summary judgment." As such, the district court did not abuse its discretion in denying Mrs. Renfroe's motion.

III. CONCLUSION

For the foregoing reasons, the district court's grant of summary judgment in favor of Defendant-Appellees on the claims brought against them in their individual and official capacities is AFFIRMED.