[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-10811

D.C. Docket No. 8:14-cv-01444-MSS-MAP

ALLISON BREDBENNER,

Plaintiff-Appellee,

versus

DEPUTY CHRISTOPHER SULLIVAN,
Individually,
DEPUTY BRIAN CRAIG,
Individually,
CORPORAL BRIAN LAVIGNE,
Individually,
SHERIFF DAVID GEE,
Hillsborough County Sheriff, in his official capacity,

Defendants-Appellants.

Appeal from the United States District Court
for the Middle District of Florida

(March 30, 2018)

Before ED CARNES, Chief Judge, NEWSOM, and SILER,[*] Circuit Judges.

PER CURIAM:

Deputy Sullivan, Deputy Craig, and Corporal Lavigne arrested Allison Bredbenner for child neglect under Florida Statutes § 827.03(2)(d). Bredbenner brought false arrest claims under 42 U.S.C. § 1983 and state law against the officers and a vicarious liability claim against Sheriff Gee. The defendants jointly moved for summary judgment. In that motion, the officers argued that they were entitled to qualified immunity on the § 1983 claims. As to the state law claims, the officers argued that no false arrest occurred because they had probable cause and, in the alternative, that they were entitled to immunity under Florida Statutes § 768.28(9)(a). The district court denied the defendants' motion. This is their appeal.[1]

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[*] Honorable Eugene E. Siler, Jr., United States Circuit Judge for the Sixth Circuit, sitting by designation.

[1] We have jurisdiction to review the denial of state law immunity to the officers because § 768.28(9)(a) provides immunity from suit. See Keck v. Eminisor, 104 So. 3d 359, 365–66 (Fla. 2012) ("If orders denying summary judgment based on claims of individual immunity from being named as a defendant under section 768.28(9)(a) are not subject to interlocutory review, that statutory protection becomes essentially meaningless for the individual defendant."); see also Griesel v. Hamlin, 963 F.2d 338, 341 (11th Cir. 1992) (reviewing denial of immunity under a Georgia law providing "immunity from suit"); Sheth v. Webster, 145 F.3d 1231, 1238 (11th Cir. 1998) (reviewing denial of immunity under an Alabama law that is "very similar, if not the same, as the immunity afforded the officials under Georgia law in Griesel").

We have discretion to review Sheriff Gee's appeal because the denial of summary judgment to him is "inextricably intertwined" with the denial of summary judgment to the officers. See Hudson v. Hall, 231 F.3d 1289, 1294 (11th Cir. 2000). The vicarious liability claim against Sheriff Gee turns on whether the officers are liable for false arrest under state law, which turns on whether they had probable cause, a question we must decide in the course of

After reviewing the record and briefs, and having had the benefit of oral argument, we affirm the denial of summary judgment to the defendants for the reasons stated in the district court's order — with three caveats.

First, we disagree with the district court's rationale for denying the officers immunity on the state law claims. It ruled that the officers were not entitled to immunity on those claims because they "did not have probable cause to arrest Ms. Bredbenner for child neglect." Doc. 55 at 27. But more is required to strip an officer of immunity under Florida law. See Fla. Stat. § 768.28(9)(a) (immunizing law enforcement officers from personal liability for actions taken within the scope of their employment unless an officer "acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property"). Courts have construed the "wanton and willful disregard" prong of that statute to require "reckless conduct." Williams v. City of Minneola, 619 So. 2d 983, 986 (Fla. 5th DCA 1993). The district court did not apply the proper test to determine state law immunity, but we affirm notwithstanding that error because a jury could reasonably conclude that the officers acted recklessly. See Haynes v. McCalla Raymer, LLC, 793 F.3d 1246, 1249 (11th Cir. 2015) ("[W]e may affirm the district court's ruling on any ground supported by the record.").

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reviewing the denial of summary judgment to the officers on the state law claims. For that reason, we will exercise pendent jurisdiction over Sheriff Gee's appeal.

Second, we disagree with the district court's reason for denying summary judgment to Sheriff Gee: "Defendants presented no arguments in favor of summary judgment on Ms. Bredbenner's claim against Sheriff Gee in his official capacity." Doc. 55 at 27. In their summary judgment motion, the defendants incorporated by reference all the arguments they raised with respect to the § 1983 claims to defend against the state law false arrest claims, including the vicarious liability claim against Sheriff Gee. Doc. 24 at 25. In that way, the defendants argued by incorporation that Sheriff Gee was entitled to summary judgment because the officers had probable cause and for that reason did not commit false arrest. But because we agree with the district court's conclusion that the officers did not have probable cause, we affirm notwithstanding its error in reasoning. See Haynes, 793 F.3d at 1249.

Third, the district court considered Deputy Lavigne's subjective intent to decide when Bredbenner was arrested, stating: "By Deputy LaVigne's own account, it was at this moment that Ms. Bredbenner was not legally authorized to leave." Doc. 55 at 17. That was beside the point because whether and when a seizure or arrest occurs is to be decided from the vantage of a reasonable person in the suspect's position and without regard to an arresting officer's subjective intent. See United States v. Mendenhall, 446 U.S. 544, 554, 100 S. Ct. 1870, 1877 (1980) ("[A] person has been seized within the meaning of the Fourth Amendment only

if . . . a reasonable person would have believed that [s]he was not free to leave.”). But considering Deputy Lavigne’s subjective intent was harmless because a reasonable person in Bredbenner’s position would not have believed she was free to leave.

AFFIRMED.