

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 28 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ESTATE OF REX VANCE WILSON; et al.,

No. 21-16760

Plaintiffs-Appellants,

D.C. No.

v.

2:18-cv-01702-APG-VCF

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT; et al.,

MEMORANDUM*

Defendants-Appellees.

Appeal from the United States District Court
for the District of Nevada
Andrew P. Gordon, District Judge, Presiding

Argued and Submitted November 16, 2022
San Jose, California

Before: SCHROEDER, GRABER, and FRIEDLAND, Circuit Judges.

Rex Vance Wilson was a suspect in a series of robberies and was driving a stolen SUV. After two officers from the Las Vegas Metropolitan Police Department (LVMPD) spotted the stolen vehicle, Wilson fled. During the lengthy high-speed pursuit that ensued, he repeatedly evaded spike strips and other efforts to disable the SUV. The chase ended when several police cars boxed in Wilson,

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

and Officer John Squeo intentionally drove his police car into the stolen SUV that Wilson was driving. Officers then saw what they perceived to be a firearm and fired thirty-five shots, killing Wilson. Plaintiffs—Wilson’s estate, wife, and children—brought this action against the LVMPD, Squeo, and several other police officers. The district court granted summary judgment in favor of all Defendants on all claims. Plaintiffs timely appeal. We review de novo the entry of summary judgment, Oswalt v. Resolute Indus., Inc., 642 F.3d 856, 859 (9th Cir. 2011), and may affirm on any ground supported by the record, Simo v. Union of Needletrades, Indus. & Textile Emps., 322 F.3d 602, 610 (9th Cir. 2003). We affirm.

1. The arguments made in the opening brief pertain only to Plaintiffs’ state-law negligence claims against Squeo and to his actions in driving his police car into the stolen SUV that Wilson was driving. Accordingly, we do not consider the district court’s rulings on any other claims, including claims related to the shooting that, according to the autopsy report, killed Wilson. See Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 919 (9th Cir. 2001) (issues not specifically and distinctly raised in a party’s opening brief are forfeited).

2. Defendants argued in support of summary judgment on the negligence claims that there was no evidence that the collision with Squeo’s police car caused Wilson any damages. Plaintiffs’ opposition to summary judgment identified no such evidence, thereby leaving this argument un rebutted. As Defendants correctly

point out, Plaintiffs cannot claim damages to the SUV because it was stolen. See Lujan v. Defs. of Wildlife, 504 U.S. 555, 560 (1992) (requiring invasion of a legally protected interest to establish standing); Brown v. United States, 411 U.S. 223, 230 n.4 (1973) (describing petitioners’ interest in stolen property as “totally illegitimate”).

In their reply brief on appeal, Plaintiffs now suggest that some of the injuries described in the autopsy report were caused specifically by the contact between the police car and the SUV, but this argument was forfeited because it was not raised in the district court. See Tibble v. Edison Int’l, 843 F.3d 1187, 1193 (9th Cir. 2016) (en banc) (citing Visendi v. Bank of Am., N.A., 733 F.3d 863, 869 (9th Cir. 2013)). In any event, it is not obvious from the face of the autopsy report that the injuries in question would have been caused by the contact between the cars as opposed to impact from broken glass after the bullets hit the car during the later shooting, and Plaintiffs presented no evidence that they were.

AFFIRMED.