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Circuit Court of Florida,
Seventeenth Judicial Circuit.
Broward County

Alverna BROWN, as Personal Representative of the Estate of Oral George Brown, deceased, and on behalf of
Oral George Brown, Plaintiffs,

v.

Kenneth C. JENNE, individually, etc., et al., Defendants.

No. 03-10097.03.

2009.

Order Granting Certain Defendants Motions for Summary Judgment

[John B. Bowman](#), Broward Circuit Court Judge.

This matter comes before the Court on the following Defendants' Motions for Summary Judgment: Broward County^[FN1]; Hayes C. Bowen, individually, Kenneth Loukin^{??}en Individually, Ken Swan, individually, Ronnie Hall, individually, Karl Froling, individually, and Lisa Long, individually, (hereinafter "FIRE RESCUE DEFENDANTS").

FN1. At oral argument, counsel for the Plaintiff conceded that Broward County is not liable for the actions of the Broward Sheriff's Office or any of that agency's deputies.

ARE RESCUE DEFENDANTS argue that Plaintiff has failed to support her allegations that any federal constitutional violations have occurred, and, even if such claims were supported, Defendants are protected by qualified immunity. Plaintiff responds by arguing that questions of material facts exist in this case as to the level-of "excessive force" and "deliberate indifference" on the part of the FIRE RESCUE DEFENDANTS precluding the entry of summary judgment based upon qualified immunity.

BACKGROUND

This lawsuit arises from the death of ORAL GEORGE BROWN ("BROWN"), on October 15, 2001.

Alverna Brown, as personal representative of her husband Brown's estate, sued several Defendants, including Broward County and employees of the Broward County Fire Rescue Division, for civil rights violations in connections with Browns' death. Her complaint alleged that Brown suffered a seizure while driving which resulted in a car accident He was dazed when he exited the vehicle, and the Defendants *and* sheriffs deputies employed with the Broward Sheriff's Office ("BSO") on the scene believed that he might be having a diabetic attack. He was not suspected of any criminal activity. Unable to talk, Brown began to walk away from the scene and did not respond to orders to stop walking. The complaint alleges that the FIRE RESCUE DEFENDANTS, and others, began to "violently physically handle and mistreat" Brown, bringing him to the ground and eventually hog-tying him, placing him face down on the ground. Brown had trouble breathing but was tied face down to a stretcher and was not permitted to turn over. He was transported to the hospital but was given no medical attention en route. During transport he suffered a grand mal seizure. At the hospital he was declared dead from positional asphyxiation as a result of the hog-tie restraint. The complaint alleged that at all times the FIRE RESCUE

DEFENDANTS were operating within the course and scope of their employment as fire rescue personnel.

FIRE RESCUE DEFENDANTS ARE ENTITLED TO QUALIFIED IMMUNITY IN THIS CASE

Public officials are immune in their individual capacities from suits for damages “insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person should have known.” *DeWald v. Wyner*, 674 So.2d 836, 839 (Fla. 4th DCA 1996) (quoting *Harlow v. Fitzgerald*, 457 US. 800, 818 (1982)). The rule of immunity shields all but the plainly incompetent or those who knowingly violate the law. *Id.* “Only in exceptional cases will government actors have no shield against claims made against them in their *individual capacities*.” *Wa??singham v. Dockery*, 671 So.2d 166, 171 (Fla. 1st DCA 1996) (emphasis in original). “Because qualified immunity shields government actors in all but exceptional cases, courts should think long and hard before stripping defendants of immunity.” *City of Hialeah v. Fernandez*, 661 So.2d 335, 339 (Fla. 3d DCA 1995). The subjective intent of the government actor defendants plays no part in qualified immunity analysis; rather, objective legal reasonableness is the touchstone. *Id.*

Qualified Immunity involves two distinct elements: (1) the government official must show that the acts complained of were within the scope of his discretionary authority when the allegedly wrongful acts occurred, and if the government official carries that burden, (2) the plaintiff must show that the government official's actions violated clearly established statutory or constitutional law. *DeWald v. Wyner*, 674 So.2d 836, 840 (Fla. 4th DCA 1996). If the applicable law is unsettled (concerning whether the government actors action(s) violates that law), immunity necessarily results. *Id.*

In this case, the FIRE RESCUE DEFENDANTS were acting pursuant to their discretionary authority. Plaintiff's *Second Amended Complaint specifically alleges that the individual officers and fire and rescue personnel were acting within the course and scope of their authority*, (*Second Amended Complaint ¶¶ 23, 88*). The Second Amended Complaint does not allege that the Defendants did anything outside the course and scope of their employment. Because it is clear that the FIRE RESCUE DEFENDANTS were acting in their discretionary authority, and the Plaintiff has not submitted evidence that their actions violated clearly established constitutional and/or statutory law, the FIRE RESCUE DEFENDANTS are entitled to qualified immunity from suit, and therefore summary judgment is granted in their favor.

Therefore, the Court having reviewed the pleadings and motions presented, and being otherwise fully advised in the premises, it is thereupon ORDERED that FIRE RESCUE DEFENDANTS' Motions for Summary Judgment are GRANTED as to all federal claims in the Second Amended Complaint for the reasons stated in this opinion.

It is further ORDERED that BROWARD COUNTY's Motion for Final Summary Judgment is GRANTED because, as conceded by counsel for Plaintiff, BROWARD COUNTY is not liable for the acts or actions of the Broward Sheriff's Office and its deputies in this case.

DONE and ORDERED in Chambers, at Fort Lauderdale, Broward County, Florida, this _____ day of _____, 2009.

John B. Bowman

Broward Circuit Court Judge

cc: See Service List

Brown v. Jenne
2009 WL 3253820 (Fla.Cir.Ct.) (Trial Order)

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