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# Spencer v. City of Minneapolis

United States District Court, D. Minnesota

Mar 4, 2005

Civil No. 03-6186 (DWF/JSM) (D. Minn. Mar. 4, 2005)

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Civil No. 03-6186 (DWF/JSM).

March 4, 2005

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C. Lynne Fundingsland, Assistant Minneapolis City Attorney, Minneapolis City Attorney's Office, counsel for Defendants.

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## MEMORANDUM OPINION AND ORDER

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DONOVAN FRANK, District Judge

### Introduction

The above-entitled matter came before the undersigned United States District Judge on February 4, 2005, pursuant to a Motion for Summary Judgment brought by Defendants City of Minneapolis and Carl Robert Blad.

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## Background

On March 12, 2003, at approximately 1:00 p.m., Minneapolis Police Officers were dispatched to 1818 Park Avenue South in Minneapolis to arrest Plaintiff Ete'u Eli-jah Spencer on an outstanding warrant for failure to register as a sex offender. Officers Kimmerle and Leum responded, and Officer Blad and his canine partner, Max, responded to assist. Officer Blad and Max remained outside the building on its north side while Officers Kimmerle and Leum entered the building.

Officers Kimmerle and Leum knocked on Plaintiff's door and were eventually allowed entry by one of Plaintiff's friends. In his deposition, Plaintiff stated that he was napping in his bedroom when he heard a loud crash, described as a "wood splintering" sound, that he believed to be an intruder. ( *See* Affidavit of Daniel Guerrero ("Guerrero Aff."), Ex. A, Excerpts from Deposition of Ete'u Eli-jah Spencer ("Spencer Dep.") at 24, 27.)

Plaintiff asserts that because he was concerned that "whoever is out there might get me," he decided to jump out the window with his cellphone in hand, "with the intention of going around the building and trying to call for help." ( *Id.* at 26.) In any event, upon hearing the sound of someone entering the apartment, Plaintiff opened his bedroom window and jumped ten feet to the ground below. Plaintiff then began running around the apartment building.

What happened next is a source of dispute between the parties. Plaintiff contends that as he turned the corner of the building, Officer Blad and Max were waiting, and Officer Blad either shouted unintelligibly at the Plaintiff or told him to "get on the ground." (Spencer Dep. at 30, 32.) Plaintiff contends that upon seeing the officer and the dog, he either told the officer "okay" or "you got me" and raised his hands. ( *Id.* at 30, 33-34.) Plaintiff contends that as he attempted to comply with Officer Blad's directive, and



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but he could not get on the ground because Max was chewing on his right arm. (*Id.* at 39.) Plaintiff contends that Officer Blad came over, put some weight on Plaintiff's back to force him to the ground, and allowed Max to "chew on" Plaintiff's right arm. (*Id.* at 41.) Plaintiff asserts that he then lost consciousness. (*Id.*) Plaintiff contends that when he became aware of his surroundings again, he felt a tearing in his left leg where Max was biting him. (*Id.*) At that time, the officers handcuffed him and dragged him to the police car. (*Id.* at 41-42.)

Officer Blad, on the other hand, contends that when he saw Plaintiff jump from the window, he retreated back to the front of a nearby building to get Max, who was waiting there unleashed. (*See* Affidavit of Lynne Fundingsland, Ex. E, Deposition of Carl Robert Blad ("Blad Dep.") at 32.) Officer Blad was holding Max by the collar in order to control him when Plaintiff came back into view. (*Id.* at 33-34.) Officer Blad asserts that he yelled and moved toward Plaintiff to intercept him, but Plaintiff continued to run. (*Id.* at 35.) Officer Blad contends that Plaintiff had his hands "up in a position like I would say you would call it a defensive stance or a getting ready stance, arms out in front of the chest." (*Id.*) Officer Blad approached Plaintiff with his left hand on Max's collar. (*Id.*) Officer Blad used his right hand to spin Plaintiff around, and let go of Max as he "grabbed [Plaintiff] with that lateral vascular neck restraint." (*Id.* at 35-36.) Because Plaintiff was flailing and "trying to shake free," Officer Blad became concerned that he was going to injure Plaintiff's neck with the hold that Officer Blad had on Plaintiff. (*Id.* at 37.) Officer Blad pushed Plaintiff to the ground, knowing that Max was not going to let \*4 Plaintiff flee the scene. (*Id.* at 37-38.) Officer Blad asserts that he could not handcuff Plaintiff immediately because Plaintiff was kicking and rolling around, trying to get back up. (*Id.* at 39.) Officer Blad felt that he needed to have Max continue to hold and bite Plaintiff until Officer Blad could gain custody of Plaintiff. (*Id.* at 41.) Officer Blad asserts that he slapped Plaintiff, pushed him to the ground, and knelt on his back. (*Id.*) As Officer Blad attempted to handcuff Plaintiff, Plaintiff

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and when he finished handcuffing him. (*Id.* at 44.)

The officers brought Plaintiff to the emergency room at Hennepin County Medical Center, where he was admitted for six days of treatment. (*Id.* at 43-44.) Plaintiff underwent several surgical procedures for the injuries to his right arm and left leg, and has suffered the loss of one-third of his left calf muscle and permanent scarring.

Defendants have moved for summary judgment, asserting that Officer Blad is entitled to official immunity on the state law claims for negligence and strict liability. In addition, Defendants contend that Defendant Blad is entitled to qualified immunity on Plaintiff's Fourth Amendment claim.

## Discussion

### I. Standard of Review

Summary judgment is proper if there are no disputed issues of material fact and the moving party is entitled to judgment as a matter of law. *See Fed.R.Civ.P. 56(c)*. The court must view the evidence and the inferences that may be reasonably drawn from the evidence in the light most favorable \*5 to the nonmoving party. *See Enter. Bank v. Magna Bank of Missouri*, 92 F.3d 743, 747 (8th Cir. 1996). However, as the Supreme Court has stated, "[s]ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed to secure the just, speedy, and inexpensive determination of every action." *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986) (quoting *Fed.R.Civ.P. 1*).

The moving party bears the burden of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *See Enter. Bank*, 92 F.3d at 747. The nonmoving party must demonstrate the existence of specific facts in the record which create a genuine issue for trial. *See Krenik v. County of Le Sueur*, 47 F.3d 953, 957 (8th Cir. 1995). A party



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[U.S. 242, 250](#) (1980); [Arenberg, 47 F.3d at 957](#).

## II. Official Immunity

Under Minnesota law, a public official is automatically entitled to official immunity from state law claims when the official's duties require the exercise of discretion or judgment, so long as the officer is not guilty of a willful or malicious wrong. *See Johnson v. Morris*, [453 N.W.2d 31, 41-42](#) (Minn. 1990); *Elwood v. County of Rice*, [423 N.W.2d 671, 677](#) (Minn. 1998). Thus, to determine whether official immunity is available in any given context requires a determination of whether the alleged acts were discretionary or ministerial and whether the alleged acts were malicious or willful. *See Davis v. Hennepin County*, [559 N.W.2d 117, 122](#) (Minn.Ct.App. 1997). If official immunity applies to the public official's conduct, then vicarious official immunity generally will apply to the government \*6 employer. *See Bailey v. City of St. Paul*, [678 N.W.2d 697, 700](#) (Minn.Ct.App. 2004) (citing *Pletan v. Gaines*, [494 N.W.2d 38, 42](#) (Minn. 1992)).

The parties do not dispute that Officer Blad was performing duties that required the exercise of his discretion when he released his canine partner on Plaintiff. Thus, the Court must determine if Officer Blad's actions were malicious or willful. "Malice in the context of official immunity means intentionally committing an act that the official has reason to believe is legally prohibited." *Kelly v. City of Minneapolis*, [598 N.W.2d 657, 663](#) (Minn. 1999) (citing *State by Beaulieu v. City of Mounds View*, [518 N.W.2d 567, 571](#) (Minn. 1994)). This is an objective inquiry that examines the legal reasonableness of an official's actions. *See State by Beaulieu*, [518 N.W.2d at 571](#). To overcome a defense based on official immunity, a plaintiff cannot rely on "bare allegations of malice"; rather, the plaintiff must present specific facts evidencing bad faith. *Harlow v. Fitzgerald*, [457 U.S. 800, 817](#) (1982).

The precise conduct at issue here is the act of Officer Blad releasing his

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after Plaintiff kicked Max in the head. Plaintiff, on the other hand, asserts that no physical contact occurred prior to Max being released and that the Officer sicced Max on Plaintiff as Plaintiff was making efforts to comply with Officer Blad’s orders to get on the ground. While the Court does not intend to second-guess the actions of an officer made in a split second and during the heat of pursuit, the Court must view the facts in the light most favorable to Plaintiff. A reasonable jury could believe Plaintiff’s description \*7 of the facts, and in turn, construe the facts to support a finding that the Officer acted with malice and in contravention of police procedures. In light of the conflicting characterization of the events that occurred, a genuine issue of material fact exists as to whether Officer Blad intentionally committed an act that he knew to believe was legally prohibited. Defendants’ motion for summary judgment on the issue of official immunity is denied.

III. Minnesota Statute § 347.22

Defendants contend that Plaintiff’s claim pursuant to Minnesota Statute § 347.22, establishing strict liability for dog bites, fails because § 347.22 does not apply to police dogs. Minnesota Statute § 347.22 states:

If a dog, without provocation, attacks or injures any person who is acting peaceably in any place where the person may lawfully be, the owner of the dog is liable in damages to the person so attacked or injured to the full amount of the injury sustained. The term “owner” includes any person harboring or keeping a dog but the owner shall be primarily liable. The term “dog” includes both male and female of the canine species.

Defendants briefed this issue before the Minnesota Supreme Court reached a decision in *Hyatt v. Anoka Police Dept.*, 691 N.W.2d 824 (Minn. Feb. 10, 2005). *Hyatt*, holding that the dog bite statute does indeed apply to police dogs and the municipalities that own them, has mooted Defendants’ motion.



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§ 1983 if Officer Blad reasonably believed that his conduct was lawful in light of clearly established law and the information possessed by him” at the time of his actions. \*8 *Smithson v. Aldrich*, 235 F.3d 1058, 1061 (8th Cir. 2000) (citing *Anderson v. Creighton*, 483 U.S. 635, 641 (1987)).

On a motion for summary judgment, the Court employs a three-part test to determine whether qualified immunity exists. First, the plaintiff must assert a violation of a constitutional right. Second, the alleged right must be clearly established. Third, taking the facts in the light most favorable to the plaintiff, “there must be no genuine issues of material fact as to whether a reasonable official would have known that the alleged action violated that right.” *Lambert v. City of Dumas*, 187 F.3d 931, 935 (8th Cir. 1999).

Defendants assert that Officer Blad acted reasonably in using Max to effect the arrest of Plaintiff, who was wanted on a felony warrant and was, according to Officer Blad’s accounts, attempting to elude arrest. Plaintiff, on the other hand, asserts that Officer Blad sicced Max on Plaintiff without provocation and as Plaintiff was attempting to comply with Officer Blad’s directives. If a jury were to believe Plaintiff’s versions of the facts, that jury could find that Officer Blad’s release of the dog was not objectively reasonable in light of the facts and circumstances confronting Officer Blad, and that Officer Blad had used excessive force. Similar to the Court’s discussion regarding official immunity, a genuine issue of fact exists as to whether Officer Blad acted in violation of Plaintiff’s constitutional rights. Defendants’ Motion for Summary Judgment on this issue is denied.

For the reasons stated, **IT IS HEREBY ORDERED:**

1. Defendants’ Motion for Summary Judgment (Doc. No. 8) is **DENIED**.



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