

SUPREME COURT OF INDIANA

Wilson v. Isaacs

929 N.E.2d 200 (Ind. 2010) · No. 09S05-1003-CV-149 · Decided June 28, 2010

SUMMARY

The Indiana Supreme Court held that Indiana Tort Claims Act law-enforcement immunity does not shield governmental entities or employees from liability for a law-enforcement officer's use of unreasonable or excessive force. Because genuine issues of material fact remained regarding whether a deputy's repeated use of a taser was reasonable and necessary to effect an arrest, the court reversed summary judgment for the Sheriff. The court summarily affirmed summary judgment for the deputy personally.

CASE DETAILS

COURT	Supreme Court of Indiana
WRITING FOR THE COURT	Justice Dickson; Chief Justice Shepard; Justice Sullivan; Justice Boehm; Justice Rucker
JURISDICTION	Indiana
DECIDED	June 28, 2010
DOCKET	09S05-1003-CV-149
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiffs appealed from summary judgment for defendants in an action for damages arising from alleged excessive use of police force. The Indiana Court of Appeals affirmed summary judgment for Deputy Craven but reversed summary judgment for Sheriff Isaacs. On transfer, the Indiana Supreme Court reviewed the partial reversal.
STANDARD OF REVIEW	Summary judgment is reviewed under the same standard applied by the trial court and is proper only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Legal questions concerning the availability of statutory immunity are reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Richard Patrick Wilson, Billy Don Wilson v. Gene Isaacs, Sheriff of Cass County, Brad Craven

TOPICS

municipal liability

summary judgment

statutory interpretation

assault

battery

PRACTICE AREAS

torts

municipal law

civil procedure

remedies

QUESTIONS PRESENTED

1. Whether Indiana Tort Claims Act law-enforcement immunity under Indiana Code section 34-13-3-3(8) shields governmental defendants from liability for a law-enforcement officer's allegedly unreasonable or excessive use of force.
2. Whether genuine issues of material fact concerning the reasonableness and necessity of Deputy Craven's use of force preclude summary judgment.
3. Whether summary judgment for Deputy Craven personally should stand where the plaintiffs did not seek relief on transfer from the Court of Appeals' affirmance.

HOLDINGS

1. A law-enforcement officer's use of force in excess of the reasonable force authorized by statute is not shielded from liability by the Indiana Tort Claims Act's enforcement-of-a-law immunity under Indiana Code section 34-13-3-3(8).
2. Genuine issues of material fact concerning whether Deputy Craven's conduct was reasonable and whether he reasonably believed the force was necessary to effect a lawful arrest precluded summary judgment on the plaintiffs' liability claims against the Sheriff.
3. The Court summarily affirmed the Court of Appeals' decision affirming summary judgment on the plaintiffs' claims against Deputy Craven personally because the plaintiffs did not seek relief on transfer as to that portion of the decision.

KEY QUOTATIONS

"We hold that a law enforcement officer's use of force in excess of the reasonable force authorized by statute is not shielded from liability under the "enforcement of a law" immunity provided in Indiana Code § 34-13-3-3(8) and that genuine issues of fact exist, precluding summary judgment." (929 N.E.2d at 202)

"In Kemezy v. Peters we declared, "the use of excessive force is not conduct immunized" by the "enforcement of a law" immunity of the Indiana Tort Claims Act." (929 N.E.2d at 203)

"Accordingly, the contrary view expressed in City of Anderson is disapproved." (929 N.E.2d at 204)

FACTUAL BACKGROUND

Deputy Brad Craven of the Cass County Sheriff's Department discharged his taser three times into Richard Patrick Wilson, including twice after Wilson was lying immobile on the ground. The plaintiffs alleged that they posed no threat, had no weapons, and were not sought by law enforcement. The parties agreed that factual

disputes existed concerning whether Craven's use of force was reasonable and whether he reasonably believed the force was necessary to effect a lawful arrest.

PROCEDURAL HISTORY

The trial court granted defendants summary judgment under the Indiana Tort Claims Act's law-enforcement immunity. The Court of Appeals affirmed summary judgment for Deputy Craven but reversed as to Sheriff Isaacs. The Supreme Court of Indiana reversed the trial court's grant of summary judgment on the claims against the Sheriff, summarily affirmed the Court of Appeals as to the claims against Deputy Craven personally, and remanded the Sheriff-related claims for trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The claims against the Sheriff of Cass County for liability arising from Deputy Craven's conduct were remanded for resolution at trial of the factual issues concerning whether Craven's conduct was reasonable and whether he reasonably believed the force was necessary to effect a lawful arrest.

CASES CITED

- Wilson v. Isaacs, 917 N.E.2d 1251 (Ind. Ct. App. 2009)
- Row v. Holt, 864 N.E.2d 1011, 1013 (Ind. 2007)
- Freidline v. Shelby Insurance Co., 774 N.E.2d 37, 39 (Ind. 2002)
- Kemezy v. Peters, 622 N.E.2d 1296, 1297 (Ind. 1993)
- King v. Northeast Security, Inc., 790 N.E.2d 474, 482-483 (Ind. 2003)
- Benton v. City of Oakland City, 721 N.E.2d 224, 230 (Ind. 1999)
- City of Anderson v. Davis, 743 N.E.2d 359, 365 n.4 (Ind. Ct. App. 2001), trans. denied
- Patrick v. Miresso, 848 N.E.2d 1083, 1085-1087 (Ind. 2006)
- City of Indianapolis v. Garman, 848 N.E.2d 1087 (Ind. 2006)
- Crawford v. City of Muncie, 655 N.E.2d 614, 622 (Ind. Ct. App. 1995), trans. denied
- City of South Bend v. Fleming, 397 N.E.2d 1075, 1077 (Ind. Ct. App. 1979), trans. not sought
- Fidler v. City of Indianapolis, 428 F. Supp. 2d 857, 867 (S.D. Ind. 2006)

OPINION

Wilson v. Isaacs 929 N.E.2d 200

DICKSON, J.

929 N.E.2d 200 (2010) Richard Patrick WILSON and Billy Don Wilson, Appellants (Plaintiffs below), v. Gene ISAACS, Sheriff of Cass County, and Brad Craven, Appellees (Defendants below). No. 09S05-1003-CV-149. Supreme Court of Indiana. June 28, 2010.

*201 William E. Beck II, Whitney K. Beck, Student Legal Intern, Kokomo, IN, Attorney for Appellants.

Ian L. Stewart, Michael R. Morow, Stephenson Morow & Semler, Indianapolis, IN, Attorneys for Appellees. Office of the Attorney General, Gregory F. Zoeller, Attorney General of Indiana, Thomas M. Fisher, Solicitor General, Heather L. Hagan, Deputy Attorney General, Ashley E. Tatman, Deputy Attorney General, Indianapolis, IN, Attorneys for Amicus Curiae. On Transfer from the Indiana Court of Appeals, No. 09A05-0906-CV-344 DICKSON, Justice. In this action for damages the plaintiffs allege that Deputy Brad Craven of the Cass County Sheriff's Department discharged his taser gun into Richard Patrick Wilson three times, two of which occurred after Wilson was laying immobile on the ground. Seeking immunities under the Indiana Tort Claims Act, the defendants obtained summary judgment from the trial court. The Court of Appeals affirmed the summary judgment for the Deputy, but reversed summary judgment as to the Sheriff. *Wilson v. Isaacs*, 917 N.E.2d 1251, 1258 (Ind.Ct.App.2009). Both defendants sought transfer, challenging the partial reversal of summary judgment.[1] We hold that a law enforcement officer's use of *202 force in excess of the reasonable force authorized by statute is not shielded from liability under the "enforcement of a law" immunity provided in Indiana Code § 34-13-3-3(8) and that genuine issues of fact exist, precluding summary judgment. As to the claims against the Sheriff of Cass County for the actions of Deputy Craven, the defendants sought summary judgment in the trial court, asserting "Indiana's law enforcement immunity found at Ind.Code § 34-13-3-3(8)." Appellants' App'x at 200. In its order granting summary judgment, the trial court did not specify the basis for its decision. *Id.* at 10. The defendants argue that there is undisputed evidence showing the deputy was engaged in acts as a law enforcement officer enforcing the law when the events giving rise to the suit occurred. They assert: Both Plaintiffs have admitted that they knew that Deputy Craven was a police officer when he arrived ... and when he tasered Richard Wilson. Plaintiffs both saw that Deputy Craven was in uniform and was in a marked patrol car. Plaintiffs knew that there were a number of other police officers present who were in uniform and were driving marked police cars. Moreover, Plaintiffs had just witnessed Deputy Craven arrest their younger brother. Appellees' Br. at 14 (internal citations omitted). In relevant part, the specific Indiana Tort Claims Act immunity provision at issue provides as follows: A governmental entity or an employee acting within the scope of the employee's employment is not liable if a loss results from the following: * * *

(8) The ... enforcement of ... a law (including rules and regulations), unless the act of enforcement constitutes false arrest or false imprisonment.

Ind.Code § 34-13-3-3. The defendants correctly point out that the plaintiffs are not asserting a claim for false arrest or false imprisonment. The plaintiffs contend on appeal that the government is not immune from liability for the deputy's conduct because disputed facts exist regarding whether the deputy used unreasonable and excessive force contrary to Indiana Code § 35-41-3-3(b), which provides in relevant part: "A law enforcement officer is justified in using reasonable

force if the officer reasonably believes that the force is necessary to effect a lawful arrest." *Id.* The plaintiffs argue that at no time during the incident did either of them pose any threat to Deputy Craven or others, that neither of the plaintiffs had a weapon, and that neither were sought by law enforcement nor had any prior criminal record. They assert that the deputy's actions were unreasonable and excessive when he "proceeded to taze the obedient plaintiff multiple times, shocking him repeatedly with 50,000 volts of electrical current." Appellants' Br. at 9. The parties do not dispute that there are contested issues of fact regarding whether the deputy's actions constituted or exceeded reasonable force. The issue is instead whether the law enforcement immunity is available to shield the government from liability for such claims. In reviewing an appeal from a summary judgment ruling, an appellate court applies the same standard as the trial court and thus affirms summary judgment only if "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Ind. Trial Rule 56(C); see *Row v. Holt*, 864 N.E.2d 1011, 1013 (Ind.2007). Where as here the dispute is one of law *203 rather than fact, a de novo standard of review applies. *Freidline v. Shelby Ins. Co.*, 774 N.E.2d 37, 39 (Ind.2002). Whether a police officer's use of unreasonable or excessive force is immune from suit under the Indiana Tort Claims Act's law enforcement immunity is not a new legal question. In *Kemezy v. Peters* we declared, "the use of excessive force is not conduct immunized" by the "enforcement of a law" immunity of the Indiana Tort Claims Act. 622 N.E.2d 1296, 1297 (Ind.1993). As emphasized in *Kemezy*, Indiana law had long recognized that "law enforcement officers owe a private duty to refrain from using excessive force in the course of making arrests." *Id.* Ten years later, in *King v. Northeast Sec., Inc.*, we explained that this immunity is restricted to the "enforcement of laws that are within the assignment of the governmental unit," and "the legislature intended that a governmental entity be immune only for failing to ... enforce a law that falls within the scope of the entity's purpose or operational power." 790 N.E.2d 474, 482, 483 (Ind.2003). The defendants argue that the rule in *Kemezy* no longer applies because it was based on a public/private duty test for law enforcement immunity that was subsequently disavowed in *Benton v. City of Oakland City*, 721 N.E.2d 224, 230 (Ind. 1999). This position is supported by *City of Anderson v. Davis*, 743 N.E.2d 359, 365 n. 4 (Ind.Ct.App.2001), trans. denied, but was rejected by the Court of Appeals in the present case. *Wilson*, 917 N.E.2d at 1257. The resolution of this question is guided by our unanimous opinion in *Patrick v. Mirosso*, 848 N.E.2d 1083 (Ind.2006). *Mirosso* did not involve a claim of excessive police force but the analogous claim of an officer's negligent operation of a police vehicle while pursuing a fleeing suspect. Addressing the impact of *Benton* upon the availability of the law enforcement immunity, we noted its implicit modification of the public/private duty test but vigorously rejected the claim that *Benton* operated to expand the availability of the immunity. *Id.* at 1085-87. We concluded by holding that the Indiana Tort Claims Act's law enforcement immunity "does not shield governmental entities and personnel from liability resulting from a breach of the statutory duty to operate emergency vehicles `with due regard for the safety of all persons.'" *Id.* at 1087 (quoting Ind.Code § 9-21-1-

8(d)(1)).[2] In *Miressso*, the statutory immunity was construed in conjunction with the statutory requirement that emergency vehicles be operated "with due regard for the safety of all persons." Ind.Code § 9-21-1-8(d)(1). Noting that statutes in apparent conflict should be construed harmoniously if reasonably possible, we declined to extend the immunity to claims of government negligence in operating emergency vehicles. Analogous to the statutory duty of due regard in the operation of emergency vehicles is the statutory provision authorizing a law enforcement officer's use of reasonable force but only "if the officer reasonably believes that the force is necessary to effect a lawful arrest." Ind.Code § 35-41-3-3(b). If an officer uses unnecessary or excessive force, the officer may commit the torts of assault and battery. *Crawford v. City of Muncie*, 655 N.E.2d 614, 622 (Ind.Ct.App.1995), trans. denied; *City of South Bend v. Fleming*, 397 N.E.2d 1075, 1077 (Ind.Ct.App.1979), trans. not sought. As in *Miressso*, we find that the statutory provision restrains the statutory immunity *204 from erecting a shield to liability for conduct contrary to the statute. [3] Accordingly, the contrary view expressed in *City of Anderson* is disapproved. Although we conclude that the law enforcement immunity of the Indiana Tort Claims Act does not shield the government from liability for excessive force by police, there remain genuine issues of material fact regarding whether Deputy Craven's conduct was reasonable and whether he reasonably believed that the force he used was "necessary to effect a lawful arrest." Ind.Code § 35-41-3-3(b). These factual issues remain for resolution at trial. Conclusion We reverse the trial court's grant of summary judgment as to the plaintiffs' liability claims against the Sheriff of Cass County for the conduct of Deputy Craven. As to the plaintiffs' claims against Deputy Craven personally, we summarily affirm the decision of the Court of Appeals affirming summary judgment. SULLIVAN, BOEHM, and RUCKER, JJ., concur. SHEPARD, C.J., dissents without opinion.

NOTES

[1] The plaintiffs did not seek relief on transfer as to the portion of the Court of Appeals decision affirming summary judgment against the plaintiffs as to their claims against the deputy personally. As to this issue, we summarily affirm the Court of Appeals. Ind. Appellate Rule 58(A)(2).

[2] Our holding in *Miressso* was unanimously reasserted in the companion case of *City of Indianapolis v. Garman*, 848 N.E.2d 1087 (Ind.2006).

[3] As Judge Hamilton insightfully observed, "[o]ne should not conclude too readily that the Indiana legislature intended to leave Indiana citizens without a remedy under state law if police officers inflict unreasonable and excessive force upon them." *Fidler v. City of Indianapolis*, 428 F. Supp. 2d 857, 867 (S.D.Ind.2006).