

NEVADA COURT OF APPEALS

Palmieri v. Clark County

2015 NV 102 · No. 65143 · Decided December 31, 2015

SUMMARY

The Nevada Court of Appeals affirmed summary judgment for Clark County and Dawn Stockman in Judy Palmieri’s civil rights and tort action arising from an administrative search of her residence. The court held that Stockman was entitled to qualified immunity because Palmieri did not make the required substantial showing that Stockman knowingly or recklessly included false information in the warrant affidavit, and the affidavit otherwise established probable cause for the administrative search. The court also adopted the application of *Franks v. Delaware* to civil claims in the qualified-immunity context.

CASE DETAILS

COURT	Nevada Court of Appeals
WRITING FOR THE COURT	Justice Silver; Chief Judge Gibbons; Judge Tao; Judge Silver
JURISDICTION	Nevada
DECIDED	December 31, 2015
DOCKET	65143
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order granting respondents summary judgment in a civil-rights and tort action.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The court views the evidence and reasonable inferences in the light most favorable to the nonmoving party and determines whether a genuine issue of material fact remains and whether the moving party is entitled to judgment as a matter of law. The issuing court's probable-cause determination is reviewed for whether there was a substantial basis for the determination, while legal conclusions concerning the constitutionality of a search are reviewed de novo.
PRECEDENTIAL VALUE	published
PARTIES	Judy Palmieri v. Clark County, Dawn Stockman

TOPICS

qualified immunity

section 1983

summary judgment

civil rights

municipal liability

PRACTICE AREAS

civil rights

constitutional law

civil procedure

municipal law

search and seizure

QUESTIONS PRESENTED

1. Whether Palmieri made the substantial showing required under *Franks v. Delaware* to challenge the veracity of the administrative search-warrant affidavit in a § 1983 action.
2. Whether the administrative search warrant was supported by probable cause sufficient to establish a reasonable suspicion that Palmieri was violating animal-health and welfare regulations.
3. Whether Stockman was entitled to qualified immunity on Palmieri's § 1983 claim.
4. Whether the district court properly granted summary judgment on Palmieri's Monell and state-law tort claims against Stockman and Clark County.

HOLDINGS

1. *Franks v. Delaware* applies in the civil context to a § 1983 claim challenging the veracity of a search-warrant affidavit. To survive summary judgment on such a claim, the plaintiff must make a substantial showing of a deliberate falsehood or reckless disregard for the truth and establish that the warrant would not have issued without the challenged information.
2. Palmieri failed to make the substantial showing necessary to establish that Stockman knowingly or intentionally, or with reckless disregard for the truth, included the informant's fictitious name in the affidavit.
3. An administrative search warrant based on specific evidence of a regulatory violation is supported by administrative probable cause when the warrant affidavit presents specific evidence sufficient to support a reasonable suspicion of a violation, evaluated under the totality of the circumstances.
4. The warrant affidavit established administrative probable cause because the informant's detailed, firsthand allegations of ongoing animal-welfare violations were sufficiently reliable and were corroborated by Stockman's verification of Palmieri's residence and review of prior animal-control records.
5. Stockman was entitled to qualified immunity because Palmieri failed to establish a constitutional violation or a genuine issue of material fact concerning a violation of clearly established constitutional rights.

KEY QUOTATIONS

“a plaintiff can only survive summary judgment on a defense claim of qualified immunity if the plaintiff can both establish a substantial showing of a deliberate falsehood or reckless disregard and establish that, without the dishonestly included or omitted information, the magistrate would not have issued the warrant.”
(2015 NV 102, at 14-15)

“we conclude that to establish administrative probable cause based on evidence of a specific violation, a search warrant affidavit must show specific evidence sufficient to support a reasonable suspicion of a violation.” (2015 NV 102, at 28-29)

“Palmieri failed to make a substantial showing that Stockman knowingly and intentionally, or with a reckless disregard for the truth, included a false statement in the administrative search warrant affidavit, and Palmieri failed to establish a genuine issue of material fact with regard to whether the administrative search warrant was supported by probable cause to search Palmieri's residence.” (2015 NV 102, at 38-39)

FACTUAL BACKGROUND

An informant identifying herself as Kaitlyn Nichols reported to animal-control authorities that Palmieri kept unhealthy animals in her residence and garage. Stockman investigated by verifying Palmieri's ownership of the residence and reviewing prior animal-control records, then obtained an administrative search warrant after supervisors and a deputy district attorney reviewed the application. The search revealed 29 dogs, including two that appeared sickly, and resulted in citations and the impoundment of several animals. Nichols later stated that she had not made the complaint and that someone else had used her identity, prompting Palmieri's civil-rights and tort action.

PROCEDURAL HISTORY

Palmieri sued Dawn Stockman and Clark County after Stockman obtained and executed an administrative search warrant for Palmieri's residence based on an animal-welfare complaint. The complaint asserted a 42 U.S.C. § 1983 claim, a Monell claim, state-law tort claims, and claims concerning an allegedly illegal search and warrant. After discovery, the district court granted summary judgment in favor of Stockman and Clark County in its entirety. The Nevada Court of Appeals affirmed, concluding that Stockman was entitled to qualified immunity and that the remaining claims likewise failed.

DISPOSITION

affirmed

CASES CITED

- Alabama v. White, 496 U.S. 325 (1990)
- Camara v. Municipal Court, 387 U.S. 523 (1967)
- Franks v. Delaware, 438 U.S. 154 (1978)
- Hervey v. Estes, 65 F.3d 784 (9th Cir. 1995)
- Illinois v. Gates, 462 U.S. 213 (1983)
- Keesee v. State, 110 Nev. 997, 879 P.2d 63 (1994)
- Marshall v. Barlow's, Inc., 436 U.S. 307 (1978)
- Pearson v. Callahan, 555 U.S. 223 (2009)
- Saucier v. Katz, 533 U.S. 194 (2001)
- West Point-Pepperell, Inc. v. Donovan, 689 F.2d 950 (11th Cir. 1982)

- Wood v. Safeway, Inc., 121 Nev. 724, 121 P.3d 1026 (2005)
- Owens v. City of North Las Vegas, 85 Nev. 105, 450 P.2d 784 (1969)
- Powell v. Liberty Mutual Fire Insurance Co., 127 Nev. 156, 252 P.3d 668 (2011)
- State v. Eighth Judicial District Court (Anzalone), 118 Nev. 140, 42 P.3d 233 (2002)
- Sengel v. JUT, 116 Nev. 565, 2 P.3d 258 (2000)

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