

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Bailey v. County of Stanislaus

Bailey · No. 2:24-cv-03231-JAM-AC · Decided July 8, 2025

SUMMARY

The United States District Court for the Eastern District of California granted motions to dismiss claims arising from the police shooting of Kevin Frey. The court dismissed claims against the County of Stanislaus and its deputies with leave to amend because the plaintiff had not adequately established successor-in-interest standing, while dismissing claims against the City of Turlock without leave to amend. The court also sua sponte dismissed negligence and Bane Act claims against a City officer identified as Doe 1.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	John A. Mendez
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	July 8, 2025
DOCKET	2:24-cv-03231-JAM-AC
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff's claims under 42 U.S.C. § 1983 and California law were challenged by separate Rule 12(b)(6) motions filed by the County and its deputies and by the City. The court granted the County's motion with leave to amend and the City's motion without leave to amend.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true and asks whether the complaint contains sufficient factual matter to state a plausible claim for relief. Legal conclusions and conclusory allegations are not accepted as true. A claim may also be dismissed for failure to adequately allege standing.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	David Michael Bailey v. County of Stanislaus, Deputy Larson, Deputy Rose, Deputy Garcia, City of Turlock, Doe One, Does 2 through 10, inclusive

TOPICS

motions to dismiss

section 1983

standing

negligence

civil rights

PRACTICE AREAS

civil rights

civil procedure

torts

municipal liability

probate

QUESTIONS PRESENTED

1. Whether Bailey plausibly alleged that he was Kevin Frey's successor in interest and therefore had standing to pursue the survival action.
2. Whether the complaint stated a § 1983 municipal-liability claim against the City when it alleged no constitutional violation by a City officer.
3. Whether the complaint stated a negligence claim against the City based on vicarious liability for a City officer's failure to release a police dog.
4. Whether the complaint stated a California Bane Act claim against the City when it alleged no threat, intimidation, coercion, or excessive force by a City officer.
5. Whether leave to amend should be granted on the dismissed claims.

HOLDINGS

1. Bailey failed to plausibly allege that he was Judy Frey's successor in interest because the allegations that she had no surviving children did not foreclose the possibility that she had other surviving issue, such as grandchildren. The claims against the County and its deputies were therefore dismissed under Rule 12(b)(6), but leave to amend was granted.
2. The complaint failed to state a municipal-liability claim against the City because it did not allege that a City officer violated Kevin Frey's constitutional rights; the allegations focused on the conduct of County deputies. Leave to amend was denied because Bailey represented that he had not alleged a Monell claim against the City.
3. The negligence claim against the City failed because the alleged City officer did not owe Frey a legal duty to release a police dog, and the City therefore could not be held vicariously liable for the officer's alleged negligence. Leave to amend was denied, and the court also sua sponte dismissed the negligence claim against Doe One.
4. The Bane Act claim against the City failed because the complaint alleged no facts showing that the City or Doe One threatened, intimidated, or coerced Frey, and the only relevant allegation was a conclusory legal assertion. Leave to amend was denied, and the court also sua sponte dismissed the Bane Act claim against Doe One.
5. The court could sua sponte dismiss the negligence and Bane Act claims against Doe One under Rule 12(b)(6) because Bailey could not possibly obtain relief on those claims based on the allegations.

KEY QUOTATIONS

“To survive a motion to dismiss [under 12(b)(6)], a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” (at 2)

“Because Plaintiff’s allegations do not support that he is the “decendent’s successor in interest,” the Complaint must be dismissed.” (at 5)

“Because Doe 1 did not owe Mr. Frey a legal duty, Doe 1 cannot be held liable for negligence, and the City therefore cannot be held vicariously liable.” (at 7)

“Because Plaintiff cannot show that a City officer used excessive force, he cannot establish a violation of the Bane Act.” (at 10)

FACTUAL BACKGROUND

The action arose from the police shooting and death of Kevin Frey, Bailey's nephew. Bailey alleged that Frey's mother, Judy Frey, was initially Frey's successor in interest and that Bailey became her successor in interest after her death. The amended complaint asserted excessive-force, false-arrest and detention, due-process, municipal-liability, battery, negligence, and Bane Act claims against County deputies, the County, the City of Turlock, and a Doe City officer. Bailey did not allege that a City officer used excessive force or that the City officer threatened, intimidated, or coerced Frey.

PROCEDURAL HISTORY

Bailey filed suit as the alleged successor in interest to his deceased nephew, Kevin Frey, asserting federal civil-rights and state-law claims arising from Frey's police shooting. The court had previously dismissed the County-related claims and granted leave to amend to plead facts establishing Bailey's standing as successor in interest. After Bailey filed a first amended complaint, the County and City moved to dismiss. The court granted the County's motion with leave to amend and dismissed the City-related claims with prejudice, also sua sponte dismissing negligence and Bane Act claims against Doe One.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand. Bailey may file an amended complaint within twenty days alleging facts establishing his standing as Kevin Frey's successor in interest. He may not assert claims against the City, negligence or Bane Act claims against Doe One, or new claims or theories of liability without prior court authorization.

CASES CITED

- Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009)
- Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992)
- Moreland v. Las Vegas Metro. Police Dep't, 159 F.3d 365, 369 (9th Cir. 1998)
- Anderson v. Hickman, No. CIV. S-07-1466 LKK/DAD, 2008 WL 2397470, at *1 (E.D. Cal. June 11, 2008)

- *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003)
- *Lockett v. County of Los Angeles*, 977 F.3d 737, 742 (9th Cir. 2020)
- *Ladd v. County of San Mateo*, 12 Cal. 4th 913, 917 (1996)
- *Alejo v. City of Alhambra*, 75 Cal. App. 4th 1180, 1185 (1999)
- *B.H. v. County of San Bernardino*, 62 Cal. 4th 168 (2015)
- *Hayes v. County of San Diego*, 57 Cal. 4th 622, 629 (2013)
- *Austin B. v. Escondido Union Sch. Dist.*, 149 Cal. App. 4th 860, 883 (2007)
- *Cornell v. City & County of San Francisco*, 17 Cal. App. 5th 766, 799 (2017)
- *Omar v. Sea-Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir. 1987)

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