

SUPREME COURT OF MISSISSIPPI

City of Jackson v. Powell

917 So. 2d 59 (Miss. 2005) · No. No. 2003-CA-01013-SCT · Decided November 10, 2005

SUMMARY

The Supreme Court of Mississippi reviewed a judgment awarding Frederick Powell compensatory and punitive damages, attorney's fees, and litigation costs arising from an alleged excessive-force incident involving Jackson police officers. The court held that the officers' actions were outside the course and scope of their employment, reversed the City's liability under the Mississippi Tort Claims Act, and reversed the awards of attorney's fees and litigation costs because 42 U.S.C. § 1983 was not adequately pleaded and the record lacked supporting evidence.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Cobb, P.J., for the Court; Cobb, P.J.; Carlson, J.; Randolph, J.
JURISDICTION	Mississippi
DECIDED	November 10, 2005
DOCKET	No. 2003-CA-01013-SCT
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The City of Jackson appealed from a bench-trial judgment of the Hinds County Circuit Court awarding Frederick Powell compensatory damages, punitive damages, attorney's fees, and litigation costs. The trial court denied the City's motion for judgment notwithstanding the verdict or, alternatively, a new trial.
STANDARD OF REVIEW	Findings in a bench trial receive the same deference as a chancellor's findings and will not be disturbed unless manifestly wrong, clearly erroneous, or based on an erroneous legal standard. Legal questions, including application of the Mississippi Tort Claims Act, are reviewed de novo.
PRECEDENTIAL VALUE	Published Mississippi Supreme Court opinion; precedential.
PARTIES	City of Jackson v. Frederick Powell

TOPICS

police misconduct

government liability

sovereign immunity

section 1983

appellate procedure

PRACTICE AREAS

Torts

Civil rights

Municipal liability

Sovereign immunity

Appellate procedure

QUESTIONS PRESENTED

1. Whether Powell was engaged in criminal activity at the time of the injuries for purposes of law-enforcement immunity under Mississippi Code section 11-46-9(1)(c).
2. Whether the officers used excessive force in arresting and subduing Powell.
3. Whether the City was immune under the Mississippi Tort Claims Act because the officers acted maliciously and outside the course and scope of employment.
4. Whether the City's supervision of its police officers was a discretionary governmental function protected by Mississippi Code section 11-46-9(1)(d).
5. Whether the trial court properly awarded attorney's fees and litigation costs under 42 U.S.C. sections 1988 and 1983.

HOLDINGS

1. A claimant's earlier criminal conduct does not establish the statutory criminal-activity exception when that conduct had ceased before the injury and had no causal nexus to the force inflicted after the claimant was subdued and handcuffed.
2. The officers used excessive force because the force was grossly disproportionate to the resistance encountered and continued after Powell was subdued and handcuffed.
3. The City was immune from liability under the Mississippi Tort Claims Act because the officers' malicious conduct placed them outside the course and scope of employment.
4. The City's manner of supervising, disciplining, and regulating police officers was a discretionary governmental function immune under Mississippi Code section 11-46-9(1)(d).
5. The award of attorney's fees and litigation costs was improper because Powell did not adequately plead or prove a claim under 42 U.S.C. section 1983.

KEY QUOTATIONS

“In the present case, there was widely contradictory evidence presented to the trial court. Powell and six witnesses testified that Powell's injuries occurred after the officers subdued and handcuffed him.” (917 So. 2d at 70)

“The exercise of the degree of force necessary to knock out several teeth from the mouth of an individual who was handcuffed and unable to offer physical resistance to the police does shock the conscience and supports the trial court's finding of excessive force.” (917 So. 2d at 72)

“The manner in which a police department supervises, disciplines and regulates its police officers is a discretionary function of the government and thus the city is immune to suit under § 11-46-9(1)(d).” (917 So.

“We hold that Powell did not adequately plead § 1983 in his complaint; and therefore, the trial court's award of attorney's fees and litigation costs pursuant to § 1988(a), (b) and (c) was inappropriate.” (917 So. 2d at 75)

FACTUAL BACKGROUND

Jackson police officers stopped Frederick Powell after observing him drive the wrong way on a one-way street. Powell lacked a driver's license, had a suspended license and an outstanding assault warrant, and marijuana was found in his vehicle according to the officers. Powell attempted to escape from the patrol car and alleged that the officers beat him during and after the effort, including after he was subdued and handcuffed; the officers disputed that account. The trial court found that the officers used excessive force maliciously and that the City had been deliberately indifferent and negligent in supervising its officers.

PROCEDURAL HISTORY

Powell sued the City and Jackson police officers Donald McCluskey and Gil Baker for assault and battery, intentional infliction of emotional distress, and negligence arising from the officers' use of force during and after his arrest. Following a bench trial, the circuit court found excessive force, malice, negligent supervision, and municipal approval of excessive force, and entered judgment for Powell. The Supreme Court of Mississippi affirmed the finding that the officers acted beyond the scope of employment but reversed and rendered the judgment against the City and the award of attorney's fees and litigation costs.

DISPOSITION

reversed_and_remanded

CASES CITED

- City of Jackson v. Perry, 764 So. 2d 373, 376, 379 (Miss. 2000)
- City of Jackson v. Brister, 838 So. 2d 274, 278 (Miss. 2003)
- Mississippi Department of Public Safety v. Durn, 861 So. 2d 990, 994 (Miss. 2003)
- Estate of Williams v. City of Jackson, 844 So. 2d 1161, 1163-65 (Miss. 2003)
- Bridges v. Pearl River Valley Water Supply District, 793 So. 2d 584, 586, 588, 590 (Miss. 2001)
- Pearl River Valley Water Supply District v. Bridges, 878 So. 2d 1013, 1014-15 (Miss. Ct. App. 2004)
- City of Jackson v. Calcote, 910 So. 2d 1103, 1111-12 (Miss. Ct. App. 2005)
- City of Ellisville v. Richardson, 913 So. 2d 973, 977-79 (Miss. 2005)
- Collins v. Tallahatchie County, 876 So. 2d 284, 287 (Miss. 2004)
- Turner v. City of Ruleville, 735 So. 2d 226, 230 (Miss. 1999)
- Webb v. Jackson, 583 So. 2d 946, 951 (Miss. 1991)
- Graham v. Connor, 490 U.S. 386, 396-97 (1989)
- Williams v. Lee County Sheriff's Department, 744 So. 2d 286, 297 (Miss. 1999)

- United States v. Bigham, 812 F.2d 943, 948 (5th Cir. 1987)
- Shillingford v. Holmes, 634 F.2d 263, 266 (5th Cir. 1981)
- Hall v. State, 79 Miss. 38, 29 So. 994 (1901)
- Doe v. State ex rel. Mississippi Department of Corrections, 859 So. 2d 350, 356 (Miss. 2003)
- Leflore County v. Givens, 754 So. 2d 1223, 1226 (Miss. 2000)
- City of Jackson v. McLeod, 199 Miss. 676, 686-88, 24 So. 2d 319, 321 (1946)
- Barrett v. Miller, 599 So. 2d 559, 563-64 (Miss. 1992)
- Hood v. Mississippi Department of Wildlife Conservation, 571 So. 2d 263, 267 (Miss. 1990)
- Burrell v. Mississippi State Tax Commission, 536 So. 2d 848, 863 (Miss. 1988)
- Garg v. Albany Industrial Development Agency, 899 F. Supp. 961, 967-68 (N.D.N.Y. 1995), *aff'd mem.*, 104 F.3d 351 (2d Cir. 1996)
- Barr v. Abrams, 810 F.2d 358, 363 (2d Cir. 1987)
- Dowdell v. Fairman, 21 F. Supp. 2d 828, 829 (N.D. Ill. 1998)
- Callis v. Sellars, 931 F. Supp. 504, 515 (S.D. Tex. 1996)
- Monell v. Department of Social Services, 436 U.S. 658, 691-92, 694 (1978)
- East Mississippi State Hospital v. Callens, 892 So. 2d 800, 817 (Miss. 2004)
- Love v. King, 784 F.2d 708, 710 (5th Cir. 1986)
- Orthopedic & Sports Injury Clinic v. Wang Laboratories, Inc., 922 F.2d 220, 224 n. 3 (5th Cir. 1991)
- Maldonado v. Kelly, 768 So. 2d 906, 909-10 (Miss. 2000)
- Beta Beta Chapter v. May, 611 So. 2d 889, 895 (Miss. 1992)
- Covington v. Carley, 197 Miss. 535, 541-42, 19 So. 2d 817, 818 (1944)