

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Janice Washington v. City of St. Louis, Missouri

No. 22-1843, United States Court of Appeals for the Eighth Circuit (October 19, 2023)

SUMMARY

****Key Legal Topics:**** Qualified immunity; summary judgment burden; unverified complaint as evidence; deliberate indifference (42 U.S.C. § 1983); wrongful death (Mo. Rev. Stat. § 537.080); municipal liability (Monell); interlocutory appeal; collateral order doctrine. ****Holding:**** The Eighth Circuit vacated the district court's denial of summary judgment to three jail guards in a § 1983 deliberate-indifference and wrongful-death action. The district court committed two legal errors: (1) it required the defendants to produce evidence affirmatively defeating the plaintiff's claims, rather than allowing them to point to an absence of evidence supporting those claims under *Celotex*; and (2) it relied on unsworn allegations from the plaintiff's unverified complaint to create genuine issues of material fact, which is impermissible at summary judgment. The case was remanded for further proceedings consistent with the correct standard.

CASE DETAILS

COURT	United States Court of Appeals for the Eighth Circuit
WRITING FOR THE COURT	STRAS; BENTON; GRASZ
JURISDICTION	Federal
DECIDED	October 19, 2023
DOCKET	22-1843
DISPOSITION	vacated
STANDARD OF REVIEW	Legal issues of summary judgment burden and use of unverified pleadings
PRECEDENTIAL VALUE	Published
PARTIES	City of St. Louis, Missouri; Phlander Hughes; Ryan Marte Branson; Matthias Arthur v. Jance Washington, Personal Representative of the Estate of Velma Payton; Louis Lyen Payton, deceased

TOPICS

- civil procedure
- summary judgment
- appellate procedure
- evidence

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court applied the correct summary-judgment standard under Celotex.
2. Whether the district court erred by relying on an unverified complaint as evidence at summary judgment.

HOLDINGS

1. A party moving for summary judgment need not produce evidence showing absence of genuine issue; it may discharge its burden by pointing out absence of evidence supporting nonmoving party's case.
2. A party may not resist summary judgment by reference only to its pleadings; district courts should not rely on unverified complaints to deny summary judgment.

KEY QUOTATIONS

"A party moving for summary judgment need not 'produce evidence showing the absence of a genuine issue of material fact' when 'the nonmoving party bears the burden of proof.' Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986)." (-5-)

"a party may not 'resist a properly made [summary-judgment] motion by reference only to its pleadings.' Celotex, 477 U.S. at 325." (-5-)

"Unsworn allegations are no substitute for evidence at summary judgment." (-6-)

FACTUAL BACKGROUND

Louis Payton, unable to afford bail, was detained at a medium-security facility in St. Louis (the Workhouse) in dormitory-style quarters. He received and overdosed on fentanyl. Inmates attempted to help by rubbing ice on him. Officers Matthias Arthur, Philander Hughes, and Ryan Branson arrived minutes later, radioed for medical assistance, but did not attempt resuscitation themselves, instead watching inmates. Trained personnel arrived four minutes later but could not revive Payton. Surveillance footage captured some but not all events. Payton's mother initially sued, and later his aunt Janice Washington became personal representative.

PROCEDURAL HISTORY

The district court denied summary judgment to defendant on deliberate-indifference and wrongful-death claims after two rounds of summary-judgment briefing, and stayed discovery.

DISPOSITION

vacated

REMAND INSTRUCTIONS

On remand, the district court should reconsider its decision to stay discovery and must apply the correct summary-judgment standard, limiting itself to the evidence and not relying on unverified pleadings.

CASES CITED

- Monnell v. Dep't of Soc. Servs., 436 U.S. 658, 691 (1978)
- N.S. v. Kansas City Bd. of Comm'rs, 933 F.3d 967, 969 (8th Cir. 2019)
- Green Tree Fin. Corp.–Ala. v. Randolph, 531 U.S. 79, 86 (2000)
- Langford v. Norris, 614 F.3d 445, 455 (8th Cir. 2010)
- Will v. Hallock, 546 U.S. 345, 349 (2006)
- Johnson v. Jones, 515 U.S. 304, 311-12 (1995)
- N.S. ex rel. Lee v. Kansas City Bd. of Comm'rs, 35 F.4th 1111, 1113 (8th Cir. 2022)
- Dean v. Bearden, 79 F.4th 986, 988 (8th Cir. 2023)
- Plumhoff v. Rickard, 572 U.S. 765, 773 (2014)
- Scott v. Benson, 742 F.3d 335, 340 (8th Cir. 2014)
- Vette v. K-9 United Deputy Sanders, 989 F.3d 1154, 1163 (10th Cir. 2021)
- Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986)
- Joseph ex rel. Est. of Joseph v. Bartlett, 981 F.3d 319, 334 (5th Cir. 2020)
- Roberson v. Hayti Police Dep't, 241 F.3d 992, 994-95 (8th Cir. 2001)
- Johnson v. Ready Mixed Concrete Co., 424 F.3d 806, 811 (8th Cir. 2005)

OPINION

PER CURIAM.

United States Court of Appeals For the Eighth Circuit _____ No. 22-1843 _____ Janice Washington, Personal Representative of the Estate of Velma Payton; Louis Lyen Payton, deceased Plaintiffs - Appellees v. City of St. Louis, Missouri; Philander Hughes, in his Individual and Official Capacities Defendants - Appellants Dale Glass, in his Individual and Official Capacities; Jeffrey Carson, in his Individual and Official Capacities Defendants Ryan Martel Branson, in his Individual and Official Capacities; Matthias Arthur, in his Individual and Official Capacities Defendants - Appellants _____ Appeal from United States District Court for the Eastern District of Missouri - St. Louis _____ Submitted: April 13, 2023 Filed: October 19, 2023 _____ Before BENTON, GRASZ, and STRAS, Circuit Judges. _____ STRAS, Circuit Judge.

In this qualified-immunity appeal, the district court misstated the burden and relied on allegations from an unverified complaint to deny summary judgment to three guards who allegedly failed to assist Louis Payton before he died. Based on these errors, we vacate and remand.

I. Unable to afford bail, Payton spent several months at a medium-security facility in St. Louis called “the Workhouse.” It had dormitory-style sleeping quarters connected to a recreation room

with tables and chairs. Inmates could move freely between the two rooms, and officers kept watch from a nearby guard station. Unfortunately, none of them saw Payton receive or take fentanyl, the drug that killed him.

Inmates tried to help by rubbing ice on him once he lost consciousness, but it did not work. Upon arriving a few minutes later, Officers Matthias Arthur, Philander Hughes, and Ryan Branson radioed for medical assistance.

In the meantime, rather than try to resuscitate Payton themselves, they stood by and watched as two inmates tried to help him. When trained medical personnel finally arrived four minutes later, it was too late: they were unable to revive Payton, who died from an overdose. Surveillance footage captured some, but not all, of these events. Payton's mother sued the City of St. Louis, the three responding officers, 1 and two supervisors for their deliberate indifference during the emergency.

See 42 U.S.C. § 1983; see also *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978). She also alleged that several of them had wrongfully caused his death. See Mo. Rev. Stat. § 537.080.

The defendants moved for summary judgment and a stay of discovery on the same day they filed their answer. Payton's mother, for her part, opposed both motions. Granting the stay would prevent her from getting the evidence she needed from discovery, and without learning more, she could not adequately respond to the summary-judgment motion.

The district court kept the case moving. After two rounds of summary-judgment briefing—during which Payton's aunt, Janice Washington, replaced his mother as personal representative—the court narrowed the case down to the deliberate-indifference and wrongful-death claims against the responding officers and the municipal-liability claim against the City of St. Louis.

For those, it denied summary judgment. II. Bypassing discovery put this case in a strange procedural posture. In denying summary judgment, the district court filled some of the holes in the record with allegations from the plaintiff's unverified complaint. Usually, in a qualified-immunity appeal, the district court has already given us the "plaintiff-friendly version of the facts" based on the evidence.

N.S. v. Kansas City Bd. of Comm'rs, 933 F.3d 967, 969 (8th Cir. 2019). The difficulty here is figuring out what we can review when the plaintiff has no evidence. Going back to the basics is a good place to start. An order denying summary judgment is typically nonfinal because it does not "end[] the litigation on the merits." *Green Tree Fin. Corp.—Ala. v. Randolph*, 531 U.S. 79, 86 (2000) (citation omitted); see also 28 U.S.C. § 1291 (granting appellate courts jurisdiction over "final decisions of the district courts").

In fact, almost by definition, it keeps the litigation -3- going, which means that the party who loses must generally wait until the case is over to appeal. See *Langford v. Norris*, 614 F.3d 445, 455 (8th Cir. 2010). Collateral orders, even when they arise out of the denial of summary judgment, are different. They are a “small class of [immediately appealable] rulings, not concluding the litigation, but conclusively resolving claims of right separable from, and collateral to, rights asserted in the action.” *Will v. Hallock*, 546 U.S. 345, 349 (2006) (citation omitted).

Included among them is a decision denying qualified immunity—precisely the situation we face here. See *Johnson v. Jones*, 515 U.S. 304, 311–12 (1995). When we review collateral orders, not everything in the case is before us. “[A]bstract issues of law,” *id.* at 317, like whether the “plaintiff-friendly version of the facts” states a constitutional violation and the law clearly establishes a right, are reviewable, *N.S. ex rel.*

Lee v. Kansas City Bd. of Comm’rs, 35 F.4th 1111, 1113 (8th Cir. 2022). The sufficiency of the evidence underlying the district court’s findings, however, is not. See *Johnson*, 515 U.S. at 313; see also *Dean v. Bearden*, 79 F.4th 986, 988 (8th Cir. 2023).

To the extent the defendants ask us to assess sufficiency, we cannot. This case also includes two other issues, ones we do not normally see in qualified-immunity appeals. The first is whether the district court picked and applied the right summary-judgment standard.

The second is whether unverified factual allegations can substitute for actual evidence in determining whether a genuine issue of material fact exists. In our view, both raise pure “legal issues” that fall within our jurisdiction, as limited as it may be. *Plumhoff v. Rickard*, 572 U.S. 765, 773 (2014); see *Scott v. Benson*, 742 F.3d 335, 340 (8th Cir. 2014) (remanding the case to the district court because it “applied the wrong constitutional standard in denying qualified immunity”); see also *Vette v. K-9 United Deputy Sanders*, 989 F.3d 1154, 1163 (10th Cir.

2021) (assessing in an interlocutory appeal whether the -4- district court appropriately treated the plaintiff’s verified complaint as “competent evidence”). A. The first legal error was not applying the correct summary-judgment standard. A party moving for summary judgment need not “produce evidence showing the absence of a genuine issue of material fact” when “the nonmoving party bears the burden of proof.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

Instead, the moving party may discharge its burden by “pointing out to the district court... that there is an absence of evidence to support the nonmoving party’s case.” *Id.*; see also *Fed. R. Civ. P.* 56(a). The summary-judgment standard was more than just window dressing here.

In its orders, the district court emphasized that the officers had not come up with any evidence definitively defeating the plaintiff’s claims. In doing so, it minimized what they did produce, like the video footage, the affidavits from the officers, and the statements from the other inmates because none “demonstrate[d] the absence of a genuine issue of material fact.” (Emphasis added.)

The problem is that, according to *Celotex*, the officers were free to rely on the absence of evidence supporting the plaintiff's claims. See *Celotex*, 477 U.S. at 325. B. A second error then compounded the first. The absence of discovery left the plaintiff without evidence to support her claims, so the district court looked to the unverified complaint to rebut the evidence the officers provided.

As *Celotex* itself states, however, a party may not “resist a properly made [summary-judgment] motion by reference only to its pleadings.” *Id.* It follows that district courts should not rely on them in denying summary judgment either. -5- Yet that is what happened here. One example is when the district court discussed what the guards knew. Rather than crediting their evidence that they only learned of the emergency shortly before they entered the dormitory, it pointed to the allegations in the unverified complaint that “support[ed] an inference that [they] knew of Mr. Payton’s need for attention” earlier.

The same goes for how the district court dealt with the gaps in the video footage, which ranged from just a few seconds to a few minutes long. Instead of relying on other evidence to fill in the missing details, the findings mirrored what the plaintiff’s unverified complaint said. 2 Once again, unsworn allegations are no substitute for evidence at summary judgment.

See *Joseph ex rel. Est. of Joseph v. Bartlett*, 981 F.3d 319, 334 (5th Cir. 2020); cf. *Roberson v. Hayti Police Dep’t*, 241 F.3d 992, 994–95 (8th Cir. 2001) (treating allegations in a verified complaint as “the equivalent of an affidavit for purposes of summary judgment” (citing 28 U.S.C. § 1746)). C. The district court tilted the scales too far in the plaintiff’s favor by raising the summary-judgment burden on the officers and allowing unsworn allegations to rebut evidence.

But take note of what we do not say. On remand, the court is free to reconsider its decision to stay discovery. And we certainly express no opinion on what should happen once the court applies the right summary-judgment standard and limits itself to the evidence. Saying anything more would, after all, overstep our jurisdiction. See *Johnson*, 515 U.S. at 317; *Dean*, 79 F.4th at 988.

2 The district court also did not purport to draw an adverse inference from the missing footage, nor could it have. Even beyond the fact that the video skipped multiple times, not just during key moments, there was no argument, much less any findings, that someone destroyed the evidence “to suppress the truth” or that the missing footage “would have favored [the plaintiff’s] case.” *Johnson v. Ready Mixed Concrete Co.*, 424 F.3d 806, 811 (8th Cir.

2005) (citation omitted). -6- III. We accordingly vacate the denial of summary judgment and remand for further proceedings. _____ -7-