

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Marilyn Wagner, on behalf of Minor Child B.D. v. City of Newark, et al.

Wagner · No. No. 23-731 (SDW) (MAH) · Decided January 28, 2026

SUMMARY

The United States District Court for the District of New Jersey granted the City of Newark and Police Chief Darnell Henry’s motions to dismiss Marilyn Wagner’s Second Amended Complaint. The court held that the wrongful-death and Survivor’s Act claims failed, and it dismissed the remaining claims because the Second Amended Complaint was substantially the same as the previously rejected pleading and did not state a claim for relief. The court declined to allow another amendment.

CASE DETAILS

COURT	United States District Court for the District of New Jersey
WRITING FOR THE COURT	Susan D. Wigenton
JURISDICTION	United States District Court for the District of New Jersey
DECIDED	January 28, 2026
DOCKET	No. 23-731 (SDW) (MAH)
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendants City of Newark and Police Chief Darnell Henry moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss the Second Amended Complaint. The court granted the motions.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true, construes the complaint in the plaintiff's favor, disregards legal conclusions, and determines whether the facts plausibly show entitlement to relief under any reasonable reading of the complaint.
PRECEDENTIAL VALUE	unpublished
PARTIES	Marilyn Wagner, on behalf of Minor Child B.D. v. City of Newark, Darnell Henry

TOPICS

[motions to dismiss](#)

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PRACTICE AREAS

civil rights

constitutional law

civil procedure

municipal liability

wrongful death

QUESTIONS PRESENTED

1. Whether the Second Amended Complaint plausibly stated a claim under the New Jersey Wrongful Death Act against the City and Chief Henry.
2. Whether the Second Amended Complaint plausibly stated a claim under the New Jersey Survivor's Act against the City and Chief Henry.
3. Whether the remaining claims against the City and Chief Henry should be dismissed because the Second Amended Complaint was materially identical to the previously dismissed First Amended Complaint and failed for the reasons stated in Wagner II.

HOLDINGS

1. The Wrongful Death Act claim was inadequately pleaded because the Second Amended Complaint did not allege that B.D. was dependent on Dorsey for support at the time of Dorsey's death, and the complaint did not establish an underlying basis for liability.
2. The Survivor's Act claim failed because Plaintiff's remaining claims did not establish a basis for liability.
3. The remaining claims against the City and Henry were dismissed because the Second Amended Complaint was practically the same as the First Amended Complaint and failed for the reasons previously stated in Wagner II.

KEY QUOTATIONS

“When deciding a motion to dismiss under Rule 12(b)(6) for failure to state a claim upon which relief may be granted, federal courts “must accept all factual allegations in the complaint as true, construe the complaint in the light favorable to the plaintiff,” and determine “whether [the] plaintiff may be entitled to relief under any reasonable reading of the complaint.”” (Section III)

“For the reasons stated above, Defendants’ Motions are GRANTED.” (Section V)

FACTUAL BACKGROUND

On New Year's Eve 2020, Newark detectives responded to what one detective believed were gunshots after the officers had observed and heard fireworks during their shift. Detective Simpkins exited an unmarked vehicle with his handgun drawn, bumped into Carl Dorsey, aimed at Dorsey's chest, and shot him approximately three seconds after exiting the vehicle. Dorsey died after suffering a gunshot wound to his torso, and officers allegedly failed to provide medical care while he lay bleeding on the sidewalk.

PROCEDURAL HISTORY

Wagner initially filed suit in New Jersey Superior Court against the City, the Newark Police Department, Henry, and Detective Simpkins; the City removed the action to federal court. The court granted earlier motions to dismiss in May 2024 and February 2025, allowing one final amendment. Plaintiff filed the Second Amended

Complaint, which the court found was practically identical to the First Amended Complaint, and the court dismissed the remaining claims against the City and Henry.

DISPOSITION

dismissed

CASES CITED

- Wagner v. City of Newark (Wagner I), No. 23-731, 2024 WL 2698588 (D.N.J. May 24, 2024)
- Monell v. Department of Social Services of City of New York, 436 U.S. 658 (1978)
- Estate of Roman v. City of Newark, 914 F.3d 789 (3d Cir. 2019)
- Wagner on behalf of B.D. v. City of Newark (Wagner II), No. 23-731, 2025 WL 635301 (D.N.J. Feb. 27, 2025)
- Ashcroft v. Iqbal, 556 U.S. 662, 677-79 (2009)
- Conley v. Gibson, 355 U.S. 41, 47 (1957)
- Mayer v. Belichick, 605 F.3d 223, 229-30 (3d Cir. 2010)
- Fowler v. UPMC Shadyside, 578 F.3d 203, 210-11 (3d Cir. 2009)
- Connelly v. Lane Construction Corp., 809 F.3d 780, 786 (3d Cir. 2016)
- Farrow v. U.S. Specialty Insurance Co., No. 20-6588, 2021 WL 6424642, at *1
- Casciano v. City of Paterson, No. 19-9475, 2022 WL 170857, at *7 (D.N.J. Jan. 19, 2022)
- Aronberg v. Tolbert, 25 A.3d 1121, 1124-25 & n.4 (N.J. 2011)
- Newburg v. Arrigo, 443 A.3d 1031, 1036 (N.J. 1982)
- Estate of Moore v. Cumberland County, No. 17-2839, 2018 WL 1203470, at *5 (D.N.J. Mar. 8, 2018)