

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
WEST VIRGINIA

Burgh v. Zerkle

Civil Action No. 3:25-0490 (S.D. W. Va. Mar. 30, 2026) · No. 3:25-0490 · Decided March 30, 2026

SUMMARY

The United States District Court for the Southern District of West Virginia considers defendants’ partial motion to dismiss claims arising from alleged police misconduct during a public arrest. The court dismisses the Cabell County Sheriff’s Office as a party, dismisses certain First, Fifth, and Fourteenth Amendment theories and official-capacity Monell claims, but allows the plaintiff’s Fourth Amendment excessive-force claims to proceed at the pleading stage. The opinion also addresses qualified immunity, municipal liability, and state-law claims.

CASE DETAILS

COURT	United States District Court for the Southern District of West Virginia
WRITING FOR THE COURT	Robert C. Chambers
JURISDICTION	United States District Court for the Southern District of West Virginia
DECIDED	March 30, 2026
DOCKET	3:25-0490
DISPOSITION	other
PROCEDURAL POSTURE	Defendants filed a partial motion to dismiss after answering the amended complaint. The court treated the motion as one for judgment on the pleadings under Rule 12(c), while applying the same standard applicable to Rule 12(b)(6).
STANDARD OF REVIEW	On a Rule 12(c) motion, the court accepts well-pleaded allegations as true and draws reasonable factual inferences in the plaintiff's favor; dismissal is proper only if it appears certain that the plaintiff cannot prove any set of facts supporting entitlement to relief. The Rule 12(b)(6) plausibility standard requires enough factual matter to state a claim that is plausible on its face.
PRECEDENTIAL VALUE	unpublished
PARTIES	Emilea Burgh v. Chuck Zerkle, Doug Adams, Cabell County Sheriff's Office, Cabell County Commission

TOPICS

section 1983

police misconduct

municipal liability

motions to dismiss

torts

PRACTICE AREAS

civil rights

constitutional law

civil procedure

municipal law

torts

QUESTIONS PRESENTED

1. Whether the Cabell County Sheriff's Office has capacity to be sued under West Virginia law.
2. Whether Burgh adequately pleaded Fourth Amendment excessive-force claims against Zerkle.
3. Whether qualified immunity required dismissal of the excessive-force claims at the pleading stage.
4. Whether the First, Fifth, and Fourteenth Amendment theories attached to the excessive-force counts were independently viable.
5. Whether the Monell claims against Zerkle, Adams, CCSO, and the Cabell County Commission were adequately pleaded.
6. Whether the West Virginia Constitution provides a basis for the asserted municipal-liability claims.
7. Whether punitive damages may be recovered from the Cabell County Commission.
8. Whether the negligent- and intentional-infliction-of-emotional-distress claims were adequately pleaded and whether some were duplicative or barred by governmental immunity.
9. Whether the state-law assault and battery claims were barred by the law-enforcement privilege or inadequately pleaded.

HOLDINGS

1. CCSO was not a proper defendant because West Virginia law authorizes suits against county commissions but does not give sheriff's offices comparable capacity to be sued.
2. Burgh adequately pleaded Fourth Amendment excessive-force claims based on allegations that Zerkle swiped at her phone, struck her, grabbed her, and dragged her while she was noncombative, recording police activity, and not suspected of a crime.
3. The court declined to decide qualified immunity on the motion to dismiss because the factual record was insufficiently developed and the defense had not been clearly asserted beyond challenging the sufficiency of the excessive-force pleading.
4. The court dismissed the independent First and Fifth Amendment claims within Counts I and II and dismissed any independent substantive-due-process claim under the Fourteenth Amendment, but allowed the Fourteenth Amendment reference insofar as it incorporated the Fourth Amendment.
5. The official-capacity Monell claims against Zerkle and Adams were dismissed.
6. The Monell claims based on failure to hire, train, or supervise were dismissed because the complaint supplied conclusions rather than facts showing an inadequate training or hiring program, deliberate indifference, or a widespread history of unconstitutional conduct.

7. The claims asserting municipal liability for violations of Article III, sections 1, 6, and 10 of the West Virginia Constitution were dismissed.
8. Burgh's requests for punitive damages against CCC were dismissed.
9. The NIED claim was dismissed because Burgh did not allege that she witnessed a person closely related to her suffer critical injury or death as a result of defendants' negligence.
10. The IIED claim against Zerkle was dismissed as duplicative of the assault and battery claims, but the IIED claim against Adams was allowed to proceed because the allegation that he stood by while Zerkle assaulted and battered Burgh was sufficient at the pleading stage.
11. The IIED claim against CCC was dismissed under the West Virginia Governmental Tort Claims and Insurance Reform Act.
12. The assault and battery claims against Zerkle were adequately pleaded and were not barred at the pleading stage by the asserted law-enforcement privilege.

KEY QUOTATIONS

“To survive a 12(b)(6) motion to dismiss, a complaint must allege “enough facts to state a claim to relief that is plausible on its face.”” (at 3)

“Here, considering Plaintiff’s detailed allegations as facts, the threat posed by Plaintiff while filming a public arrest was minimal, Plaintiff had not committed a crime nor was she resisting, and the government did not have an overwhelming interest outweighing the intrusion of her Fourth Amendment rights.” (at 9)

“Monell claims impose liability only on “municipalities and other local government units[.]”” (at 19)

“More succinctly: an assault is “the threat to do violence;” “the actual doing of violence” is battery.” (at 38)

FACTUAL BACKGROUND

Burgh alleged that, while recording a public arrest from a sidewalk, Chief Deputy Chuck Zerkle attempted to stop her recording, threatened to arrest her for obstruction, shook handcuffs at her, grabbed her arm, and dragged her approximately fifteen feet. She further alleged that Zerkle later touched her again while demonstrating his version of the earlier contact. Burgh alleged that Sheriff Doug Adams witnessed both the arrest-related force against another individual and Zerkle's interaction with her but failed to intervene.

PROCEDURAL HISTORY

Burgh filed the action in August 2025 and filed a First Amended Complaint on November 3, 2025. The amended complaint asserted federal civil-rights claims under 42 U.S.C. § 1983 and state-law tort claims arising from an alleged law-enforcement encounter. Defendants moved to dismiss selected claims. The court granted the motion in part and denied it in part, dismissing CCSO, several constitutional theories, portions of the Monell claims, certain emotional-distress claims, and punitive-damages claims against the county commission, while allowing the excessive-force, assault, battery, and some other claims to proceed.

DISPOSITION

CASES CITED

- Edwards v. City of Goldsboro, 178 F.3d 231, 243-44 (4th Cir. 1999)
- Walker v. Kelley, 589 F.3d 127, 139 (4th Cir. 2009)
- Burbach Broadcasting Co. of Delaware v. Elkins Radio Corp., 278 F.3d 401, 405-06 (4th Cir. 2002)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 545, 570 (2007)
- Conley v. Gibson, 355 U.S. 41, 47 (1957)
- Priority Auto Group, Inc. v. Ford Motor Co., 757 F.3d 137, 139 (4th Cir. 2014)
- Monell v. Department of Social Services, 436 U.S. 658, 690-91 (1978)
- Avery v. Burke County, 660 F.2d 111, 113-14 (4th Cir. 1981)
- Helms v. Carpenter, No. 16-1070, 2017 WL 5513618, at *6 (W. Va. Nov. 17, 2017)
- Maston v. Wagner, 781 S.E.2d 936, 955 (W. Va. 2015)
- Van v. Ferguson, No. 3:25-0187, 2025 WL 2831182, at *2, *5 (S.D. W. Va. Oct. 6, 2025)
- Slone v. Racer, No. 3:23-0636, 2025 WL 4314898, at *3 (S.D. W. Va. Sept. 26, 2024)
- Eagon v. Cabell County Emergency Medical Services, No. 3:23-0013, 2023 WL 8853727, at *3 (S.D. W. Va. Dec. 21, 2023)
- Graham v. Connor, 490 U.S. 386, 394-97 (1989)
- County of Los Angeles v. Mendez, 581 U.S. 420, 427 (2017)
- Tennessee v. Garner, 471 U.S. 1, 8 (1985)
- Hupp v. Cook, 931 F.3d 307, 322 (4th Cir. 2019)
- Jones v. Buchanan, 325 F.3d 520, 528, 534 (4th Cir. 2003)
- Clem v. Corbeau, 284 F.3d 543, 554 (4th Cir. 2002)
- Park v. Shiflett, 250 F.3d 843, 852-53 (4th Cir. 2001)
- Daniels v. City of South Charleston, No. 2:20-CV-00779, 2021 WL 3624696, at *3 (S.D. W. Va. Aug. 16, 2021)
- Tomashek v. Raleigh County Emergency Operating Center, No. 2:17-cv-01904, 2018 WL 502752, at *6-7 (S.D. W. Va. Jan. 22, 2018)
- Smith v. Murphy, 634 F. App'x 914, 917 (4th Cir. 2015)
- E.W. by and through T.W. v. Dolgos, 884 F.3d 172, 185-86 (4th Cir. 2018)
- Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)
- Pearson v. Callahan, 555 U.S. 223, 230-37, 243 (2009)
- Mitchell v. Forsyth, 472 U.S. 511, 526 (1985)
- Saucier v. Katz, 533 U.S. 194, 200 (2001)
- Anderson v. Creighton, 483 U.S. 635, 639 (1987)
- Somers v. Devine, 132 F.4th 689, 696 (4th Cir. 2025)
- Turner v. Thomas, 930 F.3d 640, 644 (4th Cir. 2019)

- City of Escondido, California v. Emmons, 586 U.S. 38, 42 (2019)
- Thorpe v. Clarke, 37 F.4th 926, 940 (4th Cir. 2022)
- Kisela v. Hughes, 584 U.S. 100, 104-05 (2018)
- Ashcroft v. al-Kidd, 563 U.S. 731, 741 (2011)
- Semple v. City of Moundsville, 195 F.3d 708, 712 (4th Cir. 1999)
- Lytle v. Doyle, 326 F.3d 463, 471, 473 (4th Cir. 2003)
- Owens v. Baltimore Attorney's Office, 767 F.3d 379, 403 (4th Cir. 2014)
- Hall v. Putnam County Commission, 637 F. Supp. 3d 381, 398-401 (S.D. W. Va. 2022)
- Board of County Commissioners of Bryan County v. Brown, 520 U.S. 397, 408 (1997)
- City of Canton, Ohio v. Harris, 489 U.S. 378, 388-90 (1989)
- Reese v. Hannah, No. 2:23-cv-00805, 2024 WL 3607471, at *4 (S.D. W. Va. July 31, 2024)
- Pembaur v. City of Cincinnati, 475 U.S. 469, 484 (1986)
- Starbuck v. Williamsburg James City County School Board, 28 F.4th 529, 534 (4th Cir. 2022)
- Shaw v. Stroud, 13 F.3d 791, 799 (4th Cir. 1994)
- Wilkins v. Montgomery, 751 F.3d 214, 226 (4th Cir. 2014)
- Wellington v. Daniels, 717 F.2d 932, 936 (4th Cir. 1983)
- Weller v. Department of Social Services, 901 F.2d 387, 392 (4th Cir. 1990)
- Clark v. Link, 855 F.2d 156, 163 (4th Cir. 1988)
- Stepp v. Cottrell, 874 S.E.2d 700, 706-08 (W. Va. 2022)
- Fields v. Mellinger, 851 S.E.2d 789, 798-99 (W. Va. 2020)
- City of Newport v. Facts Concerts, Inc., 453 U.S. 247 (1981)
- Heldreth v. Marrs, 425 S.E.2d 157, 158 (W. Va. 1992)
- Harless v. First National Bank, 289 S.E.2d 692, 703-04 (W. Va. 1982)
- Travis v. Alcon Laboratories, Inc., 504 S.E.2d 419 (W. Va. 1998)
- Criss v. Criss, 356 S.E.2d 620, 620 (W. Va. 1987)
- Searls v. West Virginia Regional Jail, No. 3:15-cv-9133, 2016 WL 4698547, at *4 (S.D. W. Va. Sept. 7, 2016)
- Anderson v. Barkley, Nos. 2:19-cv-00198, 00199, 2020 WL 7753290, at *3 (S.D. W. Va. Dec. 29, 2020)
- Sammons v. Armstrong, No. 2:23-cv-00236, 2023 WL 7924721, at *6 (S.D. W. Va. Nov. 16, 2023)
- Pegg v. Herrnberger, 845 F.3d 112, 121-22 (4th Cir. 2017)
- Keyes v. Keyes, 193 S.E.2d 693, 696 (W. Va. 1972)
- West Virginia State Police v. J.H., 856 S.E.2d 679, 689 n.25 (W. Va. 2021)
- Weigle v. Pifer, 139 F. Supp. 3d 760, 776 (S.D. W. Va. 2015)
- West Virginia Fire & Casualty Co. v. Stanley, 602 S.E.2d 483, 495 (W. Va. 2004)
- State v. Cunningham, 236 S.E.2d 459, 593 (W. Va. 1977)