

SUPREME COURT OF NEBRASKA

Waldron v. Roark

298 Neb. 26 (2017) · No. No. S-16-676 · Decided October 13, 2017

SUMMARY

The Nebraska Supreme Court affirmed summary judgment for a sheriff’s deputy in a 42 U.S.C. § 1983 action arising from an entry into the plaintiff’s home, her arrest, and the use of handcuffs. The court held that the deputy was entitled to qualified immunity because the plaintiff failed to show that the alleged knock-and-announce, unlawful-arrest, and excessive-force violations contravened clearly established law. The court also addressed official-capacity and municipal-liability issues.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Per Curiam; Heavican, C.J.; Wright, J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Kelch, J.; Funke, J.
JURISDICTION	Nebraska
DECIDED	October 13, 2017
DOCKET	No. S-16-676
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Lancaster County District Court's second grant of summary judgment to Deputy Roark on qualified-immunity grounds in a 42 U.S.C. § 1983 action alleging Fourth Amendment violations arising from a warrant-service entry, arrest, and use of force.
STANDARD OF REVIEW	Summary judgment is reviewed de novo, viewing the evidence in the light most favorable to the nonmoving party and drawing all reasonable inferences in that party's favor. At the qualified-immunity summary-judgment stage, the plaintiff must produce evidence sufficient to create a genuine issue of fact that the defendant violated clearly established law.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Marilyn Waldron v. Lancaster County Deputy Sheriff James Roark, individually and in his official capacity

TOPICS

summary judgment

fourth amendment

search and seizure

section 1983

municipal liability

PRACTICE AREAS

civil rights

constitutional law

civil procedure

appellate procedure

municipal law

QUESTIONS PRESENTED

1. Whether Roark was entitled to qualified immunity on Waldron's Fourth Amendment knock-and-announce claim.
2. Whether Roark was entitled to qualified immunity on Waldron's claim that he arrested her without probable cause.
3. Whether Roark was entitled to qualified immunity on Waldron's excessive-force claim.
4. Whether Waldron presented evidence that a Lancaster County policy or custom caused the alleged constitutional injury, supporting municipal liability under 42 U.S.C. § 1983.
5. Whether the court should consider Waldron's challenge to summary judgment on her official-capacity claim when the assignment of error was not argued in her brief.

HOLDINGS

1. Roark was entitled to qualified immunity because, even assuming his warrant-service entry violated the Fourth Amendment, Waldron did not show that the unlawfulness of the particular no-knock entry was clearly established such that every reasonable officer would have understood it to be unlawful.
2. Roark was entitled to qualified immunity on Waldron's claim that he arrested her without probable cause because, under the particular circumstances, a reasonable officer could have believed that probable cause existed to arrest her for obstructing government operations.
3. Roark was entitled to qualified immunity on Waldron's excessive-force claim because the contours of reasonable force were not clearly established for the specific circumstances, including Waldron's repeated disobedience, physical resistance, continued activity while officers were searching for Copple, and attempts to escape the handcuffs.
4. Waldron failed to present evidence sufficient to create a genuine issue that a Lancaster County policy or custom caused her alleged injuries; speculation based only on Roark's alleged conduct was insufficient to establish municipal liability.
5. The court declined to consider Waldron's assignment challenging summary judgment on her official-capacity claim because she assigned the error but did not specifically argue it in her brief.

KEY QUOTATIONS

"The dispositive question is "whether the violative nature of particular conduct is clearly established." (36)

"We think that an officer could reasonably, even if mistakenly, conclude that the amount of force Roark used was lawful given the circumstances." (45)

“The law has consistently broadened the parameters within which law enforcement officers facing § 1983 claims can operate.” (47)

“To be considered by an appellate court, an alleged error must be both specifically assigned and specifically argued in the brief of the party asserting the error.” (49)

FACTUAL BACKGROUND

Deputies James Roark and Amanda May went to Marilyn Waldron's home on February 22, 2012, to arrest Waldron's grandson, Steven Copple. Viewing the evidence in Waldron's favor, Roark entered without properly knocking and announcing, arrested Waldron for allegedly obstructing the deputies, and used force while handcuffing her after she resisted and attempted to remove herself from the handcuffs. Waldron alleged that the entry, arrest, and force violated the Fourth Amendment and that Lancaster County was liable under § 1983 because the conduct reflected a county policy or custom.

PROCEDURAL HISTORY

Waldron filed a § 1983 action based on events occurring when Roark and another deputy entered her home to serve an arrest warrant on her grandson. The district court initially granted summary judgment to Roark, but the Nebraska Supreme Court reversed in *Waldron v. Roark*, 292 Neb. 889, 874 N.W.2d 850 (2016), finding material factual disputes concerning the entry and use of force. On remand, the district court again granted summary judgment based on qualified immunity and rejected Waldron's municipal-policy claim; the Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- *Waldron v. Roark*, 292 Neb. 889, 874 N.W.2d 850 (2016)
- *Chambers v. Pennycook*, 641 F.3d 898 (8th Cir. 2011)
- *Thomas v. Board of Trustees*, 296 Neb. 726, 895 N.W.2d 692 (2017)
- *O'Brien v. Bellevue Public Schools*, 289 Neb. 637, 856 N.W.2d 731 (2014)
- *O'Neil v. City of Iowa City, Iowa*, 496 F.3d 915 (8th Cir. 2007)
- *Saucier v. Katz*, 533 U.S. 194 (2001)
- *Hunter v. Bryant*, 502 U.S. 224 (1991) (per curiam)
- *Mitchell v. Forsyth*, 472 U.S. 511 (1985)
- *Ashcroft v. al-Kidd*, 563 U.S. 731 (2011)
- *Anderson v. Creighton*, 483 U.S. 635 (1987)
- *Mullenix v. Luna*, 577 U.S. 7, 136 S. Ct. 305 (2015)
- *City and County of San Francisco v. Sheehan*, 575 U.S. 600, 135 S. Ct. 1765 (2015)
- *Pearson v. Callahan*, 555 U.S. 223 (2009)

- Wilson v. Arkansas, 514 U.S. 927 (1995)
- United States v. Banks, 540 U.S. 31 (2003)
- Richards v. Wisconsin, 520 U.S. 385 (1997)
- Hudson v. Michigan, 547 U.S. 586 (2006)
- United States v. Lucht, 18 F.3d 541 (8th Cir. 1994)
- Messerschmidt v. Millender, 565 U.S. 535 (2012)
- Brock v. Dunning, 288 Neb. 909, 854 N.W.2d 275 (2014)
- Devenpeck v. Alford, 543 U.S. 146 (2004)
- Heck v. Humphrey, 512 U.S. 477 (1994)
- Hernandez v. Mesa, 583 U.S. 585, 137 S. Ct. 2003 (2017)
- Tennessee v. Garner, 471 U.S. 1 (1985)
- Copeland v. Locke, 613 F.3d 875 (8th Cir. 2010)
- Ziglar v. Abbasi, 582 U.S. 120, 137 S. Ct. 1843 (2017)
- Blazek v. City of Iowa City, 761 F.3d 920 (8th Cir. 2014)
- White v. Pauly, 580 U.S. 73, 137 S. Ct. 548 (2017)
- United States v. Lanier, 520 U.S. 259 (1997)
- Monell v. New York City Department of Social Services, 436 U.S. 658 (1978)
- Stones v. Sears, Roebuck & Co., 251 Neb. 560, 558 N.W.2d 540 (1997)
- State v. Grant, 293 Neb. 163, 876 N.W.2d 639 (2016)