Appeal No. 19-3243

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Brittany J. Buckley,

Plaintiff - Appellant,

v.

Hennepin County, et al.,

Defendants - Appellees.

APPELLANT'S REPLY BRIEF

Appeal from the United States District Court, District of Minnesota

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INTRODUCTION

This is an appeal from the U.S. District Court, District of Minnesota. The Appellant has filed her opening brief and Appellees have filed their response. Appellant now submits this Reply Brief and respectfully requests that the district court's dismissal of this lawsuit be reversed and that this case be remanded to the district court for further proceedings.

ARGUMENT

I. APPELLEES IMPROPERLY MISSTATE THE RELEVANT FACTS WITH RESPECT TO MS. BUCKLEY'S EXCESSIVE FORCE CLAIM.

In their briefing, Appellees argue that the Defendant Paramedics did not use excessive force because Ms. Buckley "attempted to kick, bite, and head-butt the police officers and paramedics while being carried to the ambulance . . . [and] fought the physical restraints placed on her in the ambulance . . . ." (Appellees' Br. 27.) In fact, Appellees go so far as to claim that "[Ms.] Buckley admits" these facts. (Appellees' Br. 27.) Appellees repeat these allegations later in their briefing as well. (Appellees' Br. 35.)

The reality, of course, is the complete opposite as Ms. Buckley explicitly denies making any attempts to kick, bite, or head-but the first responders and she further denies fighting the physical restraints. In her Complaint, Ms. Buckley

specifically alleges that she "never attempted to kick, strike, or bite anyone as she was being carried out to the ambulance." (Appellant's Appendix, p. 13, ¶14.) The next paragraph of the Complaint alleges that, once in the ambulance, "Ms. Buckley continued to show no signs of physical resistance or aggression and did not push against the restraints." (Appellant's Appendix, p. 13, ¶15.) In the next paragraph of her Complaint, Ms. Buckley alleges that the paramedics' claims of physical aggression are false and fabricated. (Appellant's Appendix, p. 13, ¶16.)

Rather than address these facts in their briefing, Appellees have apparently decided to pretend that the above-referenced allegations, which are explicitly set forth in the Complaint, do not exist. Ms. Buckley respectfully requests that the Court disregard Appellees' factual allegations to the extent that they are inconsistent with the allegations set forth in the Complaint. Considering the facts as they are alleged in the Complaint, Ms. Buckley engaged in verbal outbursts but exhibited no physical resistance or aggression. Furthermore, the Complaint alleges that Ms. Buckley was sedated *after* she was fully restrained and *after* she had become semi-conscious due to her intoxicated state. Under these facts, the paramedics' decision to sedate Ms. Buckley was objectively unreasonable, and Ms. Buckley's excessive force claim is thus *plausible* under both the Fourth and Fourteenth Amendments and survives dismissal under Rule 12. *See Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (to survive dismissal, "a complaint must

contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face'"); *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 594 (8th Cir. 2009).

With respect to qualified immunity, Ms. Buckley agrees that caselaw with similar facts is extremely limited. However, the facts alleged in the Complaint are striking. Viewed as a whole, the Complaint alleges that the Paramedic Defendants injected Ms. Buckley with a powerful and knowingly dangerous sedative for the sole purpose of enrolling her into their research study. As outlined above, Ms. Buckley alleges that she never engaged in any physical resistance or aggression, that she never fought the restraints, and that she became semi-conscious before she was sedated. Ms. Buckley alleges that, despite these facts, the Paramedic Defendants injected her with ketamine while she was fully restrained and falling into unconsciousness for the sole purpose of enrolling her into their ketamine study.

The Supreme Court has held that, "in an obvious case," the clearly-established prong can be established "even without a body of relevant case law." *Brosseau v. Haugen*, 543 U.S. 194, 199 (2004). Prior caselaw is unnecessary where "a general constitutional rule already identified in the decisional law [applies] with obvious clarity to the specific conduct in question." *Capps v. Olson*, 780 F.3d 879, 886 (8th Cir. 2015) (quoting *United States v. Lanier*, 520 U.S. 259,

271 (1997)). This Court has also held that qualified immunity can be denied even in the absence of factually analogous cases where an official "acts so far beyond the bounds of his official duties that the rationale underlying qualified immunity is inapplicable." *Irving v. Dormire*, 519 F.3d 441, 450 (8th Cir. 2008). The Paramedics' alleged decision to inject Ms. Buckley with a dangerous sedative for the sole purpose of enrolling her into their research study constitutes an "obvious" violation of Ms. Buckley's constitutional rights despite the lack of relevant caselaw. For these reasons, the Defendant Paramedics are not entitled to qualified immunity on Ms. Buckley's excessive force claim.

II. THIS COURT SHOULD DISREGARD THE DISTRICT COURT'S LEGAL CONCLUSIONS AS THE STANDARD OF REVIEW IS *DE NOVO*.

In their briefing, Appellees make various references to the district court's legal conclusions, sometimes offering compliments and even requesting that this Court adopt the district court's reasoning without fully briefing the issues. (See Appellees' Br., p. 46 n. 9-10.) However, the standard of review for the district court's ruling in this case is *de novo*. *Braden*, 588 F.3d at 591 ("We review the [district] court's [Rule 12 motion to dismiss] order de novo, accepting as true the complaint's factual allegations and granting all reasonable inferences to the non-moving party."); *Schaaf v. Residential Funding Corp.*, 517 F.3d 544, 549 (8th Cir.

2008) ("We review the district court's grant of a motion to dismiss *de novo*."). Thus, the district court's legal conclusions are not relevant on appeal and are subject to full *de novo* review.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in her opening brief, Appellant respectfully requests that the district court's dismissal order and judgment be reversed and that this case be remanded to the district court for further proceedings.

THE LAW OFFICE OF ZORISLAV R. LEYDERMAN

Dated: February 18, 2020

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that his brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains **1,472** words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).
2. I hereby certify that his brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using **Microsoft Word 2007** in **14-point Times New Roman font**.
3. I hereby certify that this brief has been scanned for viruses and is virus-free.

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CERTIFICATE OF SERVICE

I hereby certify that on **February 18, 2020**, I electronically filed **this brief** with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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