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SUPREME COURT OF ARKANSAS

No. 10-1121

Opinion Delivered April 5, 2012

DAMONT EWELLS

APPELLANT

V.

ALAN CONSTANT, KIRK ZANER, AND PATRICK LANGLEY

APPELLEES

APPEAL FROM THE GARLAND COUNTY CIRCUIT COURT
[CV 2009-559, HON. LYNN WILLIAMS, JUDGE]

AFFIRMED.

PER CURIAM

Appellant Damont Ewells, appearing pro se, appeals an order of the Garland County Circuit Court granting summary judgment in favor of appellees, Officers Alan Constant, Kirk Zaner, and Patrick Langley on a civil complaint seeking compensatory and punitive damages and injunctive relief. For reversal, appellant argues that the circuit court erred in granting summary judgment and in granting appellees qualified immunity. We affirm.

On April 30, 2007, Officer Zaner responded to a disturbance call. When he arrived at the scene, two individuals were fighting in a backyard. Officer Zaner observed a brown, four-door car back into the alley and speed away. Officer Zaner radioed the information to fellow officers. Officer Constant located the vehicle in the alley and attempted to stop it, but the vehicle fled at a high rate of speed. Officer Zaner returned to his vehicle and pulled onto the road in front of the suspect vehicle, which turned onto another street and alley. The officers activated their emergency lights and sirens during the pursuit. The suspect vehicle stopped, and appellant attempted to flee on foot. Officer Constant attempted to take appellant into custody

as he exited the vehicle, but appellant struggled. The officers forced appellant to the ground, and appellant kicked Officer Constant with his free leg. Appellant stood up, leaving Officer Constant on the ground. Officer Zaner ordered appellant to stop and struck appellant in an attempt to prevent any further injury to Officer Constant. Officer Constant rose, and appellant grabbed him around his midsection near his service pistol. Officer Zaner again struck appellant in an attempt to place appellant under arrest and to prevent him from having access to the service revolver. After the struggle, the officers handcuffed appellant and placed him in the patrol car. During an inventory search of the vehicle, officers found a loaded 9mm pistol under the driver's seat. Additionally, a criminal-history check revealed that appellant was a convicted felon with two outstanding warrants. Appellant was arrested for the failure-to-appear warrants, fleeing, resisting arrest, and possession of a firearm by certain persons. Appellant was transported to the Garland County Detention Center with a black eye and a bloody nose. Appellant was later treated at National Park Medical Center where he was evaluated, treated, and released for his return to the Garland County Detention Center.

On April 13, 2009, appellant, who is incarcerated at the Arkansas Department of Correction, filed an action alleging that appellees violated his constitutional rights, specifically claiming due-process and excessive-force violations under 42 United States Code section 1983 and the Fourth Amendment to the United States Constitution. In his complaint, appellant further denied any requirement to exhaust any administrative remedies and asserted that appellees were not entitled to immunity. Noting physical injuries, appellant sought compensatory damages of $100,000 per appellee, punitive damages of $1 million, injunctive

relief to compel appellees to attend courses on executing effective arrests, and an evidentiary hearing. On June 8, 2010, appellees filed a motion for summary judgment, arguing that appellant failed to present material facts at issue relevant to appellees. Appellant responded, and appellees filed a reply. Based on a review of all motions, responses, briefs, and exhibits, the circuit court found no contested issues of material fact, granted appellees' motion for summary judgment, and dismissed appellant's complaint with prejudice. Appellant timely filed a notice of appeal.

On appeal, appellant argues that the circuit court erred in granting summary judgment and in granting appellees qualified immunity. We have repeatedly held that summary judgment is appropriate when there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law. *Gentry v. Robinson*, 2009 Ark. 634, 361 S.W.3d 788. Once the moving party has established a prima facie entitlement to summary judgment, the opposing party must meet proof with proof and demonstrate the existence of a material issue of fact. *Couch v. Farmers Ins. Co.*, 375 Ark. 255, 289 S.W.3d 909 (2008). On appellate review, we determine whether summary judgment was appropriate based on whether the evidentiary items presented by the moving party in support of the motion leave a material fact unanswered. *City of Farmington v. Smith*, 366 Ark. 473, 237 S.W.3d 1 (2006). We view the evidence in the light most favorable to the party against whom the motion was filed, resolving all doubts and inferences against the moving party. *Smith v. Brt*, 363 Ark. 126, 211 S.W.3d 485 (2005). Our review focuses not only on the pleadings but also on the affidavits and other documents filed by the parties. *Dodson v. Taylor*, 346 Ark. 443, 57 S.W.3d 710 (2001).

The right to be free from excessive force is a clearly established right under the Fourth Amendment's prohibition against unreasonable seizures of the person. *Crumley v. City of St. Paul*, 324 F.3d 1003 (8th Cir. 2003). Thus, excessive-force claims are analyzed under the Fourth Amendment's standard of reasonableness, which requires a careful balancing of the nature and quality of an intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake. *Graham v. Connor*, 490 U.S. 386 (1989). The test is whether the amount of force used was objectively reasonable under the circumstances. *Id.* Further, as an objective inquiry, it is made without regard to the officer's underlying intent or motivation. *Samuelson v. City of New Ulm*, 455 F.3d 871 (8th Cir. 2006). The issue is judged from the perspective of a reasonable officer on the scene rather than with the 20/20 vision of hindsight. *Graham*, 490 U.S. 386. This standard includes allowance for the fact that "officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary." *Id.* at 396–97. Therefore, not every push or shove violates the Fourth Amendment, even if such actions may later seem unnecessary in the peace of a judge's chambers. *Id.* Circumstances such as the severity of the crime, whether the suspect posed a threat to the safety of the officers or others, and whether the suspect is resisting arrest are all relevant to the reasonableness of the officer's conduct. *Crumley*, 324 F.3d 1003. Injuries that are attributable to a plaintiff's own actions do not demonstrate excessive use of force by police. *Grenier v. City of Irwindale*, 67 Cal. Rptr. 454 (Cal. Ct. App. 1997). If the complaining party's injuries are likely explained by his or her own actions, the allegations cannot create an issue of material fact as to whether the officer used excessive force. *Brandt v. Davis*, 191

F.3d 887 (8th Cir. 1999). Also, a de minimus use of force is insufficient to support the finding of a constitutional violation. *Crumley*, 324 F.3d 1003 (holding that injury was considered de minimus where tight handcuffs caused bleeding); *see also Wertish v. Krueger*, 433 F.3d 1062 (8th Cir. 2006) (holding that minor scrapes and bruises and a less-than-permanent aggravation of a bad shoulder were de minimus injuries); *Grenier*, 67 Cal. Rptr. 454 (holding that severed tendon was a de minimus injury).

In the present case, appellees, in support of their motion for summary judgment, provided the following three affidavits. First, Officer Zaner stated that he responded to the disturbance and observed a car back into an alley and speed away. Shortly thereafter, the officer observed the suspect vehicle traveling at a high rate of speed with Officer Constant in pursuit. Officer Zaner stated that appellant attempted to flee on foot, that he witnessed the struggle between appellant and Officer Constant, and that he attempted to subdue appellant. Officer Zaner testified that when appellant grabbed Officer Constant's midsection, near his duty pistol, he struck appellant, causing the officer to injure his wrist. Officer Zaner described in detail the officers' struggle to handcuff appellant. Second, Officer Langley stated that he and Officer Zaner witnessed Officer Constant struggling with appellant as they arrived at the scene. According to Officer Langley, appellant fought all three officers as they attempted to handcuff him. Officer Langley stated that he held appellant by the arm as the other two officers attempted to handcuff him. Third, Officer Constant submitted that he attempted to place appellant in custody when appellant jumped from his vehicle and that both he and appellant "went to the ground." As Officer Constant held appellant's left leg, appellant kicked the officer

in the chest and arms in an effort to escape. Officer Constant stated that all three officers attempted to gain control of appellant and that he and Officer Zaner handcuffed appellant by using pain compliance via a wrist lock and escorted appellant to the police car. Lastly, all three officers swore in their affidavits that "[a]t no time did any officer use excessive force upon [appellant]. The only force used was the amount of force necessary to apprehend [appellant] and place him into custody. [Appellant] continued to resist and flee apprehension."

In response, appellant merely submitted his own affidavit verifying the truth of his allegations, which included that "[t]hese officers of the peace beat the hell out an unarmed, noncombative citizen, who simply elected to exercise his constitutional provisions and was sent to the hospital." Appellant failed to allege that the three officers used any excessive, unreasonable force in light of the circumstances. Moreover, with regard to appellant's alleged injuries, the hospital records referenced in appellant's response designate an emergency-room visit to St. Joseph's Medical Health Center on November 11, 2004, instead of medical records from National Park Medical Center on April 30, 2007, as alleged in appellant's complaint.

Viewing the evidence in the light most favorable to appellant, we conclude that appellant, as the opposing party, failed to meet proof with proof and to demonstrate the existence of a genuine issue of material fact. *Couch*, 375 Ark. 255, 289 S.W.3d 909. Therefore, for the foregoing reasons, we hold that the circuit court properly granted summary judgment in favor of appellees. Because we hold that summary judgment was properly granted on the issue of whether appellant's constitutional rights were violated, we decline to address appellant's remaining arguments.

Affirmed.

Damont Ewells, pro se appellant.

Brian W. Albright, City Attorney, for appellees.