FILED
United States Court of Appeals
Tenth Circuit

December 29, 2020

Christopher M. Wolpert
Clerk of Court

PUBLISH

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

MARTIN CROWSON,

Plaintiff - Appellee,

v.

WASHINGTON COUNTY STATE OF UTAH; CORY PULSIPHER, acting Sheriff of Washington County; MICHAEL JOHNSON,

Defendants - Appellants,

and

JUDD LAROWE; JON WORLTON,

Defendants.

No. 19-4118

MARTIN CROWSON,

Plaintiff - Appellee,

v.

JUDD LAROWE,

Defendant - Appellant,

and

WASHINGTON COUNTY STATE OF UTAH; CORY PULSIPHER, acting Sheriff of Washington County; MICHAEL

No. 19-4120

JOHNSON; JON WORLTON,

Defendants.

Appeal from the United States District Court
for the District of Utah
(D.C. No. 2:15-CV-00880-TC)

Frank D. Mylar (Andrew R. Hopkins with him on the briefs), Mylar Law, P.C., Salt Lake City, Utah, for Defendants - Appellants Michael Johnson, Washington County, and Sheriff Cory Pulsipher.

Gary T. Wight (Shawn McGarry and Jurhee A. Rice with him on the briefs), Kipp and Christian, P.C., Salt Lake City, Utah, for Defendant - Appellant Judd LaRowe, M.D.

Devi Rao, Roderick & Solange MacArthur Justice Center, Washington, D.C. (Megha Ram, Roderick & Solange MacArthur Justice Center, Washington, D.C.; Ryan J. Schriever, The Schriever Law Firm, Spanish Fork, Utah; David M. Shapiro, Roderick & Solange, MacArthur Justice Center, Northwestern Pritzker School of Law, Chicago, Illinois, on the briefs) for Plaintiff - Appellee Martin Crowson.

Before **MATHESON**, **BACHARACH**, and **McHUGH**, Circuit Judges.

McHUGH, Circuit Judge.

Martin Crowson was an inmate at the Washington County Purgatory Correctional Facility (the "Jail") when he began suffering from symptoms of toxic metabolic encephalopathy. Nurse Michael Johnson and Dr. Judd LaRowe, two of the medical staff members responsible for Mr. Crowson's care, wrongly concluded Mr. Crowson was experiencing drug or alcohol withdrawal. On the seventh day of medical observation, Mr. Crowson's condition deteriorated and he was transported to

the hospital, where he was accurately diagnosed. After Mr. Crowson recovered, he sued Nurse Johnson, Dr. LaRowe, and Washington County[1] under 42 U.S.C. § 1983, alleging violations of the Eighth and Fourteenth Amendments.

The district court denied motions for summary judgment on the issue of qualified immunity by Nurse Johnson and Dr. LaRowe, concluding a reasonable jury could find both were deliberately indifferent to Mr. Crowson's serious medical needs, and that it was clearly established their conduct amounted to a constitutional violation. The district court also denied the County's motion for summary judgment, concluding a reasonable jury could find the treatment failures were an obvious consequence of the County's reliance on Dr. LaRowe's infrequent visits to the Jail and the County's lack of written protocols for monitoring, diagnosing, and treating inmates.

Nurse Johnson, Dr. LaRowe, and the County filed these consolidated interlocutory appeals, which raise threshold questions of jurisdiction. Nurse Johnson and Dr. LaRowe challenge the district court's denial of qualified immunity, while the

[1] Mr. Crowson also sued Cory Pulsipher, the acting Sheriff of Washington County, in his official capacity. But official-capacity suits "generally represent only another way of pleading an action against an entity of which an officer is an agent." *Kentucky v. Graham*, 473 U.S. 159, 165 (1985) (quoting *Monell v. New York City Dept. of Soc. Servs.*, 436 U.S. 658, 690 n.55 (1978)). "As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity." *Id.* at 166. The district court and the parties have treated Mr. Crowson's *Monell* claims against Sheriff Pulsipher accordingly. *See, e.g.*, App., Vol. I at 209 n.1; Appellee Br. at 7 n.2. We therefore refer only to Washington County.

County contends we should exercise pendent appellate jurisdiction to review the district court's denial of its summary judgment motion.[2]

For the reasons explained below, we exercise limited jurisdiction over Nurse Johnson's and Dr. LaRowe's appeals pursuant to the exception to 28 U.S.C. § 1291 carved out for purely legal issues of qualified immunity through the collateral order doctrine. *See Mitchell v. Forsyth*, 472 U.S. 511, 524–30 (1985). We hold Nurse Johnson's conduct did not violate Mr. Crowson's rights and, assuming without deciding that Dr. LaRowe's conduct did, we conclude Dr. LaRowe's conduct did not violate any clearly established rights.

Our holding on Nurse Johnson's appeal is inextricably intertwined with the County's liability on a failure-to-train theory, so we exercise pendent appellate jurisdiction to the extent Mr. Crowson's claims against the County rest on that theory. *See Moore v. City of Wynnewood*, 57 F.3d 924, 930 (10th Cir. 1995). However, under our binding precedent, our holdings on the individual defendants' appeals are not inextricably intertwined with Mr. Crowson's claims against the County to the extent he advances a systemic failure theory. *See id.* We therefore reverse the district court's denial of summary judgment to Nurse Johnson and

[2] Nurse Johnson and the County's Opening Brief is cited herein as "County Br.," and their Reply Brief is cited as "County Reply." Dr. LaRowe's Opening Brief is cited as "LaRowe Br.," and his Reply brief is cited as "LaRowe Reply." Mr. Crowson's Brief is cited as "Appellee Br."

Dr. LaRowe, as well as to the County on the failure-to-train theory, and we dismiss the remainder of the County's appeal for lack of jurisdiction.

I. BACKGROUND

A. Factual History[3]

On June 11, 2014, Mr. Crowson was booked into the Washington County Purgatory Correctional Facility for a parole violation. On June 17, due to a disciplinary violation, Mr. Crowson was placed in solitary confinement, known as the "A Block."

"On the morning of June 25, while still in solitary confinement, Jail Deputy Brett Lyman noticed that Mr. Crowson was acting slow and lethargic." App., Vol. I at 205. Deputy Lyman asked Nurse Johnson to check Mr. Crowson. "As a registered nurse, Nurse Johnson could not formally diagnose and treat Mr. Crowson." App., Vol. I at 205. Rather, Nurse Johnson assessed inmates and communicated with medical staff. The medical staff available to diagnose were Jon Worlton, a physician assistant ("PA"),[4] and Dr. LaRowe, the Jail's physician.

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[3] Because our interlocutory review of an order denying qualified immunity is typically limited to issues of law, this factual history is drawn from the district court's recitation of the facts. *See Mitchell v. Forsyth*, 472 U.S. 511, 524–30 (1985).

[4] There is some ambiguity concerning whether Jon Worlton was, in fact, a PA. The district court found he was a PA. At oral argument, the County asserted that Mr. Worlton was a nurse practitioner, not a PA, but suggested that accorded him similar or greater medical training. In describing his education, Mr. Worlton stated, "I'm a social worker. I have a master's degree in social work. I also have a clinical license, licensed clinical social worker." App., Vol. II at 478. At oral argument before this court, however, counsel for Mr. Crowson answered affirmatively when asked whether Mr. Worlton was a PA and whether he could diagnose inmates. Where neither party has challenged the district court's finding that Mr. Worlton was a PA,

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