

Civil Rights Update

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Thompson v. Cope: A Victory for State Actor Medical Providers in a Landscape of Eroding Immunities

In *Thompson v. Cope*, No. 17-3060, 2018 U.S. App. LEXIS 22480 (7th Cir. Aug. 14, 2018), the United States Court of Appeals for the Seventh Circuit reversed the Southern District of Indiana’s denial of summary judgment on qualified immunity grounds to a paramedic who was assisting law enforcement in subduing a suspect in a drug induced mania, and who later became unresponsive and died. The Seventh Circuit held that the paramedic was entitled to qualified immunity because it was not clearly established that an emergency medical provider could effectuate an illegal “seizure” under the Fourth Amendment by sedating an arrestee suffering from a medical emergency. Therefore, the plaintiff estate’s claim of excessive force against the paramedic under 42 U.S.C. § 1983 (Section 1983 claim) failed as a matter of law.

Background Facts

In October 2014, Indianapolis police responded to a call regarding Dusty Heishman, who was running around naked in the street, while high on amphetamines. *Thompson*, 2018 U.S. App. LEXIS 22480, at 1-2. Paramedic Cope followed the police in arriving on the scene, and administered a sedative to Mr. Heishman in order to subdue him and safely transfer him for medical treatment and subsequent custody. *Id.* Soon after Cope’s intervention, Mr. Heishman’s heart and breathing stopped, and although he was initially revived, he died several days later. *Id.* at 2. Mr. Heishman’s estate sued Cope, among others. As to Cope, the estate asserted a Section 1983 claim for excessive force in violation of the Fourth Amendment, as well as various state law claims. *Id.* This column, however, focuses only on the Section 1983 claim for excessive force.

Paramedic Cope moved for summary judgment, asserting a qualified immunity defense as to the Section 1983 claim. *Id.* at 6-7. The District Court denied Cope’s motion for summary judgment, and Cope appealed to the Seventh Circuit.

Appellate Court Opinion

The Seventh Circuit began its legal analysis by discussing the established two-step qualified immunity summary judgment inquiry of, “1) whether the facts, taken in the light most favorable to the plaintiff, show that the defendant violated a constitutional right; and 2) whether the constitutional right was clearly established at the time of the conduct.” *Id.* at 10; *citing Estate of Clark v. Walker*, 865 F.3d 544, 550 (7th Cir. 2017). In ultimately holding that Paramedic Cope was protected by qualified immunity, the Seventh Circuit considered the second prong of the inquiry dispositive, obviating the need for the court to consider the first prong. *Thompson*, 2018 U.S. App. LEXIS 22480, at 10. However,

the court implied that the plaintiff estate would not have been able to overcome the initial qualified immunity inquiry either, noting that the plaintiff had not cited any case law holding that a paramedic could violate a patient’s Fourth Amendment rights by rendering medical treatment, and further expressing doubt that the only two federal cases it could find on the issue were applicable to the present case. *Id.* at 10-11.

Therefore, the Seventh Circuit moved on to what it considered the determinative inquiry of asking whether it had been clearly established that at the time of the incident that a paramedic “seized” an arrestee and was therefore subject to the Fourth Amendment limitations on excessive force by sedating the arrestee—who appeared to the paramedic to suffer from a medical emergency—before transporting the arrestee to the hospital. *Id.* The court, explaining that some type of precedent must be established to provide “fair warning” to a state actor that his or her conduct is unconstitutional, found no case law that established that a medical provider was performing a Fourth Amendment seizure in providing medical assistance, even when assisting in an arrest. *Id.* at 15-16. Instead, all the cases cited by the plaintiff estate and District Court pertaining to subduing a suspect, involved only police officers, and not medical personnel. *Id.* at 16. Finally, in holding that qualified immunity applied to insulate Paramedic Cope from Section 1983 liability, the court specifically noted that in the absence of qualified immunity, a paramedic like Cope could find himself in a situation where he could face liability for either action in providing medical treatment, or inaction for acting with deliberate indifference to a serious medical need. *Id.* at 17. The Seventh Circuit preferred condoning action on the part of paramedics to address medical needs, holding that qualified immunity should protect such emergency medical providers. *Id.*

Takeaway

The Seventh Circuit’s grant of qualified immunity to the emergency medical provider in the Fourth Amendment context emphasizes the different roles of law enforcement and medical personnel in arrest situations where medical intervention is required for the safety of both the arrestee and arresting officers, regardless of whether the intervention assisted in the arrest itself. The court highlighted the challenges faced by medical personal in such situations—where medical action or inaction could lead to a constitutional claim against the provider. Further, while the Seventh Circuit punted on whether a medical provider could violate the Fourth Amendment rights of an arrestee in the performance of medically necessary conduct, and instead decided the case based on the “clearly established” prong, the court, in dicta, strongly suggested the first prong of the qualified immunity analysis may not have been satisfied either.

About the Authors

Brian M. Smith concentrates his practice in the areas of civil rights, professional liability, employment law and trucking/motor carrier litigation. Much of his practice entails defending government officials and medical professionals in cases alleging violations of constitutional rights. Brian also has experience defending employers before the Illinois Human Rights Commission and in federal court. He represents defendants in other tort litigation, including cases arising from automobile and trucking accidents. Mr. Smith has extensive motion practice experience in both state and federal courts and has authored numerous successful motions to dismiss and motions for summary judgment. In addition, he has defended the firm’s clients in depositions of plaintiffs, and fact and expert witnesses.



Mr. Smith began his career with *Heyl, Royster, Voelker & Allen, P.C.* by clerking in the firm's Urbana office. Following graduation from law school in 2007, he joined the firm in the Urbana office as an associate. During law school, he was a teaching assistant at the University of Illinois College of Law and a member of the *University of Illinois Law Review*.

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