IN THE SUPREME COURT OF IOWA

NO. 17 - 1592

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION, CASE NO. C 15-3168-MWB

GREGORY BALDWIN, Plaintiff-Appellee,

v.

CITY OF ESTHERVILLE, IOWA, MATT REINEKE, Individually and in his Official Capacity as an Officer of the Estherville Police Department, and MATT HELLICKSON, Individually and in his Official Capacity as an Officer of the Estherville Police Department, Defendants-Appellants

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CERTIFIED QUESTION FROM THE HONORABLE MARK W. BENNETT, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA, CENTRAL DIVISION

DEFENDANTS-APPELLANTS' BRIEF AND REQUEST FOR ORAL ARGUMENT

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I. CAN A DEFENDANT RAISE A DEFENSE OF QUALIFIED IMMUNITY TO AN INDIVIDUAL'S CLAIM FOR DAMAGES FOR VIOLATION OF ARTICLE I, § 1 AND § 8 OF THE IOWA CONSTITUTION?

AUTHORITIES

ROUTING STATEMENT

This case should be retained by the Supreme Court because it is a case presenting substantial issues of first impression. Rule 6.1101(2)(c).

STATEMENT OF THE CASE/STATEMENT OF FACTS[1]

In 1980, the City of Estherville passed an ordinance in which it adopted Iowa Code Chapter 321 ("Motor Vehicles and Law of the Road") and incorporated the provisions of Chapter 321 into the Estherville Municipal Code. (Joint Appendix p. 87). On November 11, 2013, Estherville police officer Matt Reineke issued a citation to Gregory Baldwin for an alleged violation of Estherville Municipal Code § E-321I.10.[2] (Joint Appendix pp. 92-93). When he was unable to serve the citation, he applied for an arrest warrant. (Joint Appendix p. 93). The warrant was issued, and ultimately served by Estherville police officer Matt Hellickson. (Joint Appendix p. 93).

The actions of Officers Reineke and Hellickson were premised upon the mistaken belief that when the City adopted Chapter 321, they included Chapters 321A – 321M. They were wrong. The City Attorney discovered during the prosecution that followed Mr. Baldwin's arrest, that Iowa Code Chapter 321I had actually not been a part of the 1980 ordinance in which other parts of Chapter 321 were adopted. (Joint Appendix p. 93).

[1] This Statement of Facts is provided to put the parties' dispute in context, but Appellants believe that the question before this Court is purely a question of law.

[2] Under the terms of the ordinance that incorporated Chapter 321 into the Municipal Code, local infractions were to be designated with the letter "E," followed by reference to the particular section of Chapter 321 that was involved.

On November 4, 2015, Plaintiff filed suit in the Iowa District Court for Emmet County. On November 20, 2015, Defendants removed the case to the United States District Court for the Northern District of Iowa, Western Division, where the case remains pending as case no. 3:15-cv-3168.

In his Petition, Plaintiff alleged:

COUNT I:	Unreasonable Seizure in Violation of Article I, Section 8 of the Constitution of the State of Iowa (Against the City of Estherville);
COUNT II:	Unreasonable Seizure in Violation of the 4th Amendment to the Constitution of the United States (Against the Individual Defendants);
COUNT III:	Violation of the Right to Freedom, Liberty and Happiness Protected by Article I, Section 1 of the Constitution of the State of Iowa (Against the City of Estherville); and
COUNT IV:	False Arrest under State Common Law (Against All Defendants).

(Joint Appendix pp. 1-10).

On July 19, 2016, Defendants moved for partial summary judgment, seeking judgment as matter of law with respect to Counts II (4th Amendment) and IV (False Arrest), asserting that the individual defendants were entitled to qualified immunity on the federal constitutional claim, and

judgment as a matter of law with respect to the common law claim, based on the existence of probable cause.[3]

On August 11, 2016, Plaintiff responded with a Cross-Motion for Partial Summary Judgment. In his Motion, Plaintiff sought a declaration of liability with respect to Counts I-IV, leaving only the issues of actual and punitive damages for trial. (Joint Appendix pp. 11-53 and 73-84).

On November 18, 2016, the federal court,[4] entered its Memorandum Opinion and Order on the parties' Cross-Motions. The Court held:

1. The individual defendants were entitled to summary judgment on Plaintiff's 4th Amendment claim "because probable cause was *not* lacking for Baldwin's arrest," (emphasis in original);

2. In the alternative, the individual defendants were entitled to qualified immunity, "based on their reliance on a warrant, where it was not clearly established that Baldwin's *conduct* did not violate a City Ordinance." (Emphasis in original); and

3. "[W]here, as here, the arrest was pursuant to a facially valid warrant on which it was not unreasonable for the officers to rely, the City and the officers are protected from liability." (Joint Appendix pp. 85-113)

[3] Counts I and III in the Petition purported to state claims against the City of Estherville for violations of the Constitution of the State of Iowa. (Joint Appendix pp. 1-10). The question of whether there was a private cause of action for money damages under the Iowa Constitution was under consideration for further review by the Iowa Supreme Court at the time, in the case of *Conklin v. State*, 863 N.W.2d 301 (Iowa App. 2015). Defendants elected to wait for guidance from the Iowa Courts before addressing those claims.
[4] The Honorable Mark W. Bennett.

Plaintiff's Cross-Motion with respect to the federal constitutional claim and the state common law claim was denied. That part of the Motion seeking judgment on the State Constitutional claims was stayed "pending determination by the Iowa Supreme Court of the question of further review in *Conklin*." (*Id*.)

On June 30, 2017, in the case of *Godfrey v. State*, 898 N.W.2d 844, 871-872 (Iowa 2017), the Iowa Supreme Court held that Article I, Section 9 (the due process clause) and Article I, Section 6 (the equal protection clause) are "self-executing" for purposes of a damages action, at law.

On August 11, 2017, Defendants filed a second motion for summary judgment, seeking dismissal of the remaining state constitutional claims on qualified immunity. (Joint Appendix pp. 114-125) Plaintiff resisted. (Joint Appendix pp. 126-143).

On October 2, 2017, the federal court determined that the best course of action was to certify the question of whether this Court will recognize a qualified immunity defense in a case alleging violations of the Iowa Constitution. The federal court stayed the pending action and certified the following question:

> Can a defendant raise a defense of qualified immunity to an individual's claim for damages for violation of Article I, § 1 and § 8 of the Iowa Constitution?

(Joint Appendix, p. 148).

That is the question that is now before this Court.

ARGUMENT

I. THE COURT SHOULD ADOPT THE DEFENSE OF QUALIFIED IMMUNITY IN CASES INVOLVING AN INDIVIDUAL'S CLAIM FOR DAMAGES ALLEGING VIOLATIONS OF ARTICLE I, § 1 AND ARTICLE I, § 8 OF THE IOWA CONSTITUTION.

A. Preservation

This matter is before the Court pursuant to a question of law certified to this Court by the United States District Court for the Northern District of Iowa, Central Division, in accordance with the provisions of Iowa Code §§ 684A.1 and 684A.2.

B. Scope and Standard of Review

"It is within … [the] discretion [of the Supreme Court of Iowa] to answer certified questions from a United States district court. Iowa Code § 684A.1 (stating the court "may" answer a certified question). We may answer a question certified to us when (1) a proper court certified the question, (2) the question involves a matter of Iowa law, (3) the question "may be determinative of the cause ... pending in the certifying court," and (4) it appears to the certifying court that there is no controlling Iowa precedent. (Citation)." *Life Investors Ins. Co. of America v. Estate of Corrado*, 838 N.W.2d 640, 643 (Iowa 2013).

C. Argument

In *Godfrey v. State*, a case in which this Court held that the due process and equal protection clauses in the Constitution of the State of Iowa are self-executing, "concern about dampening the ardor of the Governor and other public officers in the exercise of their duties[]" was raised in an amicus brief. 898 N.W.2d at 879. The Court said that "the doctrine of qualified immunity is the appropriate vehicle to address those concerns[,]" but declined to consider the issue, stating: "The issue of qualified immunity, however, is not before the court today." *Id*.

Today, that issue is before the Court, and Appellants urge the Court to adopt the doctrine as it applies to claims such as those raised by Plaintiff in the underlying federal case.

"Qualified immunity shields government officials from civil damage liability for discretionary action that 'does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *De La Rosa v. White*, 852 F.3d 740, 743 (8th Cir. 2017) (quoting from *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982)). *Scott v. Tempelmeyer*, 867 F.3d 1067, 1070 (8th Cir. 2017).

Qualified immunity "gives 'government officials breathing room to make reasonable but mistaken judgments, and protects all but the plainly

incompetent or those who knowingly violate the law.'" *Manning v. Cotton*, 862 F.3d 663, 667-668 (8th Cir. 2017) (*quoting from Blazek v. City of Iowa City*, 761 F.3d 920, 922 (8th Cir. 2014) *in turn, quoting from Stanton v. Sims*, —— U.S. ——, 134 S.Ct. 3, 5, 187 L.Ed.2d 341 (2013)).

"[T]he purpose of the qualified immunity defense for a state official is to shield a government official from suit rather than merely to serve as a defense to liability." *Gainor v. Rogers*, 973 F.2d 1379, 1382 (8th Cir. 1992). *Myers v. Becker County*, 833 F.Supp. 1424, 1430 (D. Minn. 1993). At the same time, the doctrine ensures that government officials "'are on notice their conduct is unlawful.'" *Sisney v. Reisch*, 674 F.3d 839, 845 (8th Cir. 2012) (*quoting from Hope v. Pelzer*, 536 U.S. 730, 739, 122 S.Ct. 2508 (2002)).

> [T]he qualified immunity doctrine … [serves] to protect 'government's ability to perform its traditional functions' by providing immunity where 'necessary to preserve' the ability of government officials 'to serve the public good or to ensure that talented candidates were not deterred by the threat of damages suits from entering public service.'

Pierce v. Moore, 2014 WL 4724771 * 3 (E.D. Mo. 2014) (*quoting from Richardson v. McKnight*, 521 U.S. 399, 407–08 (1997) (*quoting in turn from Wyatt v. Cole*, 504 U.S. 158, 167 (1992)).

Qualified immunity "'allow[s] public officers to carry out their duties as they believe are correct and consistent with good public policy, rather

than acting out of fear for their own personal financial well being.'" *Brown v. City of Golden Valley*, 534 F.Supp.2d 984, 991 (D. Minn. 2008) (*quoting from Sparr v. Ward*, 306 F.3d 589, 593 (8th Cir.2002)). *Greiner v. City of Champlin*, 27 F.3d 1346, 1351 (8th Cir. 1994).

Several states that have recognized a claim for damages caused by a state constitutional violation have also adopted the doctrine of qualified immunity as a defense. *See, e.g.*, *Moresi v. State Through Dept. of Wildlife and Fisheries*, 567 So. 2d 1081, 1093 (La. 1990), where the Louisiana Supreme Court held:

> Having concluded that an individual is entitled to recover money damages for any injury he has suffered as a result of a state agent's violation of Article I, § 5 of the 1974 Louisiana Constitution, it does not follow that the plaintiffs in the present case are entitled to recover under the circumstances herein. The same factors that compelled the United States Supreme Court to recognize a qualified good faith immunity for state officers under § 1983 require us to recognize a similar immunity for them under any action arising from the state constitution.

See also, *Freedman v. American Online, Inc*., 412 F.Supp.2d 174, 189 (D. Conn. 2005) (predicting that the Connecticut Supreme Court would hold police officers are entitled to qualified immunity for state constitutional violations, but finding defendants in that case were not entitled to qualified immunity); *Perez v. City of Camden*, 2014 WL 4681037 * 6 (D. N.J. 2014) ("'The immunities of municipalities and their officials sued directly under

[the New Jersey Constitution] are identical to those provided by federal law.'" Citation omitted.); *Gragg v. Kentucky Cabinet for Workforce Development*, 289 F.3d 958, 964 (6th Cir. 2002) ("Qualified immunity is available as a defense to claims raised under the state constitution as well as claims raised under the Federal Constitution[.]")[5]

In his Resistance to Defendants' Second Motion for Summary Judgment, Plaintiff argued that the qualified immunity afforded defendants in claims brought pursuant to 42 U.S.C. § 1983 should not be extended to claims arising under the Iowa Constitution, because, under federal jurisprudence, immunity is inferred from congressional intent, whereas *Godfrey* holds that in Iowa, one has a direct action for the violation of a state constitutional right. This is a distinction without any meaningful difference.

Federal courts have limited jurisdiction.[6] "Section 1983 confers original federal question jurisdiction with federal district courts." *Charchenko v. City of Stillwater*, 47 F.3d 981, 984 (8th Cir. 1995). It does not create any substantive rights. *Riley v. St. Louis County of Mo.*, 153 F.3d 627, 630 (8th Cir. 1998). It is a mechanism used to vindicate the violation of a federal right. *Midwest Foster Care and Adoption Ass'n v. Kincade*, 712. F.3d 1190, 1195 (8th Cir. 2013).

[5] *But see*, *Franklin v. Clark*, 454 F.Supp.2d 356, 363 (D. Md. 2006) ("There is no official/individual dichotomy in state constitutional jurisprudence, and qualified immunity is not available as a defense.").
[6] *See generally*, 28 U.S.C. §§ 1331, 1332.

Conversely, The Iowa District Court, as a court of general jurisdiction, has jurisdiction to hear constitutional claims that might arise under the holding in *Godfrey*, without the need for legislative action. Iowa Code § 602.6101.[7]

The issue in *Godfrey* was not whether the District Court had jurisdiction to decide a state constitutional claim. Rather, the question was whether the constitutional claims that plaintiff made were "self-executing." Having answered that question in the affirmative, it does not follow, as Plaintiff suggests, that qualified immunity is now somehow unavailable.

Plaintiff also appears to rely on the case of *McClurg v. Brenton*, 123 Iowa 881 (1904), to support his claim that qualified immunity should not be available as a defense in a case alleging a violation of the state constitution.

McClurg is inapposite. First, plaintiff in *McClurg* was seeking damages, not for "malicious prosecution or malicious arrest, but for an alleged wrongful and unauthorized trespass upon … [his] home and property." 123 Iowa at 882. In an unauthorized trespass case, the Court noted, probable cause "has no application." *Id*. at 883. Baldwin reads the

[7] "A unified trial court is established. This court is the 'Iowa District Court'. The district court has exclusive, general, and original jurisdiction of all actions, proceedings, and remedies, civil, criminal, probate, and juvenile, except in cases where exclusive or concurrent jurisdiction is conferred upon some other court, tribunal, or administrative body. The district court has all the power usually possessed and exercised by trial courts of general jurisdiction, and is a court of record."

holding in *McClurg* far too expansively. His constitutional claims arise, not out of an alleged trespass, but an alleged false arrest.

Second, Plaintiff's reliance on *McClurg* for the proposition that good faith is not a defense to a constitutional tort in Iowa completely misses the mark. Good faith is irrelevant to the qualified immunity analysis Appellants are asking this Court to adopt. The standard is objective reasonableness. *Slone v. Herman*, 983 F.2d 107, 110 (8th Cir. 1993).

The policy considerations which support affording qualified immunity to government employees do not change, just because the focus shifts from the federal constitution to the state constitution.

Breathing room to make reasonable, albeit mistaken judgments is just as important under state law as it is under federal law. Qualified immunity will serve the same purpose in this context as in the federal arena; *i.e*. it will put government officials on notice when their conduct is illegal.

Qualified immunity will serve to protect the government's ability to perform its traditional functions and provide traditional services while ensuring that talented candidates are not deterred from service by the threat of litigation.

Consistency, and not some perceived distinction between the manner in which similar, if not identical claims can be brought, should be the goal.

This Court should adopt the defense of qualified immunity in order to shield government officials from civil damage liability for discretionary action that does not violate the clearly established statutory or constitutional rights of which a reasonable person would know.

CONCLUSION

For each of the foregoing reasons, Appellants respectfully urge this Court to answer the certified question in the affirmative.

REQUEST FOR ORAL SUBMISSION

Appellants ask to be heard on oral argument.

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

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/s/ Douglas L. Phillips December 19, 2017

CERTIFICATE OF SERVICE

I, Douglas L. Phillips, hereby certify that on the 19th day of December, 2017, I served Appellant's Brief on all other parties to this appeal by emailing one copy thereof to the following counsel for the parties at the following addresses:

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CERTIFICATE OF FILING

I, Douglas L. Phillips, further certify that I filed Appellant's Brief via EDMS on the 19th day of December, 2017.

/s/ Douglas L. Phillips