

IN THE COURT OF APPEALS OF IOWA

No. 7-715 / 07-0561
Filed November 29, 2007

STEVEN LAVERN BLACKETER,
Plaintiff-Appellant,

vs.

**STATE OF IOWA, DIVISION OF
NARCOTICS ENFORCEMENT,**
Defendant-Appellee.

Appeal from the Iowa District Court for Page County, Gordon C. Abel,
Judge.

Steven Blacketer appeals from the district court's grant of the State's
Division of Narcotics Enforcement's motion for summary judgment. **AFFIRMED.**

Jon H. Johnson of Johnson Law, P.L.C., Sidney, and Seth E. Baldwin of
Johnson Law, P.L.C., Shenandoah, for appellant.

Thomas J. Miller, Attorney General, and Mark Hunacek and Jeffrey C.
Peterzalek, Assistant Attorneys General, for appellee.

Heard by Miller, P.J., and Eisenhauer and Baker, JJ.

BAKER, .J.

Steven Blacketer appeals from the district court's grant of the State of Iowa, Division of Narcotics Enforcement's motion for summary judgment on his claim for excessive force under the State Tort Claims Act. We affirm.

I. Background Facts and Proceedings

In the late evening of January 30 and into the early morning hours of January 31, 2003, the State's agents and Clarinda Police Department officers located and attempted to arrest Blacketer on drug charges. Blacketer's vehicle was parked in the driveway of a residence. The State's agents and the officers used their vehicles in an attempt to block Blacketer's vehicle from backing out of the driveway. Blacketer attempted to use his vehicle to exit the driveway into the street or into the residence's yard, hitting several police vehicles and a civilian vehicle during his efforts. During the incident, State agent Michael Mittan fired six shots at Blacketer, three of which hit him. Subsequently, Blacketer was charged with and pled guilty to willful injury causing bodily injury.

On July 31, 2006, Blacketer filed a petition against the State, asserting a claim under the Iowa Tort Claims Act, which is codified at Iowa Code chapter

669.¹ In relevant part, Blacketer alleged as follows:

5. On or about January 30 and 31, 2003, Mittan while attempting to execute and arrest [Blacketer] shot Blacketer three times causing severe injury.
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7. Mittan, without justification, willfully and maliciously shot Blacketer with the purpose of killing or injuring him.

¹ Originally, Blacketer also alleged a 42 U.S.C. section 1983 claim which he voluntarily dismissed.

8. Michael Mittan acted willfully and maliciously in his use of deadly force when he shot Blacketer, which constitutes excessive force in violation of § 804.8 of the Code of Iowa (2005).

The State filed an answer, denying the material allegations of the petition and asserting the affirmative defense of sovereign immunity under section 669.14.

On December 18, 2006, the State filed a motion for summary judgment, arguing Blacketer's excessive force claim is the functional equivalent of a claim for assault and battery and, therefore, is prohibited by section 669.14(4) as a matter of law. The State also asserted Mittan's actions were objectively reasonable under the circumstances as a matter of law and that Blacketer's guilty plea for willful injury precludes his excessive force claim. Blacketer filed a resistance, arguing his excessive force claim is a negligence claim, not an assault and battery claim, and genuine issues of material fact exist regarding whether Mittan's actions were objectively reasonable under the circumstances. The district court's February 28, 2007 order sustained the State's motion for summary judgment. The district court concluded the State was immune from a tort suit because Blacketer's excessive force claim is the functional equivalent of a claim for assault and battery. The district court also concluded Mittan's actions were objectively reasonable under the circumstances as a matter of law. The court did not address the effect of the guilty plea for willful injury.

On appeal, Blacketer claims (1) the Iowa Tort Claims Act does not preclude an action for excessive force, (2) the reasonableness of Mittan's actions is a question of fact, and (3) his guilty plea for willful injury does not preclude his excessive force claim.

II. Standard of Review

Our review of a ruling on a motion for summary judgment is for correction of errors at law. Iowa R. App. P. 6.4; *Clinkscales v. Nelson Sec., Inc.*, 697 N.W.2d 836, 840-41 (Iowa 2005). Summary judgment is proper only if

“the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”

Iowa R. Civ. P. 1.981(3). “When the facts are undisputed and the only dispute concerns the legal consequences flowing from those facts, [we] must determine whether the district court correctly applied the law.” *Perkins v. Dallas Center-Grimes Cmty. Sch. Dist.*, 727 N.W.2d 377, 378 (Iowa 2007).

III. Sovereign Immunity

Under the Iowa Tort Claims Act, “the legislature abrogated, in part, the State’s immunity from suits sounding in tort.” *Drahaus v. State*, 584 N.W.2d 270, 272 (Iowa 1998); see also *Dickerson v. Mertz*, 547 N.W.2d 208, 213 (Iowa 1996) (“The doctrine of sovereign immunity dictates that a tort claim against the state or an employee acting within the scope of his office or employment with the state must be brought, if at all, pursuant to chapter 669.”). However, a private citizen’s right to sue the State “is limited by conditions set forth by the legislature in chapter 669.” *Drahaus*, 584 N.W.2d at 272. “These limitations are most clearly manifested in the specific exceptions to the act, which describe the categories of claims for which the State has not waived its sovereign immunity.” *Trobaugh v. Sondag*, 668 N.W.2d 577, 584 (Iowa 2003).

At issue in this case is the exception for “[a]ny claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.” Iowa Code § 669.14(4). Our supreme court has recognized that this section “identifies excluded claims in terms of the type of wrong inflicted.” *Greene v. Friend of Court, Polk County*, 406 N.W.2d 433, 436 (Iowa 1987). Therefore, when “[t]he gravamen of plaintiff’s claim . . . is the functional equivalent” of the causes of action listed in this section, the claim cannot be pursued against the State. *Id.*; see also *Hawkeye By-Prods., Inc. v. State*, 419 N.W.2d 410, 411 (Iowa 1988).

While Blacketer argues his claim is for negligence, the State argues his claim is essentially a claim for assault and battery. See Iowa Code § 708.1 (defining assault); *Greenland v. Fairtron Corp.*, 500 N.W.2d 36, 38 n.5 (Iowa 1993) (defining battery); *Knake v. King*, 492 N.W.2d 416, 417 (Iowa 1992) (defining negligence). Blacketer’s petition does not allege negligence or breach of a duty of care; rather, it alleges Mittan willfully and maliciously shot Blacketer in violation of section 804.8. This section provides in relevant part:

A peace officer, while making a lawful arrest, is justified in the use of any force which the peace officer reasonably believes to be necessary to effect the arrest or to defend any person from bodily harm while making the arrest. However, the use of deadly force is only justified when a person cannot be captured any other way and either

1. The person has used or threatened to use deadly force in committing a felony or
2. The peace officer reasonably believes the person would use deadly force against any person unless immediately apprehended.

Iowa Code § 804.8. In *Johnson v. Civil Service Commission of City of Clinton*, 352 N.W.2d 252, 257 (Iowa 1984), our supreme court stated that under this section “an assault only occurs if a peace officer does not reasonably believe the particular force was necessary in the circumstances.” See also *Lawyer v. City of Council Bluffs, Iowa*, 240 F. Supp. 2d 941, 955 (S.D. Iowa 2002) (“Police officers are privileged to commit a battery pursuant to a lawful arrest’ [under section 804.8] subject to the limitation on excessive force.”). Section 804.8 does not state a cause of action but rather is a defense to what would otherwise be an assault or battery. Therefore, we find Blacketer’s excessive force claim is the functional equivalent of a claim for assault and battery, and the State is immune from suit under section 669.14(4).

This conclusion is further buttressed by cases examining 28 U.S.C. section 2680(h) (2006), an identical Federal Tort Claims Act provision. We turn to federal law in construing chapter 669 “because our statute is modeled after the Federal Tort Claims Act.” *Hyde v. Buckalew*, 393 N.W.2d 800, 802 (Iowa 1986). These courts have stated an excessive force claim is an assault and battery claim. See, e.g., *Stepp v. United States*, 207 F.2d 909, 911 (4th Cir. 1953) (“It is well established that an intentional use of excessive force in making an arrest amounts to an assault and battery.”); *Pendarvis v. United States*, 241 F. Supp. 8, 10 (E.D.S.C. 1965) (“It is clear from the complaint, that excessive force was used in arresting plaintiff, and that . . . plaintiff’s cause of action or claim in this case is one arising out of assault and battery . . . so as to be barred under the Federal Tort Claims Act by the exclusionary provision of 28 U.S.C. 2680(h).”).

Because a claim for excessive force is the functional equivalent of a claim for assault and battery, the State is immune from suit. We have no jurisdiction to reach the merits of Blacketer's claim and affirm the district court's grant of the State's motion for summary judgment. See *North v. State*, 400 N.W.2d 566, 569-70 (Iowa 1987) (holding if the State is immune from suit under former section 25A.14(4) we have no jurisdiction to reach the merits).

Because we have determined that the State is immune from suit under the facts of this case, we do not reach Blacketer's argument that the reasonableness of the officer's actions is a question of fact or that his guilty plea for willful injury does not preclude his excessive force claim.

AFFIRMED.