Civil Rights Update

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Animal Abuse Case Provides Reminder as to the Low Federal Pleading Standard

The Court of Appeals for the Seventh Circuit's recent opinion in *Neita v. City of Chicago*, No. 15-1404, 2016 U.S. App. LEXIS 13191 (7th Cir. July 19, 2016), reaffirmed the low bar plaintiffs face in successfully pleading 42 U.S.C. § 1983 claims in federal court. In so doing, the court reminds us that the summary judgment stage—and not the pleading stage—is the true "put up or shut up" moment for civil rights plaintiffs.

Background

The facts in *Neita* are simple. The plaintiff owned a dog-grooming business called "A Doggie Business." *Neita*, 2016 U.S. App. LEXIS 13191, at *2. He claimed that he brought two dogs—one that was overly aggressive and killed another dog, and another that became ill after whelping a litter of puppies—to the Chicago Department of Animal Care and Control for help. *Id.* Upon observing the dogs, an Animal Control employee called the police. Two Chicago police officers arrived, interviewed the Animal Control worker, and arrested the plaintiff. *Id.* The plaintiff was prosecuted for animal cruelty and for breaching various animal owners' duties under state law. He was acquitted of all charges. *Id.*

The plaintiff timely filed a section 1983 suit against, among others, the arresting police officers and the City of Chicago. *Id.* at *2, *7. His complaint included constitutional claims for false arrest and illegal searches of his person, his vehicle, and his business. *Id.* at *2-3. The defendants prevailed twice on motions to dismiss the complaint brought pursuant to Federal Rule of Civil Procedure 12(b)(6). *Neita*, 2016 U.S. App. LEXIS 13191, at *3. On the second occasion, the district court dismissed the complaint with prejudice. The court held that the plaintiff was unable to articulate a violation of his constitutional rights, and that further amendment would be futile under the circumstances. *Id.* This appeal followed.

The Seventh Circuit reversed the trial court's ruling finding that the plaintiff adequately pleaded deprivations of his Fourth Amendment rights. *Id.* at *1-2. The court's analysis may be useful to defense counsel when considering whether to challenge the sufficiency of a pleading through a Rule 12(b)(6) motion.

The Plaintiff's False Arrest Claim

The Seventh Circuit's analysis began with the plaintiff's false arrest claim. To substantiate a false arrest claim at trial, the plaintiff must show that the police lacked probable cause for the arrest. Probable cause exists if, "at the time of the arrest, the facts and circumstances within the officer's knowledge . . . are sufficient to warrant a prudent person, or

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one of reasonable caution, in believing, in the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense." *Id.* at *4 (quoting *Thayer v. Chiczewski*, 705 F.3d 237, 246 (7th Cir. 2012)). The *Neita* court observed that the determination of probable cause depends upon the elements of the underlying criminal offense. *Neita*, 2016 U.S. App. LEXIS 13191 at *4 (citing *Stokes v. Bd. of Educ.*, 599 F.3d 617, 622 (7th Cir. 2010)).

The court analyzed the elements of the animal cruelty offense and the statutory language explaining an animal owner's duties in Illinois, then turned its attention to the complaint. *Neita*, 2016 U.S. App. LEXIS 13191, at *4-5 (citing 510 ILCS 70/3 and 70/3.01). It boiled down the plaintiff's false arrest claim as alleging that the plaintiff "showed up at Animal Control to surrender two dogs, neither of which showed signs of abuse or neglect, and was arrested without any evidence that he had mistreated either dog." *Neita*, 2016 U.S. App. LEXIS 13191, at *5-6. This was sufficient for pleading purposes. The court found that, if the plaintiff's allegations were true, "no reasonable person would have cause to believe that Neita had abused or neglected an animal." *Id.* at *6. It consequently reversed the district court's dismissal of the false arrest claim. *Id.* at *2.

Successfully pleading false arrest is, of course, easier than proving it. After all, "as long as a reasonably credible witness or victim informs the police that someone has committed, or is committing, a crime . . . officers have probable cause." *Spiegel v. Cortese*, 196 F.3d 717, 723 (7th Cir. 1999). At summary judgment and beyond, the officer's first-hand observations of the appearance of the animals (alleged by the defense to be "patently indicative of abuse or neglect") may yet prove crucial. *Neita*, 2016 U.S. App. LEXIS 13191, at *6.

Multiple Searches Attacked Through Multiple Doctrines

The complaint further alleged that the arresting officers violated the plaintiff's Fourth Amendment rights through illegal searches of his person, his vehicle, and his business. *Id.* The Seventh Circuit found that the plaintiff sufficiently pleaded each claim for different, but important, reasons.

First, the complaint alleged that the officers illegally searched the plaintiff's person at the time of his arrest. *Id.* A search incident to lawful arrest is a well-established exception to the Fourth Amendment's warrant requirement, so the district court dismissed this claim. On appeal, the Seventh Circuit easily found that, because the plaintiff successfully pleaded false arrest, this claim must necessarily proceed. *Id.* at *6-7.

Next, the complaint claimed that, after his arrest, the two police officers took Neita's car keys and proceeded to search his vehicle without his consent. *Id.* at *7. This claim did not debut until the plaintiff's second amended complaint, which was filed after the two-year limitations period controlling section 1983 claims filed in Illinois expired. The district court, therefore, dismissed the claim as untimely. *Id.* On appeal, the plaintiff conceded that he filed this claim late, but argued that it was saved by the relation-back doctrine. *Neita*, 2016 U.S. App. LEXIS 13191, at *8. Federal Rule of Civil Procedure 15(c)(1)(B) provides that an amendment to a complaint relates back to the filing date of the original, timely pleading if the amendment sets forth a claim arising out of the same conduct, transaction, or occurrence described in the original pleading. *Id.* The doctrine applies if the defendant has sufficient notice of the nature and scope of the new claim from the original pleading such that the amendment does not result in surprise. *Id.* (quoting *Santamarina v. Sears, Roebuck & Co.*, 466 F.3d 570, 573 (7th Cir. 2006)).

The court found that the "relevant transaction" in this case was the plaintiff's arrest. *Neita*, 2016 U.S. App. LEXIS 13191, at *8. Because the subsequent search of his car flowed from the arrest, the original complaint put the defendants on notice "that they would have to defend against all claims arising out of this encounter, including the related search of

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Neita's vehicle." *Id.* at *8-9. The Seventh Circuit consequently reversed the district court's ruling as to the vehicle search, as well.

Finally, the plaintiff argued on appeal that the search of his business was also erroneously dismissed. *Id.* at *9. In analyzing this argument, the court noted that the Fourth Amendment's protections against warrantless searches extend to commercial properties. *Id.* (citing *Dow Chem. Co. v. United States*, 476 U.S. 227, 237-38 (1986)). The district court dismissed this claim on qualified immunity grounds, ruling that the officers possessed the statutory authority, pursuant to section 10 of the Humane Care for Animals Act, 510 ILCS 70/10, to "'enter during normal business hours upon any premises where the animal or animals described in the complaint are housed or kept, provided such entry shall not be made into any building which is a person's residence, except by search warrant or court order.'" *Neita*, 2016 U.S. App. LEXIS 13191, at *9 (quoting section 10 of the Act). In following Illinois law, the officers "did not violate any clearly established statutory or constitutional rights of which a reasonable person would have known." *Id.* at *9-10.

Again, the Seventh Circuit disagreed with the district court. It interpreted the complaint as alleging that the officers either never received a complaint of abuse or neglect to animals or, alternatively, that they knew such complaints were false. *Id.* at *10. This interpretation necessarily removed reliance upon the Humane Care for Animals Act as a defense. For pleading purposes, the court found that the plaintiff sufficiently pleaded an unlawful search of his business premises. *Id.* Although qualified immunity may still prove effective at summary judgment, the Seventh Circuit was unwilling to apply it here without discovery.

Conclusion: Is a Motion to Dismiss the Right Move?

The *Neita* decision provides a succinct review of the federal pleading standard applicable to run-of-the-mill section 1983 claims. The defendants presented a number of arguments that, if made in a summary judgment motion, may have carried the day. A Rule 12(b)(6) motion, on the other hand, must contend with notice pleading and its low "plausibility" standard as articulated in *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544, 570 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). So long as a complaint alleges a plausible cause of action, it will be difficult to secure a dismissal that will survive appellate review. Although all efforts to end a case at the pleading stage should be considered, the better part of valor may dictate patience until a well-supported motion for summary judgment can be filed. Previewing one's arguments early, as occurred here, may dictate the course of discovery such that unwelcome questions of material fact may jeopardize an otherwise dispositive motion down the road.

About the Author

John P. Heil, Jr. is a partner in the Peoria office of *Heyl, Royster, Voelker & Allen, P.C.*, where he chairs the firm's drone law practice group and is vice-chair of the business and commercial litigation practice group. He also regularly defends complex civil rights cases, *qui tam* actions and catastrophic tort suits in state and federal court. Prior to joining *Heyl Royster* in 2007, Mr. Heil was an Assistant State's Attorney in Cook County for eleven years. He received his undergraduate degree from Bradley University in 1993 and his law degree from Chicago-Kent College of Law, with honors, in 1996. He is a member of the Illinois Association of Defense Trial Counsel, the Federal Bar Association, the Illinois State Bar Association, the Peoria County Bar Association, and the Abraham Lincoln American Inn of Court.

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