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OPINIONS AND ORDERS

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OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT (JULY 13, 2021)

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

SALLY GAETJENS,

Plaintiff-Appellant,

v.

CITY OF LOVES PARK, ET AL.,

Defendants-Appellees.

No. 20-1295

Appeal from the United States District Court for the Northern District of Illinois, Western Division.
No. 16-cv-50261—John Robert Blakey, Judge.

Before: KANNE, SCUDDER, and KIRSCH, Circuit Judges.

KANNE, Circuit Judge.

Plaintiff Sally Gaetjens sued various local government officials for entering and condemning her home and confiscating her thirty-seven cats, all without a warrant. She's right that the Fourth Amendment would usually prohibit such conduct. But emergencies

breed exceptions—and this case is littered with emergencies.

Namely, Gaetjens went missing in action, and Defendants had reason to believe that she was experiencing a medical emergency. Plus, when Defendants attempted to check her home, they deemed it so noxious that it posed a public-safety risk. Given these exigencies, the Fourth Amendment did not require Defendants to wait for judicial approval before acting. We thus affirm the decision of the district court granting summary judgment to Defendants.

I. Background

The following facts are undisputed and stated in the light most favorable to Gaetjens as the nonmoving party. *Wonsey v. City of Chicago*, 940 F.3d 394, 399 (7th Cir. 2019) (citing *Dayton v. Oakton Cmty. Coll.*, 907 F.3d 460, 465 (7th Cir. 2018)).

Gaetjens bred cats in her home in Loves Park, Illinois. On December 4, 2014, she visited her doctor and was told to go to the hospital because of high blood pressure. Later that day, the doctor couldn't locate Gaetjens, so she phoned Rosalie Eads (Gaetjens's neighbor who was listed as her emergency contact) to ask for help finding her. Eads called Gaetjens and knocked on her front door but got no response.

The next day, Gaetjens was still missing, so Eads called the Loves Park police and told them that Gaetjens might be experiencing a medical emergency. Defendant Sergeant Allton and another officer went to Gaetjens's Loves Park home but could not see anyone inside. They did, though, notice packages on the porch, untended garbage, and a full mailbox.

The police then met up with Eads, who said she had a key to the Loves Park house and confirmed what she had said on the phone. With these facts before them, the police asked Eads for the key so that they could enter to see if Gaetjens was in danger. Eads obliged but also said that she thought perhaps Gaetjens was at her other home in Rockford.

The police went into the home but didn't get far. After making it about ten feet, intense odors forced them back out. Allton described the smell as a mix of urine, feces, and maybe a decomposing body.

The police then called on the Loves Park Fire Department to enter the home with breathing devices. Defendant Fire Chief Foley arrived first, and Allton told him the whole tale. So Foley approached the cracked front door for himself and got a whiff of something that could "gag a maggot." Foley thus temporarily condemned the home as not fit for human or animal habitation by placing a placard on the front door that read: "CONDEMNED[.] This Structure is Unsafe and Its use or occupancy has been prohibited by the code administrator. It shall be unlawful for any person to enter such structure except for the purpose of making the required repairs or removal."

More firefighters soon arrived and went into the home to look for Gaetjens. But instead of Gaetjens, they found thirty-seven cats.

At that point, the responders summoned Winnebago County Animal Services to round up the cats because Gaetjens was not allowed inside the condemned house to care for the clowder herself. Some of the felines proved more difficult to catch than others. In particular, the male stud, Calaio, looked

ready to attack the workers. So they pulled out metal "cat grabbers" to trap him.

In the end, Animal Services impounded the cats from December 4 to December 13, 2014. Sadly, four cats, including Calaio, died as a result of the impoundment.

Based on these events, Gaetjens—who unbeknownst to the officers had been in the hospital all along—sued the City of Loves Park, Winnebago County, and various employees of each under 28 U.S.C. § 1983. Relevant to this appeal, she alleged that the individual Defendants (Allton, Foley, and three Animal Services employees) violated her Fourth Amendment rights by (1) entering her home, (2) condemning her home, and (3) seizing her cats. She also alleged that the City of Loves Park and Winnebago County are liable for these violations under *Monell v. Department of Social Services of New York*, 436 U.S. 658 (1978).

The district court granted summary judgment to all Defendants on all claims. Gaetjens now appeals.

II. Analysis

We review a district court's grant of summary judgment *de novo*. *Wonsey*, 940 F.3d at 399 (citing *Dayton*, 907 F.3d at 465). In this case, the district court determined that Gaetjens's Fourth Amendment claims fail because the individual defendants are entitled to qualified immunity. We agree that Gaetjens's claims fail, but for a more basic reason—the individual defendants did not violate the Fourth Amendment.

The Fourth Amendment, made applicable to the States through the Fourteenth Amendment, protects "[t]he right of the people to be secure in their persons,

houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. This protection exists in both the criminal and civil contexts. *Soldal v. Cook County*, 506 U.S. 56, 67 (1992).

"[T]he ultimate touchstone of the Fourth Amendment is 'reasonableness.'" *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006) (citing *Flippo v. West Virginia*, 528 U.S. 11, 13 (1999); *Katz v. United States*, 389 U.S. 347, 357 (1967)). "[S]earches and seizures inside a home without a warrant are presumptively unreasonable." *Id.* (quoting *Groh v. Ramirez*, 540 U.S. 551, 559 (2004)). But this "warrant requirement is subject to certain exceptions." *Id.* (citing *Flippo*, 528 U.S. at 13; *Katz*, 389 U.S. at 357).

One such exception arises when "'the exigencies of the situation' make the needs of law enforcement so compelling that [a] warrantless search [or seizure] is objectively reasonable under the Fourth Amendment." *Mincey v. Arizona*, 437 U.S. 385, 394 (1978) (quoting *McDonald v. United States*, 335 U.S. 451, 456 (1948)) (citing *Johnson v. United States*, 333 U.S. 10, 14– 15 (1948)). In these situations, one principle governs—"[t]he need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency." *Id.* at 392–93 (quoting *Wayne v. United States*, 318 F.2d 205, 212 (D.C. Cir. 1963)).

To determine whether an exigency permitted a warrantless search or seizure in a home, we "conduct[] an objective review, analyzing whether the government met its burden to demonstrate that a reasonable officer had a 'reasonable belief that there was a compelling need to act and no time to obtain a warrant.'" *United States v. Andrews*, 442 F.3d 996, 1000 (7th Cir.

2006) (quoting *United States v. Saadeh*, 61 F.3d 510, 516 (7th Cir. 1995)). This objective review looks at "the totality of facts and circumstances 'as they would have appeared to a reasonable person *in the position of the . . . officer*—seeing what he saw, hearing what he heard.'" *Bogan v. City of Chicago*, 644 F.3d 563, 572 (7th Cir. 2011) (quoting *Mahoney v. Kesery*, 976 F.2d 1054, 1057 (7th Cir. 1992)).

The exigent circumstances doctrine applies equally to warrantless searches of a home, seizures of a home, and seizures of private property within a home. *See Sutterfield v. City of Milwaukee*, 751 F.3d 542, 558 (7th Cir. 2014); *United States v. Shrum*, 908 F.3d 1219, 1231 (10th Cir. 2018) ("[T]he warrantless seizure of a home . . . 'is per se unreasonable, unless the police can show that it falls within one of a carefully defined set of exceptions based on the presence of "exigent circumstances."'" (quoting *Coolidge v. New Hampshire*, 403 U.S. 443, 474–75 (1971)) (citing *Brigham City*, 547 U.S. at 403)); *Siebert v. Severino*, 256 F.3d 648, 657 (7th Cir. 2001) ("Exigent circumstances may justify a warrantless seizure of animals." (citing *DiCesare v. Stuart*, 12 F.3d 973, 977 (10th Cir. 1993))).

Here, all parties agree that Allton "searched" the Loves Park home by entering it to look for Gaetjens. Likewise, all agree that Foley "seized" the Loves Park home by placing a condemnation placard on it and that the Animal Services workers "seized" Gaetjens's cats by capturing them. *United States v. Jacobsen*, 466 U.S. 109, 113 (1984) ("A 'seizure' of property occurs when there is some meaningful interference with an individual's possessory interests in that property."). Finally, all agree that Defendants did not obtain warrants or any other judicial or admin-

istrative approval before conducting these searches and seizures.

So, to satisfy the Fourth Amendment, Defendants' warrantless searches and seizures needed to fall into an exception to the warrant requirement. They all did—each was justified by an exigent circumstance.

First, Allton (who searched the house) had an objectively reasonable basis for believing that Gaetjens was experiencing a medical emergency that required immediate action. Second, Foley (who seized the house) had an objectively reasonable basis on which to believe that the Loves Park home posed a safety threat that required immediate attention. Third, the Animal Services employees (who seized the cats) reasonably determined that the cats were in imminent danger because they could not be cared for in the home.

Last, because none of the individual defendants violated Gaetjens's Fourth Amendment rights, her *Monell* claims fail as well.

A. The Home Entry

In an exigent circumstance often referred to as an "emergency-aid" situation, government officials may enter a home without a warrant "to 'render assistance or prevent harm to persons or property within.'" *Sutterfield*, 751 F.3d at 558 (quoting *Sheik–Abdi v. McClellan*, 37 F.3d 1240, 1244 (7th Cir. 1994)). In a recent concurring opinion, Justice Kavanaugh provided "[a] few (non-exhaustive) examples [that] illustrate" "some heartland emergency-aid situations." *Caniglia v. Strom*, 141 S. Ct. 1596, 1604 (2021) (Kavanaugh, J., concurring). The following example is particularly apt for this appeal:

> Suppose that an elderly man is uncharacteristically absent from Sunday church services and repeatedly fails to answer his phone throughout the day and night. A concerned relative calls the police and asks the officers to perform a wellness check. Two officers drive to the man's home. They knock but receive no response. May the officers enter the home? Of course.

Id. at 1605 (Kavanaugh, J., concurring); *accord United States v. Tepiew*, 859 F.3d 452 (7th Cir. 2017) (permitting police officers' warrantless entry into a home on the basis of a report from a child in the home that her one-year-old brother had sustained a head injury and had a puffy face).

The home entry in this case likewise falls into the heartland of emergency-aid situations. It is undisputed that Allton knew that (1) Eads and Gaetjens's doctor were unable to get in touch with Gaetjens; (2) the doctor's office called Eads because she was Gaetjens's emergency contact; (3) Eads was concerned that Gaetjens was experiencing a medical emergency; and (4) Gaetjens's mail and garbage were piling up.

If, as Justice Kavanaugh posits, failing to come to church and answer a phone provides an objectively reasonable basis for believing that an occupant needs emergency assistance, then this litany of concerning circumstances facing Allton more than provided him with the same. His warrantless entry of the Loves Park home thus did not violate the Fourth Amendment.

In response, Gaetjens makes much of the fact that Eads told Allton that she believed Gaetjens was at

her Rockford home, not her Loves Park home. But that statement just gave Allton a reason to also look for Eads in her Rockford house; it in no way contradicted the above facts that gave Allton an objectively reasonable basis to enter the Loves Park home.

B. The Condemnation

"The exigent circumstances doctrine [also] allows officers to enter a home without a warrant . . . to address a threat to the safety of law enforcement officers or the general public . . . ." *Caniglia*,141 S. Ct. at 1603 (Kavanaugh, J., concurring) (citing, among other cases, *Michigan v. Clifford*, 464 U.S. 287, 293 & n.4 (1984)). Two precedents guide our analysis of whether Foley had an objectively reasonable basis for believing that a safety threat required him to condemn the Loves Park home without a warrant.

First, in *Wonsey*, building inspectors found thirty-two building code violations in the plaintiff's home. 940 F.3d at 398. Based on the "dangerous conditions" that those violations presented, the inspectors asked the police to help them with "emergency evacuations." *Id*. The police did so, and then faced a § 1983 suit from an evacuee for violating her Fourth Amendment rights. *Id.* We rejected that claim because the "police entered her house . . . to help with an evacuation given an immediate safety concern." *Id.* at 401.

Second, the Sixth Circuit addressed a similar scenario in *Flatford v. City of Monroe*, 17 F.3d 162 (6th Cir. 1994), which we find persuasive. There, police officers evacuated a residential apartment building after inspectors determined that it "posed an immediate danger to its occupants and the public" because

of its dilapidated wooden structure and faulty electrical system. *Id.* at 171. The court determined that the officers were entitled to qualified immunity for this warrantless evacuation because they reasonably believed that their entry was justified by exigent circumstances. *Id.* And the court noted that "[t]he very point of the exigency exception under these circumstances is to allow immediate effective action necessary to protect the safety of occupants, neighbors, and the public at large." *Id.* at 170.

This case aligns with both *Wonsey* and *Flatford*. Allton reported to Foley that the home was so noxious that the police could not bear going in more than ten feet. Foley then probed the front door himself and smelled a stench that could "gag a maggot." These circumstances gave Foley a reasonable basis on which to conclude that the home's "conditions posed an immediate danger to its occupants and the public." *Id.* at 171. Thus his reflex to temporarily condemn the home and "protect or preserve life" from such danger did not violate the Fourth Amendment. *Mincey*, 437 U.S. at 392–93 (quoting *Wayne*, 318 F.2d at 212).

Gaetjens retorts that summary judgment on this claim is inappropriate because the condition of the home was put in dispute by the testimony of her friend, Joan Klarner, who testified that she did not believe the home posed a health risk when she visited it several hours before Defendants arrived. But Klarner's testimony doesn't directly dispute the state of the home as Defendants found it later on that day. More important, even if the home was not as bad as Allton made it out to be, Foley was nonetheless entitled to rely on Allton's statements about the condition of the home because Allton had superior

information after entering the home moments earlier. *Cf. Flatford*, 17 F.3d at 170 ("[R]equiring officers to second guess the more informed judgment of a building safety inspector would hinder effective and swift action. Officers should, therefore, have wide latitude to rely on a building-safety official's expertise where that expert determination appears to have some basis in fact.").

C. Confiscation of the Cats

Last, "[e]xigent circumstances may justify a warrantless seizure of animals" when an official reasonably believes that the animals are in "imminent danger." *Siebert*, 256 F.3d at 657 (citing *DiCesare*, 12 F.3d at 977); *see also, e.g.*, *Commonwealth v. Duncan*, 7 N.E.3d 469, 471 (Mass. 2014) (finding exigent circumstances to seize dogs where the dogs were left out "in severely inclement winter weather" and "extremely emaciated"); *Hegarty v. Addison Cnty. Humane Soc'y*, 848 A.2d 1139, 1143 (Vt. 2004) (permitting the warrantless seizure of a horse where officer reasonably believed that the horse's "health was in jeopardy and that immediate action was required to protect her").

The imminent danger to animals here was plain —Gaetjens's thirty-seven cats could not be cared for in the Loves Park home because the condemnation placard prevented Gaetjens from entering the home for that purpose. Given this situation, the Animal Services officials' warrantless entry into the Loves Park home and the seizure of her cats did not violate the Fourth Amendment.

Gaetjens argues in rebuttal that regardless of whether Animal Services could seize her cats, they

still violated the Fourth Amendment by using excessive force when doing so. Specifically, she alleges that the officials used a "cat grabber" that injured and ultimately killed the stud Calaio.

We have held before that "the use of deadly force against a household pet is reasonable only if the pet poses an immediate danger and the use of force is unavoidable." *Viilo v. Eyre*, 547 F.3d 707, 710 (7th Cir. 2008) (citing *Brown v. Muhlenberg Township*, 269 F.3d 205, 210–11 (3d Cir. 2001)). But that case, and the cases from this circuit applying its rule, involved officers shooting dogs with firearms. This case involved Animal Services officials using a cat-catching tool to catch a cat (which, according to indisputable testimony, looked ready to "maul" the cat-catcher). That Calaio died as a result of this manifestly reasonable tactic is unfortunate, but it does not an unreasonable seizure make.

Gaetjens also argues that even if the initial seizure of her cats was lawful, Animal Services violated her Fourth Amendment rights by retaining the cats longer than necessary. This argument fails because we have made clear that the Fourteenth Amendment, not the Fourth Amendment, provides the appropriate basis for challenging post-seizure procedures for the retrieval of property. *Bell v. City of Chicago*, 835 F.3d 736, 741 (7th Cir. 2016).

As a final note, Gaetjens argues that the district court incorrectly granted summary judgment *sua sponte* to the Animal Services officials. While Gaetjens is correct that this procedure warrants caution, it is permissible when "the losing party is given notice and an opportunity to come forward with its evidence." *Jones v. Union Pac. R.R. Co.*, 302 F.3d 735, 740

(7th Cir. 2002) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986); *Goldstein v. Fid. and Guar. Ins. Underwriters, Inc.*, 86 F.3d 749, 750 (7th Cir. 1996)). Gaetjens has not argued here that she received inadequate notice, nor has she shown that she was deprived of an opportunity to marshal evidence to dispute the facts relied on in this opinion.

We therefore conclude that the Animal Services workers, like the other individual defendants, did not violate Gaetjens's Fourth Amendment rights.

D. Monell Liability

According to the Supreme Court's decision in *Monell*, municipalities are sometimes liable for the constitutional violations that their employees commit. 436 U.S. at 658. "But a municipality cannot be liable under *Monell* when there is no underlying constitutional violation by a municipal employee." *Sallenger v. City of Springfield*, 630 F.3d 499, 504 (7th Cir. 2010) (citing *King ex rel. King v. E. St. Louis Sch. Dist. 189*, 496 F.3d 812, 817 (7th Cir. 2007); *Jenkins v. Bartlett*, 487 F.3d 482, 492 (7th Cir. 2007)). That's the case here. Gaetjens's constitutional rights were not violated, and thus her *Monell* claim cannot succeed.

III. Conclusion

For the foregoing reasons, we AFFIRM the judgment of the district court.

ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION (JANUARY 21, 2020)

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

GAETJENS,

Plaintiff,

v.

CITY OF LOVES PARK, ET AL.,

Defendants.

Case No. 16-cv-50261

Before: John ROBERT BLAKEY, Judge.

In May 2019, Judge Kapala granted summary judgment for Defendants City of Loves Park, Philip Foley, and Doug Alton (the City Defendants) on qualified immunity grounds and closed the case. [114]. Judge Kapala subsequently modified that prior order (thereby reopening the case), clarifying that the court granted summary judgment only as to the City Defendants, and ordering Plaintiff to show cause as to why the court should not grant summary judgment as to the remaining Defendants—Jennifer Stacy, Dave Kaske, and Joshua Del Rio (the County Defendants). [115]. Plaintiff timely responded. [120]. This Court,

having been reassigned this case, grants summary judgment in favor of the County Defendants.

STATEMENT

This Court incorporates by reference, and presumes familiarity with, Judge Kapala's prior opinion. [114]. As detailed in that opinion, to "determine whether a defendant is entitled to qualified immunity, courts must address two issues: (1) whether the defendant violated the plaintiff's constitutional rights and (2) whether the right at issue was clearly established at the time of the violation." *Rooni v. Biser*, 742 F.3d 737, 742 (7th Cir. 2014) (quoting *Stainback v. Dixon*, 569 F.3d 767, 770 (7th Cir. 2009)). Courts maintain discretion to decide which prong to address first; if the answer to either question is "no," summary judgment should enter in favor of the defendant. *Thompson v. Cope*, 900 F.3d 414, 420 (7th Cir. 2018); *see also Leiser v. Kloth*, 933 F.3d 696, 701 (7th Cir. 2019). Plaintiff bears the burden to defeat the qualified immunity defense once raised. *Leiser*, 933 F.3d at 701; *Estate of Rudy Escobedo v. Martin*, 702 F.3d 388, 404 (7th Cir. 2012).

Plaintiff alleges that the County Defendants violated her Fourth Amendment rights by wrongfully seizing her cats. [1] ¶¶ 84–88. She also asserts a civil conspiracy claim against Defendant Del Rio. *Id.* ¶¶ 96–99. Plaintiff advances two primary arguments for why summary judgment should not be entered in the County Defendants' favor.

Plaintiff first argues that the County Defendants acted unlawfully when they initially seized the cats. [120] at 2–10. But Judge Kapala already addressed and rejected this first argument, reasoning that

Plaintiff failed to carry her burden to demonstrate that a clearly established law—namely, that the County Defendants could not permit re-entry into Plaintiff's home when it had been condemned—had been violated. [114] at 12. Because Plaintiff raises no new bases why Judge Kapala erred here, see [120], this Court rejects this initial argument.

Plaintiff next argues that even if the County Defendants possess qualified immunity relating to the initial seizure, they do not possess qualified immunity for actions they took in impounding the cats from December 5 through 13, 2014. [120] at 11–13. Specifically, Plaintiff contends that, after arriving to the scene in the midst of the impoundment, the County Defendants improperly denied her request to retain possession of her cats, which constituted an additional unlawful seizure. *Id*. at 11. Relatedly, Plaintiff contends that the County Defendants wrongfully maintained possession of the cats through December 13, 2014, such that the possession amounted to an additional seizure and violation of her Fourth Amendment rights. *Id*. at 12.

This Court disagrees, because the County Defendants relied upon the Animal Control Act to guide their impoundment process; the Act requires payment of certain fees before Animal Services can release animals. [81-13] at 32; *see also* 510 ILCS 5/10 ("In case the owner, agent, or caretaker of any impounded dog or cat desires to make redemption thereof, he or she may do so by doing the following. . . Paying the pound for the board of the dog or cat for the period it was impounded[; and] Paying into the Animal Control Fund an additional impoundment fee as prescribed by the Board as a penalty for the first offense and for

each subsequent offense."). Plaintiff points to no evidence indicating that she attempted to pay the fees, or that the County Defendants refused to release the cats to her after she paid the fees. Under these circumstances, a reasonable official could have believed that she acted lawfully in impounding and maintaining possession of the cats. Qualified immunity therefore cloaked the County Defendants' actions in impounding and maintaining possession of the cats.

Finally, this Court also rejects Plaintiff's theory that the County Defendants used excessive force in the seizure of the cats, particularly on Calaio, such that the harm caused to the animals constituted a separate unlawful seizure. *See* [120] at 12–13. Plaintiff relies heavily upon *Viilo v. Eyre*, where the Seventh Circuit held that "use of deadly force against a household pet is reasonable only if the pet poses an immediate danger and the use of force is unavoidable." 547 F.3d 707, 710 (7th Cir. 2008). Under *Viilo*, this Court must determine whether the County Defendants reasonably believed Calaio posed an imminent threat and using force was unavoidable.

Here, Defendant Del Rio testified that he escalated his method of catching the cats under the circumstances—first using his hands, then using welders gloves, and finally using the "cat grabbers" for the most skittish cats, such as Calaio. [96-1] at 72–74. Del Rio testified that he "would have been mauled" had he used his hands instead of the "cat grabbers." *Id.* at 72. Plaintiff has not disputed Del Rio's version of events, so the uncontested evidence demonstrates that Del Rio believed the cats posed an imminent threat and that using force was unavoidable. Plaintiff has therefore failed to show that using force against

the animals was unreasonable under clearly established law. *Kemp v. Liebel*, 877 F.3d 346, 351 (7th Cir. 2017). For these reasons, this Court finds that qualified immunity also applies to Plaintiff's theory relating to the County Defendants' application of force against the cats.

In light of the foregoing, this Court grants summary judgment to the County Defendants on Plaintiff's Fourth Amendment claim. Moreover, as Judge Kapala found, a "finding of qualified immunity . . . also dooms the conspiracy claim." [114] at 12. This Court therefore also grants summary judgment to Del Rio on the civil conspiracy claim.

The Clerk is directed to enter judgment for Defendants Stacy, Kaske, and Del Rio, and against Plaintiff. Civil case terminated.

Enter:

/s/ John Robert Blakey
United States District Judge

Date: January 21, 2020

ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS (MAY 3, 2019)

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

SALLY GAETJENS,

Plaintiff,

v.

CITY OF LOVES PARK, ET AL.,

Defendants.

Case No: 16 C 50261

Before: Frederick J. KAPALA, Judge.

The court modifies its order [114] dated May 2, 2019 to clarify that summary judgment is entered only in favor of the City of Loves Park, Philip Foley, and Doug Alton. However, in light of the court's analysis in its May 2, 2019 order, the court orders plaintiff to show cause as to why this court should not grant summary judgment under Fed. R. Civ. P. 56(f)(3) in favor of the remaining defendants. Plaintiff shall respond to this order to show cause by May 17, 2019. The remaining defendants may reply by May 24, 2019.

Enter:

/s/ Frederick J. Kapala
District Judge

Date: 5/3/2019

ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS (MAY 2, 2019)

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

SALLY GAETJENS,

Plaintiff,

v.

CITY OF LOVES PARK, ET AL.,

Defendants.

Case No: 16 C 50261

Before: Frederick J. KAPALA, District Judge.

Defendants' motion for summary judgment [79] is granted. This case is closed.

STATEMENT

Plaintiff, Sally Gaetjens, brings this action under 42 U.S.C. § 1983 against defendants, City of Loves Park, Winnebago County, and various officials working for those public entities, stemming from the condemnation of her house. Specifically, plaintiff claims that defendants violated her Fourth Amendment rights through three distinct events: (1) entering her house without a warrant or applicable exception to the

warrant requirement; (2) seizing her house through condemnation without a warrant or applicable exception to the warrant requirement; and (3) seizing her cats discovered in the course of entering her house without a warrant or applicable exception to the warrant requirement. Defendants moved for summary judgment.

It is axiomatic that the doctrine of qualified immunity shields government officials from liability unless the official violated a clearly established right at the time of the challenged conduct, and further, that it is the plaintiff's burden to demonstrate that a right was clearly established. While plaintiff argues the merits of her constitutional claims, plaintiff provides virtually no focused argument as to whether those purported violations were clearly established on the night that plaintiff's house was condemned. Plaintiff's failure to carry her burden as to qualified immunity is dispositive of her claims. Thus, for the reasons that follow, the court grants defendants' motion for summary judgment.

I. Background

The facts are taken from the pleadings, the parties' statements of undisputed facts, the parties' responses thereto, the parties' supplemental briefing as ordered by the court, and the evidence submitted in support. All the facts detailed are undisputed unless otherwise stated.

Plaintiff owned and operated a cattery out of her home in the City of Loves Park, Illinois. Plaintiff also owns a residence in Rockford, Illinois. On December 4, 2014, plaintiff woke up from a nap and noticed that her blood pressure was very high, so she visited

her physician at the Perryville Convenient Care Clinic. Following the examination and the diagnostic tests, the medical staff told plaintiff that she needed to go to the emergency room for a medical emergency and recommended that she go to the hospital via ambulance. Plaintiff declined to go to the hospital via ambulance, so that she could feed her cats at her houses in Loves Park and in Rockford. Later that evening, the physician's office called plaintiff's Loves Park residence to check on her whereabouts after she left the clinic because she needed to get to the emergency room as soon as possible, but plaintiff did not answer because she already had checked herself into the hospital without informing the physician's office.

The physician's office then called Rosalie Eads, plaintiff's neighbor who was listed as an emergency contact for plaintiff with one of plaintiff's healthcare providers at Perryville Clinic. Eads testified in her deposition that she was not sure the exact reasons why the physician's office wanted to get in touch with plaintiff but she did believe that it was due to a medical emergency. Eads attempted unsuccessfully to reach plaintiff by phone and by knocking on her door at her Loves Park residence.

On the following day, Eads called 9-1-1 dispatch services and informed them that she was concerned that plaintiff was having a medical emergency and that neither she nor her physician's office were able to get in touch with plaintiff. The Loves Park police were then dispatched to plaintiff's Loves Park residence. The officers could not see anyone inside plaintiff's house when they peered through the windows. They then met up with Eads. She informed them, including Sergeant Doug Allton, that she had a key

to plaintiff's house. She also confirmed the information she told the police dispatcher when she called 9-1-1.

The officers also noticed packages outside the house, garbage that had not been taken out, and plaintiff's mailbox was full. Eads told Allton that it was unusual for plaintiff to not bring the packages in or take care of the garbage. From these facts, Allton concluded that there was a medical emergency that merited entering plaintiff's house without a warrant.

Eads then gave the key to the officers.[1] The police officers used the key to enter plaintiff's house. The police officers were only able to go approximately 10 feet into the home due to intense odors emanating from the house. Allton testified in his deposition that the home smelled like urine, feces and possibly a decomposed body inside of the home.

Allton decided to call the Loves Park Fire Department to complete the search of the house for plaintiff, which he felt was necessary due to the extremity of the odors. Allton told the Fire Department that breathing devices would be necessary. The Loves Park Fire Department was then dispatched to the house, including Fire Chief Phillip Foley. The fire officials, wearing self-contained breathing apparatuses, entered plaintiff's home and conducted a search of the home for plaintiff. Plaintiff was not discovered during the course of the search because, as mentioned above, plaintiff

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[1] Plaintiff makes much of the fact that Eads testified that she "begged" the officers not to enter the Loves Park residence and instead to check for plaintiff at plaintiff's Rockford residence. But the court finds this fact to be immaterial to this motion, as is explained in this opinion.

was at the hospital. However, the fire officials discovered 37 cats in the house.

At that point, either Allton or Foley summoned Josh Del Rio from Winnebago County Animal Services to the house. Foley determined that plaintiff's house needed to be condemned because the intensity of the odor suggested to him that the house was not fit for human or animal inhabitation and that the cats would have to be seized by Animal Services since plaintiff would not be able to enter the condemned home. Accordingly, Commander Dave Kaske of Animal Services arrived and entered the house and seized the cats, ultimately impounding them due to the house being condemned. Kaske testified at his deposition that there was a residue film from urine and feces that was soaked into the floor, which he could feel under his shoes, that there was an odor of ammonia in the house, which was stronger in the basement, and that the smell was affecting his respiratory system. Plaintiff does not dispute that Kaske testified as such, but does dispute the extent of the sanitation of plaintiff's house through the deposition testimony of her friend, Joan Klarner, who took care of plaintiff's cats earlier in the day on December 5, 2014, and testified that she had no problems breathing and did not experience the sanitation issues reported by the fire officials and Animal Services officials. However, it is undisputed that Foley's determination to condemn the house was limited to the odor emanating from the house alone, which he personally smelled from standing outside the front door of the house but without actually entering.

Plaintiff filed an action against the City of Loves Park, Winnebago County, and various employees of

each for violations of her civil rights after her home was entered and searched and numerous cats were removed. On May 19, 2017, the court granted in part and denied in part defendants' motion to dismiss. The claims that remain from plaintiff's complaint are (1) unlawful search and seizure in violation of the Fourth Amendment under 42 U.S.C. § 1983 (Count I); conspiracy to violate plaintiff's Fourth Amendment rights under § 1983 (Count III); and municipal liability under *Monell* under § 1983 (Count IV).[2]

[2] The complaint also contains another claim against the City titled "Indemnification" (Count V). However, this is not really an independent cause of action, but rather a request for relief from the City. Because the court finds that there is no underlying liability based on the conduct of the defendant officers, Count V is dismissed as moot.

II. Analysis[3]

Under § 1983, a federal remedy exists against anyone who, under color of state law, deprives a citizen of his or her rights under the Constitution. *See Planned Parenthood of Ind., Inc. v. Comm'r of Ind. State Dep't of Health,* 699 F.3d 962, 972 (7th Cir. 2012). However, defendants have raised qualified immunity as a defense to their conduct. "[Q]ualified immunity shields government officials from civil damages liability unless the official violated a statutory or constitutional right that was clearly established at the time of the challenged conduct." *Kingsley v. Hendrickson,* 801 F.3d 828, 831 (7th Cir. 2015). Once raised by defendants, qualified immunity shields "all

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[3] Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In evaluating such a motion, the court's role is not to weigh the evidence and determine the truth of the matter, but to determine whether there is a genuine issue for trial. *Preddie v. Bartholomew Consol. Sch. Corp.,* 799 F.3d 806, 818-19 (7th Cir. 2015). "A genuine issue exists as to any material fact when the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Fidlar Techs. v. LPS Real Estate Data Sols., Inc.,* 810 F.3d 1075, 1079 (7th Cir. 2016). The moving party initially bears the burden of "identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact." *Spierer v. Rossman,* 798 F.3d 502, 508 (7th Cir. 2015) (quoting *Celotex Corp. v. Catrett,* 477 U.S. 317, 323 (1986)). "If a party moving for summary judgment has properly supported his motion, the burden shifts to the nonmoving party to come forward with specific facts showing that there is a genuine issue for trial." *Cincinnati Life Ins. Co. v. Beyrer,* 722 F.3d 939, 951 (7th Cir. 2013) (emphasis omitted).

but the plainly incompetent or those who knowingly violate the law. . . . If officers of reasonable competence could disagree on the issue [of whether or not an action was constitutional], immunity should be recognized." *Malley v. Briggs,* 475 U.S. 335, 341 (1986). "To determine whether a defendant is entitled to qualified immunity, courts must address two issues: (1) whether the defendant violated the plaintiff's constitutional rights and (2) whether the right at issue was clearly established at the time of the violation." *Rooni v. Biser,* 742 F.3d 737, 742 (7th Cir. 2014) (quoting *Stainback v. Dixon,* 569 F.3d 767, 770 (7th Cir. 2009)) (citation omitted).

Once the defense of qualified immunity is raised, "it becomes the plaintiff's burden to defeat it." *Estate of Escobedo v. Martin,* 702 F.3d 388, 404 (7th Cir. 2012); *Boyd v. Owen,* 481 F.3d 520, 527 (7th Cir. 2007) ("The plaintiff has the burden of establishing that the constitutional right was clearly established."). A plaintiff can only defeat a qualified immunity defense by meeting both prongs. *See Levenstein v. Salafsky,* 164 F.3d 345, 351 (7th Cir. 1998). "In other words, the plaintiff must show not only that her constitutional rights were violated, but that any reasonable official under the circumstances would have realized that her rights were being violated." *Easterling v. Pollard,* 528 F. App'x 653, 656-57 (7th Cir. 2013). In order to avoid "[u]nnecessary litigation of constitutional issues" and expending scarce judicial resources that ultimately do not impact the outcome of the case, the court may analyze the "clearly established" prong without first considering whether the alleged constitutional right was violated. *Kemp v. Liebel,* 877 F.3d 346, 351 (7th Cir. 2017).

"To be clearly established at the time of the challenged conduct, the right's contours must be 'sufficiently clear that every reasonable official would have understood that what he is doing violates that right,' and 'existing precedent must have placed the statutory or constitutional question beyond debate.'" *Rabin v. Flynn,* 725 F.3d 628, 632 (7th Cir. 2013) (quoting *Humphries v. Milwaukee County,* 702 F.3d 1003, 1006 (7th Cir. 2012)). Whether a right is clearly established must be decided "in light of the specific context of the case, not as a broad general proposition," *Brosseau v. Haugen,* 543 U.S. 194, 198-99 (2004) (citation omitted); *Florek v. Village of Mundelein,* 649 F.3d 594, 598 (7th Cir. 2011). Accordingly, the Supreme Court has "repeatedly told courts . . . not to define clearly established law at a high level of generality." *Thompson v. Cope,* 900 F.3d 414, 421 (7th Cir. 2018) (quoting *Ashcroft v. al-Kidd,* 563 U.S. 731, 742 (2011)) (citation omitted). "Instead, the dispositive question is whether the violative nature of particular conduct is clearly established." *Kemp,* 877 F.3d at 351.

There are two avenues that a plaintiff may take to demonstrate that the law was clearly established at the time of the alleged conduct. The most commonly used avenue is by "presenting a closely analogous case that establishes that the Defendants' conduct was unconstitutional." *Estate of Escobedo v. Bender,* 600 F.3d 770, 780 (7th Cir. 2010). "Finding that a right is clearly established under the second prong of [the] qualified immunity analysis is not predicated upon the existence of a prior case that is directly on point." *Id.* at 781. However, in order to satisfy her burden, plaintiff must produce cases that would put

officers in defendants' shoes on reasonable notice that their conduct is contrary to prior decisions such that only "the plainly incompetent or those who knowingly violate the law" are not shielded by qualified immunity. *White v. Pauly,* 580 U.S. ___, 137 S. Ct. 548, 551 (2017).

In the absence of controlling or persuasive authority, plaintiffs can alternatively demonstrate that a clearly established right was violated by proving that the defendant's conduct was "so egregious and unreasonable that . . . no reasonable [official] could have thought he was acting lawfully." *Abbott v. Sangamon County,* 705 F.3d 706, 724 (7th Cir. 2013). Such "obvious cases . . . where the unlawfulness of the officer's conduct is sufficiently clear even though existing precedent does not address similar circumstances" are "rare." *Thomas,* 900 F.3d at 422 (quoting *District of Columbia v. Wesby,* 583 U.S. ___, 138 S. Ct. 577, 590 (2018)). In that scenario, a plaintiff need not point to a closely analogous case to satisfy the second prong "if the violation is so obvious that a reasonable state actor would know that what they are doing violates the Constitution." *Siebert v. Severino,* 256 F.3d 648, 654-55 (7th Cir. 2001); *see also Vinyard v. Wilson,* 311 F.3d 1340, 1350-54 (11th Cir. 2002) (explaining that "obvious clarity" cases can exist (1) where a statute or constitutional provision is "specific enough to establish clearly the law applicable to particular conduct and circumstances and to overcome qualified immunity, even in the total absence of case law" and (2) where "broad statements of principle in case law are not tied to particularized facts and can clearly establish law applicable in the future to different sets of detailed facts").

A. Fourth Amendment

The Fourth Amendment, made applicable to the states by the Fourteenth Amendment, *Ker v. California,* 374 U.S. 23, 30 (1963), provides in pertinent part that the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." An official's entry onto private land generally requires a warrant. *Michigan v. Tyler,* 436 U.S. 499, 504-07 (1978). Further, a "seizure" of property occurs when "there is some meaningful interference with an individual's possessory interests in that property." *United States v. Jacobsen,* 466 U.S. 109, 113 (1984). Therefore, a search or seizure in a home without a warrant is presumptively unreasonable, and only under well-defined exceptions may a warrant be bypassed. *Perry v. Sheahan,* 222 F.3d 309, 316 (7th Cir. 2000).

Plaintiff brings a Fourth Amendment claim against all defendants with respect to three separate Fourth Amendment events: (1) the warrantless entry into plaintiff's home; (2) the seizure via condemnation of her home; and (3) the seizure of plaintiff's cats within the home. Defendants raise a qualified immunity defense for all three events. Therefore, it is plaintiff's burden to establish that the rights that were purportedly violated were clearly established.

As mentioned in the introduction, plaintiff's opposition brief to this motion contains almost no analysis on the second prong of qualified immunity—that is, whether, assuming plaintiff can demonstrate that her Fourth Amendment rights were violated, that it would be sufficiently clear to a reasonable officer in defendants' shoes that they were violating a clearly established law at the time of the alleged

conduct. Plaintiff's substantive argument on the second prong for qualified immunity for all three Fourth Amendment events is contained in two paragraphs. The brevity of these arguments are accompanied by few case citations and even fewer explanations as to the relevance of those cases. These citations are gravely deficient in satisfying plaintiff's burden to present "closely analogous cases."[4] At best, plaintiff associates these cases with the facts of the instant case at a high level of generality that cannot avoid the shield of qualified immunity. *See al-Kidd,* 563 U.S. at 742 (commenting that "clearly established law lurking in the broad history and purposes of the Fourth Amendment" violates the proscription against defining rights at too high a level of generality). While not obliged to do so, the court nevertheless took pains to infer from other parts of plaintiff's brief arguments that could reasonably speak to prong two of qualified immunity, and included analysis of those sections below. But for the reasons stated below, the court finds that plaintiff has failed to meet her burden with respect to the second prong of the qualified immunity test, which requires dismissal of plaintiff's claim as to all three events. *See id.* at 743 ("Qualified

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[4] Plaintiff cites *Boyce v. Fernandes,* 77 F.3d 946, 948 (7th Cir. 1996) to argue that "there are material issues of fact remaining as to whether Defendants violated Plaintiff's Fourth Amendment rights. That precludes summary judgment on qualified immunity grounds." But this case simply does not stand for this proposition. And in any event the Seventh Circuit considered the issue of immunity only in an academic manner. Although there may be some question as to how the concept of public immunity referenced in that case is related to the doctrine of qualified immunity, the latter term does not appear in the case anywhere at all.

immunity gives government officials breathing room to make reasonable but mistaken judgments about open legal questions."); *Rambo v. Daley,* 68 F.3d 203, 206 (7th Cir. 1995) (quoting *Harlow v. Fitzgerald,* 457 U.S. 800, 816 (1982)) ("Qualified immunity was designed to prevent the distraction of officials from their governmental duties.").

1. Warrantless Entrance into the House

Plaintiff's argument that defendants' warrantless entry into her house violated a clearly established law is contained in one line: "This case is the 'obvious' scenario—any reasonable state actor would know that he cannot enter a home without a warrant or some exception to the warrant requirement." This one-line, one-citation argument notwithstanding, the court finds that plaintiff's argument is undeveloped and therefore waived. *Jain v. Bd. of Educ. of Butler Sch. Dist. 53,* No. 17 C 0002, 2019 WL 1125809, at *4 (N.D. Ill. Mar. 12, 2019) (citing *Crespo v. Colvin,* 824 F.3d 667, 674 (7th Cir. 2016)) (plaintiff's attempt to argue "in a single sentence" that the facts brought that case into the group of "rare 'obvious cases'" constituted waiver of the argument).

This recitation of black-letter law rings hollow given the Supreme Court's instruction that courts do not allow parties to define clearly established law at a high level of generality. *al-Kidd,* 563 U.S. at 742; *see also Golodner v. Berliner,* 770 F.3d 196, 206 (2d Cir. 2014) ("If . . . the right is defined too broadly, the entire second prong of qualified immunity analysis will be subsumed by the first and immunity will be available rarely, if ever."). Plaintiff cites to one case, *Siebert v. Severino,* to support her view that it was

obvious that the officers violated her Fourth Amendment rights by using the key to enter her Loves Park residence. But *Siebert* is readily distinguishable, as the Seventh Circuit applied the "obvious" characterization to officers who entered a fenced-in, closed structure located within 60 feet of a person's house without a warrant. 256 F.3d at 655. The officers' defense was not that an exigent circumstance existed such as the emergency aid exception in the instant case, but rather, that the plaintiffs did not have a reasonable expectation of privacy over a structure that was reportedly a location where animal abuse was occurring. *Id.* at 654. If the court were to accept plaintiff's analogy of the facts in *Siebert* to those of the instant case, the court would be going against the Supreme Court's instruction not to define the contours of a clearly established right at too high a level of generality. *See Anderson v. Creighton,* 483 U.S. 635, 640 (1987) ("[T]he clearly established law must be 'particularized' to the facts of the case."). The question is not simply whether it was obvious that the officers needed an exception to the warrant requirement if no warrant could be processed, but instead, whether it was obvious that a particular exception to the warrant requirement—the emergency aid doctrine—did not apply in this instance.

It is undisputed that the police heard from 9-1-1 dispatch that Eads had called in a medical emergency; that Eads and plaintiff's physician were unable to get in touch with plaintiff for almost 24 hours; that the physician's office had gotten in touch with Eads because Eads was the emergency contact for plaintiff; that the officers could not see plaintiff when peering through her windows; that boxes were outside the

house; that Eads told them it was unordinary for that to be the case; that the mailbox was full; that the garbage had not been taken out; and that it was unusual for that to be the case. By the court's measure, these circumstances cannot demonstrate that only the "plainly incompetent" officer would have reasonably believed that entering plaintiff's house under these circumstances would constitute the "obvious scenario" of a constitutional violation.

Because it is only in "rare cases where the constitutional violation is patently obvious," *Denius v. Dunlap,* 209 F.3d 944, 950 (7th Cir. 2000), as the court finds that it was not patently obvious to the officers that the emergency aid exception to the warrant requirement did not apply in these circumstances, the court finds that plaintiff has not satisfied her burden to present analogous cases to overcome defendants' qualified immunity defense.[5] Thus, summary judgment

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[5] Because the court finds that qualified immunity is warranted in this case on prong two, the court need not address prong one. However, the fact that plaintiff's opposition to this motion fails to cite any cases involving potential medical emergencies portends the difficulty plaintiff would have had in establishing prong one. It is true that the Seventh Circuit and other circuits have frequently upheld warrantless entries under the emergency aid doctrine or the broader exigent circumstances doctrine when officers have visual confirmation of an individual in need of medical assistance coupled with other circumstances, *see, e.g., United States v. Venters,* 539 F.3d 801, 809 (7th Cir. 2008); *see also Stricker v. Twp. of Cambridge,* 710 F.3d 350, 360 (6th Cir. 2013), or evidence of domestic abuse or violence, *see, e.g., United States v. Paulette,* No. 14-CR-30152-1-NJR, 2015 WL 4624265, at *11 (S.D. Ill. Aug. 3, 2015). But warrantless entries into an individual's home may be justified "to render emergency assistance to an injured occupant or to protect an occupant from imminent injury." *Sutterfield v. City of Milwaukee,* 751 F.3d 542, 550 (7th

is appropriate on the issue of the entry into plaintiff's house. As the court finds that the officers are entitled to qualified immunity on the issue of whether they violated a clearly established right by relying on the emergency aid doctrine given the particularized facts of this case, the court need not determine the issue of whether Eads had apparent authority to allow defendants to enter plaintiff's house.

2. Warrantless Seizure of the House Through Condemnation

Plaintiff also claims that her Fourth Amendment rights were violated when Foley condemned her house, arguing that the decision to do so was unreasonable. The pertinent question before the court is whether Foley's determination to condemn the house because it was not fit for human or animal inhabitation violated clearly established law. Like in the previous section, the court finds that plaintiff's thin argument concerning prong two does not satisfy her burden to avoid summary judgment.

Cir. 2014) (quoting *Kentucky v. King,* 563 U.S. 452, 460 (2011)). Accordingly, the Seventh Circuit consistently upholds warrantless entries into homes under the emergency aid doctrine, where 9-1-1 calls coupled with additional facts lead officers to reasonably "believe[] that it was necessary to enter a home in order to render assistance or prevent harm to persons or property within," *Sutterfield v. City of Milwaukee,* 751 F.3d 542, 558 (7th Cir. 2014); *see, e.g., United States v. Tepiew,* 859 F.3d 452, 457 (7th Cir. 2017); *see also Brigham City v. Stuart,* 547 U.S. 398, 403 (2006). The closeness of the question on prong one implies the greater difficulty plaintiff has to overcome prong two, and as noted above, plaintiff fails to do so.

The only case plaintiff cites that involves a seizure of a home[6] is *Soldal v. Cook County,* 506 U.S. 56 (1992), for the proposition that "being unceremoniously dispossessed of one's home" constitutes "a seizure invoking the protection of the Fourth Amendment," *id.* at 61; *see also id.* at 69 ("What matters is the intrusion on the people's security from governmental interference. Therefore, the right against unreasonable seizures would be no less transgressed if the seizure of the house was undertaken to . . . effect an eviction by the police."). But *Soldal* is a readily distinguishable case that involved a mobile park owner evicting a mobile home resident two weeks prior to a scheduled eviction hearing; it did not involve a condemnation due to sanitation. *Id.* at 58. The deputy sheriffs knew that the owner did not have an eviction order and that its actions were unlawful, but nevertheless, the sheriffs refused to accept the resident's complaint for trespass; eventually, workers hired by the owner, in the presence of the deputy sheriffs, pulled the mobile home trailer free of its moorings and towed it onto the street and ultimately to a

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[6] Plaintiff also cites *Conner v. City of Santa Ana,* 897 F.2d 1487 (9th Cir. 1990), for the proposition that condemnation may never be implemented without a judicial warrant. The court finds *Conner* unpersuasive for two reasons. First, besides the fact that a Ninth Circuit decision is not binding precedent for this court, the facts of *Conner* are distinguishable from this case in that *Conner* involved the entrance by city officials onto private property to seize previously-condemned automobiles—not the condemnation of an entire home. Second, *Conner* involved a vigorous dissent by Judge Trott that various circuits have agreed with. *See, e.g., Freeman v. City of Dallas,* 242 F.3d 642, 652 (5th Cir. 2001); *Hroch v. City of Omaha,* 4 F.3d 693, 697 (8th Cir. 1993); *see also Redwood v. Lierman,* 331 Ill. App. 3d 1073, 1093 (2002).

neighboring property. *Id.* at 58-59. The Court's holding was narrow: the seizure of the mobile house was in fact a seizure under the Fourth Amendment. *Id.* at 72.

To the extent *Soldal* (an eviction case) is informative to the instant case (involving a condemnation issue), the case held that "reasonableness is still the ultimate standard" as to whether a state actor's sanction of one's possessory rights of one's home violates the Fourth Amendment. *Id.* at 71. But the only question before the Court in *Soldal* was whether the state action constituted a seizure under the Fourth Amendment; the Court explicitly noted that they were not dealing with the question of whether the seizure by the officers was reasonable. *Id.* at 61. Thus, plaintiff has not cited any cases dealing with the reasonableness of a warrantless dispossession of one's property interest in one's home (either through condemnation, eviction, or otherwise), and in turn, has not satisfied her burden to defeat qualified immunity.

Rather, plaintiff only argues that Foley's purported failure to follow the procedures of the International Property Maintenance Code, which Foley relied on to condemn the home, and argues that defendants' failure to abide by them evinces that the condemnation was unreasonable.[7] But just because *Soldal* held that

[7] In their reply, defendants argue that, because this court previously ruled in defendants' favor regarding plaintiff's Fourteenth Amendment Due Process claim regarding lack of process, the court should reject the lack-of-process argument here. The court disagrees with this assertion. The court only rejected this lack-of-process argument in the context of plaintiff's Fourteenth Amendment claim. We found that the Fourth Amendment would be a more appropriate vehicle to challenge the constitutionality of the seizure of her home because a lack of process may have a bearing on the reasonableness of a Fourth Amendment seizure.

compliance with eviction procedures suggests that the seizure was reasonable does not make the opposite true. Rather, the Court held that "the reasonableness determination will reflect a careful balancing of governmental and private interests." *Id.* at 71; *see also Freeman v. City of Dallas,* 242 F.3d 642, 652 (5th Cir. 2001) (describing this determination as a "question decided by balancing the public and private interests at stake").[8] Indeed, there are times when condem-

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Thus, plaintiff is not barred from making this argument in regard to her Fourth Amendment claim. *See G.M. Leasing Corp. v. United States,* 429 U.S. 338, 352 n.18 (1977) (noting that the Fourth Amendment analysis and the Due Process analysis of the Fifth and Fourteenth Amendments are "similar and yield[] a like result").

[8] In *Flatford v. City of Monroe,* 17 F.3d 162 (6th Cir. 1994), the Sixth Circuit held that officers are entitled to qualified immunity when they reasonably believed that they could rely on the "exigent circumstances" exception to the warrant requirement, where there is "an immediate danger to its occupants and the public" that justifies foregoing a pre-deprivation hearing to evict property owners due to the building's faulty wiring. *Id.* at 169-71. The Sixth Circuit noted that "[t]he very point of the exigency exception under these circumstances is to allow immediate effective action necessary to protect the safety of occupants, neighbors, and the public at large." *Id.* at 170; *see also Wonsey v. City of Chicago,* No. 16 C 9936, 2018 WL 6171795, at *5 (N.D. Ill. Nov. 26, 2018) (granting qualified immunity to officers who ordered eviction because of the building's dangerous conditions).

Ultimately, it is unnecessary for the court to resolve the reasonableness of Foley's determination, which would go to prong one of the qualified immunity test, because plaintiff has failed to satisfy her burden on prong two of the test, to demonstrate that Foley's determination violated clearly established law. Further, *Flatford* and *Wonsey* came from the court's own survey of possibly relevant cases. But even these cases do not deal with the reasonableness of a warrantless condemnation of a home, let alone the warrantless condemnation of a home due to odor

nation can and must happen without judicial sanction or the following of formal procedures. *See Weinberger v. Town of Fallsburg,* No. 18-CV-988(NSR), 2019 WL 481733, at *7 (S.D.N.Y. Feb. 6, 2019) (citing *Parratt v. Taylor,* 451 U.S. 527, 539 (1981), rev'd on other grounds, *Daniels v. Williams,* 474 U.S. 327 (1986)) (noting in the Due Process context that "where there is a genuine public safety concern, the law does not require officials, out of fear of exposure to liability, to assess the appropriate avenue for a Plaintiff to get due process before taking prompt remedial action, especially where post-deprivation procedures are available"). That Foley may not have followed established procedures for condemnation is not dispositive on the issue of the reasonableness of his determination to condemn plaintiff's house, and certainly not on the issue of whether this determination violated clearly established law.

The record reflects the undisputed facts that Allton told Foley that the officers had been looking for plaintiff because of a medical emergency raised by her physician's office and that in order to look for plaintiff to determine whether she was in the house the fire fighters would need to come with breathing devices because of the odor in the house. When Foley smelled the odor emanating from the house, he agreed with Allton's suggestion that the fire fighters enter the house with breathing devices in order to look for plaintiff. Foley testified that he had condemned various houses for odor in Loves Park in the past, and would do so if—as he determined was the case here—the smell "gags a maggot."

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that makes a home uninhabitable.

Plaintiff disputes the fact that the odor could have been bad enough for Foley to have reasonably condemned the house, citing the deposition testimony of plaintiff's friend, Joan Klarner, who had been in plaintiff's house earlier on the day in question and testified to having had no difficulty breathing on that day. The court notes in passing that whether Klarner had trouble breathing does not contradict the officers' testimonies that intense odors kept them from going into the house without breathing apparatuses or create a genuine issue of fact as to whether the officers were reasonable in believing that the house was uninhabitable and therefore subject to condemnation. But the court need not determine whether plaintiff created a genuine dispute of material fact as to the reasonableness of Foley's determination because the court is satisfied that plaintiff's failure to cite to any closely analogous cases evinces that the law on the reasonableness of warrantless condemnations under the particularized facts of this case was not clearly established at the time. *See Fitzpatrick v. City of Dearborn Heights,* 19 F. App'x 261, 265 (6th Cir. 2001) ("It matters not, for purposes of determining whether the defendants were entitled to qualified immunity, whether in fact, an emergency existed; what matters is whether, what the defendant actors did, including their conclusion that they thought an emergency existed and their acting upon that conclusion by boarding up and posting condemnation notices on the property without first providing a hearing, was conduct "a reasonable person would have known" violated the Fitzpatricks' "clearly established constitutional rights." (emphases omitted)); *Flatford v. City of Monroe,* 17 F.3d 162, 168 (6th Cir. 1994) ("Qualified immunity is a creation of policy designed to strike a balance that

allows compensation for persons who suffer injury caused by lawless conduct but avoids over-deterring officials where their duties legitimately require action in situations not implicating clearly established rights. An emergency eviction from one's home is a significant intrusion. However, where the need to protect lives is the basis for such an intrusion, government officials should not be made to hesitate in performing their duties." (citation omitted)). Accordingly, qualified immunity is appropriate as to this issue as well.

3. Warrantless Seizure of the Cats

Further, plaintiff argues that defendants violated her Fourth Amendment rights by seizing her cats without a warrant. As to prong two of qualified immunity, once again, plaintiff's argument is brief. She contends that the law was clearly established that officers cannot seize property as part of a condemnation on the basis of the plain view doctrine alone.

The plain view doctrine is an exception to the warrant requirement that is met if "(1) the [officials] did not violate the Fourth Amendment in arriving at the place from which the items were plainly viewed; (2) the items were in plain view and their incriminating character was 'immediately apparent;' and (3) the [officials] had a lawful right of access to the object itself." *Horton v. California,* 496 U.S. 128, 136-37 (1990). Plaintiff cites one case, *Perry v. Sheahan,* in which the Seventh Circuit rejected a qualified immunity argument by defendants who seized firearms after entering a house despite an eviction order being stayed by order of the court. 222 F.3d at 316. But the court found explicitly that the plain-view doctrine did

not apply because it was not "immediately apparent" that the firearms were linked to criminal activity, and thus, the defendant could not satisfy the second requirement of the plain view doctrine. *Id.* at 316-17.[9]

The facts of this case are clearly distinguishable with regards to the second requirement. It is undisputed that the fire department officers identified 37 cats in the house. This is a violation of Loves Park City Code § 14-3, which states that "[t]here shall be a maximum limitation per household or building located within the city of three domestic animals, not to exceed two of any one species." Loves Park City Code § 14-3. In such situations, the code permits "[t]he code enforcement officer or his or her designee [to] impound immediately every animal exceeding the limit per household." *Id.*

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[9] Plaintiff also cites to *Siebert* and *Bielenberg v. Griffiths,* 130 F. App'x 817, 818 (7th Cir. 2005) as comparison cases for the proposition that Foley's purported failure to follow the IPMC procedure was unreasonable, but plaintiff provides no analysis as to how these cases support her contention regarding qualified immunity. Further, the cases are distinguishable. In *Siebert,* the Court denied qualified immunity to the officer because the officer failed to contact the Department of Agriculture before effectuating the seizure. 256 F.3d at 658-59. Doing so was required by statute, and the Court found that fact dispositive to the qualified immunity issue. *Id.* Here, while Foley may not have followed the IPMC, as explained above, there is no evidence in the record that Foley was required to do so by statute. As for *Bielenberg,* plaintiff appears to have cited this case for the proposition that if an officer conducts a search and housing-code inspection on the authority of a warrant that they would "almost certainly possess qualified immunity." 130 F. App'x at 818. This case is no aid to the court in deciding the reasonableness of the seizure of plaintiff's cats other than at a high-level of generality, which does not satisfy plaintiff's burden to refute qualified immunity.

Plaintiff makes the argument that "the number of cats—without more—is not enough to justify Animal Services' [subsequent] search and seizure of the cats here. . . . Defendants cite to no case that supports the notion that knowledge of the number of cats would make a violation of the City code 'immediately apparent.'" But no matter the validity of this statement, it is misguided when assessed in the context of qualified immunity. It is *plaintiff's,* not defendants', burden to cite analogous cases demonstrating that the officers could not cause the seizure of the cats when they were aware that the number of cats exceeded the legally allowed amount for plaintiff's household. Plaintiff produces no cases to support the contention that the law was clearly established that the officers would be committing a Fourth Amendment violation by seizing animals that violated a municipal code when the officials could lawfully enter the house (for the reasons explained in the previous section), it was immediately apparent that the number of cats violated § 14-3, and those animals were in plain view around the house. Accordingly, the court rejects plaintiff's contentions concerning the second requirement.

Plaintiff also argues that Animal Services' entry into the home constituted a separate search that required a separate exigency, which is essentially a challenge to the first requirement of the plain view doctrine. Specifically, plaintiff argues that Animal Services had no lawful right to enter the house because by that point it was clear that plaintiff was not in the house and, accordingly, could not rely on the emergency aid exception. Plaintiff cites *Bilda v. McCleod,* 211 F.3d 166, 172 (1st Cir. 2000), for the proposition that the "exigency exception[] relied upon

by Defendants—even if valid—do[es] not extend to Animal Services' subsequent search and seizure of the premises." In *Bilda,* a police officer responded to a security alarm at the plaintiff's home, and in the course of doing so, found a pet racoon. *Id*. at 169. After speaking to the plaintiff and determining that she could not present her permit for the raccoon as required by municipal law, the Department of Environmental Management sent two of its officers to the home, entered the backyard, and seized the raccoon against the plaintiff's wishes. *Id.* After the plaintiff brought a § 1983 suit alleging violation of her Fourth Amendment rights, the First Circuit affirmed the district court's conclusion that the subsequent officers' entry onto her property was a new search. *Id.* at 173-74.

However, it is curious that plaintiff cites to *Bilda,* as the First Circuit dismissed the Fourth Amendment claims against the officers on qualified immunity grounds: "Given the lack of clarity in prior precedent, we are satisfied that a reasonable government agent could easily have believed that the final reentry and seizure of [the animal] was a protected extension of the original, lawful entry by Officer Brierly." *Id.* at 174.

Likewise, we find that it was reasonable for Del Rio, Kaske, and Director Jennifer Stacy of Animal Services to believe they could enter the home to seize the cats after Foley had condemned the home. The record supports the confusion around this issue. It is undisputed that when Foley asked Del Rio if Animal Services could enter the house to seize the cats if Foley condemned the house, Del Rio responded "possibly," but was unsure because he had never dealt with a house being condemned while he was on the scene. Del Rio then called Kaske, informed him

of the conditions of the home and the number of cats in the home, that Foley planned on condemning the house, and asked Kaske whether Del Rio should then enter the house to remove the cats. Based on this information, Kaske and Stacy concluded that Del Rio should enter the house to remove the cats, and to send Del Rio assistance to do so, because plaintiff would not be allowed inside her own home to care for and remove the cats herself. Kaske testified that he had experienced situations where if a home was condemned because the odor was so bad that it indicated that it would not be safe for animals to stay in there, that immediate seizure of the cats was warranted.

Plaintiff cites no case to support the contention that the law is clearly established that Del Rio, Kaske, and Stacy could not permit re-entry into plaintiff's home based on Foley's condemnation of the house—or, as stated in the previous section, that the condemnation itself was unreasonable. Like the officers in *Bilda,* the Animal Services' officers could have reasonably believed that § 14-3 allowed them to enter the house to seize the cats given the condemnation order. As plaintiff has not carried her burden to establish that a clearly established law was violated, the court grants summary judgment on this issue as well.

B. Conspiracy Claim and *Monell* Claim

Plaintiff also brings a claim against Foley, Del Rio, Allton, and Kaske for civil conspiracy to violate plaintiff's Fourth Amendment rights. However, "the absence of an underlying constitutional violation dooms the conspiracy claim." *Akbar v. Calumet City,*

632 F. App'x 868, 872-73 (7th Cir. 2015). A finding of qualified immunity, which dispenses of the underlying allegations of a violation, also dooms the conspiracy claim. *See Atkins v. Hasan,* No. 15 CV 203, 2015 WL 3862724, at *5 (N.D. Ill. June 22, 2015) (citing *House v. Belford,* 956 F.2d 711, 720 (7th Cir. 1992) ("A person may not be prosecuted for conspiring to commit an act that he may perform with impunity.")). Accordingly, the court grants summary judgment on plaintiff's conspiracy claim.

Similarly, plaintiff's *Monell* claim against the City of Loves Park and Winnebago County fails because the court has found no underlying constitutional violation. *See Alexander v. City of South Bend,* 433 F.3d 550, 557 (7th Cir. 2006). Like the conspiracy claim, a finding of qualified immunity dooms the *Monell* claim. *See Horton v. Pobjecky,* No. 12 C 7784, 2017 WL 5899694, at *8 (N.D. Ill. Mar. 20, 2017) (citing *Sallenger v. City of Springfield,* 630 F.3d 499, 504 (7th Cir. 2010)) ("[A] municipality cannot be liable under *Monell* when there is no underlying constitutional violation by a municipal employee."). The court grants summary judgment on plaintiff's *Monell* claim as well.

III. Conclusion

For the foregoing reasons, defendants' motion for summary judgment is granted.

Enter:

/s/ Frederick J. Kapala
District Judge

Date: 5/2/2019

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT DENYING PETITION FOR REHEARING (DATED AUGUST 12, 2021 ENTERED AUGUST 13, 2021)

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

SALLY GAETJENS,

Plaintiff-Appellant,

v.

CITY OF LOVES PARK, ET AL.,

Defendants-Appellees.

No. 20-1295

Appeal from the United States District Court for the Northern District of Illinois, Western Division.
No. 16-cv-50261—John Robert Blakey, Judge.

Before: Michael S. KANNE, Michael Y. SCUDDER, Thomas L. KIRSCH II, Circuit Judges.

On consideration of the petition for rehearing filed in the above-entitled cause, all judges on the original panel have voted to deny a rehearing. It is, therefore, ORDERED that the aforesaid petition for rehearing is DENIED.

PLAINTIFF'S STATEMENT OF ADDITIONAL MATERIAL FACTS (FEBRUARY 19, 2019)

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS WESTERN DIVISION

SALLY GAETJENS,

Plaintiff,

v.

CITY OF LOVES PARK, ET AL.,

Defendants.

Case No: 16-cv-50261

Before: Hon. Frederick J. KAPALA, Judge., Iain D. JOHNSTON, Magistrate Judge.

Plaintiff Sally Gaetjens, through her undersigned counsel, provides the following statement of additional material facts pursuant to Local Rule 56.1(b) in opposition to Defendants' motion for summary judgment. (Dkt. 79)

1. As of December 2014, Rosalie Eads was listed as Plaintiff's emergency contact, but she did not have any idea why Plaintiff listed her as her emergency contact. (Dkt. 81-6, 131:2-6 (Dep. of Rosalie Eads))

2. When Rosalie Eads received the call from Plaintiff's doctor on December 4, 2014, at or around

8:30 p.m., the caller did not provide details of Plaintiff's condition or what he wanted and instructed Eads that he wanted Plaintiff to call her doctor before 9 p.m. (Dkt. 81-4 (Voicemail recording of Rosalie Eads call on December 4, 2014 at 8:32 p.m., Call ID number 60669_12121793) ("I don't know what the doctor wanted but he wanted you to call him before 9 o'clock"); Dkt. 81-7 at1 (Letter from Rosalie Eads) ("They said I was down as your emergency contact. They ask if I would have you call your doctor immediately."))

3. Rosalie Eads called Loves Park Police because Plaintiff's doctor was searching for her and Eads did not know where she was; as a result, Eads was concerned for her well-being. (Dkt. 81-6, 120:21-24 to 121:1 (Dep. of Rosalie Eads))

4. After Eads knocked on Plaintiff's Loves Park house that night to see if she was home, when Plaintiff did not answer the door, she was sure that Plaintiff was at her other house on 7330 Olde Creek Road, Rockford, Illinois 61114 (the "Rockford house"). (Dkt. 81-6, 124:12-17 (Dep. of Rosalie Eads); Dkt. 81-2, 11:2-24 (Dep. of Sally Gaetjens))

5. The next day, on December 5, 2014, Eads called Perryville Clinic after 3:15 to see if they had any information for her but they responded that they were not allowed to provide information on Plaintiff's health due to their privacy policy. (Dkt. 81-6 at 15: 3-7 (Deposition of Rosalie Eads); Dkt. 81-7 at 1 (Letter from Rosalie Eads))

6. The clinic further explained that if Rosalie was concerned about Plaintiff's well-being, she could call

the police. (Dkt. 81-7 at 1 (Letter from Rosalie Eads); Dkt. 81-6 at 15: 11-13 (Deposition of Rosalie Eads).

7. When Defendant Allton arrived on the scene with another officer, Dan Johnson, he spoke with Rosalie Eads outside her own home, (*see* Dkt. 81-9, 41 (Dep. of Doug Allton)), identified himself, and asked her if she had a key to Plaintiff's house. (Dkt. 81-6 at 53 (Dep. of Rosalie Eads))

8. Defendant Allton did not state why he needed the key; he only said, "Can you get it for me." (Dkt. 81-6 at 53 (Dep. of Rosalie Eads))

9. Eads responded that she did have a key to Plaintiff's house. (Dkt. 81-6 at 54 (Dep. of Rosalie Eads))

10. Before going to get the key, Rosalie Eads first said, "Can you take me to her other house? I don't think she's here. I think she's at her other house." (Dkt. 81-6 at 54, 124:20-24 to 125:1-3 (Dep. of Rosalie Eads))

11. Defendant Allton did not respond to Eads' request and instead said, "I need the key." (Dkt. 81-6 at 54 (Dep. of Rosalie Eads))

12. Defendant Allton did not ask Rosalie Eads for permission to enter Plaintiff's house, (Dkt. 81-6 at 122:23-24 to 123:1 (Dep. of Rosalie Eads))

13. Eads obeyed Defendant Allton and retrieved a Walmart bag containing keys. (Dkt. 81-6 at 54 (Dep. of Rosalie Eads))

14. At the time, Eads did not know which key in the bag was the key to Plaintiff's Loves Park house; she handed the plastic bag full of keys to Defendant Allton somewhere on the sidewalk in front of Plain-

tiff's Loves Park house and that she "let him figure out which key was which." (Dkt. 81-6 at 101:9, 123:10-11, 54:9-14, 100:18-14, (Dep. of Rosalie Eads))

15. Rosalie Eads did not want the officers to go to Plaintiff's Loves Park house—she begged him to not go into her Loves Park house and begged him to take her to the Rockford house. (Dkt. 81-6 at 15:14-19 (Dep. of Rosalie Eads))

16. Rosalie continued to beg the officers to take her to Plaintiff's Rockford house because she knew that Plaintiff was not in her Loves Park house. (Dkt. 81-6, 19:17-23 (Dep. of Rosalie Eads))

17. Allton's impression that Rosalie Eads had the authority to consent to a search of Plaintiff's house on her behalf was based on the fact that Rosalie had a key, that he believed the doctor's office knew she had a key, and nothing else. (Dkt. 81-9 at 84:13-21 (Dep. of Doug Allton)).

18. Defendant Foley arrived on scene sometime before 4:25 p.m. (Dkt. 81 10 at 63-64 (Dep. of Philip Foley))

19. At 4:25 p.m., Defendant Foley called his dispatcher and requested one engine company and fire fighters be dispatched to Plaintiff's Loves Park home; at 5:13 p.m. they arrived on the scene. (Dkt. 81-10 at 61-62, 89-90 (Dep. of Philip Foley))

20. After their arrival, the firefighters spent about 15 minutes suiting up and 20 minutes searching Plaintiff's residence; By 5:53 p.m. the firefighters had cleared the scene to return to the station. (Dkt. 81-10 at 91-93 (Dep. of Philip Foley))

21. Defendant Foley condemned and placarded the house at 4:35 p.m. (Dkt. 81-10 at 201:5-9 (Dep. of Philip Foley); [Ex. 2 (Placard Photo)]

22. When Foley arrived on the scene, Defendant Allton told him to examine the front door of the house, which at that point was cracked open several inches. (Dkt. 81-10 at 78-79, 196-97 (Dep. of Philip Foley))

23. Foley could not see into the house through the front door. (Dkt. 81-10 at 65 (Dep. of Philip Foley))

24. Foley approached the front door, opened it a little bit, smelled the house, closed the door, and walked out to the front yard, and called for the engine company. (Dkt. 81-10 at 78-79 (Dep. of Philip Foley))

25. At no time before, during, or after that point did Foley enter into Plaintiff's house, and at no point did he observe the conditions of the interior of the house. (Dkt. 81-10 at 109-110, 214 (Dep. of Philip Foley))

26. Foley condemned the house solely based on the smell and saw nothing else to indicate the condition of the house. (Dkt. 81-10 at 110, 215 (Dep. of Philip Foley))

27. Defendant Del Rio arrived on the scene at 4:37 p.m. (Ex. 1 at 23:10-14 (Dep. of Joshua Del Rio))

28. While Defendants Foley and Allton discussed the situation with Del Rio, Defendant Foley asked Del Rio if Animal Services could take the cats, to which he responded, "I don't believe we can just walk in and take them;" Del Rio further explained that, typically, Animal Services would leave a written notice for 24 hours of care, and then, if nobody contacted

them, they would return to the house to determine whether someone had been to the house in the meantime. (Ex. 1 at 27:14 16, 32:2-7 (Dep. of Joshua Del Rio))

29. Defendant Allton added that they would need a warrant to go back inside the house. (Ex. 1 at 33:2-11 (Dep. of Joshua Del Rio))

30. Defendant Foley then asked whether Animal Services could take the cats if he condemned the home; Del Rio responded that Animal Services possibly could, but added that he had never dealt with a house being condemned while he was on the scene. (Ex. 1 at 33:20-24 to 34:1-4 (Dep. of Joshua Del Rio))

31. At that point, Del Rio called his commander, Defendant Kaske, who, after being informed of the situation, stated that if the home was condemned that the owner could still go inside. (Ex. 1 at 38:11-24 (Dep. of Joshua Del Rio))

32. While Del Rio was on the phone with Kaske, he asked Defendant Foley whether or not the owner would be able to go back into the home and care for the cats after it was condemned; Defendant Foley responded, "No" and stated that if the owner was found in the home, that they would be arrested. (Ex. 1 at 40:17-24 to 41:1-3 (Dep. of Joshua Del Rio))

33. Foley further stated that no one was able to be in the home unless it was Winnebago County Animal Services to remove the cats. (Ex. 1 at 40:17-24 to 41:1-3 (Dep. of Joshua Del Rio))

34. Before Plaintiff checked herself into the hospital on December 4, she arranged for her friend,

Joan Klarner, to care for her cats while Plaintiff was gone. (Dkt. 81-14 at 18:16-23 (Dep. of Joan Klarner))

35. Ms. Klarner holds a Bachelor of Science degree in Animal Science from the Ohio State University, she has judged cats for 50 years as an AFCA official, she judged livestock before that, she was a cat breeder for years, and her husband was a veterinarian. (Dkt. 81-14 at 22:15, 20:14-16, 23:1-9, 22:18-19 (Dep. of Joan Klarner))

36. Ms. Klarner arrived at Plaintiff's house with her husband to care for Plaintiff's cats on December 5 around 11 a.m. and stayed for two hours as they fed the cats, emptied a Breeze box, ran the dishwasher and washed several dishes for the cats; at no point did she feel the need to go outside to get fresh air or to open the windows or ventilate the house; she was not concerned for her health at all based on the smell of the house; and neither her nor her husband's clothes smelled like urine as a result of spending two hours in the house; when they left, there was adequate food and water for the cats. (Dkt. 81-14 at 19:1-2, 25:5-12, 53:12-13, 51:23-25, 23:1-13, 33:3-10; 45:5-8; 44:19-24; 33:17-24 (Dep. of Joan Klarner))

37. While Ms. Klarner was at Plaintiff's house, she visited every area of the house, save the bedroom, where Plaintiff had kept a cat that she was treating separately with IV fluids; the house did not appear to be in disrepair; no plants were knocked over; there were no kibble or pellets on the floor; no long-term stains on the floor; no film of urine on the floor or the baseboards; no vomit on the floor. (Dkt. 81-14 at 26:20-25 to 27:1-14; 4:16-18; 44:10-14; 44:6-10; 45:9-18; 33:25 to 34:1-19 (Dep. of Joan Klarner))

38. Ms. Klarner testified that the condition of Plaintiff's house and the Breeze boxes inside were such that she did not feel it was unsafe for a human being to live there; nor did she consider the condition of the Breeze boxes to be unsafe for cats; there was nothing regarding the conditions of the house that she believe posed a danger to any of the cats. (Dkt. 81-14 at 49:20-24; 48:17-20; 51:15-18 (Dep. of Joan Klarner)).

39. Ms. Klarner explained that Plaintiff's male cats would typically "spray," or urinate, in the presence of females, and so Plaintiff kept the males in the basement, apart from the female cats. (Dkt. 81-14 at 35:24-25 to 36:1-19 (Dep. of Joan Klarner)).

40. Ms. Klarner had never been sprayed by a male herself, but she had seen males spray judges during her time in the ALFA, and the smell would require a change in clothes. (Dkt. 81-14 at 125:1-17 (Dep. of Joan Klarner)).