

No. 22-5741

ORIGINAL

Supreme Court, U.S.
FILED

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In the
SUPREME COURT OF UNITED STATES

WARNE KEAHI YOUNG,
Petitioner,

Vs.

HAWAII ISLAND HUMANE SOCIETY, S.P.C.A., a non-profit corporation; ET AL.,
Respondents.

On Petition for Writ of Certiorari to the
Intermediate Court of Appeals of the State of Hawaii

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Petitioner
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QUESTION PRESENTED

Is the standard of reasonableness under the Fourth Amendment of the United States Constitution the same as the standard of reasonableness under negligence such that a finding of reasonableness under the Fourth Amendment collaterally estops the Hawaii state court claims of negligence and intentional infliction of emotional distress.

PARTIES TO THE PROCEEDING

Petitioner is Warne Keahi Young, pro se. Petitioner was the plaintiff in the Third Circuit Court of the State of Hawaii and the plaintiff-appellant in the Intermediate Court of Appeals of the State of Hawaii.

Respondents are The Hawaii Island Humane Society, a non-profit corporation; DONNA WHITAKER, Individually and in her official capacity as Executive Director of the Hawai'i Island Humane Society S.P.C.A.; and STARR K. YAMADA, Individually and in her official capacity as Humane Officer, and DOE DEFENDANTS 1-50.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

Young vs. Hawaii Island humane Society et al, filed July 15, 2014, Third Circuit
Court of the State of Hawaii.

STATEMENT OF THE CASE

Factual Background

Petitioner Pro Se, who maintained a permitted, no-kill animal sanctuary, was subjected to a search with a warrant by the Hawaii Island Humane Society, a private, Non-profit corporation for the prevention of cruelty to animals. Petitioner's animals and other personal property including legal documents were seized during the execution of the warrant.

After the seizure, petitioner's sister, without the petitioner's knowledge, hired attorney Michael Ostendorp to protect any interests she had in the property that was the subject of the search and seizure.

Attorney Ostendorp contacted the Humane Society and without the Petitioner's knowledge or consent, made an illegal plea agreement on behalf of the Petitioner, with Humane Officer, Starr Yamada.

The agreement stated that Officer Yamada would not bring criminal charges against the Petitioner if the Hawaii Island Humane Society was given ownership of the animals and given financial payment for costs incurred. The plea agreement

also included a promise by the humane society to not inform the Petitioner that his animals had been permanently surrendered to the organization.

Petitioner's animals were later disposed of again without the Petitioner's knowledge or consent.

Procedural Background

The Petitioner filed a lawsuit in federal district court in the state of Hawaii on September 23, 2011, (947 F. Supp.2d 1097) United States District Court, D. Hawaii (Civil Number 11-00580 ACK-RLP), alleging both federal civil rights violations as well as state causes of action.

The federal causes of action included a claim that his Fourth Amendment right under the United States Constitution protecting against unreasonable seizures was violated.

The state causes of action included claims of negligence and a claim of intentional infliction of emotional distress.

The Petitioner believed that the Humane Society was not authorized under Hawaii law to obtain a search warrant and therefore his animals were seized unlawfully and in violation of the fourth amendment.

Hawaii Revised Statute §711-1109.1 Authority to enter premises; said that only a law enforcement officer could obtain a warrant to seize animals from private property. Furthermore, HRS 711 -1109.1(4) and HRS 710-1000 mandated that only

an employee of the Federal government, the State of Hawaii, or subdivision thereof could be a law enforcement officer.

Because humane society officers were employed by a private non-profit organization, the Petitioner argued that they had unlawfully obtained a warrant therefore subjecting the Petitioner to an unreasonable seizure.

The Petitioner also argued that the Humane Society violated his fourth amendment rights when they permanently took custody of and disposed of his animals.

The district court however, determined that the humane society officers were law enforcement officers under Hawaii state law and therefore did conduct a lawful seizure when they removed the Petitioner's animals.

The district court further determined that the humane society was not unreasonable to dispose of the petitioner's animals because Officer Yamada reasonably believed through her agreement with Attorney Ostendorp, that the humane society was the owners of the animals before the animals were disposed of.

All of the federal claims were dismissed through summary judgment and jurisdiction was not exercised over the state claims which were remanded to state court.

Petitioner appealed the summary judgment to the Ninth Circuit Court of appeals which then affirmed the decision of the district court. Young v. County of Hawaii, 578 Fed. Appx. 728 (9th Cir. 2014).

The Petitioner filed a lawsuit in the Third Circuit Court of the State of Hawaii on July 15, 2014, putting forth his state claims which included negligence and intentional infliction of emotional distress.

In particular, the petitioner claimed that Humane Society Officer, Starr Yamada, who was not authorized under Hawaii State Law negotiate criminal charges on behalf of the state of Hawaii. Such authority was granted only to the Attorney General or the Prosecuting Attorney. The Petitioner therefor alleged that Officer Yamada had made an illegal plea agreement with attorney Michael Ostendorp, and that this illegal agreement caused the loss of his animals and also denied the Petitioner of his right to go to court and have judicial process.

The Petitioner claimed he suffered harm including emotional distress from the loss of his animals and also from the loss of his right to go to court exercise his legal remedies.

The third circuit court dismissed the Petitioner's claims of negligence and intentional infliction of emotional distress, citing that the doctrine of collateral estoppel applied.

The court determined that because Yamada in the federal case, had been found reasonable under the fourth amendment for disposing of the Petitioner's animals, that issue could not be relitigated.

The court also determined that because the federal case concluded that the humane society had a valid search warrant; it was reasonable when it removed the animals from the Petitioner's property and that issue could not be relitigated.

Petitioner appealed to the intermediate court of appeals of the state of Hawaii claiming that what is reasonable in terms of the fourth amendment of the united states constitution is not the same as reasonable under negligence law.

The Petitioner also claimed that his cause of action based upon Yamada making an illegal plea agreement was not covered by the federal case and was in fact a separate cause of action with a separate harm, not related to the loss of the animals.

Petitioner argued in summary, that a determination of reasonableness under the fourth amendment was very narrow and looked only at the moment of the seizure whereas negligence law was broader and could look at conduct that preceded the seizure to determine if there was a negligence based claim. Petitioner in essence argued that Officer Yamada, in making an illegal plea agreement, negligently caused the situation whereby she was then reasonable in disposing of the Petitioner's animals.

On March 9, 2022, the Intermediate court of appeals affirmed the decision of the third circuit court and stated that collateral estoppel precluded all of the Petitioner's claims of negligence and claims based upon negligence.

The Supreme Court of the State of Hawaii denied the Petitioner's writ of certiorari on June 29, 2022.

REASONS FOR GRANTING PETITION

This Court should determine whether the standard of reasonableness under the fourth amendment of the united states constitution is different in both scope

and blameworthiness or merely the mirror image of reasonableness under common law negligence.

The ninth circuit court of appeals of California and the California supreme Court have already considered this issue and have found fourth amendment reasonableness and negligence reasonableness to be different standards.

In the case of Hayes v. County of San Diego, 658 F.3d 867 (2011), the Ninth Circuit Court of Appeals asked the California Supreme Court to certify a question of whether pre-shooting conduct by law enforcement officers could give rise to a claim of negligence after the shooting itself was found to be reasonable.

Hayes involved the shooting of a suicidal individual by law enforcement. The daughter of Shane Hayes sued in federal district court for violations of constitutional rights as well as for state claims of negligence and wrongful death.

Because Hayes approached the officers with a knife, the officers were found reasonable at the moment of the shooting itself therefore the federal district court dismissed the federal claims which included a fourth amendment claim of an unreasonable seizure.

The state claims were also dismissed because the shooting was found to be reasonable.

On appeal, the Ninth Circuit asked the California Supreme Court to certify the question of whether officers could be negligent for the conduct that preceded the shooting.

The California Supreme Court In granting the Ninth Circuit"s request, restated the issue as "[w]hether under California negligence law, liability can arise from tactical conduct and decisions employed by law enforcement preceding the use of deadly force." Our response, which is based on long-established state law, is that such liability can arise if the tactical conduct and decisions leading up to the use of deadly force show, as part of the totality of circumstances, that the use of deadly force was unreasonable. *Hayes v. County of San Diego*, 57 Cal.4th 622 (2013).

The California Supreme Court in *Hayes* reached its affirmative answer after revisiting another California case, *Hernandez vs. City of Pomona*, 46 CAL. 4TH 501, 207 P.3D 506, and after thoroughly explaining the differences between fourth amendment reasonableness and reasonableness under negligence.

Hernandez was another case of a shooting by law enforcement of which the officers in federal court, were found reasonable under the fourth amendment.

The issue before the *Hernandez* Supreme Court was whether the state claims were precluded by collateral estoppel. The *Hernandez* court found that state claims regarding the shooting were precluded but did collateral estoppel did not apply to the pre-shooting conduct which involved a police chase and the use of a police dog.

Instead, the *Hernandez* court "reviewed the evidentiary record and determined as a factual matter that the officers" preshooting conduct in that case was not negligent

In the Hayes case at bar, The California Supreme Court made clear that there were differences in the standard of reasonableness between fourth amendment law and negligence law. The Hayes court stated that “The Fourth Amendment’s „reasonableness“ standard is not the same as the standard of „reasonable care“ under tort law, and negligent acts do not incur constitutionalliability.” (Billington v. Smith, at p. 1190.) The Hayes court further explained that Fourth Amendment law protects against an “unreasonable . . . seizure U.S. Const., 4th Amend.) and thus tends to focus more narrowly than state tort law on the moment when deadly force is used, placing less emphasis on preshooting conduct (see Billington v. Smith (9th Cir. 2002) 292 F.3d 1177, 1190).

The Hayes court then clarified that “Certain language in Hernandez, supra, 46 Cal.4th 501, can be misunderstood. As noted (see p. 19, ante), state negligence law, which considers the totality of the circumstances surrounding any use of deadly force (see Grudt, supra, 2 Cal.3d at pp. 585-588), is broader than federal Fourth Amendment law, which tends to focus more narrowly on the moment when deadly force is used (see Billington v. Smith, supra, 292 F.3d at p. 1190). This court’s opinion in Hernandez, however, can be misread as suggesting that the state and federal standards are the same. (See Hernandez, at p. 514 [federal law requires consideration of “ „the totality of the circumstances at the time“ ”; “[t]he same consideration of the totality of the circumstances is required in determining reasonableness under California negligence law”].) But if the state and federal

standards are the same, our Hernandez opinion should not have separately analyzed the evidence of preshooting negligence (*id.*, at pp. 517-521). That we did separately analyze such evidence suggested our acknowledgment that the state and federal standards are not the same, which we now confirm. negligent acts do not incur constitutional liability.”

Based upon the findings of the California Supreme Court and its answer to the certified question, the Ninth Circuit Court of Appeals reversed the district court ruling and allowed the claim for negligence based upon pre shooting conduct.

The Petitioner here, believes that the third circuit court of Hawaii and the intermediate Court of appeals both erred in finding that the Petitioner’s claim of negligence base upon Officer Yamada’s pre-seizure conduct of making an illegal plea agreement should not have been precluded by collateral estoppel. The finding that Officer Yamada was reasonable under the fourth amendment by accepting ownership of the animals and then disposing of them does not extend to whether Officer Yamada was unreasonable to cause the situation by which she then acted reasonably.


Petitioner’s claim of intentional infliction of emotional distress should likewise not have been precluded because it derives from the same claim of a negligent plea agreement.

Petitioner points out that based upon the ruling of the Intermediate Court of Appeals of the State of Hawaii, in any occurrence which gives rise to both negligence claims and claims of a fourth amendment violation, any finding of

unreasonableness in a state negligence claim would preclude a defendant of claiming reasonableness as a defense to a fourth amendment violation. Collateral estoppel would apply as the two claims would be one and the same.

For the above reasons, the Petitioner asks this Court to grant his petition for writ of certiorari.

Respectfully submitted,


Warne Keahi Young, Petitioner pro se

Dated this 26 day September, 2022