

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF TENNESSEE,
NASHVILLE DIVISION

JUDGMENT IN A CIVIL CASE

CEDRIC ADAMS,)
)
Plaintiff,)
)
VS.) CASE No. 3:18-CV-976
)
NICK DIAMOND,)
)
Defendant.)

o **Jury Verdict.** This action came before the court for a trial by jury. The issues have been tried and the jury has rendered its verdict as reflected in the verdict form filed February 23, 20220. (Docket No. 111).

The jury found that the plaintiff Cedric Adams did not prove by a preponderance of the evidence that defendant Metropolitan Nashville Police Officer Nick Diamond, in discharging his weapon in plaintiff's home, used intentional force against the plaintiff in violation of the plaintiff's civil rights.

IT IS ORDERED AND ADJUDGED.

LYNDA HILL,CLERK

DATE: 2/24/2022

/s/ *Katheryn Beasley*
BY KATHERYN BEASLEY
DEPUTY CLERK

Appendix E

NOT RECOMMENDED FOR PUBLICATION

No. 22-5224

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jun 1, 2023
DEBORAH S. HUNT, Clerk

CEDRIC ADAMS,)
Plaintiff-Appellant,)
v.)
NICK DIAMOND, et al.,)
Defendants-Appellees.)

) ON APPEAL FROM THE UNITED
) STATES DISTRICT COURT FOR
) THE MIDDLE DISTRICT OF
) TENNESSEE

O R D E R

Before: MOORE, GRIFFIN, and READLER, Circuit Judges.

Cedric Adams, proceeding pro se, appeals the district court's judgment following a jury trial in his civil rights action. He also moves for the appointment of counsel. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See Fed. R. App. P. 34(a).* Because we discern no error in the jury's verdict or the district court's judgment, we affirm.

The events underlying the complaint occurred in the early morning hours of September 29, 2017, when Adams's then fiancée, Ashley Smith, called 911 during a domestic dispute with Adams. Their infant son was also present. Although Smith did not speak directly into the phone, the police dispatcher could hear screaming, threats, and pleas for help coming from the open line. Officer Nick Diamond of the Metropolitan Nashville Police Department responded to the residence to investigate, but he parked in front of the wrong house. After exiting his vehicle, Diamond heard a loud argument coming from the neighboring, correct house, and approached. Taking note of a car with an open door in front of the house, he knocked on the front door several times, receiving no response. Diamond then walked around the house with his flashlight and tried,

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unsuccessfully, to look inside. He then received additional reports from the dispatcher informing him that it sounded like Smith had been hit and that she was now whispering repeatedly for help. Upon receipt of this information, Diamond decided to forcibly enter the house. He approached the front door, knocked, announced himself as the police, and drew his pistol. Diamond then kicked the door multiple times and gained entry, after which his pistol discharged a single round that just missed Adams, passed through his shirt, and struck the couch. Diamond checked Adams for any injuries, and, as he was doing so, additional officers arrived and took over the investigation.

Adams and Smith filed this pro se lawsuit on behalf of themselves and their infant son, alleging that Diamond, a John Doe, and the Metropolitan Government of Nashville and Davidson County (Metro Nashville) violated their rights under 42 U.S.C. § 1983 and Tennessee law. The district court dismissed the claims of the minor child because Adams and Smith could not bring pro se claims on his behalf. The court also dismissed all claims against the John Doe defendant and Metro Nashville and a state law claim for negligent infliction of emotional distress against Diamond. After these dismissals, Adams and Smith were left to pursue claims for unlawful entry, excessive force, assault, battery, and the intentional infliction of emotional distress against Diamond.

Following discovery, Diamond moved for summary judgment. The district court granted the motion in part and denied it in part. The district court first granted judgment on Adams and Smith's unlawful-entry claim, determining that undisputed evidence established that Diamond possessed an objectively reasonable belief that exigent circumstances justified his entry without a warrant. The district court allowed Adams's claims for excessive force, battery, and assault related to the shooting to proceed to trial, but it granted judgment on Smith's parallel claims because no evidence supported a conclusion that Diamond restrained her, threatened her, or intentionally fired his pistol at her. The district court also granted judgment on the claims of intentional infliction of emotional distress because Adams and Smith presented no evidence that they suffered a serious mental injury as required by Tennessee law.

The district court appointed Adams counsel for trial. Prior to trial, the parties agreed to a special verdict form that asked the jury to decide whether Diamond intentionally fired his pistol.

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The jury concluded that Diamond did not intentionally fire his pistol, and the district court accordingly rendered judgment in Diamond's favor. Adams filed a notice of appeal solely on his own behalf, and we therefore lack jurisdiction to consider any arguments concerning claims raised by Smith—who is not Adams's spouse—or their minor child. *See Fed. R. App. P. 3(c)(2); see also Shepherd v. Wellman*, 313 F.3d 963, 970-71 (6th Cir. 2002) (holding that parents cannot appear pro se on behalf of their minor children).

On appeal, Adams challenges the fairness of the district court proceedings in general and provides a lengthy list of grievances. In particular, he argues that: accidental discharge of the pistol was impossible; the district court improperly limited the trial to the question of whether Diamond intentionally discharged his pistol and did not allow Adams to explore the entire scope of the incident; the district court failed to consider whether a mens rea of recklessness is sufficient to prove assault and battery; and Adams's appointed counsel refused to revisit the district court's earlier rulings or file certain motions because of a conflict of interest due to a personal relationship with the district court judge. Adams also claims that he has unspecified new evidence. In addition, he contends that the district court erred in granting summary judgment on his unlawful-entry claim. In his reply brief, he raises a new argument: that the district court erred in dismissing Metro Nashville from the case. We decline to consider arguments raised for the first time in a reply brief. *See Osborne v. Hartford Life & Accident Ins. Co.*, 465 F.3d 296, 301 (6th Cir. 2006).

We begin with the jury's verdict. We review the district court's decision to use a special verdict form for abuse of discretion. *See Bills v. Aseltine*, 52 F.3d 596, 605 (6th Cir 1995); *see also* Fed. R. Civ. P. 49(a)(1). Adams tried claims for assault, battery, and excessive force to the jury. In Tennessee, a civil claim for battery requires proof of “an intentional act that causes an unpermitted, harmful or offensive bodily contact.” *Spearman v. Shelby County Bd. of Ed.*, 637 S.W.3d 719, 734 (Tenn. Ct. App. 2021) (quoting *Lacy v. Hallmark Volkswagen Inc. of Rivergate*, No. M2016-02366-COA-R3-CV, 2017 WL 2929502, at *4 (Tenn. Ct. App. July 10, 2017)). Assault claims also require proof that the individual “intend[ed] to cause harmful or offensive contact with another or intend[ed] to create an apprehension of harm.” *Id.* Likewise, claims of excessive force under the Fourth Amendment require proof of an intentional application of force.

See Kingsley v. Hendrickson, 576 U.S. 389, 395-96 (2015). The district court thus did not abuse its discretion by using the special verdict form and asking the jury to decide whether Diamond fired his pistol intentionally. Adams's citation to Tennessee Code Annotated § 39-13-101 does not change this conclusion. That statute outlines the mens rea necessary for criminal assault, not the civil tort. And to the extent that Tennessee courts look to the criminal offense to inform their civil analysis, recklessness suffices to prove the criminal offense when bodily injury is caused, which was not the case here. *See* Tenn. Code Ann. § 39-13-101(a)(1).

Adams next questions the correctness of the jury's finding that Diamond did not intentionally discharge his weapon and complains that he was unable to present relevant evidence, including a fuller exploration of Diamond's mindset and mentality before receiving the call from the dispatcher. His contention that an accidental discharge was impossible is conclusory. To the extent that Adams is challenging the sufficiency of the evidence at trial and is arguing that he should have been granted judgment as a matter of law, he forfeited that issue by failing to file a Federal Rule of Civil Procedure 50(a) motion in the district court. *Hanover Am Ins. Co. v. Tattooed Millionaire Entm't, LLC*, 974 F.3d 767, 780 (6th Cir. 2020). Regardless, the jury was able to assess the testimony of Adams, Diamond, and the officer who conducted the investigation of the incident, as well as review Smith's deposition testimony. This testimony provided sufficient evidence for the jury's conclusion. Adams relatedly claims that his appointed counsel performed ineffectively in various ways at trial, but Adams possessed no right to the effective assistance of counsel in a civil case. *See Lanier v. Bryant*, 332 F.3d 999, 1006 (6th Cir. 2003); *see also Wainwright v. Torna*, 455 U.S. 586, 587-88 (1982) (per curiam) (noting that an individual cannot be deprived of effective counsel where no constitutional right to counsel exists).

Adams also challenges the district court's decision to grant summary judgment in favor of Diamond on the Fourth Amendment unlawful-entry claim. We review a district court's grant of summary judgment de novo. *Huckaby v. Priest*, 636 F.3d 211, 216 (6th Cir. 2011). Summary judgment is appropriate when "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 resolving summary judgment motions, courts view the evidence in the light most favorable to the non-

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moving party. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). To state a claim under § 1983, a plaintiff must establish the deprivation of a right secured by the Constitution or laws of the United States caused by a person acting under the color of state law. *See Sigley v. City of Parma Heights*, 437 F.3d 527, 533 (6th Cir. 2006).

Under the Fourth Amendment, a warrantless search is “per se unreasonable” unless an exception applies. *United States v. Jenkins*, 92 F.3d 430, 436 (6th Cir. 1996) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)). A warrant is not required if “‘the exigencies of the situation’ make the needs of law enforcement so compelling that the warrantless search 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)). For exigent circumstances to excuse a warrantless search, there must be both a “compelling need for official action and no time to secure a warrant.” *Missouri v. McNeely*, 569 U.S. 141, 149 (2013) (quotation marks omitted).

The undisputed evidence supports the district court’s conclusion that Diamond had an objectively reasonable belief that a person within the house needed immediate aid. *See Johnson v. City of Memphis*, 617 F.3d 864, 868 (6th Cir. 2010). Diamond was responding to a 911 call from Smith, during which Smith was heard screaming, crying, and begging for help. Diamond noticed the car in front of the house with its door left open—suggesting that someone might have been dragged out of it—and he heard screaming coming from the house. Diamond’s knocks on the front door went unanswered, and the dispatcher informed him that it sounded like Smith had been assaulted and that she was whispering pleas for help into the phone. Diamond’s perception of these circumstances is uncontested, and his entry into the home was therefore supported by a reasonable belief that an exigency existed. The district court correctly granted summary judgment on this claim.

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For the reasons discussed above, we **AFFIRM** the district court's judgment. We **DENY** Adams's motion for the appointment of counsel as unnecessary.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt
Deborah S. Hunt, Clerk

No. 22-5224

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Appendix
FILED
Jun 23, 2023
DEBORAH S. HUNT, Clerk

CEDRIC ADAMS,

Plaintiff-Appellant,

v.

NICK DIAMOND, ET AL.,

Defendants-Appellees.

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ORDER

BEFORE: MOORE, GRIFFIN, and READLER, Circuit Judges.

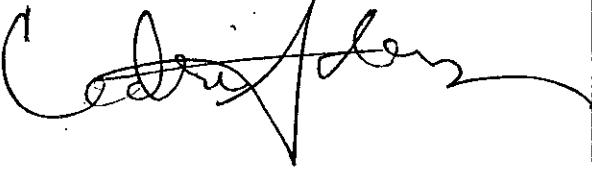
Upon consideration of the untimely petition for rehearing en banc from the appellant,
It is ORDERED that the petition not be accepted for filing.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

Regardless of the techniques, tactics and terminology of intentional and accidental distinguishing criminal intent-the intent to cause harm or injury including negligence and general intent-the intent to commit the act, ordinary negligence and gross negligence Officer Diamond is guilty as a matter of law for constitutional and civil rights violations and the intentional tort of assault and battery with the use of his service weapon that was not listed in the Final Judgment Order in this case making the Final Judgment Order invalid on its face which District Court Judge stated in judgment summary and throughout trial with Petitioner Adams court appointed representation with their unique skills, knowledge and experience did not file customary and procedural rule 50 motion after defense rested or before case was submitted to jury which was the reasoning the post trial motion Judgment as a matter of law, rule 59(e) Alter and Amend Judgment, New trial was denied. This case was filed civilly in federal court according a constitutional and civil rights violations according to the negligence of a police officer where his motivations or intent was irrelevant eliminating the qualified immunity defense of Officer Diamond and removing immunity from Metro Nashville Davidson County who was dismissed from this case from acceptance of claims with prejudice making entire process unjust and invalid and without allowing time for factual allegations, evidence, facts, documentation and record to be established that reveals a policy violation, state remedy or legal authority that governs civil liability and that Officer Diamond violated according to the Tennessee Governmental Tort Liability Act distinguishing discretionary acts from ministerial and operational acts or functions. The Sixth Circuit Court of Appeals did not address issues, concerns and challenges at appeal stage based on formality and what Officer Diamond intended. What Officer Diamond intended or his intentions is not what actually happened and the reasoning what and the way it happened did. The panel rehearing and the rehearing *en banc* was denied for untimely filing and here at the Supreme Court is that only time it was open and allow for Petitioner Adams to bring forth and have addressed these exceptional questions of law according to qualified immunity and the intentional tort of assault and battery, constitutional rights of the 4th Amendment, due process, proceedings and procedures and respectfully request and pray that this writ of certiorari is granted.

Respectfully Submitted

Cedric Adams

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

CEDRIC ADAMS,)
Plaintiff,)
v.) Case No. 3:18-cv-00976
NICK DIAMOND,) Judge Aleta A. Trauger
Defendant.)

MEMORANDUM & ORDER

Cedric Adams has filed a *pro se* Motion to Alter or Amend the Judgment Under Federal Rule of Civil Procedure 59(e) (Doc. No. 119), to which Nick Diamond has filed a Response (Doc. No. 121). For the reasons set out herein, the motion will be denied.

Adams originally filed claims along with another plaintiff, Ashley Smith, as well as claims purportedly on behalf of their minor child, based on an encounter with Diamond, a police officer, in which Diamond discharged a firearm. (See Doc. No. 1.) The court dismissed some of the claims, including those on behalf of the child, on January 24, 2019, and granted Diamond summary judgment with regard to other aspects of the case, including Smith's claims, on March 18, 2021. (Doc. Nos. 9, 77.) On February 22–23, 2022, the court held a jury trial on Adams' remaining claims against Diamond. The jury reached a verdict in Diamond's favor, finding that Diamond did not intentionally discharge the weapon, which, in the context of the court's rulings, was wholly determinative of the claims. (Doc. No. 111 at 1.) Shortly thereafter, Adams filed the present motion, challenging various aspects of the court's resolution of the case.

Adams characterizes the motion as filed pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, which permits a court to alter or amend a judgment based on: (1) a clear error of

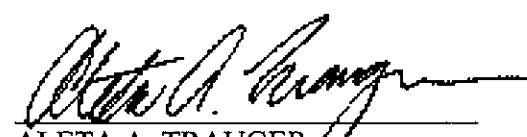
law; (2) newly discovered evidence; (3) an intervening change in controlling law; or (4) a need to prevent manifest injustice. *Leisure Caviar, LLC v. U.S. Fish & Wildlife Serv.*, 616 F.3d 612, 615 (6th Cir. 2010); *Roger Miller Music, Inc. v. Sony/ATV Publ'g, LLC*, 477 F.3d 383, 395 (6th Cir. 2007); *Intera Corp. v. Henderson*, 428 F.3d 605, 620 (6th Cir. 2005). “Relief under Rule 59(e) is an extraordinary remedy reserved for exceptional cases.” *Hines v. Comm’r of Soc. Sec.*, 414 F. Supp. 3d 1080, 1081 (S.D. Ohio 2019) (citations and internal quotation marks omitted). “The grant or denial of a Rule 59(e) motion is within the informed discretion of the district court, reversible only for abuse.” *Spec’s Fam. Partners, Ltd. v. First Data Merch. Servs. LLC*, 777 F. App’x 785, 787 (6th Cir. 2019) (quoting *Huff v. Metro. Life Ins. Co.*, 675 F.2d 119, 122 (6th Cir. 1982)).

Diamond suggests that aspects of Adams’ motion are substantively better suited to a Rule 50 motion for judgment as a matter of law or a Rule 59(a) motion for a new trial. A Rule 50 motion made after a jury’s verdict can only be granted if (1) a motion was made pursuant to Rule 50(a) prior to the submission of the charge to the jury and (2) “there is no legally sufficient evidentiary basis for a reasonable jury to find for the nonmoving party on that issue, or where a claim or defense cannot under the controlling law be maintained or defeated without a favorable finding on that issue.” *Vance v. Spencer Cty. Pub. Sch. Dist.*, 231 F.3d 253, 258 (6th Cir. 2000); *see Exxon Shipping Co. v. Baker*, 554 U.S. 471, 486 n.5 (2008) (“A motion under Rule 50(b) is not allowed unless the movant sought relief on similar grounds under Rule 50(a) before the case was submitted to the jury.”) A court may grant a new trial under Fed. R. Civ. P. 59(a) “if the verdict is against the weight of the evidence, if the damages award is excessive, or if the trial was influenced by prejudice or bias, or otherwise unfair to the moving party.” *Conte v. Gen. Housewares Corp.*, 215 F.3d 628, 637 (6th Cir. 2000).

None of the issues raised by Adams provides a persuasive basis for disturbing the judgment under any of those three standards. Although Adams uses boilerplate language suggesting otherwise, he has not identified any meaningful error of law, newly discovered evidence, or intervening change in the controlling law that would justify disturbing either the judgment based on the jury's verdict or the court's summary judgment rulings. Adams, moreover, has not demonstrated that the jury's verdict was unsupported; the jury's conclusion reflected a plausible weighing of contested evidence, particularly considering the fact that the jury heard Diamond's own testimony that the shooting was accidental and was within its rights to credit that testimony. Adams also raises objections about the scope of the issues under consideration at trial, but those issues reflected the terms of a pretrial order jointly agreed upon by Adams and Diamond, through their respective trial counsel. (See Doc. No. 107 at 3–4.) The evidentiary issues raised by Adams are similarly without merit and reflect, at most, a request to reconsider matters that the court already addressed. Finally, Adams devotes a significant amount of briefing to arguing that he received ineffective assistance of counsel, but “[i]t is well settled that there is no constitutional or statutory right to effective assistance of counsel in a civil case.” *Standberry v. City of Cleveland*, 43 F. App'x 791 (6th Cir. 2002) (citations omitted).

For the foregoing reasons, Adams' Motion to Alter or Amend the Judgment Under Federal Rule of Civil Procedure 59(e) (Doc. No. 119) is hereby **DENIED**.

It is so **ORDERED**.



ALETA A. TRAUGER
United States District Judge