

*EX PARTE CITY OF VESTAVIA HILLS*: REINFORCING A HIGH BAR:  
ALABAMA SUPREME COURT GRANTS WRIT OF MANDAMUS IN  
FAVOR OF POLICE OFFICER WHO SHOT AND KILLED PLAINTIFF’S  
DOG

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In *Ex parte City of Vestavia Hills*, the Supreme Court of Alabama addressed both federal and state claims brought by a dog owner against the City of Vestavia Hills and Officer William Mitchell after an altercation that led Mitchell to shoot and kill the plaintiff’s dog.<sup>1</sup> Specifically, the plaintiff brought an action against the city and Mitchell, alleging violations of her Fourth Amendment rights, negligence, and deprivation of property.<sup>2</sup> On appeal, the Supreme Court of Alabama affirmed in part and denied in part the plaintiff’s petition for a writ of mandamus, finding that, although the city and Mitchell were both entitled to state-agent immunity on the state claims, only Mitchell—not the city—was entitled to qualified immunity on the federal claims.<sup>3</sup>

On May 19, 2019, five police officers were “dispatched to the plaintiff’s residence to investigate a physical altercation between the plaintiff’s two sons.”<sup>4</sup> At the scene, Corporal Lee McGuire and Mitchell were speaking to one of the plaintiff’s sons outside when the plaintiff’s dog, “a boxer weighing approximately [seventy] pounds,” approached.<sup>5</sup> After “a fast-paced series of events [that lasted] only a few seconds, Mitchell shot and killed the dog.”<sup>6</sup>

In response, the plaintiff brought the following four claims: (1) a federal claim under 42 U.S.C. § 1983 against Mitchell for depriving the plaintiff of her Fourth Amendment rights by seizing her dog without cause; (2) a federal claim under § 1983 against the city based on its policies or customs on the use of deadly force; (3) a state claim against the city for “Mitchell’s alleged negligence, carelessness, or unskillfulness in shooting and killing [the plaintiff’s] dog;” and (4) a state claim

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<sup>1</sup> *Ex parte City of Vestavia Hills*, No. 1210113, 2022 WL 1721484, at \*1 (Ala. May 27, 2022).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at \*3.

<sup>4</sup> *Id.* at \*1.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

against Mitchell for depriving the plaintiff of her property.<sup>7</sup> Following the complaint, the city and Mitchell “filed a joint motion for summary judgment . . . on the grounds of qualified immunity,” which the Circuit Court of Jefferson County denied.<sup>8</sup> The city and Mitchell petitioned for a writ of mandamus directing the circuit court to grant their motion.<sup>9</sup>

The defendants presented affidavits from both Mitchell and McGuire describing how, in their opinion, the dog posed a threat to public safety.<sup>10</sup> Both Mitchell and McGuire explained that the dog was friendly when it exited the residence.<sup>11</sup> Yet, after McGuire bent down to leash the dog, “the dog lunged at him[] [and made] contact with his face.”<sup>12</sup> McGuire was able to stand up, but the dog lunged at him again, biting McGuire’s vest in his midsection.<sup>13</sup> The dog then quickly approached Mitchell while “shaking his head and growling.”<sup>14</sup> Mitchell took one step backward; then, he shot and killed the dog when the dog was about one foot away in distance.<sup>15</sup> To supplement the affidavits, the defendants offered the following pieces of evidence: a picture of McGuire’s vest where the dog bit him; the city’s policies on the lawful use of deadly force; records from an animal clinic noting the dog’s aggression at a previous visit; testimony that the dog had bitten a maintenance man at an apartment complex; and two dashboard-camera videos taken from the police cars the day of the incident.<sup>16</sup>

To dispute the defendants’ evidence and establish a genuine issue of material fact, the plaintiff offered her own affidavit.<sup>17</sup> Contrary to the officers’ statements of the facts, the plaintiff explained that the dog did not attack McGuire but rather “jumped on him in a friendly manner.”<sup>18</sup> The plaintiff alleged that McGuire’s vest ripped only due to the dog’s toenails.<sup>19</sup> She also asserted that the dog was not barking or growling and ultimately did not pose a threat to anyone.<sup>20</sup>

Because the parties presented conflicting stories about an incident that happened within a matter of seconds, the supreme court heavily

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<sup>7</sup> *City of Vestavia Hills*, 2022 WL 1721484, at \*1.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at \*2.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *City of Vestavia Hills*, 2022 WL 1721484, at \*1.

<sup>14</sup> *Id.* at \*2.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *See City of Vestavia Hills*, 2022 WL 1721484, at \*2.

<sup>20</sup> *Id.*

relied on the dashboard videos from the police cars on the day of the incident.<sup>21</sup> The court explained that if a dashboard video refutes a party's version of the facts, "blatantly contradict[ing] . . . the record, so that no reasonable jury could believe it," the court must adopt the facts in the light depicted by the video.<sup>22</sup> Here, the court held that the dashboard videos "clearly refute[d] the plaintiff's version of facts."<sup>23</sup> Thus, the court rejected the plaintiff's affidavit and examined her claims using the facts as shown by the dashboard camera.<sup>24</sup>

First, reviewing the district court's decision *de novo*, the supreme court addressed Mitchell's qualified immunity defense against the plaintiff's 42 U.S.C. § 1983 claim.<sup>25</sup> The court explained that the purpose of qualified immunity is to shield public officials from civil liability "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."<sup>26</sup> To properly assert the defense, Mitchell was required to initially demonstrate that he "was acting within the scope of his . . . discretionary authority at the time of the alleged constitutional violation."<sup>27</sup> The court determined that it was undisputed that Mitchell was acting within the scope of his discretionary authority because he was "responding to a domestic-disturbance call at the plaintiff's residence" at the time of the incident.<sup>28</sup>

Accordingly, the burden shifted to the plaintiff to overcome the immunity by showing: (1) "the [public official] violated a constitutional right" and (2) such "right was clearly established at the time of the alleged violation."<sup>29</sup> The court found, however, that the plaintiff's argument "beg[an] and end[ed] with the first prong" because the plaintiff "failed to demonstrate a constitutional violation under the Fourth Amendment."<sup>30</sup> The court assumed, without officially deciding, that

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.* (quoting *Scott v. Harris*, 550 U.S. 372, 380–81 (2007)).

<sup>23</sup> *Id.* ("[B]oth videos confirm[ed] that the plaintiff's dog did attack [Corporal] McGuire and then advanced toward Officer Mitchell, who shot and killed the dog.").

<sup>24</sup> *Id.*

<sup>25</sup> *City of Vestavia Hills*, 2022 WL 1721484, at \*2; see 42 U.S.C. § 1983. Under § 1983, an injured person can seek damages against an individual who violated his or her federal rights while acting under color of state law. *Id.*

<sup>26</sup> *City of Vestavia Hills*, 2022 WL 1721484, at \*2 (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)).

<sup>27</sup> *Id.* (citing *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1264 (11th Cir. 2004)).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* (noting that the court may decide which prong of the test should be addressed first).

<sup>30</sup> *Id.* (citing U.S. CONST. AMEND IV) ("The Fourth Amendment provides, in relevant part, that '[t]he right of the people to be secure in their . . . effects, against unreasonable searches and seizures, shall not be violated . . .').")

the killing of a family pet is a type of seizure within the meaning of the Fourth Amendment.<sup>31</sup> Yet, to determine whether this was an unconstitutional seizure, the supreme court explained that “the touchstone of the Fourth Amendment is reasonableness.”<sup>32</sup> Hence, the issue was whether the officer’s conduct was objectively reasonable in light of the facts presented.<sup>33</sup> Relying on the dashboard-camera videos in this case, the “plaintiff’s dog behaved aggressively by attacking Cpl. McGuire and then immediately advancing toward Officer Mitchell.”<sup>34</sup> The court found that, objectively, the dog’s aggressive behavior “posed an imminent threat of harm to Officer Mitchell and others.”<sup>35</sup> Therefore, summary judgment was appropriate for Mitchell with respect to the § 1983 claim on the basis of qualified immunity.<sup>36</sup>

The supreme court next considered the § 1983 claim against the city.<sup>37</sup> The city argued that it was also entitled to qualified immunity.<sup>38</sup> However, citing the Supreme Court of the United States, the Alabama Supreme Court explained that only individual officers, not municipalities, are covered by qualified immunity.<sup>39</sup> Because the city failed to assert any other viable defense in its motion for summary judgment, the city had not shown a legal right to mandamus relief.<sup>40</sup>

Next, the supreme court addressed the state-law claims against the city and Mitchell, in which they both asserted state-agent immunity.<sup>41</sup> The court found that Mitchell was a city police officer “responding to a domestic-disturbance call at the plaintiff’s residence,” which constituted a law-enforcement duty.<sup>42</sup> Thus, the plaintiff’s claim arose out of Mitchell’s official function, which entitled him to state agent immunity.<sup>43</sup> The burden then “shifted to the plaintiff to show that Officer

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<sup>31</sup> *Id.* (citing *Hogan v. Hogan*, 199 So. 3d 50, 56 (Ala. Civ. App. 2015)).

<sup>32</sup> *City of Vestavia Hills*, 2022 WL 1721484, at \*2 (quoting *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006)).

<sup>33</sup> *Id.* (citing *Vinyard v. Wilson*, 311 F.3d 1340, 1347 (11th Cir. 2002)).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at \*3.

<sup>38</sup> *See City of Vestavia Hills*, 2022 WL 1721484, at \*3. Under § 1983, a municipality will be held liable if its policy or custom caused a constitutional violation. *See Monell v. Dep’t of Soc. Servs. of New York*, 436 U.S. 658, 694 (1978).

<sup>39</sup> *City of Vestavia Hills*, 2022 WL 1721484, at \*3 (citing *Owen v. City of Independence*, 445 U.S. 622, 638 (1980)).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

Mitchell acted either willfully, maliciously, or in bad faith in shooting and killing her dog.”<sup>44</sup>

The videos showed that the dog became aggressive when McGuire tried to leash it, and Mitchell only shot the dog after it attacked his colleague and then started advancing toward him.<sup>45</sup> Thus, the court held that the plaintiff failed to meet her burden and that Mitchell was therefore entitled to state-agent immunity.<sup>46</sup> Mitchell’s state-agent immunity also extended to the city.<sup>47</sup>

Although “the denial of a motion for summary judgment is not [generally] reviewable[,]” a plaintiff may petition for a writ of mandamus when the denial is based on governmental immunity.<sup>48</sup> The Supreme Court of Alabama’s analysis in *Ex parte City of Vestavia Hills* highlights the uphill battle plaintiffs face when bringing claims against public officials who assert the immunity defense.<sup>49</sup> Importantly, although the court did not grant the city summary judgment with respect to the § 1983 claim, the plaintiff’s failure to establish an underlying violation of her constitutional rights “necessarily preclude[d] the [c]ity’s liability.”<sup>50</sup> For this reason, Justice Mitchell’s concurring opinion considered extending mandamus relief to certain defendants, in this case, the city, where a “grant of mandamus relief with respect to one petitioner necessarily disposes of the plaintiff’s claim with respect to another petitioner.”<sup>51</sup> If mandamus relief is extended, plaintiffs will face yet another challenge in addition to the present difficulty when suing individual officers who claim qualified or state-agent immunity.

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<sup>44</sup> *Id.*

<sup>45</sup> *City of Vestavia Hills*, 2022 WL 1721484, at \*3.

<sup>46</sup> *Id.* (citing *Ex parte Cranman*, 792 So. 2d 392, 405 (Ala. 2000) (plurality opinion)).

<sup>47</sup> *Id.* (citing *City of Crossville v. Haynes*, 925 So. 2d 944, 955–56 (Ala. 2005)).

<sup>48</sup> *Id.* at \*1.

<sup>49</sup> *See id.*

<sup>50</sup> *Id.* at \*4 (Mitchell, J., concurring) (citing *Monell v. Dep’t of Soc. Servs. of New York*, 436 U.S. 658 (1978)).

<sup>51</sup> *City of Vestavia Hills*, 2022 WL 1721484, at \*5 (Mitchell, J., concurring).