



It Is Okay to Try to Help a Sick Child



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In *Linicomn v. Hill*, ___ F.3d ___, 2018 WL 4214979 (5th Cir. Sept. 5, 2018), Plaintiff Vernon Linicomn sued certain Dallas, Texas, police officers alleging that they violated his Fourth Amendment rights by forcibly entering his house without a warrant, by entering without his consent, and by entering without reason to believe that any person inside was in imminent danger of harm. Linicomn also asserted that the police officers assaulted him and arrested him with excessive force. Two of the officers, Maurico Hill and Cheryl Matthews, obtained an early exit from the case, and Linicomn filed an appeal with the United States Court of Appeals for the Fifth Circuit to challenge the District Court's Order dismissing Hill and Matthews as Defendants.

Because the District Court dismissed Hill and Matthews at the pleading stage, the relevant facts were those contained within Linicomn's Complaint, and Linicomn's Complaint contained the following factual allegations. Linicomn was awarded primary custody of his two minor children in his divorce from their mother, Linda, who suffers from mental disorders that rendered her unfit to be a custodial parent. After the divorce and prior to the incident involved in this lawsuit, Linda falsely reported to the City of Dallas's Police Department on numerous occasions that the welfare of the children was endangered while they resided with Linicomn. Although the police responded on each occasion, no action was ever taken against Linicomn because each of the reports proved to lack substance or justification.

On October 23, 2011, at approximately 4:40 p.m., Linda called 911 regarding the welfare of the children and told the dispatcher that Linicomn was "abusing" the children. Officers Gilbert and Oliver went to Linicomn's house, knocked on the door, but received no response. Accordingly, the officers departed without taking further action. At 9:20 p.m. that same night, Linda again called the police department and reported a "disturbance" pertaining to the children at Linicomn's residence. Officers Hill and Matthews (i.e., the Defendants/Appellees), responded and arrived at Linicomn's house between 9:30 and 10:41 p.m. Upon arrival, the officers met Linda, Dallas paramedics, and Dallas firefighters outside of Linicomn's home. Linda informed the officers that her daughter was "lethargic and sick" inside of Linicomn's house. The paramedics stated that they had been unable to gain entry to Linicomn's house. The officers tried to contact Linicomn by calling his cell phone and knocking repeatedly at his front door, but Linicomn did not respond.

Officer Hill, then, contacted his supervisor, Sergeant Melquiades Irizarry, and Sergeant Irizarry came to Linicomn's house. Sergeant Irizarry spoke with Linda and directed Officer Hill to announce through the police public address system that they would enter the house—with or without Linicomn's cooperation.

Eventually, Linicomn answered the door. Linicomn advised Sergeant Irizarry and Officer Hill, who were standing at the threshold of the doorway, that his daughter was asleep and did not need medical assistance. Meanwhile, Officer Matthews stood off to the side of the door with her back to Linicomn and the other officers. The officers did not have a warrant to enter Linicomn's house.

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Linicomn refused to allow anyone entry without a warrant. Sergeant Irizarry placed his hand on Linicomn's shoulder and asked him to step aside so that the paramedics could enter and could verify that his daughter was safe. Linicomn pushed Sergeant Irizarry's hand away. Officer Hill then clasped Linicomn's right arm and shoulder. Linicomn pushed Officer Hill away, retreated, and tried to close the door to the house. But, Officer Hill and Sergeant Irizarry prevented Linicomn from closing the door, and Linicomn ran toward the back of the house.

So, Officer Hill ran after Linicomn. Officer Matthews entered the house but remained near the front door. Inside the house, a struggle ensued. Officer Hill grabbed Linicomn and tried to take him to the floor; Linicomn resisted; and Sergeant Irizarry sprayed Linicomn with pepper spray. Linicomn was then handcuffed, escorted outside, and treated by paramedics. The officers spoke with Linicomn's children and confirmed that the children had been asleep and were not ill. The children also confirmed that Linda had a history of making exaggerated claims about their welfare.

Initially, Linicomn filed suit against the Defendants in state court. After the state court dismissed Linicomn's assault and battery claims against them, Officers Hill and Matthews removed the case to the United States District Court for the Northern District of Texas. Officers Hill and Matthews then asserted that they were entitled to judgment on the pleadings based upon the doctrine of qualified immunity. Public employees are entitled to qualified immunity unless the plaintiff can plead specific allegations demonstrating (1) the violation of a constitutional right that (2) was clearly established at the time of the alleged misconduct. *Pearson v. Callahan*, 555 U.S. 223, 232 (2009). A right is "clearly established" when the contours of the right are sufficiently clear that a reasonable official would understand that what he is doing violates that right.

The District Court found that Linicomn's Complaint did not contain sufficient facts to overcome Officers Hill and Matthew's qualified immunity defense. Linicomn argued on appeal that his pleadings sufficiently demonstrated that Officers Hill and Matthews acted objectively unreasonably and violated his clearly established Fourth Amendment rights by (1) entering his house without a warrant and (2) using excessive force by assaulting him and pepper spraying him.

In its opinion affirming the District Court's Order dismissing Officers Hill and Matthews at the pleading stage, the Fifth Circuit considered both prongs of the qualified immunity analysis, but the Fifth Circuit ultimately concluded that the officers were entitled to a dismissal from the suit based upon the second prong. The Fifth Circuit stated that, under the first prong of the qualified immunity analysis, it must consider whether Officers Hill and Matthews' actions violated Linicomn's Fourth Amendment rights. The Fifth Circuit stated that entries into a home—such as the officers' entry into Linicomn's home—without a warrant presumptively violate the Fourth Amendment unless an exception to the warrant requirement applies.

Here, the Fifth Circuit determined that the exigent circumstances exception did not apply. When the officers arrived at Linicomn's house over an hour after Linda made the report, it was a relatively calm scene outside with no external signs of struggle or violence. In addition, Linda had merely reported that her daughter was lethargic and ill, not that she was in dire need of emergency assistance or that Linicomn may harm the children or that anything that Linicomn did or did not do caused her daughter to be lethargic or ill. Linicomn told the officers that his children were asleep, and the officers offered nothing to demonstrate that the circumstances were to the contrary. Indeed, the officers ultimately found the children asleep. Therefore, even though Officers Hill and Matthews denied knowing of Linda's mental illness, the Fifth Circuit held that Linicomn facially pled sufficient facts to support a plausible claim that Officers Hill and Matthews violated Linicomn's Fourth Amendment rights when they entered his house without a warrant and absent proof of exigent circumstances.

However, the Fifth Circuit could not conclude, under the second prong of the qualified immunity analysis, that Linicomn's right was clearly established under the circumstances at the time of the officers' entry into the house. The law is "clearly established" for qualified immunity purposes when there is controlling authority or a robust consensus of persuasive authority that defines the contours of the right in question with a high degree of particularity. The United States Supreme Court "does not require a case directly on point for a right to be clearly established, [but] existing precedent must have placed the statutory or constitutional question beyond debate." *Kisela v. Hughes*, ___ U.S. ___, 138 S.Ct. 1148, 1152 (2018). An officer is entitled to qualified immunity unless all reasonable officials in the defendant officer's circumstances would have then known that the defendant's conduct violated the United States Constitution.

The Fifth Circuit explained that the officers acted in response to Linda's 911 call asking for assistance and to check on her sick and lethargic child. The Fifth Circuit noted that Linicomn failed to cite to any controlling authority establishing that Officers Hill and Matthews' entry into his home would have violated a clearly established right under these circumstances. Accordingly, the Fifth Circuit affirmed the District Court's dismissal of Officers Hill and Matthews from the case and affirmed the District Court's conclusion that they were immune from this suit based upon the doctrine of qualified immunity.