

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Joseph Robert Gilliam,

Case No.: 19-CV-2749 (NEB/LIB)

Plaintiff,

v.

Robin Roach, Michael Engel,
Nickolas Eberheart, Ryan Manley,
Jesse Kenow, and Troy Griffith,

**Defendants Troy Griffith and Jesse
Kenow's Memorandum of Law in
Support of their Motion to Dismiss**

Defendants.

INTRODUCTION

Defendants Pine County Deputies Jesse Kenow and Troy Griffith conducted a welfare check at Plaintiff's residence on September 22, 2019. Plaintiff was absent, entry was forced through the least intrusive method available, there was minimal damage to the entry door, and the protective sweep was conducted within seven minutes. These Pine County Deputies are entitled to Rule 12(c) dismissal of the Complaint and claims therein against them arising under 42 USC § 1983, 1986, 1988, and the Fourth Amendment of the United States Constitution, because (1) the claims are barred by qualified immunity, (2) forced entry under the circumstances and a brief sweep of a residence for a welfare check does not present a constitutional violation, and (3) the force used, and resulting injury (property damage), is so de minimus as to be insufficient to bring a constitutional claim as a matter of law.

STATEMENT OF FACTS

As set forth in the Complaint, Plaintiff is an employee at Hinckley Grand Casino. *ECF Dn. 1, Complaint.* Defendants Troy Griffith and Jesse Kenow are Pine County deputies providing law enforcement services to the jurisdiction in which Plaintiff resides. *ECF Dn. 1, ICR attached to Complaint.* On September 22, 2019, Pine County dispatch received a call requesting a welfare check relating to Plaintiff. *Id., see also ECF DN 14-1, Command Log.* The information provided indicated that Plaintiff was a long-term employee, had failed to show for work and had not called in, it was highly unusual that Plaintiff had no call, no showed, and further that Plaintiff was an elderly gentlemen with some challenges; all of which made the caller concerned for Plaintiff's welfare and requesting that Plaintiff's welfare be checked. *ECF DN 1, 14-1, ICR and Command Log.*

The Pine County deputies attempted to make contact with Plaintiff once they arrived at Plaintiff's residence. *Id.* He had no listed phone number and his emergency contact had passed the week prior. *ECF DN 1, ICR.* Having no response, and concerned for Plaintiff's welfare as a result of information received by dispatch and others, the deputies decided to force entry into Plaintiff's home. *Id.* They made a quick sweep of the home, found no one, and left the property after re-securing the entry door and leaving a note requesting a call. *See ECF DN 1, 14-1, ICR and Command Log (showing approximate seven minutes time lapse from time of radio call of forced entry until radio call that no one found).* Plaintiff called dispatch later that day, advising that he was fine and expressed no further concern or objection to the method of handling. *See Ex. 14-1 at 17:34:48 and 17:35:21.* Upon information and belief, neither the involved Pine County Deputies nor

Pine County had heard anything further relating to this incident until receipt of the summons and complaint.

As to Plaintiff's claims specific to Deputies Kenow and Griffith, Plaintiff alleges that Defendants committed an act that violated his right to privacy under Fourth Amendment after "the deputies made a forced entry into the plaintiffs house, busted the locks on the door, [and] went in his home." *ECF DN 1, Complaint p. 2*. Deputy Kenow and Griffith deny any wrongdoing, but for purposes of this Motion will accept the facts as stated in the Complaint as true as well as those supplemental facts and matters set forth in matters of public record and embraced by the Complaint. *See Blakley v. Schlumberger Tech. Corp.*, 648 F. 3d 921 (8th Cir. 2011) (EEOC charge is part of the public record and may be considered pursuant to a motion to dismiss); *Porous Media Corp. v. Pall Corp.*, 186 F.3d 1077, 1079 (8th Cir. 1999) (court properly relied on transcript of proceedings before lower court in ruling on a motion to dismiss).

Plaintiff contends that there was no reasonable purpose for entering his home since he never informed "defendants that if he's late for work to call the deputies to go bust in his house." *Complaint p. 2*. Consequentially, Plaintiff alleges that Defendants are liable for "reckless disregard for his federally protected rights." *Compliant p. 3*. The demanded relief for the pretended Fourth Amendment rights violation claim arising out of Deputy Kenow and Griffith's entry into Plaintiff's home is monetary damages in excess of \$500,000. *Id.*

ARGUMENT

Standard of Review

To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (internal quotation marks and citations omitted); *accord Gregory v. Dillard's, Inc.*, 565 F.3d 464, 473 (8th Cir. 2009). The efficient administration of justice requires that courts dispose of meritless claims at the first opportunity so as not to waste the time and resources of the judicial system or the parties involved. *Orlando v. Alamo*, 646 F.2d 1288, 1289 (8th Cir. 1981) (citation omitted). Deputies Kenow and Griffith are entitled to dismissal of the Complaint and claims therein against them with prejudice based upon lack of any constitutional violation and qualified immunity.

I. Deputies Kenow and Griffith are entitled to qualified immunity because, as a matter of law, they acted reasonably under the circumstances and there was no clear constitutional violation.

The Supreme Court has held that “government officials performing discretionary functions...shield[s] them from civil damages liability as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated. *Malley v. Briggs*, 475 U.S. 335, 341, 106 S.Ct. 1092, 1096, 89 L.Ed.2d 271 (1986) (qualified immunity protects “all but the plainly incompetent or those who knowingly violate the law”). Whether an official protected by qualified immunity may be held personally liable for an allegedly unlawful action generally turns on the objective legal

reasonableness of the action. *Mitchell v. Forsyth*, 472 U.S. 511, 512, 105 S. Ct. 2806, 2808, 86 L. Ed. 2d 411 (1985) (“Qualified immunity, similar to absolute immunity, is an entitlement not to stand trial under certain circumstances. Such entitlement is an immunity from suit rather than a mere defense to liability”).

Law enforcement officers who are acting as a “community caretaker,” as the Pine County Deputies were acting when they entered Plaintiff’s home, may enter a residence without a warrant if they have “a reasonable belief that an emergency exists requiring his or her attention.” *United States v. Quezada*, 448 F.3d 1005, 1007 (8th Cir.2006). This is a less exacting standard than probable cause. *Id.*

Here, Plaintiff attached to his Complaint the ICR report which flushes out what was in the mind of law enforcement at the time that they decided to force entry to Plaintiff’s home. Plaintiff had no called, no showed for work contrary to his known and well-established habits, multiple attempts to contact Plaintiff had been made without success, he was an elderly gentlemen with some challenges, the presence of his vehicle at his home suggested he was there, and persons whom had known Plaintiff for many years were concerned about his welfare. Under similar circumstances, the Eighth Circuit has granted immunity ruling that law enforcement acted reasonably as a matter of law when forcing entry and making a sweep of a home for purposes of a welfare check. *See Collins v. Bellinghausen*, 153 F.3d 591, 596 (8th Cir. 1998)(“The defendants’ knowledge of Campbell’s frail and apparently deteriorating physical condition, her missed appointment with Dr. Comstock, [...] was sufficient to lead them to reasonably believe that Campbell was in need of immediate aid.”). Accordingly, under *Collins*, Defendants Kenow and

Griffith are entitled to immunity; Plaintiff's suit against them is, thus, barred.

II. Even if Plaintiff's claims against the Pine County deputies are not barred by immunity, they are subject to dismissal because (1) a warrantless entry and search was permissible, and (2) the use of force and resulting injury was *de minimis*.

As set forth above, while the Fourth Amendment typically requires a warrant prior to entry into a residence by law enforcement, the Supreme Court has found that law enforcement officers may enter a home without a warrant to render emergency assistance without violating the Fourth Amendment. *See Brigham City v. Stuart*, 547 U.S. 398, 403-04, 126 S.Ct. 1943, 164 L.Ed.2d 650 (2006). The governing principle from *Brigham City* is clear: "law enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury." *Id.* at 403, 126 S.Ct. 1943.

Here, a welfare search and subsequent entry was commenced only after behavior alarmed not only Plaintiff's employer, but also well-trained officers of the law. Normally, workplace absenteeism may not result in a welfare check. However, in this instance, it was the first time in nearly a decade that Plaintiff no called, no showed for work. These factors combined with Plaintiff's advanced age and health concerns was bizarre enough for his employer to request a welfare check on what they understood to be a longstanding, reputable employee. What is more is that there was no other means for law enforcement to verify Plaintiff's safety given the absence of an emergency contact and phone.

Under these circumstances and the applicable case law, the forced entry and brief sweep of the residence did not constitute a violation of any Fourth Amendment right held

by Plaintiff. *See Id.*; *see generally, Winters. v. Adams*, 254 F.3d 758, 763 (8th Cir.2001)(providing a further in depth discussion of the scope of law enforcement authority in the context of a Fourth Amendment claim where law enforcement was acting pursuant to its community caretaking function). A constitutional claim further fails in this case because the deputies used *de minimis* force and the resulting harm (damage to the entry door) was *de minimis*. *Chambers v. Pennycook*, 641 F.3d 898, 906 (8th Cir. 2011)(where the force used, and resulting injury, is *de minimis*, no Fourth Amendment claim may lie). Accordingly, Pine County Deputies Kenow and Griffith are entitled to dismissal for this reason as well.

CONCLUSION

Defendants Pine County Deputies Jesse Kenow and Troy Griffith did nothing more than conduct a reasonable welfare check based upon information provided to them and their own independent observations. Dismissal at this juncture is not premature since Plaintiff adopted the factual basis for the deputies' actions by attaching the ICR to the Complaint; and, discovery will not further inform the Court or the parties. Instead, under the above-cited case law, the deputies' conduct was reasonable as a matter of law and does not give rise to a constitutional violation. Therefore, Deputies Kenow and Griffith respectfully request that this Court grant an Order for dismissal, dismissing Plaintiff's Complaint and all the claims therein against them in its entirety and with prejudice.

Dated: December 4, 2019

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