that may have allowed him to pass the physical fitness test. Mississippi law states that a finding of "misconduct" disqualifies an individual from receiving unemployment benefits (Miss. Code Ann. § 71-5-513 (A)(1)(b) (2020)). The City of Grenada argued that Mr. Sanders' failure to seek a second opinion regarding his mental fitness constituted the requisite misconduct.

The court rejected this argument, first by reiterating the definition of misconduct as an employee's "willful and wanton disregard" of an employer's expectations, and "carelessness and negligence" of such degree that the employee has shown an "intentional or substantial disregard of the employer's interest or of the employee's duties . . . ." (*City of Grenada*, p 526, citing prior case law).

The court determined that, in contrast to the claimant in *City of Clarksdale*, Mr. Sanders' actions did not constitute misconduct. The court noted that "no evidence was presented that refutes the Board of Review's finding that Sanders's mental condition is the result of anything other than circumstances outside Sanders's control." (*City of Grenada*, p 528). Regarding Mr. Sanders' failure to seek a second opinion, the court noted that there was no surety that a second opinion would have changed his fitness for duty or the City of Grenada's decision to terminate his employment and additionally did not qualify as misconduct.

The City of Grenada argued that the decision in *City of Clarksdale* called upon the Mississippi State Legislature to amend the applicable employment statute if it felt unemployment benefits should be provided in such a scenario. It argued that the legislature's failure to amend the statute in the ensuing two decades further affirmed the denial of benefits in *City of Clarksdale* and should be similarly denied in the current case. The court found that the legislature's inaction suggested that the established definition of misconduct, as applied in *City of Clarksdale* and upon which qualification for unemployment benefits relies, was appropriate. Accordingly, the court determined that as Mr. Sanders did not engage in misconduct as legally defined, he qualified for unemployment benefits.

Finally, regarding Mr. Sanders' failure to follow the recommendation to seek treatment for his mental illness, the court said that Mr. Sanders' termination was based on his mental illness alone. Therefore, it would not consider whether this refusal constituted misconduct.

Discussion

In *City of Grenada*, the Mississippi Supreme Court evaluated whether it is misconduct when a police officer is diagnosed with a mental disorder that makes the officer mentally unfit for duty. The definition of misconduct here is a legal one, defined in state statute. A finding of misconduct disqualifies a terminated employee for unemployment benefits. The court determined that the scenario in Mr. Sanders' case does not constitute misconduct, based on the established definition of misconduct. In doing so, the court refused to assign blame to Mr. Sanders for having a mental illness.

The City of Grenada's argument for Mr. Sanders' misconduct was based on the previous case of *City of Clarksdale* regarding a police officer who repeatedly failed physical fitness tests yet refused opportunities to improve his physical condition. In that case, the court determined that a police officer's failure to pass a physical fitness test to obtain certification was in his control and constituted misconduct as a matter of law.

Upon appeal, the City of Grenada had also argued that the fitness-for-duty evaluator recommended that Mr. Sanders seek treatment with psychotherapy and medication and that the officer had failed to do so. The court of appeals and the Mississippi Supreme Court declined to consider whether this constituted misconduct, noting that Mr. Sanders was terminated on the basis of his mental condition alone. The court gave no indication on how it would rule had the City of Grenada terminated Mr. Sanders based on his failure to mitigate as instructed with treatment recommendations, thereby leaving this question unanswered.

Police Officer Immunity in Cases of Suicide

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Police Officer Conduct May Not Be Shielded by Statutory Immunity in Cases of Suicide When the Risk for Suicide is Obvious

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Key words: police; suicide; reckless conduct; qualified immunity; statutory immunity

In *Wilson v. Gregory,* 3 F.4th 844 (6th Cir. 2021), the U.S. Court of Appeals for the Sixth Circuit considered whether a police officer can be held liable in cases of suicide when the individual is not in official custody. Jack Huelsman died by suicide after police deputies were called to his residence and were on the scene. Mr. Huelsman's family filed suit for violations of civil rights under 42 U.S.C. § 1983 (1996) and denial of public services under the Americans with Disabilities Act (ADA), 42 U.S.C. § 12132 (1990), as well as for Ohio state law tort claims. The court affirmed summary judgment for the defendants on the federal causes of action and vacated and remanded on the state claims.

Facts of the Case

On September 19, 2015, Jack Huelsman experienced a mental health crisis. According to his family, the 64-year-old man, who had been diagnosed with bipolar disorder, was experiencing paranoid delusions and making concerning statements about killing himself. His wife, Cheryl Huelsman, a nurse, called their daughter and instructed her to call 911. Clermont County Deputies Eric Gregory and Meredith Walsh responded to the call. They were aware of Mr. Huelsman's current state of mental health and that there may be guns in the home. Upon arrival, Deputy Gregory called off the paramedics who had also responded. He spoke with both Mrs. Huelsman, who expressed fear that her husband would attempt suicide, and Mr. Huelsman, whom Deputy Gregory considered to be lucid. Deputy Gregory called the county's Mobile Crisis Unit, a team of social workers specially trained to respond to mental health crises. Mrs. Huelsman pleaded with Deputy Gregory not to leave Mr. Huelsman unattended, but the Deputy left him inside the home, alone, for about nine minutes. During this time, Mr. Huelsman shot and killed himself.

The Hueslmans filed suit against the deputies claiming deprivation of civil rights under 42 U.S.C. § 1983; denial of benefits of public services under the ADA; and wrongful death, intentional infliction of serious emotional distress, and negligent infliction of emotional distress under Ohio law. The deputies filed a motion for summary judgment, claiming they were entitled to qualified immunity and statutory immunity. The district court granted the motion for summary judgment for the defendants, concluding that the deputies were entitled to qualified immunity and statutory immunity. The court also rejected the Huelsmans' ADA claims. The Huelsmans appealed.

Ruling and Reasoning

The U.S. Court of Appeals for the Sixth Circuit affirmed the district court's ruling regarding the Huelsmans' § 1983 and ADA claims but vacated and remanded the district court's ruling on the Huelsmans' state law claims.

Under 42 U.S.C. § 1983, the Huelsmans claimed that Mr. Huelsman's Fourteenth Amendment right to due process was violated under the state-created danger exception. The deputies claimed qualified immunity. The court noted that a plaintiff may bring a due process claim under the state-created danger exception if they show: the state's affirmative act created or increased the plaintiff's risk of private acts of violence; there was a special risk to the plaintiff greater than the general public's risk because of the state's action; and the requisite culpability to establish a substantive due process violation was demonstrated by deliberate indifference by the government entity. The court also noted that for a plaintiff's claim to prevail over an official's qualified immunity, the plaintiff must show that the official violated a constitutional right that was clearly established at the time of the incident.

The court stated that it had not previously applied the state-created danger exception to cases of suicide and therefore concluded that this was not a clearly established right at the time of Mr. Huelsman's death. Consistent with their precedent, the court determined that a 42 U.S.C. § 1983 claim under the state-created danger exception did not apply to this case.

With regard to the Huelsmans' ADA claim, the court determined that Deputy Gregory's calling the mobile crisis unit was a reasonable accommodation under the ADA, and therefore the Huelsmans' ADA claim did not stand.

Regarding the Huelsmans' claims under state law, the district court had granted summary judgment on the basis of statutory immunity claimed by the deputies. The appeals court, however, made a distinction between qualified immunity for 42 U.S.C. § 1983 claims and statutory immunity for state claims. The appeals court noted that to bring a successful claim against federal qualified immunity, the plaintiff must demonstrate that the official acted with deliberate indifference. Citing the Supreme Court's opinion in *Farmer v. Brennan*, 511 U.S. 825 (1994), the court said that for an official's conduct to amount to deliberate indifference, "the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference" (*Wilson*, p 861, citing *Farmer* at 827). In other words, the official must act or fail to act despite his knowledge of a substantial risk of serious harm.

The court construed Ohio state law, where the official must have acted "with malicious purpose, in bad faith, or in a wanton or reckless manner" (Ohio Rev. Code Ann. § 2744.03(A)(6)(b) (2002)) to negate statutory immunity. The court stated that the district court erred in conflating the federal standard of deliberate indifference with the Ohio standard of recklessness. The court explained that wanton misconduct is roughly equivalent to deliberate indifference but that recklessness, as stated in the Ohio Statute, is distinguished from wantonness in that it does not require actual knowledge of a risk. Further, the court noted that a plaintiff must show that the official acted in a reckless or wanton manner, not both. Accordingly, the deputies did not need actual knowledge of the risk of Mr. Huelsman's suicide to have acted recklessly.

The court recognized that there were numerous disputes of fact in the case, including the information provided to the deputies from dispatch, Mrs. Huelsman's statements about not leaving her husband alone, the Huelsmans' statements about the number of guns in the house, Mr. Huelsman's statements about his health, Deputy Walsh's decision to leave the scene, and Deputy Gregory's decision to call off EMS, among others. The court found that in light of these disputes, the grant of summary judgment by the district court was inappropriate, since based on these facts a reasonable juror could conclude that the risk of Mr. Huelsman's suicide was obvious and that the deputies acted recklessly as a result.

Concurrence

Judge Stranch stated that the appeals court's decision rested on the finding that the applicable law was not clearly established. But, she noted that the state-created danger exception itself was clearly established and that it should have been left to the jury whether Deputy Gregory, in leaving him alone in the house, violated Mr. Huelsman's constitutional rights by increasing the risk of suicide.

Dissent

Judge Bush concurred with the majority regarding the 42 U.S.C. § 1983 and ADA claims but dissented regarding the state law claims. He stated he would affirm summary judgment for the state-law immunity because there is a high standard for establishing recklessness. Judge Bush noted that there were many undisputed facts that showed that the deputies exercised care toward Mr. Huelsman and, therefore, no reasonable juror could find the deputies' actions reckless. He accused the majority of engaging in hindsight bias.

Discussion

This case underscores that standards for immunity against civil lawsuits for state officials can vary across jurisdictions. The Sixth Circuit Court of Appeals described that under the federal standard of deliberate indifference, to be found liable, the police must have had actual knowledge of the risk of suicide. But, the court held that under Ohio state law, police could be found liable for a suicide if they failed to act when the suicide risk was obvious.

As this case illustrates, although they are not mental health professionals, police officers who respond to mental health crisis calls may be held accountable for their actions toward an individual in crisis. Police are often the first officials to respond to a crisis call and may be required to take measures when an individual is at risk of self-harm. Predicting an individual's suicide risk is notoriously difficult, even for psychiatrists. Although there are increasingly available mental health trainings for police to help them assess risk of suicide, this case brings into question the challenges officers face in these

situations and the role of mental health professionals in crisis situations.

Admissibility of Mental State Evidence Without an Insanity Defense

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Colorado Supreme Court Rules That Evidence of a Criminal Defendant's Mental Illness May Be Introduced in Absence of Insanity Plea in Some Cases

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Key words: insanity; mental state evidence; self-defense; admissibility; expert testimony

In *People v. Moore*, 485 P.3d 1088 (Colo. 2021), the Colorado Supreme Court ruled that the trial court erred in permitting a defendant who had not entered an insanity plea to introduce evidence probative of insanity. But evidence of less-severe mental illness may be admissible, absent an insanity plea, if it otherwise conforms to the statutory requirements and the rules of evidence. The state supreme court ruled that lower court judges should distinguish between the two.

Facts of the Case

On March 21, 2019, Aundre Moore and an acquaintance drove to a local establishment for drinks. After parking, a second vehicle entered the lot and stopped in front of Mr. Moore's vehicle. A male known to Mr. Moore exited this car and approached the driver's side of Mr. Moore's vehicle. After an apparent argument, Mr. Moore shot the acquaintance in the head, resulting in his death. Mr. Moore was charged with first degree murder and other crimes. He planned to assert a self-defense strategy at trial, claiming the victim was a gang member known for carrying a firearm, exited his car, approached yelling and aggressively posturing, was observed reaching into his vehicle prior to approaching, and that Mr. Moore repeatedly instructed him to stop. Mr. Moore planned to present evidence regarding how his mental state contributed to his subjective belief that he was in imminent danger and needed to use deadly force.

To support this claim, Mr. Moore retained a psychologist, Dr. Jane Wells. A state-hired forensic psychiatrist, Dr. Leah Brar, also conducted an examination. Dr. Wells outlined Mr. Moore's history of trauma related to gun violence, highlighting he was previously shot, and people close to him had died from gun violence. She indicated Mr. Moore had previously been psychiatrically hospitalized and diagnosed with delusional psychosis and bipolar disorder. She said he did not meet full criteria for posttraumatic stress disorder and rather diagnosed him with another specified trauma related disorder and bipolar I disorder. Dr. Wells opined Mr. Moore's mental state contributed to his impressions of the incident, as he had distorted thinking with "psychotic qualities," (*Moore*, p 1094) experienced trauma-related paranoia and hypervigilance, and had an elevated mood at the time, which rose to the level of a mental disease.

Dr. Brar diagnosed Mr. Moore with the same trauma-related disorder, an unspecified bipolar disorder, and several substance related disorders. But, Dr. Brar opined Mr. Moore did not experience a serious mental disorder that significantly impaired reality testing at the time of the offense, instead suggesting his difficulties were "likely secondary to the voluntary ingestion of substances" (*Moore*, p 1094). Dr. Brar further asserted the intoxication and trauma-related symptoms likely did affect his judgment at the time, despite not meeting the severity of a mental disease under Colorado's standard.

The prosecution objected to the presentation of mental state information pursuant to Colo. Rev. Stat. § 16-8-107(3)(a) (2020), arguing that such information "is relevant to the issue of insanity" (*Moore*, p 1094), which Mr. Moore declined to pursue. The Colorado District Court denied the state's motion, indicating Mr. Moore's objective in offering the mental condition evidence was to support his self-defense claim, not prove insanity. The district court ruled it would allow all expert testimony, without an insanity plea, as long as the testimony conformed to other relevant rules of evidence (specifically Colo. R. Evid.).