

Ryan v. Napier

Full Citation: Ryan v. Napier, No. CV-17-0325-PR, 2018 WL 4016372 (Ariz. Aug. 23, 2018).

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Opinion's Author: Justice Timmer

Joined by: Chief Justice Bales, Vice Chief Justice Brutinel, and Justices Pelander, Bolick, Gould, and Lopez

Practitioners: For quick reference, please see the "Issue" and "Holding" sections.

Facts: Pima County Sheriff's Deputy Matthew Dixon was driving his patrol car late at night, when an oncoming vehicle swerved into his lane and nearly collided with him. Officer Dixon activated his lights and siren, made a U-turn, and pursued McDonald. Officer Dixon called for assistance when McDonald did not stop, and other officers placed traffic spikes in McDonald's path. McDonald stopped before running over the spikes, but he did not exit his vehicle or respond to any verbal commands.

Officer Klein arrived on the scene with his dog, Barry, who was trained to assist officers in apprehending suspects. Klein assumed command and alerted McDonald that he was going to "send [his] dog" unless McDonald talked to him. McDonald then rolled up his window and drove over the spikes and onto a curb. Klein radioed to other officers that he would deploy Barry if McDonald "went mobile." McDonald exited the car and staggered around the back of the car, leaning on the car as he walked. When McDonald failed to respond to commands, Klein intentionally deployed Barry, who bit McDonald's leg. Officer Klein did not order Barry to release McDonald for thirty-eight seconds, and McDonald suffered severe injuries and permanent scarring.

Unbeknownst to the officers at the scene, McDonald was a type-1 diabetic and was suffering from severe hypoglycemia at the time of the incident, rendering him unaware of his surroundings and unable to respond to commands. The state did not pursue criminal charges against him. After the initial trial, but during the pendency of the appeal, McDonald died from causes unrelated to the dog bite. The name of the administrator of his estate was substituted as petitioner on the appeal, but the opinion refers to the petitioner as "McDonald" throughout to maintain continuity.

Procedural History: The case is currently before the Arizona Supreme Court. At the trial court level, the jury considered whether Klein was negligent when he released his dog and whether his conduct was justified. The court permitted evidence of factors established in the U.S. Supreme Court case *Graham v. Connor*¹ to evaluate reasonableness of use of force by officers. In addition, the court instructed the jury that the defendants bore the burden of proving that Officer Klein's actions were justified. The jury found in favor of McDonald but found him five percent at fault. The jury awarded him \$617,500 in damages. Defendants moved for a new trial but were denied.

¹ 490 U.S. 386 (1989).

In a split decision, the court of appeals affirmed the verdict. Rather than decide whether Arizona law recognizes a tort of “negligent use of excessive force,” the court of appeals found that McDonald could recover for damages resulting from Klein’s negligent “evaluation of whether to intentionally release” his canine.² The court also found that justification statutes did not apply to negligence claims and rejected defendants’ arguments that evidence of the *Graham* factors were inadmissible.³

The Arizona Supreme Court granted review to determine whether the trial court and court of appeals properly decided several issues of statewide significance.

Issues:

- (1) Can an officer’s intentional actions give rise to a negligence claim?
- (2) In response to such a negligence claim, may an officer submit a defense of justification under A.R.S. section 13-409, and, if so, which party should bear the burden of proof?
- (3) Should the trial court have excluded testimony of the *Graham* factors?

Holding:

- (1) Intentional use of force by an officer can only give rise to a claim of battery, not negligence.
- (2) A.R.S. section 13-409 provides law enforcement officers a justification defense in actions for battery. The justification defense is inapplicable in negligence actions. The officer, as defendant, bears the burden of proving a justification defense in a civil case by a preponderance of the evidence.
- (3) Expert witnesses may introduce *Graham* factors for limited purposes but may not suggest to the jury that the *Graham* factors are legally required or that they control a determination of justification.

Disposition: The opinion of the court of appeals was vacated and the trial court’s judgment was reversed. The case was remanded to the trial court for entry of judgment in favor of defendants on the negligence claim.

Rule: (1) Negligence and intentional torts are mutually exclusive grounds for liability. Intentional use of force by an officer cannot give rise to a negligence claim. (2) Defendants bear the burden of proving an affirmative defense in civil cases.

² Ryan v. Napier, No. CV-17-0325-PR, 2018 WL 4016372, at ¶ 11 (Ariz. Aug. 23, 2018) (quoting Ryan v. Napier, 406 P.3d 330, 335 (Ariz. Ct. App. 2017)).

³ *Id.*

Reasoning:

- **Negligence versus intentional torts:** Negligence claims and intentional tort claims are mutually exclusive and have distinct elements.⁴ The elements of negligence are a duty of care, a breach of that duty, a causal connection between the breach and the injury inflicted, and provable damages.⁵ Intent in a negligence case is immaterial.⁶ On the other hand, intent is the principle element in an intentional tort claim.⁷ The court quoted the Restatement (Second) of Torts for a definition of intent: “[T]he actor desires to cause [the] consequences of his act, or that he believes that the consequences are substantially certain to result from it.”⁸ Since prevailing on a claim of battery requires proof that the defendant intended to cause the harmful conduct, “there is no such thing as a negligent battery.”⁹

The court also expressed concern that permitting a negligence claim based solely on an officer’s intentional use of force would allow defendants to “plead around” statutory provisions intended to provide justification defenses in intentional tort claims.¹⁰ By statutory provision, an officer who intentionally employs physical force is “presumed to [have been] acting reasonably,” and the officer’s employer is “presumed to have reasonably hired and trained” the officer.¹¹ The mandated presumption provisions have immunity, insurance, and evidentiary implications and their application “should not depend on clever pleadings.”¹² When an officer’s intentional use of force is at issue, plaintiffs may plead a negligence claim based on conduct other than the intentional conduct, or they may plead battery and negligence as alternate theories if the evidence can be interpreted to support either theory.¹³ But Arizona law does not permit a negligence claim based solely on intentional physical conduct by an officer.¹⁴

- **Justification statutes and burden of proof:** A.R.S. section 13-409 provides immunity from civil liability for officers when they use *reasonable* physical force.¹⁵ Since negligent behavior is by definition *unreasonable*, A.R.S. section 13-409 is inapplicable in negligence actions.¹⁶ Arizona statutes do not specify who bears the burden of proof for a justification defense in civil cases.¹⁷ Historically, the court has

⁴ *Id.* at ¶ 16 (comparing *Wells Fargo Bank v. Ariz. Laborers, Local No. 395 Pension Tr. Fund*, 38 P.3d 12, 21 (Ariz. 2002)).

⁵ *Id.* at ¶ 17.

⁶ *Id.*

⁷ *Id.* at ¶ 18.

⁸ RESTATEMENT (SECOND) OF TORTS § 8A (AM. LAW INST. 1965).

⁹ *Ryan*, 2018 WL 4016372, at ¶ 21 (citing DAN B. DOBBS ET AL., *THE LAW OF TORTS* § 31.77 (2d. ed. 2011)).

¹⁰ *Id.* at ¶ 23.

¹¹ ARIZ. REV. STAT. § 12-716(A)(1)–(2).

¹² *Id.* at ¶ 26.

¹³ *Id.* at ¶ 31.

¹⁴ *Id.* at ¶ 32.

¹⁵ *Id.* at ¶ 36.

¹⁶ *Id.*

¹⁷ *See* ARIZ. REV. STAT. §§ 13-409, -413.

held that defendants in civil cases bear the burden of proving affirmative defenses.¹⁸ The ambiguity that led to the issue in this case arose in 2006, when the legislature amended A.R.S. section 13-205(A) to read that a defendant “shall prove any affirmative defense raised by a preponderance of the evidence,” but excluded justification defenses from the category of affirmative defenses.¹⁹ The court held that the prohibition on justification defenses as affirmative defenses applies only in criminal cases, and the amendment did not change the common law standard and that defendants, including law enforcement officers, still bear the burden of proving any justification defense by a preponderance of the evidence in a civil case.²⁰ This holding aligns with the burden placed on officers to prove non-statutory justification defenses.²¹

- ***Graham* factors:** Over defendants’ objection, the trial court permitted McDonald’s expert witness to explain the *Graham* factors to the jury. The witness, who was an expert in police tactics, described the factors as “based on a United States Supreme Court case” and accepted “nationwide” as the standard for reasonableness.²² The expert explained how Officer Klein was trained under the *Graham* factors and how his actions were unreasonable based on that standard.²³ A witness for the defense also testified about the *Graham* factors and stated that he believed that Officer Klein acted reasonably in light of the factors.²⁴ The court agreed with the defendants that permitting a witness to present the *Graham* factors to the jury could create confusion because it could “unduly elevate the expert’s opinion” in the eyes of the jury and give jurors the impression that *Graham* is the legal standard for determining whether an officer’s actions were justified under section 13-409.²⁵ The court held that an expert witness who reasonably relied on the *Graham* factors in forming an opinion should be permitted to explain them to the jury.²⁶ However, to reduce the chance of prejudice, experts should refer to *Graham* without informing jurors that it is a United States Supreme Court case, as that could give them the impression that the case is controlling.²⁷ In addition, witnesses may not suggest that the factors constitute the legal standard for a jury’s determination of reasonableness.²⁸ It is for the judge, and not an expert witness, to instruct the jury on the appropriate legal standard to apply.²⁹

¹⁸ *Ryan*, 2018 WL 4016372, at ¶ 39.

¹⁹ *Id.* at ¶ 40 (citing ARIZ. REV. STAT. § 13-205(A)).

²⁰ *Id.* at ¶ 44–46.

²¹ *Id.* at ¶ 45.

²² *Id.* at ¶ 48.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at ¶ 52.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at ¶ 54.

²⁹ *Id.* at ¶ 51.