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HAYLEY STEINBERG,

Plaintiff,

v.

PHILIP D'ALONZO,

Defendant.

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION

BURLINGTON COUNTY

CONSOLIDATED DOCKET NO. BUR-L-001630-16

CIVIL ACTION

**ORDER GRANTING SUMMARY
JUDGMENT TO DEFENDANT, PHILIP
D'ALONZO**

PHILIP D'ALONZO,

Plaintiff,

v.

HAYLEY D. STEINBERG, DIANNE
STEINBERG, JOHN DOES ONE,
TWO AND THREE,

Defendants.

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION

BURLINGTON COUNTY

DOCKET NO. BUR-L-000440-16

CIVIL ACTION

ALLSTATE NEW JERSEY
INSURANCE CO.,

Plaintiff,

v.

HAYLEY D. STEINBERG; DIANNE
STEINBERG; PHILIP D'ALONZO;
JOHN DOE A to Z; XYZ Entity A to Z,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
BURLINGTON COUNTY
DOCKET NO. BUR-L-1294-17

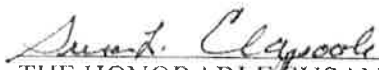
CIVIL ACTION

THIS MATTER having been opened to the Court by Parker McCay P.A., attorneys for Defendant, Philip D'Alonzo, for an Order granting summary judgment, and the Court having read all submissions and heard argument of counsel, and for good cause shown;

IT IS on this 2 day of October, 2018, **ORDERED** that summary judgment be entered in favor of defendant, Philip D'Alonzo, dismissing the Complaint with prejudice and without costs; and,

IT IS FURTHER ORDERED, that plaintiff, Hayley Steinberg, is hereby barred from bringing claims that arise in tort in regard to the Complaint; and.

IT IS FURTHER ORDERED, that a copy of this Order shall be served on other parties within seven (7) days from the date of this Order.


THE HONORABLE SUSAN L. CLAYPOOLE, J.S.C.

LAW OFFICE
PARKER McCAY P.A.

JUDGE'S CHECKLIST

X Opposed

See Attached Statement of Reasons

STATEMENT OF REASONS

Overview

This matter comes before the Court on Defendant Philip D'Alonzo ("Defendant")'s Motion for Summary Judgment. Specifically, Defendant argues that Plaintiff Hayley Steinberg ("Plaintiff")'s claim of excessive force is unsupported by the record, and that he is subject to qualified immunity. As such, Defendant asserts that he is entitled to judgment as a matter of law. Plaintiff has filed opposition to this Motion. Oral Arguments were held on this matter on September 28, 2018.

Standard

A Motion for Summary Judgment is governed by R. 4:46-2 of the New Jersey Court Rules. This rule provides that summary judgment shall be "rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2.

The case of Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995), sets forth the standard for a trial court to apply when determining whether an alleged disputed issue should be considered "genuine" for purposes of R. 4:46-2. The Brill court stated that:

Under this new standard, a determination whether there exists a "genuine issue" of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.

142 N.J. at 540.

The Brill court further clarifies that, "[i]f there exists a single, unavoidable resolution of the alleged disputed issue of fact, that issue should be considered insufficient to constitute a 'genuine' issue of material fact for purposes of R. 4:46-2." Id. Rather, when the evidence "is so one-sided that one party must prevail as a matter of law, the trial court should not hesitate to grant summary judgment." Id., citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986).

Discussion

This matter arose from a wellness check on or about August 2, 2014 during which Defendant, a police officer in the Township of Medford, County of Burlington, State of New Jersey, was brought to the home of Plaintiff and Diane Steinberg regarding a request of Diane Steinberg regarding problems with her daughter, the Plaintiff. (Df. Br. p. 2; Df. Statement of Undisputed Material Facts "SUMF" ¶¶ 2-6). Specifically, Defendant was advised that Plaintiff had a past drug problem. (Df. Br. p. 2). Plaintiff and two social workers from the Department of Child Protection and Permanency visited the home of Plaintiff, finding her under the influence of heroin. (Id. at 2-3; Df. SUMF ¶¶ 7-12). During the course of the visit, it is alleged that Defendant found heroin in the possession of Plaintiff and, thereafter, Defendant and Plaintiff engaged in a physical

altercation culminating in Plaintiff's arrest. (Df. Br. p. 3; Df. SUMF ¶¶ 10-31; Pl. Counterstatement of Facts ¶¶ 1-7).

On or about August 2, 2016, Plaintiff brought the instant action, alleging "Defendant used excessive force during the arrest causing Plaintiff to suffer injuries." (Df. Br. p. 3). While Plaintiff did not state whether the claim was grounded in either the Fourth Amendment of the United States Constitution or common law, Defendant argues that Summary Judgment is warranted under either claim. (*Ibid.*).

As an initial matter, the Court notes that Defendant presented arguments supporting its assertion that any tort claims alleged under the New Jersey Tort Claims Act must fail for lack of notice. (*Id.* at 10-12). However, Plaintiff, in her opposition papers, "concedes that defendant is entitled to summary judgment as to any state tort claims. Plaintiff concedes no notice was given and therefore plaintiff did not file seeking state claim relief." (Pl. Opp. p. 1). Therefore, it is unnecessary for the Court to address the matter further.

"[E]xcessive force in the course of an arrest is properly analyzed under the Fourth Amendment." *Abraham v. Raso*, 183 F.3d 279, 288 (3d Cir. 1999) (citing *Graham v. Connor*, 490 U.S. 386, 393-94 (1989)). "To state a claim for excessive force as an unreasonable seizure under the Fourth Amendment, a plaintiff must show that a 'seizure' occurred and that it was unreasonable." *Id.* (citing *Brower v. County of Inyo*, 489 U.S. 593, 599 (1989)). "Determining whether the force used to effect a particular seizure is 'reasonable' under the Fourth Amendment requires a careful balancing of 'the nature and quality of the intrusion on the individual's Fourth Amendment interests' against the countervailing governmental interests at stake." *Graham, supra*, 490 U.S. at 396 (quoting *Terry v. Ohio*, 392 U.S. 1, 8 (1968)).

The courts have long recognized "that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." *Ibid.* (citing *Terry, supra*, 392 U.S. at 22-27).

"Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers," violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation.

Id. at 396-97 (internal citations omitted).

Our courts have held that the "inquiry in an excessive force case is an objective one: the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Id.* at 397 (citing *Scott v. United States*, 436 U.S. 128, 137-139 (1978); *Terry, supra*, 392 U.S. at 21). This inquiry is "judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id.* at 396.

According to Defendant, a Motion for Summary Judgment cannot survive bare accusations and self-serving statements not backed by any evidence. (Df. Br. p. 7, citing *Peterson v. Township of Raritan*, 418 N.J. Super. 125, 132 (App. Div. 201); *Heyert v. Taddese*, 431 N.J. Super. 388, 413-14 (App. Div. 2013)). Defendant argues that Plaintiff has admitted in deposition and video

testimony to striking Defendant in the face. (*Ibid.*). Therefore, an officer moving a flailing, hostile individual to the ground in order to secure the officer's safety is, according to Defendant, objectively reasonable. (*Ibid.*). Further, Defendant submits that the record is so one-sided as to warrant summary judgment. (*Ibid.*). Specifically, Defendant notes that the record contains deposition testimony from the Defendant and two neutral DCPD employees which state that Defendant did not "punch, strike, or choke plaintiff." (*Id.* at 8, citing Smith Dep. 48-22 to 49-12; Sidweber Dep. 32-10 to 32-23; D'Alonzo Dep. 100-9 to 100-20; Ex. H; Ex. I). In fact, Defendant contends that the only evidence to the contrary is Plaintiff's deposition. (*Ibid.*).

Further, Defendant contends that Plaintiff's claim fails as he is subject to qualified immunity. (*Ibid.*). "[G]overnment officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory and constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). "Qualified immunity operates 'to protect officers from the sometimes 'hazy border between excessive and acceptable force.'" Leopardi v. Township of Maple Shade, 363 N.J. Super. 313, 330-31 (App. Div. 2003) (quoting Saucier v. Katz, 533 U.S. 194, 206 (2001))."

Qualified immunity claims involve a two-step analysis. First, the court must consider whether, "[t]aken in the light most favorable to the party asserting the injury . . . the facts alleged show that the officer's conduct violated a constitutional right." If there is no constitutional violation established, then the inquiry is at an end. Where a constitutionally established violation can be made out on a favorable view of the plaintiff's submissions, the next question to be decided is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation confronting the officer. This second step "must be undertaken in light of the specific context of the case, not as a broad general proposition."

Id. at 327-28 (internal citations omitted).

Defendant does not dispute that he used force to control and arrest Plaintiff; however, he does argue that police officers are entitled to use a level of force consistent with that asserted against him. (Df. Br. p. 9). Defendant cites to the New Jersey Attorney General Guidelines which state:

A law enforcement officer may use physical force or mechanical force when the officer reasonably believes it is immediately necessary at the time:

- (a) To overcome resistance directed at the officer or others; or
- (b) To protect the officer, or a third party from unlawful force; or
- (c) To protect property; or
- (d) To effect other lawful objectives, such as to make an arrest.

(*Id.* at 9-10, quoting NJAG Force Guidelines, I(A)(1)).

Based on these guidelines, Defendant submits that his use of force against Plaintiff was neither "incompetent nor in knowing violation of the law" and fell within the guidelines put forth by the New Jersey Attorney General. (Id. at 10).

In opposition, Plaintiff first argues that she has not put forth bare assertions or self-serving allegations. (Pl. Opp. p. 2). Rather, Plaintiff cites to record evidence that she was examined in the emergency room shortly after the incident with Defendant. (Id., Ex. B). According to the triage assessment, Plaintiff had a swollen lip. (Ibid.). Further, The Deposition testimony of Tami Sidweber alleges that she saw blood coming from Plaintiff's mouth. (Ibid.). Another witness, Cynthia Smith, also testified as seeing blood coming from Plaintiff's mouth. (Ibid.). This, according to Plaintiff, established more than bare, self-serving allegation. (Ibid.).

In addition, Plaintiff contends that Defendant's reliance on Peterson and Hevert to support his claims that Plaintiff's testimony lacks sufficient reliability and therefore cannot defeat a motion for summary judgment is misguided. (Id. at 3). Specifically, Plaintiff argues that the court in Peterson held that the plaintiff was attempting to create a factual dispute out of something which it had no support. (Ibid., citing Peterson, supra, 418 N.J. Super. at 132). In Hevert, Plaintiff contends that the court held in a similar fashion. (Id. at 3-4, citing Hevert v. Taddese, 431 N.J. Super.). Essentially, Plaintiff argues that these cases stand for the proposition that a plaintiff cannot "conjure a factual dispute out of thin air," however Plaintiff has presented sufficient evidence to withstand summary judgment. (Id. at 4).

Finally, Plaintiff argues that there exists a genuine issue of material fact as to whether the force used by Defendant was excessive. (Ibid.). To support her assertion, Plaintiff cites to Bustamante v. Borough of Paramus which held in relevant part:

This, in considering whether plaintiff's § 1982 claim was insufficient as a matter of law, the motion judge was obligated to credit his allegation that defendants continued to attack him after he was in custody. Whether that alleged conduct was reasonable under the "totality of the circumstances," is a question that could not be resolved on a motion brought pursuant to Rule 4:6-2(e)."

Bustamante v. Borough of Paramus, 413 N.J. Super. 276, 297-98 (App. Div. 2010).

Based on the above, Plaintiff argues that her allegations that Defendant punched her on the side of her head and kicked and stomped her, combined with the record evidence of her injuries, leads to a conclusion that there exists genuine issues of material fact. (Pl. Opp. p. 5). Further, Plaintiff submits that this reasoning is also applicable to Defendant's argument that he is entitled to qualified immunity as she specifically disputes whether the force used was excessive. (Ibid.). Plaintiff also notes that Defendant has stated that "Plaintiff, high on heroin at the time of the incident is simply guessing as to what occurred." (Id. at 6). Therefore there is "no corroboration of the extent to which Plaintiff may or may not have been affected by her use of heroin," nor is there expert opinion provided. (Ibid.).

In reply, Defendant states that Plaintiff has based her opposition merely on providing alternative facts; however, there is no record evidence to support any of Defendant's allegations.

(Pl. Rpl. p. 1-2). Specifically, Defendant notes that two independent witnesses provided testimony in which they agreed that Defendant acted “professionally” and that “at no point did [Defendant] strike, punch or kick [Plaintiff.]” (*Id.* at 2: see also Pl. Br. Ex. D 24:16-25:25; Pl. Br. Ex. E 30:9-32:23).

Further, Defendant contends that Plaintiff’s reliance on Bustamante is misplaced as that case revolved around the standards for a Motion to Dismiss pursuant to R. 4:6-2(e) rather than one for Summary Judgment. (*Id.* at 3). Even taking Plaintiff’s alleged injuries as true, Defendant reiterates his point that police officers are permitted to use force necessary to overcome the arrestee’s actions, and at no point did the force used rise to the level of excessive. (*Id.* at 3-4). Citing back to the New Jersey Attorney General Guidelines, Defendant notes that the Guideline defines physical force as:

1. Physical force involves contact with a subject beyond that which is generally utilized to effect an arrest or other law enforcement objective. Physical force is employed when necessary to overcome a subject’s physical resistance to the exertion of the law enforcement officer’s authority, or to protect persons or property. 2. Examples include wrestling a resisting subject to the ground, using wrist locks or arm locks, striking with the hands or feet, or other similar methods of hand-to-hand confrontation.

(*Id.* at 4, quoting NJAG Force Guidelines, Definitions (C)).

During Oral Arguments, Defendant stated that a mere bloody lip does not create an inference of excessive force. Rather, two independent witnesses have confirmed that Defendant acted professionally during the interaction. Further, in Plaintiff’s video deposition she did not mention being either punched or kicked by Defendant, and she failed to raise these claims in the statements she made only hours after the incident. Therefore, according to Defendant, the totality of the circumstances lead to a finding of summary judgment. Plaintiff countered, arguing that the Court is not to look to the weight of the evidence. It is for a jury to determine credibility. Here, according to Plaintiff, there is evidence that there was blood on the sofa, the independent witnesses saw the blood, and she was treated in the emergency room after the incident. This, Plaintiff argues, creates a genuine issue of material fact which precludes summary judgment.

As an initial matter, this Court finds Plaintiff’s reliance on Bustamante misplaced. The court there made clear that the holding was limited to cases in which a party brought a Motion to Dismiss pursuant to R. 4:6-2(e). Specifically, the court stated: “We only hold that as defendants’ motion sought relief under Rule 4:6-2(e), dismissal was improper.” Bustamante, supra, 413 N.J. Super. at 298. Therefore, the limited holding in that case is not controlling in the current motion for Summary Judgment.

As stated above, our courts have a long held that an inquiry into excessive force is an objective one. Graham, supra, 490 U.S. at 397. Police officers are permitted to use reasonable force necessary in order to effectuate a valid seizure, and the courts will not find every “push or shove” to be a violation of one’s Fourth Amendment rights. *Id.* at 396-97. The record before this Court is completely devoid of any evidence to suggest that the actions of Defendant may rise to the level

of impermissible excessive force. While Plaintiff asserts that she was punched, stomped, and kicked, there is no evidence, other than her own testimony, to suggest this to be the case. Rather, the record is replete with deposition testimony in which it is categorically denied that Defendant did any of those. (Pl. Br. Ex. D Smith Dep. 24:16-25:25; Pl. Br. Ex. E Sidweber 30:9-32:23; D'Alonzo Dep. 100-9 to 100-20). While there is evidence that Plaintiff had a swollen lip and that she had bled from her mouth, there are no facts to suggest that any excessive use of force was used by Defendant to cause these injuries. Rather, the record reflects, and Plaintiff admits, that Plaintiff acted as the initial aggressor by throwing her wallet at Defendant and swinging her arms at him, after which Defendant used reasonably necessary force in order to subdue her. Therefore, this Court finds that Defendant did not use excessive force in violation of Plaintiff's Fourth Amendment rights.

Based on this finding, the Court also finds that the first step in the qualified immunity analysis has been satisfied. As such, this Court also finds that Defendant is entitled to qualified immunity.

For the foregoing reasons, Defendant's Motion for Summary Judgment is hereby **GRANTED**. Plaintiff's Complaint is hereby dismissed with prejudice.

This Court also Orders that Plaintiff is barred from bringing any claims that arise in tort in regards to this claim.