NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2073-06T3

RUSSELL JOHNSTON,

Plaintiff-Appellant,

v.

PATROLMAN BRYAN BOCCANFUSO, WASHINGTON TOWNSHIP POLICE DEPARTMENT, WASHINGTON TOWNSHIP, OFFICER EDWARD DEVINE, OFFICER CHESTER EMBLEY, HAMILTON TOWNSHIP POLICE DEPARTMENT, HAMILTON TOWNSHIP, KELLI MITCHELL AND ROBERT WOOD JOHNSON UNIVERSITY HOSPITAL AT HAMILTON,

Defendants-Respondents.

Submitted September 25, 2007 - Decided October 23, 2007

Before Judges Coburn and Fuentes.

On appeal from Superior Court of New Jersey, Law Division, Mercer County, Docket Number L-103-03.

Kardos, Rickles, Sellers & Hand, attorneys for appellant (Marc I. Rickles, on the brief).

Lenox, Socey, Wilgus, Formidoni, Brown, Giordano & Casey, attorneys for respondents Bryan Boccanfuso, Washington Township Police Department and Washington Township (George Wilgus, III, on the brief).

Mark W. Catanzaro, attorney for respondents Edward Devine and Chester Embley.

PER CURIAM

Plaintiff Russell Johnson appeals from the order of the Law Division granting defendants' summary judgment motion. In his cause of action, plaintiff alleged that police officers from Washington and Hamilton Townships used excessive force in the process of physically restraining him to permit medical staff employed by Robert Wood Johnson Hospital to extract a sample of his blood for the purpose of determining his blood alcohol content (BAC). At the time this occurred, plaintiff had been arrested and charged with driving while under the influence of alcohol (DWI).

The motion judge held that the law enforcement defendants were entitled to qualified immunity because, under the circumstances, the actions taken by the police officers were objectively reasonable, and thus entitled to the protections afforded by the qualified immunity doctrine. Plaintiff argues, however, that he presented sufficient evidence from which a rational jury could find that the degree of force employed here was excessive and amounts to a compensable claim against defendants. We disagree with plaintiff's argument and affirm.

In reviewing a matter on summary judgment, we will apply the same standards applicable in the trial court. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 536-37 (1995); Prudential Property & Cas. Ins. Co. v. Boylan, 307 N.J. Super.

162, 167 (App. Div.) certif. denied, 154 N.J. 608 (1998); R. 4:46-2(c). Here, because the judgment presented for our review involved purely legal determinations, we owe no special deference to the trial court's analysis and ultimate legal conclusions. Shaler v. Toms River Obstetrics & Gynecology Assocs., 383 N.J. Super. 650, 657 (App. Div.), certif. denied, 187 N.J. 82 (2006).

Plaintiff presented evidence, in the form of deposition testimony, indicating that police officers from both municipalities injured him in the process of placing a handcuff onto his wrist. According to plaintiff, one officer "hung" on his wrist "with his weight." Plaintiff's fiancée Cynthia Baxter submitted a certification in opposition to defendants' summary judgment motion corroborating plaintiff's version of what took place.

Plaintiff presented the report of Michael S. Grenis, an orthopedic doctor who opined that as a result of this trauma, plaintiff sustained a permanent injury to his wrist, with unabated symptoms of "numbness" and "hypersensitivity." In this light, Dr. Grenis concluded that

> [b]ecause of this condition, [plaintiff] has the restriction that he cannot safely lift heavy or fragile objects as the unpredictable sharp jolts of pain that come from any stress on the wrist which stretch the nerve may cause him to drop such fragile or heavy objects.

Finally, plaintiff also presented a report authored by Joseph J. Stine, a former police chief from Pennsylvania, who, after reviewing the records of the arrest and the encounter at the hospital, concluded that the force used by the officers involved in subduing plaintiff was unreasonable and excessive. Although this conclusion is disputed by defendants, the report was not challenged as inadmissible.

In an excessive force case, a court must determine whether the actions taken by the individual police officers were objectively reasonable in light of the facts and circumstances confronting them. De la Cruz v. Bor. of Hillsdale, 183 N.J. 149, 166 (2005).

In State v. Ravotto, 169 N.J. 227, 231 (2001), the defendant was charged with DWI, and forced to submit to a blood test. The Court concluded that the force used by the police was excessive, and thus warranted the suppression of the test results. Ibid. The Court cited the following facts in support of this conclusion.

> Defendant was terrified of needles and voiced his strong objection to the procedures used on him. He shouted and flailed as the nurse drew his blood. Several persons, including the police, and mechanical restraints were needed to hold defendant down. Defendant's fear is relevant to our analysis. A suspect's reaction to law enforcement officials is part of the fact pattern considered by a

> reviewing court when it determines whether police behavior was objectively reasonable.
>
> [Id. at 241.]

Here, by contrast, the motion judge made the following findings to support her conclusion that the actions taken by the police officers to restrained defendant were objectively reasonable:

> You had a resisting individual that could have been endangering himself and the technician. I think he was waving his arm around and Kelly Mitchell was the technician there to take the blood. So they had to apply sufficient force to enable the test to be taken. And it's very unfortunate that there was an injury but I don't think you reason backwards. I don't think you look at the fact that there was an injury to reason backwards and say they should have done it in some other way.
>
> You had officers there. They had handcuffs. He was a suspect. He was under arrest. He had been taken to the hospital. At the hospital, once they told him he was getting a blood test, he started to resist. They used the handcuff as part of holding his arm down in order to take the blood sample. He wasn't punched. . . . He wasn't hit with a baton. You know, what would a reasonable officer do under the circumstances? Try to hold him down in any way that was possible and reasonable.

It is also noteworthy that plaintiff's objections here were not based on a fear of needles or grounded upon religious belief.

Viewing all of the evidence presented from the light most favorable to plaintiff, we are satisfied that the actions taken

by the police officers to restrain plaintiff were objectively reasonable. Defendants are thus entitled to the protections afforded by the qualified immunity doctrine.

Affirmed.