

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

DAVID RENDER	:	APPEAL NO. C-080371
		TRIAL NO. A-0705308
and	:	
ELIZABETH RENDER,	:	<i>JUDGMENT ENTRY.</i>
Plaintiffs-Appellants,	:	
vs.	:	
FOREST PARK POLICE	:	
DEPARTMENT	:	
and	:	
COREY HALL,	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Plaintiffs-appellants David and Elizabeth Render appeal the trial court's entry of summary judgment in favor of defendants-appellees Forest Park Police Department and Forest Park police officer Corey Hall. For the following reasons, we affirm.

The undisputed facts are as follows. On June 24, 2005, David Render and a friend were stopped by Officer Hall, who was investigating drug activity alleged to

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

have been occurring at the residence that Render had just come from. Render smelled of burnt marijuana. Hall asked Render for identification, which Render refused to give. Hall said that Render dropped something on the ground and began to flee. Hall gave a verbal command for Render to stop, but he did not comply, so Hall “deployed” his Taser. Render fell to the ground. Hall stated that as he rounded the back of his police cruiser, Render pointed a handgun at him. Hall dropped the Taser, reached for his handgun, and retreated. He ordered Render to drop the gun, but Render refused and fled, running into a fence. Render then spun around, and Hall, who later stated in an affidavit that he was in extreme fear for his life, shot Render in the hip.

Render was then arrested. Following a plea of no contest, Render was convicted of resisting arrest with accompanying specifications, having a weapon while under a disability with accompanying specifications, and carrying a concealed weapon. He was sentenced to a prison term.

On June 14, 2007, Render and his wife, Elizabeth, sued Officer Hall and the Forest Park Police Department (“the FPPD”), alleging that Officer Hall had used excessive force by shooting Render while arresting him and that the FPPD had negligently trained and supervised Officer Hall. Further, there were specific claims against Officer Hall for gross negligence, negligent infliction of emotional distress, and battery. Render’s wife asserted a claim for loss of consortium.

In January 2008, the FPPD and Hall moved for summary judgment, submitting the affidavit of Hall. The Renders, ultimately proceeding pro se, filed their own affidavits and opposing memorandum on the date that the court was to

hear and decide the motion. The trial court entered summary judgment in favor of the FPPD and Hall without a written decision.

In this appeal, Render, pro se, brings forth seven assignments of error. We address the assignments of error out of order for ease of discussion. Furthermore, as each assignment of error contests the entry of summary judgment in favor of Hall and the FPPD, we set forth our standard of review here. Summary judgment is appropriate when “(1) no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, the conclusion is adverse to that party.”² We review a trial court’s decision to grant a motion for summary judgment de novo.³

In his sixth assignment of error, Render contends that the trial court erred by entering summary judgment in favor of the FPPD and Hall because there were genuine issues of material fact as to whether the Forest Park Police Department was an entity capable of being sued. We disagree.

It is well established that a city police department is not an entity capable of being sued.⁴ Accordingly, as a matter of law, Render’s claims against the FPPD could not stand. Therefore, the trial court properly entered summary judgment in favor of the FPPD. The sixth assignment of error is overruled.

² *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327, 364 N.E.2d 267.

³ *Koos v. Central Ohio Cellular, Inc.* (1994), 94 Ohio App.3d 579, 641 N.E.2d 265.

⁴ *Richardson v. Grady* (Dec. 18, 2000), 8th Dist. Nos. 77381 and 77403 (city police department is not sui juris); *Ferrell v. Windham Twp. Police Dep’t* (Mar. 27, 1998), 11th Dist. No. 97-P-0035 (village police department is not a legal entity capable of suing or being sued); *Burgess v. Doe* (1996), 116 Ohio App.3d 61, 686 N.E.2d 1141 (Lebanon, Ohio, police department dismissed as not being an entity with the capacity to be sued).

In the second assignment of error, Render argues that summary judgment was improperly granted in Hall's favor because the trial court failed to provide proper notice of the hearing on Hall's motion. Render argues that this failure caused him to file his memorandum in opposition to summary judgment and supporting affidavit out of time. This assignment of error is not well taken.

Hall moved for summary judgment on January 30, 2008, and properly served this motion. Under Loc.R. 14(B) of the Hamilton County Court of Common Pleas, Render had ten days to oppose the motion or to ask for an extension to respond to the motion. He did neither, according to the record before us. Furthermore, after those ten days expire, if neither party has requested oral argument, then the motion is considered ripe for decision.⁵ On April 2, 2008, the trial court granted Hall's motion for summary judgment, as this was the date set forth in the case scheduling order to hear any motions or proceed to trial. Because it is clear that Render had notice of the pending summary-judgment motion,⁶ we overrule his second assignment of error.

In his seventh assignment of error, Render contends that the trial court erred by denying his "motion for leave to file discovery out of time." In his motion for leave to file discovery out of time, Render indicated that he was unaware that the attorney who had filed the original complaint was no longer working on his case, and that this had caused him to miss deadlines. But the record demonstrates that Render was aware that his attorney was no longer working with him as a result of a letter from his attorney dated January 8, 2008. Under these circumstances, we cannot say

⁵ See Loc.R. 14(C)(4) of the Hamilton County Court of Common Pleas.

⁶ See *Ashworth v. Village of Enon* (Oct. 18, 1995), 2nd Dist. No. 95-CA-43 (holding that "the local rules provide constructive notice to the party opposing summary judgment of the date after which the motion may be decided").

that the trial court abused its discretion in denying Render's motion.⁷ The seventh assignment of error is overruled.

In his first assignment of error, Render contends that the trial court erred by entering summary judgment in favor of Hall when genuine issues of material fact existed as to whether Render had posed an immediate threat to the safety of Hall while he was fleeing. This assignment of error is not well taken.

Under this assignment, it appears that Render is arguing that Officer Hall used excessive force in arresting Render. We do not agree. In determining whether excessive force was used, we must look at the totality of the circumstances to determine whether the officer's actions were "objectively reasonable."⁸ In employing this reasonableness standard, we consider "whether the suspect pose[d] an immediate threat to the safety of the officer or others, and whether he [was] actively resisting arrest or attempting to evade arrest by flight."⁹

Here, it is apparent that Officer Hall's use of force was reasonable under the circumstances. First, we note that Render admits that Hall had probable cause to arrest. Hall was investigating drug activity reported by undercover officers. Second, Render pointed a gun at Officer Hall while he was attempting to flee. Therefore, Hall was in reasonable fear of his safety while trying to stop Render from fleeing. Accordingly, Officer Hall's actions were constitutionally permissible here.

The first assignment of error is overruled.

Because we have held that Officer Hall did not use excessive force in arresting Render, the remaining assignments of error are moot. We briefly note that the

⁷ *Miller v. Lint* (1980), 62 Ohio St. 2d 209, 404 N.E.2d 752.

⁸ See *Graham v. Connor* (1989), 490 U.S. 386, 109 S.Ct. 1865.

⁹ *Id.* at 396.

OHIO FIRST DISTRICT COURT OF APPEALS

claims for gross negligence, negligent infliction of emotional distress, and battery were all based on Officer Hall's alleged use of excessive force. As we have held that Officer Hall did not use excessive force, summary judgment was properly entered in favor of Hall on these claims.

The judgment of the trial court is affirmed.

Further, a certified copy of this Judgment Entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., HILDEBRANDT and PAINTER, JJ.

To the Clerk:

Enter upon the Journal of the Court on May 6, 2009

per order of the Court _____
Presiding Judge