Cluff v. Miami-Dade County

United States District Court for the Southern District of Florida

February 01, 2022, Filed

Case No. 21-23342-CIV-WILLIAMS

Reporter

2022 U.S. Dist. LEXIS 18023 *

DIANA B. CLUFF, et al., Plaintiffs, vs. MIAMI-DADE COUNTY, et al., Defendants.

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Opinion

[*1] **ORDER**

THIS MATTER is before the Court on a motion to dismiss (the "Motion") filed byDefendants Miami-Dade County, Miami-Dade Fire Rescue Department ("Miami-Dade Fire"), Captain Artis West, Allison Ault, and Jerome Weldon (collectively, the "Defendants"). (DE 10.) Plaintiffs Diana B. Cluff, on behalf of herself and the Estate of

Gustavo Beaz, and Jacqueline F. Beaz filed a response in opposition (the "Response")

(DE 14), to which Defendants filed a reply (DE 17). For the reasons set forth below, Defendants' Motion (DE 10) is **GRANTED IN PART AND DENIED IN PART**. Plaintiffs' Amended Complaint (DE 1-1) is: (1) **DISMISSED WITH PREJUDICE** as to Defendant Miami-Dade Fire in full; (2) **DISMISSED WITH PREJUDICE** as to Counts III through VI as alleged by Plaintiff Cluff and Plaintiff Beaz as individuals;1 (3) **DISMISSED WITHPREJUDICE** as to Counts I and II; and (4) **REMANDED** for further proceedings as to

1 Plaintiffs consent to the dismissal of all claims against Defendant Miami- Dade Fire, and the claims brought by Plaintiff Cluff and Plaintiff Beaz, individually, as set forth in Counts

I through VI. (DE 14 at 5.)

Counts III through VI as alleged by the Estate and Count VII as alleged by Plaintiff Cluff and [*2] Plaintiff Beaz individually.

I. BACKGROUND

At the motion-to-dismiss stage, the facts as alleged in a plaintiff's complaint are

taken as true. *Silberman v. Miami Dade Transit*, 927 F.3d 1123, 1128 (11th Cir. 2019). Thus, the following facts alleged in Plaintiffs' Amended Complaint frame this discussion.

(DE 1-1.)

On April 2, 2019, Gustavo Beaz pressed the button on his medical alert device for emergency rescue response from Miami-Dade Fire after having difficulty breathing.

(*Id.* at 6.) Miami-Dade Fire received Mr. Beaz's medical alert at 2:06:28 AM. (*Id.*) Defendants West, Ault, and Weldon, who are employed as paramedics by Miami-Dade Fire, were dispatched at 2:06:45 AM. (*Id.*) According to the Patient Care Report ("PCR"), Mr. Beaz's alert was dispatched as incident type "341F - Sick or injured person" with the remark "FD/COMBS,SHERENE;MED ALARM; GUSTAVO BEAZ 67 YOM DIFF BREATHING." (*Id.* at 6-7.) The incident type and remark were available to Defendants West, Ault, and Weldon upon dispatch (*Id.* at 7.) Defendants West, Ault, and Weldon reported being en route at 2:08:28 AM and arrived at Mr. Beaz's home at 2:13:25 AM. (*Id.*) At 2:15 AM, Defendants West, Ault, and Weldon made contact with Mr. Beaz and found him dead upon their arrival ("DOA"). (*Id.* at 9.)

From the [*3] moment Miami-Dade Fire received Mr. Beaz's medical alert to the time

Mr. Beaz was pronounced DOA, less than nine (9) minutes elapsed. The PCR narrative for the events of April 2, 2019 states: "Pt call generated from medical alert as difficulty breathing. On arrival found door unlocked, pt sitting in chair with foam on nose and mouth, unresponsive, cold to touch, apneic, and pulseless, EKG asystole. Pt DOA." (*Id.* at 10.)

Defendant West signed the PCR. (*Id.*) Plaintiffs allege that Defendants West, Ault, and

Weldon should have initiated "medical treatment or cardiopulmonary resuscitation efforts

and expedite[d] transport to the closest appropriate emergency department" pursuant to

"industry standards." (*Id.* at 11.) Instead, Plaintiffs allege the Defendants West, Ault, and

Weldon "stood over [Mr. Beaz] and watched doing absolutely nothing to treat him." (*Id.*)

However, Plaintiffs also note at least one of the defendant paramedics actively engaged

in rescue efforts by pulling a stretcher and other equipment from the emergency vehicle

when Mr. Beaz was pronounced DOA. (*Id.* at 12.)

Plaintiffs allege an investigation of the incident suggests that the defendant

paramedics could or should have acted differently. [*4] (*See id.* at 14.) The "investigating EMS

Captain" purportedly found that "[b]ased on the initial dispatched information, the time of

patient contact along with the confirmed patient rhythm that was documented from the

lifepak, I was not able to find any legitimate reasons in the protocols as to why Rescue

27 made the decision not to resuscitate the patient."2 (*Id.*) Plaintiffs assert that a lack of

action on April 2, 2019 by the defendant paramedics and inadequate training, supervision,

and admonishment by Miami-Dade Fire and the County resulted in the death of Mr. Beaz.

(*Id.*)

2 It should be noted that attribution to the "investigating EMS Captain" does not include a citation or reference to any document, official or otherwise, nor is the Captain nor investigation process identified. Defendants assert the only incident report is the incident report regarding the emergency call in this matter, which contains no language regarding "false and misleading information" that the County "used as the basis for covering up the inadequacies of its employees". (DE 10 at 14 (citing DE 1-1 at 14-15, 17).) The source of this quote is not

identified by name in either Plaintiffs' Amended Complaint or Response. [*5]

Plaintiffs' Amended Complaint was filed in state court on July 8, 2021, and

Defendants removed the matter on September 16, 2021. (DE 1-1 at 1; DE 1.) Plaintiffs raise a total of seven (7) claims against the five (5) Defendants in the Amended

Complaint. (DE 1-1.) However, Plaintiffs consent to the dismissal of Counts I through VI brought by Plaintiff Cluff and Plaintiff Beaz as individuals, and all claims against Miami-

Dade Fire. (DE 14 at 5.) On December 15, 2021, after briefing on Defendants' Motion was complete, the Court entered an order granting in part and denying in part Defendants' motion to stay pending ruling on the motion to dismiss. (DE 18 (granting in part and denying in part DE 11).) This matter was stayed until January 31, 2022. Nonetheless, seventeen (17) days before the expiration of the stay and a month after the Court's order, Defendants filed an interlocutory appeal as to the Court's order granting in part Defendants' motion to stay.3 (DE 19.)

II. LEGAL STANDARD

In ruling on a motion to dismiss for failure to state a claim under Federal Rule of

Civil Procedure 12(b)(6) ("Rule 12(b)(6)"), a court assumes as true all well-pleaded factual

allegations and determines whether they plausibly give rise to an entitlement [*6] for relief.

3 The order granting in part Defendants' motion to stay does not fall within immediately appealable orders anticipated in 28 U.S.C. § 1292(a). Furthermore, the *Cohen v.*

Beneficial Indus. Loan Corp., 337 U.S. 541, 546 (1949), "collateral order" doctrine requires that the order being appealed "[1] conclusively determine[s] the disputed question, [2] resolve[s] an important issue completely separate from the merits of the action, and [3] be effectively unreviewable on appeal from a final judgment." *Johnson v.*

Jones, 515 U.S. 304, 310 (1995) (quoting *P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.,* 506 U.S. 139, 144 (1993)). In light of the fact that Defendants filed their noticeof an interlocutory appeal prior to the stay expiring-or being lifted-or the Court ruling on Defendants' Motion, the disputed question had not been conclusively determined, and the collateral order doctrine does not apply.

Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009). To survive a motion to dismiss, a complaint must contain sufficient facts to state a claim for relief that is plausible on its face. *BellAtlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A court must accept factual allegations as true and draw reasonable inferences in the plaintiff's favor. *See Speakerv. U.S. Dept. of Health & Human Servs. Ctrs. for Disease Control & Prevention*, 623 F.3d

1371, 1379 (11th Cir. 2010); *see also Silberman*, 927 F.3d at 1128. Plaintiffs make a facially plausible claim when they plead factual content from which the court can reasonably infer that defendants are liable for the misconduct alleged. *Iqbal*, 556 U.S. at 678. In determining whether a complaint [*7] states a plausible claim for relief, the Court draws on its judicial experience and common sense. *Id.* at 679.

Although a court resolves all doubts or inferences in the plaintiff's favor, the plaintiff bears the burden to frame the complaint with sufficient facts to suggest that he is

entitled to relief. *Twombly*, 550 U.S. at 556. A pleading that offers labels and conclusions, a formulaic recitation of the elements of a cause of action, or naked assertions devoid of further factual enhancement will not stand. *Id.* at 557. Dismissal pursuant to a Rule 12(b)(6) motion is warranted "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations of the complaint." *Shands*

Teaching Hosp. & Clinics, Inc. v. Beech St. Corp., 208 F.3d 1308, 1310 (11th Cir. 2000)

(quoting *Hishon v. King & Spalding*, 476 U.S. 69, 73 (1984)).

III. ANALYSIS

Defendants seek to dismiss Counts I through IV, VI, and VII of the Amended

Complaint in full, and Count V to the extent it is asserted by Plaintiff Cluff and Plaintiff

Beaz individually. Because Plaintiffs consent to the dismissal of certain claims as brought

by Plaintiff Cluff and Plaintiff Beaz individually, and all claims against Defendant Miami-

Dade Fire, the Court limits its analysis only to contested claims.4

Defendant County, and Defendants West, Ault, and Weldon raise the affirmative [*8] defense of qualified immunity for the claims asserted against them under 42 U.S.C. §

1983 ("Section 1983") by Counts I and II, and contend the Amended Complaint fails to allege that the relevant defendants' conduct violated any constitutional right. (DE 10 at 1;

42 U.S.C. § 1983 (2012).) The Court analyzes Counts I and II below and concludes that they must be dismissed under Rule 12(b)(6).5 As the Court only has original jurisdiction over Counts I and II under 28 U.S.C. § 1331, the Court declines to address the remaining state law claims which are **REMANDED**.

A. Count I: 42 U.S.C. § 1983 claim against the County.

Under Section 1983, local governments can be sued for monetary, declaratory, or injunctive relief for alleged unconstitutional action pursuant to an officially adopted policy, ordinance, regulation, or decision; or a governmental custom which "has not received formal approval through … official decisionmaking [sic] channels." *Monell v. Dep't of Soc.Servs. of City of New York*, 436 U.S. 658, 690-91 (1978). However, "[t]here can be no

4 The remaining contested claims are Counts I through IV, and VI as brought by the Estate, and Count VII as brought by Plaintiff Cluff and Plaintiff Beaz individually.

Defendants did not move to dismiss Count V as alleged against the County by the Estate. (DE 10 at 1.) However, because the Court declines to exercise [*9] supplemental jurisdiction over Plaintiffs' state law claims following the dismissal of Counts I and II, Counts III through VII are remanded. Although the Defendants did not move to dismiss Count V as alleged against the County by the Estate, the Court is remanding Count V *sua sponte* in light of the dismissal of all claims over which the Court has original jurisdiction.

5 As this Order dismisses Counts I and II of Plaintiffs' Amended Complaint and finds Defendant the County and Defendants West, Ault, and Weldon entitled to the defense of qualified immunity, there is no basis for continuing the stay.

policy-based liability or supervisory liability when there is

no underlying constitutional violation." *Cantrell v. McClure*, 805 F. App'x 817, 822 (11th Cir. 2020) (citing *Knightthrough Kerr v. Miami-Dade Cnty.*, 856 F.3d 795, 821 (11th Cir. 2017). Where, as discussed below in Part III(B), a court concludes there is no underlying constitutional violation, a local government cannot be found liable for an alleged Section 1983 violation.

Id. The Court finds that, in addition to failing to plead a violation of Mr. Beaz's constitutional rights, Plaintiffs also fail to adequately plead the existence of: (1) an "officially adopted policy," or (2) a custom which would provide the basis for the County's liability under Section 1983.

First, Plaintiffs concede [*10] the absence of an officially-adopted County policy in their Response. (DE 14 at 12-13 (stating the defendant paramedics' allegedly offensive practices are not the result of "*officially-adopted* policies of the County, they are all part of the County's unofficial customs or practices which permit, condone, and even encourages the kind of egregious behavior as was exhibited by [the County's]

Paramedics towards Mr. Beaz") (emphasis original).)

Second, although Plaintiffs repeatedly raise the specter of a County custom which facilitated the events of April 2, 2019, nowhere in the six (6) pages dedicated to Count I of Plaintiffs' Amended Complaint do they offer any more detail other than the conclusory allegations that Miami-Dade Fire had a custom of "failing to render aid." (DE 1-1 at 20.)

Plaintiffs allege in their Amended Complaint and Response that the County and Miami-

Dade Fire maintained customs of failing to monitor employee compliance with the law, required response times, medical protocols and procedures, and that there was a custom of employees committing constitutional violations, falsifying arrival times, and failing to

provide meaningful medical services. But Plaintiffs neglect [*11] to support such blanket

assertions with citation to any facts or incidents other than the unfortunate events

involving Mr. Beaz.6 (DE 14 at 15; DE 1-1 at 16-22.) Further, Plaintiffs continually refer

in general to a "policy statement, regulation or decision … or … practice and custom"

without any detail or factual predicate throughout their Amended Complaint. (*Id.* at 17-

20.) Even under a liberal notice pleading standard, "labels and conclusions" alone are

insufficient to survive a Rule 12(b)(6) motion to dismiss. *See Twombly*, 550 U.S. at 555

(citation omitted). Plaintiffs cannot manufacture a County or Miami-Dade Fire custom

based on broad-sweeping conclusory statements without citation to any supporting

documents or other specific examples indicative of such a custom.

Plaintiffs cite *Gold v. City of Miami*, 151 F.3d 1346, 1351-52 (11th Cir. 1998), for

the proposition that "evidence of prior incidents is not required to establish a city policy …

[where] the likelihood of constitutional violations was highly predictable so that liability

attaches for [a] single incident." However, Plaintiffs miscite *Gold*, which notes that the

Supreme Court "simply hypothesiz[ed] … a narrow

range of circumstances that a plaintiff

might succeed without showing a pattern of constitutional violations." *Id.* at 1352. That

6 In Plaintiffs' [*12] Response, Plaintiffs point to paragraphs 35 and 61 of the Amended Complaint as "properly ple[d] prior instances of violations including falsification of en route times, failure to follow policies, pronouncing citizens as "Dead on Arrival" when Defendants knew they were in fact alive, etc." (DE 14 at 13.) However, reviewing paragraphs 35 and 61, the Court again finds only conclusory statements such as "[t]his is not the first time that DEPARTMENT Employees either falsify response times or simply fail to comply with policies and procedures … this is a rampant and prevalent practice through the DEPARMENT" and "[t]his is not the first time that the DEPARTMENT's employees … improperly fail to render care …." (DE 1-1 at 8, 14.) The statements are without citation to any report, to any cases involving a similar violation, or to any newspaper accounts indicating even one other instance arising under such alleged customs.

"narrow range of circumstances" is cabined to "failure to equip law enforcement officers with specific tools to handle recurring specific situations," such as the provisioning of police officers with firearms and the obvious need to train such officers on the constitutional [*13] limitations of the use of deadly force. *Id*. Plaintiffs do not explain how the defendant paramedics' actions on April 2, 2019 constitute an area where the likelihood of constitutional violations is as highly predictable as the circumstances discussed in *Gold*.

Thus, based on the foregoing, the Court grants Defendants' Motion as to Count I, and dismisses that claim with prejudice.

B. Count II: 42 U.S.C. § 1983 claim against Defendants West, Ault, and Weldon.

Count II of Plaintiffs' Amended Complaint raises a claim under Section 1983 against Defendants West, Ault, and Weldon as individuals. Plaintiffs allege Defendants

West, Ault, and Weldon "caused Mr. Beaz to be subjected to the deprivation of rights, privileges and immunities secured by the Constitution and the laws of the United States …." (DE 1-1 at 23.) Further, Plaintiffs allege the defendant paramedics "acted with reckless disregard by denying aid to someone they knew to be alive." (*Id.* at 21.) In response, Defendants West, Ault, and Weldon assert the affirmative defense of qualified immunity.

The defense of qualified immunity "shields a government official from liability unless he violates 'clearly established statutory or constitutional rights of which a reasonable [*14] person would have known.' An officer asserting a qualified-immunity defense bears the initial burden of showing that he was 'acting within his discretionary authority.'"

Piazza v. Jefferson Cnty., 923 F.3d 947, 951 (11th Cir. 2019); *see also Mikko v. City of*

Atlanta, 857 F.3d 1136, 1144 (11th Cir. 2017). After the government official makes this

showing, the burden shifts to the plaintiff. To overcome the defense of qualified immunity, a plaintiff must plead facts showing (1) the defendants violated a statutory or constitutional right, and (2) that the right was "clearly established" at the time of the challenged conduct.

Wood v. Moss, 572 U.S. 744, 757 (2014) (citation omitted); *see also Waldron v. Spicher*,

954 F.3d 1297, 1304 (11th Cir. 2020).

The qualified immunity analysis begins with Plaintiffs' assertion that the defendant paramedics "were all acting

in the course and scope of their employment with [Miami-Dade Fire] during all times relevant to this amended Complaint." (DE 1-1 at 26.) Then, throughout the Amended Complaint, Plaintiffs allege "reckless disregard and/or deliberate indifference" by the defendant paramedics such that they deprived Mr. Beaz of his substantive due process rights. (DE 1-1 at 13, 21-23 (stating the defendant paramedics displayed "deliberate indifference and reckless disregard for [Mr. Beaz's] life and health," and "acted with reckless [*15] disregard for the consequences so as to affect the life and health of Mr. Beaz" and "acted with reckless disregard by denying aid to someone they knew to be alive.").) Finally, in their Response, Plaintiffs contend the defendant paramedics knew Mr. Beaz was alive when they allegedly failed to render aid. (DE 14 at 7.)

Although undeniably tragic, the timeline as pled does not support Plaintiffs' claim against the defendant paramedics. The events of the early morning of April 2, 2019 as described by the Plaintiffs involve quick decisions made during an emergency call over the course of minutes, if not seconds. As detailed by Plaintiffs in the Amended Complaint,

Defendants West, Ault, and Weldon arrived at Mr. Beaz's home at 2:13:25 AM. (DE 1-1 at 9.) Finding the door unlocked, the paramedics made contact with Mr. Beaz at 2:15 AM.

(*Id.* at 9-10.) Mr. Beaz was sitting in a chair unresponsive, pulseless and cold to the touch,

with foam on his nose and mouth. (*Id.* at 10 (quoting the PCR narrative).) While one of

the defendant paramedics "was in the process of pulling life-saving equipment out of the

vehicle along with a stretcher" Mr. Beaz was pronounced dead. (*Id.* at 12.) According to

the Amended [*16] Complaint, the defendant paramedics then entered the home with a 3-lead

EKG machine and connected Mr. Beaz to the machine. (*Id.* at 11.) Although Plaintiffs

assert the decisions and actions of the defendant paramedics at Mr. Beaz's home were

inconsistent with "industry standards,"7 the actions-or inactions-of Defendants West,

Ault, and Weldon as pled do not rise to the level of constitutionally infirm conduct.

In a non-custodial setting, "'deliberate indifference' is insufficient to constitute a

due-process violation." *Nix v. Franklin Cnty. Sch. Dist.*, 311 F.3d 1373, 1378 (11th Cir.

2002). The Eleventh Circuit has ruled that "a negligent or grossly negligent rescue attempt

by a state employee is not the equivalent of a deprivation of right to life without due

process of law." *Bradberry v. Pinellas Cnty.*, 789 F.2d 1513, 1516, 1518 (11th Cir. 1986)

(holding a county's alleged failure to adequately train lifeguards is not a constitutional

7 The Plaintiffs selectively quote the one protocol they reference for withholding resuscitation, the Miami-Dade Fire Rescue Medical Operations Manual Protocol 27. (*Compare* DE 1-1 at 9; *with* Miami-Dade County, *Miami-Dade Fire Rescue MedicalOperations Manual Protocol 27: Withholding Resuscitation* (July 25, 2019), https://mdsceh.miamidade.gov/mobi/moms/protocol%2027.pdf.) But Plaintiffs [*17] fail to include pertinent language in Protocol 27 that provides "[c]ardiopulmonary resuscitation will be

initiated on all patients … except those with obvious signs of irreversible biological death."

Additionally, even if the defendant paramedics did not follow Protocol 27, such a violation, as pled, does not indicate the defendant paramedics acted with a purpose to cause harm in a manner which shocks the conscience, as is required in emergency situations. *SeeL.S. ex rel. Hernandez v. Peterson*, 982 F.3d 1323, 1331 (11th Cir. 2020); *infra* at 13. The Court observes, however, that while Defendants' actions may support a negligence claim, the Court declines to analyze the merits of Plaintiffs' state-law claims here.

violation). Consequently, a plaintiff can establish a violation of substantive due process rights only by demonstrating an official's conduct was "arbitrary or conscience shocking in a constitutional sense." *Waldron*, 954 F.3d at 1306. However, in scenarios such as emergency rescues "[w]hen split-second judgments are required, an official's conduct will shock the conscience only when it stems from a 'purpose to cause harm.'" *L.S.*, 982 F.3d at 1331.8

Although a plaintiff can demonstrate a violation of a substantive due process right by pleading facts alleging official conduct was "arbitrary or conscience [*18] shocking in a constitutional sense," Plaintiffs have not set forth sufficient facts to meet their burden. *See*

Waldron, 954 F.3d at 1308 (holding that reckless interference does violate substantive due process rights). Reiteration of "formulaic" phrases or "naked assertions" alone is insufficient to plead a constitutional violation. Even when the facts alleged are viewed in a light most favorable to Plaintiffs, the uncontroverted timeline indicates that the defendant paramedics' behavior could not be characterized as more than gross incompetence. *See Bradberry*, 789 F.2d at 1517 (holding that an allegation of gross negligence because of inadequately trained lifeguards is insufficient to state a claim under Section 1983); *see also Aracena v. Gruler*, 347 F. Supp. 3d 1107, 1116-17 (M.D. Fla.

2018) (reasoning that negligently inflected harm does not shock the conscience in a case where an officer abandoned a security post prior to a mass shooting); *see also Peete v.*

8 Plaintiffs' Response acknowledges the standard articulated in *Waldron* that "although there are limited circumstances where a failure to render aid will be considered a violation of substantive due process rights, 'one such exception to the rule of qualified immunity is where a plaintiff alleges that the official's conduct was 'arbitrary [*19] or conscience shocking in a constitutional sense.'" (DE 14, at 6-7; *see Waldron*, 954 F.3d at 1306.)

Metro. Gov. of Nashville & Davidson Cnty., 486 F.3d 217, 222 (6th Cir. 2007) (reasoning

"improper medical treatment by a government employee, standing alone, does not violate the … Fourteenth Amendment"); *see generally DeShaney v. Winnebago Cnty. Dep't of*

Soc. Servs., 489 U.S. 189, 197-98 (1989) (reasoning that the failure to competently protect does not amount to a conscience-shocking substantive due process violation).

The events of April 2, 2019 are an example of the split-second decisions discussed in *L.S. ex rel Hernandez v. Peterson*, 982 F.3d 1323, 1327, 1331 (11th Cir. 2020). In *L.S.ex rel Hernandez v. Peterson*, the failure of security guards to intervene during a school shooting, including allowing a known potential school shooter into the school, not calling in a code to put the school on lockdown after hearing gunshots, and repeatedly barring emergency responders from entering was not

conscience shocking because the officials' conduct did not stem from a "purpose to cause harm." *Id.* (citing *Waldron*, 954 F.3d at 1307). Here, the defendant paramedics arrived on scene, began to remove emergency equipment, and deployed an EKG. Moreover, between the time of dispatch and the defendant paramedics' determination that Mr. Beaz was DOA, less than nine minutes had elapsed. As in *L.S. ex rel Hernandez v. Peterson*, the facts alleged in this case do not indicate the paramedics' actions [*20] could be more than incorrect, split-second decisions made during a response to an emergency medical alert, let alone actions stemming from a purpose to cause harm.

Even though the Court's analysis is complete after finding a plaintiff fails to meet her burden on either prong of the qualified immunity analysis, the Court also notes Plaintiffs do not show that the defendant paramedics violated a "clearly established" right.

See Piazza, 923 F.3d at 951 (noting that although a court "may consider these two prongs

in either order; an official is entitled to qualified immunity if the plaintiff fails to establish either"). Under Eleventh Circuit precedent, there are three ways a plaintiff can satisfy the "clearly established" requirement: (1) a plaintiff can show a materially similarly case has already been decided by the Supreme Court, the Eleventh Circuit, or the Florida Supreme

Court; (2) a plaintiff can show a broader, clearly established principle should control the novel facts of a particular case; or (3) a plaintiff can show a case "fits within the exception of conduct which so obviously violates the Constitution that prior case law is unnecessary." *Edwards v. City of Fort Myers*, 2021 WL 1627475, at *3 (M.D. Fla. Apr. 27, 2021) (citations, internal quotations omitted).

The one case Plaintiffs [*21] cite in support of the Court finding a "clearly established" right supports the defendant paramedics' argument that they are entitled to qualified immunity. In *Anderson v. City of Minneapolis*, 934 F.3d 876, 879 (8th Cir. 2019), fire department defendants declared the deceased dead after performing a "30-second check

… by holding his wrist which was frostbitten and cold to the touch" and failing to find a heartbeat. The Eighth Circuit noted the defendants "may have performed their duties poorly, but if so, they made an error in judgment of the sort that qualified immunity protects." *Id.* at 883. Similarly, one could claim that Defendants West, Ault, and Weldon may have performed their "duties poorly," but such poor performance is protected by qualified immunity. As in *Anderson*, the defendant paramedics are accused only of failure to render emergency aid.9Because Plaintiffs have failed to overcome the defense of qualified immunity by pleading a violation of a clearly established constitutional or

9 Even if *Anderson* were read to support Plaintiffs' position, it is an Eighth Circuit decision and therefore does not clearly establish a right under Eleventh Circuit jurisprudence. *See*

Edwards, 2021 WL 1627475, at *3.

statutory right or principle, or conduct so obviously violative of the Constitution, Count II of [*22] Plaintiffs' Amended Complaint must be dismissed. *See Corbitt v. Vickers*, 929 F.3d 1304, 1311 (11th Cir 2019), *cert denied*, 141 S. Ct. 110 (2020) (noting "it is proper to grant a motion to dismiss on qualified immunity grounds when 'the complaint fails to allege the violation of a clearly established constitutional right'") (quoting *St. George v. Pinellas*

Cnty., 285 F.3d 1334, 1337 (11th Cir. 2002)); *see also Dukes v. Deaton*, 852 F.3d 1035,

1043 (11th Cir. 2017) (holding conduct violates a clearly established principle when such conduct is so egregious "every objectively reasonable government official" would know it violates federal law) (quotation omitted); *see also Waldron*, 954 F.3d at 1305 (noting conduct so obviously violative of the Constitution encompasses a "narrow category" where the unconstitutional nature "was readily apparent … notwithstanding lack of case law").

C. Counts III through VII: the state law claims.

As Defendants note in their Notice of Removal, Counts III through VII are state law claims over which the Court has supplemental jurisdiction. (DE 1 at 2.) Under 28 U.S.C. § 1367, a district court "may decline to exercise supplemental jurisdiction … if … the district court has dismissed all claims over which it has original jurisdiction." 28 U.S.C. §

1367(c)(3) (2012) ("Section 1367(c)(3)"). Judicial prudence guides this Court, which considers "at every stage of the litigation, the values of judicial economy, convenience, [*23] fairness, and comity in order to decide whether to exercise jurisdiction over a case … involving pendent state-law claims." *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988). The Eleventh Circuit notes "a needless decision would occur when a court decides issues of state law after the federal claims are dismissed before trial; in that

situation, 'the state claims should be dismissed as well.'" *Ameritox, Ltd. v. Millennium*

Labs., Inc., 803 F.3d 518, 531 (11th Cir. 2015).

Remand of the remaining state law claims in this matter pursuant to Section

1367(c)(3) further serves the values of judicial economy given the nascent stage of litigation. Defendants moved to stay litigation early on; therefore, this matter has not proceeded beyond the motion-to-dismiss stage. Further, as Defendants note in their

Motion, at least one of the remaining state law claims may require an analysis of the Florida state legislature's intent. (*See* DE 10 at 16.) The interest of comity guides this Court to refrain from deciding these issues. Thus, under Section 1367(c)(3), the Court remands Counts III through VI as alleged by the Estate and Count VII as alleged by Plaintiff Cluff and Plaintiff Beaz, individually.

IV.CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED** that Defendants' Motion (DE 10)

is **GRANTED IN PART AND DENIED IN PART**.

Plaintiffs' [*24] Amended Complaint (DE 1-1) is:

(1) **DISMISSED WITH PREJUDICE** as to Defendant Miami-Dade Fire in full;

(2) **DISMISSED WITH PREJUDICE** as to Counts III through VI as alleged by

Plaintiff Cluff and Plaintiff Beaz as individuals;

(3) **DISMISSED WITH PREJUDICE** as to Counts I and II; and

(4) **REMANDED** as to Counts III through VI as alleged by the Estate, and Count

VII as alleged by Plaintiff Cluff and Plaintiff Beaz individually.

The Clerk is directed to **TRANSMIT** this matter to the Circuit Court of the Eleventh

Judicial Circuit of Florida, in and for Miami-Dade County, and **CLOSE** this case.

DONE AND ORDERED in Chambers in Miami, Florida, this1st day of February,

2022.

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