

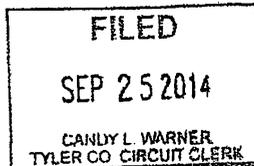
14-1113

IN THE CIRCUIT COURT OF TYLER COUNTY, WEST VIRGINIA

THOMAS JEFFERSON WAGNER,

Plaintiff,

VS.



// CIVIL ACTION NO. 11-C-12 H

David W. Hummel, Jr.
Circuit Court Judge

DEPUTY J. K. MASTON, individually
and as a member of the Tyler County
Sheriff's Department, TYLER COUNTY
SHERIFF'S DEPARTMENT, TRP. S. CURRAN,
Individually and as a member of the
West Virginia State Police, and
WEST VIRGINIA STATE POLICE,

Defendants.

ORDER

Pending in the above-styled civil action is Defendants' joint Motion for Summary Judgment which has been fully briefed and orally argued before the undersigned. Having had an opportunity to maturely consider the respective written and oral arguments of the parties hereto as well as the law to be applied, the Court is of the reasoned opinion that genuine issues of material fact exist to preclude granting the relief sought by the instant dispositive motion.

Standard of Review

Summary judgment is proper where "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 and that the moving party is entitled to

judgment as a matter of law." W.Va. R.Civ.P. 56(c). Material facts are those necessary to establish the elements of a party's cause of action. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

A motion for summary judgment should be granted when it is clear that no genuine issue of fact exists to be tried and inquiry concerning the facts is not desirable to clarify the application of the law. Syllabus Point 3, Aetna Casualty & Surety Co. v. Federal Insurance Co. of New York, 148 W. Va. 160, 133 S.E.2d 770 (1963). Syllabus Point 1, Andrick v. Town of Buckhannon, 187 W. Va. 706, 421 S.E.2d 247 (1992)." Syllabus Point 1, Williams v. Precision Coil, Inc., 194 W. Va. 52, 459 S.E.2d 329 (1995).

At summary judgment stage, the Circuit Court's function is to determine whether a genuine issue exists for trial, not to determine the truth of the matter. Syllabus Point 4, Gooch vs. West Virginia Dept. of Pub. Safety, 195 W. Va. 357, 359, 465 S.E.2d 628, 630 (1995); Syllabus Point 3, Painter v. Peavy, 192 W Va. 189, 190, 451 S.E.2d 755, 756 (1994).

Decision and Ruling

The crux of Defendants' joint motion rests on the contention that the Court should apply qualified or statutory immunity to the "facts" and determine that Plaintiff's claims must be dismissed. If only it were that easy.

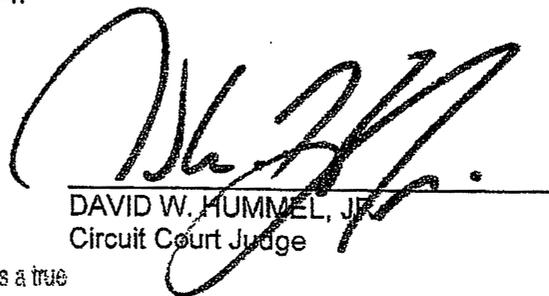
The Court truly respects the exigencies of time and circumstances which law enforcement officers in Tyler County, West Virginia, and around this Wonderful State must operate day-in and day-out. Without fail, each and every day those men and women who have sworn to serve and protect must make swift decisions and take immediate action to carry out their duties. Companion with the authority to act is the responsibility to do so reasonably and without violating a citizen's constitutional rights.

Before the Court is a record laden with genuine issues of material fact. That is not to say that any person or persons who participated in or witnessed the matters that are the subject of the instant civil action are in any way being less than truthful.

WHEREFORE, it is the **ORDER** of this Court that Defendants' joint Motion for Summary Judgment be and hereby is **DENIED**.

It is further the **ORDER** of this Court that the Clerk shall transmit an attested copy of this Order to all counsel of record in accord with W.Va. R.Civ.P. 77(d).

Entered: September 9, 2014.



DAVID W. HUMMEL, JR.
Circuit Court Judge

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.

Attest: Candy D. Warden, Clerk

Circuit Court of Tyler County, West Virginia

By: Amelia K. Wesley, Deputy