

NONPRECEDENTIAL DISPOSITION
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United States Court of Appeals

**For the Seventh Circuit
Chicago, Illinois 60604**

Argued March 27, 2024

Decided July 16, 2024

Before

FRANK H. EASTERBROOK, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 23-2691

LAVITA MCCLAIN,
Plaintiff-Appellee,

v.

MARK REYNOLDS, ET AL.,
Defendants-Appellants.

Appeal from the United States District
Court for the Southern District of
Indiana, New Albany Division.

No. 4:21-cv-00165-SEB-KMB

Sarah Evans Barker,
Judge.

ORDER

Ta'Neasha Chappell died after a medical crisis that began while she was detained at the Jackson County, Indiana, jail. Her Estate filed a lawsuit that included claims against three of the jail's officers for violating Chappell's constitutional rights. The officers sought qualified immunity in a motion for summary judgment, but multiple disputes of fact between the parties led the district court to deny the officers' request. The officers now appeal to us, but it is well-settled that our court will not review a provisional denial of qualified immunity when it is based on a question of fact

as opposed to a question of law. *See Stewardson v. Biggs*, 43 F.4th 732, 734 (7th Cir. 2022); *Bayon v. Berkebile*, 29 F.4th 850, 856 (7th Cir. 2022); *Ferguson v. McDonough*, 13 F.4th 574, 584 (7th Cir. 2021); *Day v. Wooten*, 947 F.3d 453, 459 (7th Cir. 2020), *cert. denied sub nom. Shanika Day v. Wooten*, — U.S. —, 141 S. Ct. 1449, 209 L. Ed. 2d 164 (2021); *Gant v. Hartman*, 924 F.3d 445, 451 (7th Cir. 2019); *Dockery v. Blackburn*, 911 F.3d 458, 464–65 (7th Cir. 2018). We lack jurisdiction and therefore dismiss this appeal.

As relevant to our disposition, the facts are brief, tragic, and viewed in the light most favorable to Chappell’s Estate as the non-movant at summary judgment. *Smith v. Finkley*, 10 F.4th 725, 729 (7th Cir. 2021). In the several hours leading to Chappell’s death on July 16, 2021, she displayed disturbing symptoms including altered states of consciousness and excessive bouts of diarrhea and vomiting. Chappell died approximately two hours after being transported from the jail to a nearby hospital. Lavita McClain, as administratrix and personal representative of the Estate, brought federal and state law claims against employees of the jail. The complaint alleges that three of the defendants, Officers Michael Davisson, Mark Reynolds, and Matt Stillwell, displayed deliberate indifference to Chappell’s serious medical needs in violation of the Fourteenth Amendment because they failed to secure adequate medical care for her.

The officers moved for summary judgment against the Estate, asserting that qualified immunity barred the deliberate indifference claims against them. The Estate disagreed: Qualified immunity does not protect an official if a plaintiff can show: (1) the official violated a statutory or constitutional right, and (2) the right was “clearly established” at the time of the challenged conduct. *See Kemp v. Liebel*, 877 F.3d 346, 350–51 (7th Cir. 2017).

The officers argued in district court that they acted appropriately and did not violate clearly established law because they consulted with the jail’s nurse, Ed Rutan, as soon as they recognized developments in Chappell’s condition. But that contention conflicts with Nurse Rutan’s testimony. He testified that none of the officers reported Chappell’s symptoms to him in the hours preceding her death. Based on these conflicting accounts, the district court reasoned that it could not award summary judgment to the officers because factual disputes foreclosed its ability to answer the qualified immunity question. The court held that qualified immunity does not apply at the summary judgment stage. But notably the court left open the possibility that qualified immunity might apply later in the case.

We agree with the district court that disputed questions of fact currently bar qualified immunity. As our precedent explains, this court generally lacks jurisdiction

under 28 U.S.C. § 1291 to review a district court's denial of summary judgment. *Via v. LaGrand*, 469 F.3d 618, 622 (7th Cir. 2006). Although an exception arises when an interlocutory appeal involves an assertion of qualified immunity, that exception only creates a basis for jurisdiction if qualified immunity depends on a question of law. *Id.* We do not have jurisdiction if the defense hinges on a question of fact. *Id.*

To determine whether qualified immunity depends on a factual question as opposed to a legal one, we examine the record and the arguments on appeal with two questions in mind. *Finkley*, 10 F.4th at 736. First, does the district court decision identify factual disputes as the reason for denying qualified immunity? *Id.* Second, do the defendant-appellant's arguments or stipulations adopt the plaintiff's facts, or do they "make a 'back-door effort' to use disputed facts" instead? *Id.* When the answers to these two questions show disputed facts are what precluded the application of qualified immunity, we lack jurisdiction. *See id.*; *Biggs*, 43 F.4th at 734.

We begin with the district court order. It expressly states that the qualified immunity question for all three officers cannot be answered at present because of disputed facts. As the court properly outlined, to prevail on a deliberate indifference claim, the Estate had to show: (1) there was an objectively serious medical need; (2) the defendant committed a volitional act concerning the decedent's medical need; (3) the act was objectively unreasonable under the circumstances in terms of responding to the decedent's medical need; and (4) the defendant acted "purposefully, knowingly, or perhaps even recklessly" with respect to the risk of harm. *Miranda v. County of Lake*, 900 F.3d 335, 349, 351, 353–54 (7th Cir. 2018). In its analysis of these elements, the district court explains more than once that it cannot apply qualified immunity at summary judgment because the parties dispute a set of facts related to the third element—whether the officers acted unreasonably while responding to Chappell's medical needs.

For Officer Reynolds, the parties dispute whether he reasonably relied on Nurse Rutan's assessment of Chappell and whether Officer Reynolds communicated Chappell's deteriorating condition to jail staff. The district court determined that "disputes of material fact as to whether Officer Reynolds violated Ms. Chappell's rights must be resolved by a factfinder. Whether he is entitled to qualified immunity is a matter the Court will be required to resolve in due course. Summary judgment is, in any event, not appropriate."

The parties also dispute whether Officers Davisson and Stillwell reasonably relied on Nurse Rutan's medical expertise, and the district court said virtually the same thing:

Perhaps . . . a jury might conclude that their actions were unreasonable, since there is no evidence that either of them contacted Nurse Rutan during the early afternoon hours to advise him of Ms. Chappell's quickly deteriorating condition. Having non-medical staff simply observe a seriously ill inmate, rather than obtaining medical help or otherwise delaying her access to medical care, might be viewed as objectively unreasonable. A jury could otherwise find that the officers' reliance on Nurse Rutan was unreasonable because as an LPN with limited authority to diagnose or treat patients, his ability to address or ameliorate the serious medical needs presented by Ms. Chappell was obviously lacking. . . . Thus, summary judgment in favor of either party is unavailable relating to the claims against Defendants Stillwell and Davisson.

In sum, there is no question the district court identified factual disputes as the reason for denying qualified immunity at the summary judgment stage.

The remaining question is whether any of the officers "make a 'back-door effort' to use disputed facts." *Finkley*, 10 F.4th at 736. They do. In their trial and appellate briefing, the officers patently use disputed facts to support their qualified immunity argument. For example, the officers contend they expressly alerted Nurse Rutan when they observed changes in Chappell's condition. But again, that assertion conflicts with Nurse Rutan's testimony. By advancing arguments that invoke disputed facts, the officers engage in precisely the type of back-door efforts that assure us the district court declined to grant qualified immunity on a factual basis and not a legal one. *Finkley*, 10 F.4th at 736. Accordingly, this appeal is DISMISSED for lack of jurisdiction.