IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

DAVID BAKUTIS, et al.	§	
	§	
VS.	§	ACTION NO. 4:21-CV-665-Y
	§	
AARON DEAN, et al.	§	

ORDER DENYING MOTION TO DISMISS

Before the Court is defendant Aaron Dean's motion to dismiss under Rule 12(b)(6) based on his assertion of qualified immunity (doc. 76). For the reasons se out below, the Court will deny the motion.

BACKGROUND

This case arises from the death of Atatiana Jefferson. Plaintiff's complaint alleges that at approximately 2:25 a.m. on October 12, 2019, the Fort Worth Police Department ("FWPD") received a call on a non-emergency line reporting an open front door at Jefferson's residence.[1] Jefferson's neighbor placed the call, but gave no other facts indicative of suspicious activity. Officer Aaron Dean and a second, unidentified FWPD officer, responded to what was dispatched as an "open structure" call approximately three to five minutes later.

[1] All background facts are drawn from the allegations set forth in Plaintiff's complaint, document 74 in the Court's Electronic Case Files System.

Upon arrival, the officers parked their vehicles roughly one block away, out of view of the residence and without activating their emergency lights or sirens. According to Plaintiff, FWPD policy states that suspicious "open structure" calls are treated like active home alarms—as if there were an active burglary in progress. Dean and the unnamed officer proceeded to approach the home without a warrant. They inspected the doors, garage, and vehicles in the driveway and then inspected the rest of the property. Dean did not observe any indications of a disturbance consistent with a burglary in progress.

After these observations, Dean opened a gate to enter the side yard of the residence. By this time, Jefferson, who was inside the home, had become aware that there were individuals outside. Jefferson then approached the window facing the side yard where Dean stood. Dean saw Jefferson's figure in the window and immediately drew his service weapon, pointing it at Jefferson. Dean was simultaneously shining his flashlight into the window, the reflection from which partially obstructed his view.

Dean then shouted: "Put your hands up! Show me your hands!" without announcing himself as a police officer. Before Dean finished issuing the command, he fired a single shot through the window, killing Jefferson.

Jefferson was pronounced dead at the scene. At no point in responding to the call did Dean or the unnamed officer announce themselves as police or give any indication of their presence.

Plaintiff sued, and the Court stayed the case in part pending the outcome of Defendant's criminal trial (See Docs. 1, 37.) On January 11, 2023, the Court lifted the stay after it was notified by the parties that Defendant's criminal charges had been resolved. (Doc. 61.) Defendant moved to dismiss, asserting qualified immunity. (Doc. 70.) And opn March 24, 2023, in accordance with *Schultea v. Wood*, 47 F.3d 1427 (5th Cir. 1995), the Court ordered Plaintiff to file an amended complaint "alleging with particularity all material facts establishing [his] right to recovery as to [Defendant], including detailed facts supporting any contention that the plea of qualified immunity cannot be sustained." (Doc. 73.)

Plaintiff filed his amended complaint on April 24 (doc. 74) and Defendant filed the instant motion to dismiss (doc. 76).

LEGAL STANDARD

To survive a motion to dismiss under Rule 12(b)(6), a plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The Court must accept the complaint's well-pleaded

facts as true and view them in the light most favorable to the plaintiff to determine whether they plausibly give rise to an entitlement to relief. *Sonnier v. State Farm Mut. Auto. Ins. Co.*, 509 F.3d 673, 675 (5th Cir. 2007).

At the motion-to-dismiss stage, a defendant's assertion of qualified immunity does not affect the pleading standard that a plaintiff must meet. *Arnold v. Williams*, 979 F.3d 262, at 266-67(5th Cir. 2020). A plaintiff need only plead "specific facts that both allow the court to draw the reasonable inference that the defendant is liable for the harm he has alleged and that defeat a qualified immunity defense with equal specificity." *Id.*

Government officials performing discretionary functions—functions requiring independent judgment apart from a ministerial task—generally are shielded from suit if their conduct does not violate clearly established statutory or constitutional rights. *Ramirez v. Guadarrama*, 3 F.4th 129, 133 (5th Cir. 2021). "The protection of qualified immunity applies regardless of whether the government official's error is a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). When a defendant invokes qualified immunity, the burden rests on the plaintiff to demonstrate that qualified immunity is inapplicable. *Ramirez*, 3 F.4th at 133.

To defeat an assertion of qualified immunity, a plaintiff must show: (1) the violation of a constitutional or statutory right; and (2) that the right in question was clearly established at the time of the alleged violation. *Id.*; *Pearson*, 555 U.S. at 236. The district court may address either prong first. *Id.* To be clearly established, "[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). For purposes of qualified immunity, the reasonableness of the official's conduct and the clarity of the right in question are merged into one question. *Ramirez*, 3 F.4th at 133–34.

ANALYSIS

I. Plaintiff's claim for excessive force.

To establish a claim for the excessive use of force, a plaintiff must show: (1) an injury; (2) which resulted directly and only from the use of force that was clearly excessive; and (3) that the excessiveness of the force was clearly unreasonable. *Orr v. Copeland*, 844 F.3d 484, 492 (5th Cir. 2016). In cases involving lethal force, an officer's use of force is constitutionally reasonable "[w]here the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the

officer or others." *Crane v. Cty. of Arlington*, 50 F.4th 453, 463 (5th Cir. 2022).

In sum, Plaintiff alleges that Defendant unlawfully used excessive force when he shot and killed Jefferson. (See Doc. 28, at 7.) Plaintiff's complaint sufficiently alleges an excessive force claim on its face. Plaintiff adequately alleges an injury (Jefferson's death) resulting directly from Defendant's use of force (firing while simultaneously commanding Jefferson to "[p]ut [her] hands up!" (Doc. 28, at 7)), and that the force was clearly unreasonable because Jefferson posed no serious threat of physical harm to Defendant. (See Doc. 28, at 5–7.)

The dispositive elephant in the room is whether Jefferson held or threateningly brandished a weapon when Defendant fired the fatal shot. (See Docs. 76, at 13; 79, at 12–14.) Defendant argues that Plaintiff failed to plead that Jefferson was unarmed, and that the law has long recognized that an officer need not wait for a suspect to aim his weapon before using defensive deadly force. (*Id.*, at 17–18.) Defendant hinges the reasonableness of his use of force on the supposition that Plaintiff failed to allege that she **did not** have a weapon. Therefore, Defendant acted as a reasonable officer in believing that she could have had one—justifying lethal force.

But Defendant's position misplaces—and indeed elevates—the plaintiff's burden at this stage. A plaintiff overcoming qualified

immunity must only satisfy Federal Rule 8, save the factual particularity required to defeat the defense. *See Arnold*, 979 F.3d, at 267. Thus, Plaintiff must only plead enough facts to state a plausible claim that Defendant: (1) violated a constitutional right; and (2) the right was clearly established at the time. *See Anderson*, 483 U.S., at 640. This turns on the reasonableness of Defendant's conduct. *Id.* Hence, Plaintiff need not plead that Jefferson was **unarmed**, but must only plead that Defendant acted unreasonably when he deployed deadly force.

Plaintiff's complaint meets this standard. Regardless of whether Plaintiff admits or denies in the complaint that Jefferson possessed a deadly weapon, Plaintiff pleads enough facts to state a plausible claim that Defendant used unreasonable lethal force. *Crane*, 50 F.4th, at 463. Plaintiff specifically pleads that: (1) Defendant drew his weapon the moment he saw Jefferson's "figure" in the kitchen window (doc. 74, at 7); (2) Defendant's view of Jefferson was obstructed by the reflection of his flashlight (*id.*); (3) Defendant did not announce himself as a police officer when he drew his weapon (*id.*); and (4) Defendant fired at Jefferson before finishing his command for her to "[p]ut [her] hands up." (*Id*).

Assuming the veracity of these allegations and drawing all inferences in Plaintiff's favor, Plaintiff states a plausible claim for excessive force specific enough to overcome Defendant's claim of qualified immunity. From these facts, it is permissible

to infer that—despite Defendant's training to treat any individual as a suspect in such a response situation—Defendant did not have a reasonable basis to discharge his weapon before finishing his command. It is arguable from Plaintiff's complaint that he could not see Jefferson's person at all—only her "figure"—which would preclude him from seeing whether she was armed. Thus, Plaintiff states a plausible claim that Defendant lacked the reasonable fear of serious injury necessary to justify his use of lethal force. "Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so." *Crane*, 50 F.4th, at 453 (quoting *Tennessee v. Garner*, 471 U.S. 1, 11 (1985)). Federal precedent has long been clear on this point, meaning Defendant had fair notice that such force was constitutionally impermissible.

Thus, Plaintiff's excessive-force claim has enough specificity to overcome qualified immunity at this stage. Accordingly, Defendant's motion to dismiss Plaintiff's excessive force claim will be denied.

II. Plaintiff's claim for unlawful search.

Defendant similarly argues that Plaintiff's claim for unlawful search should be dismissed because Defendant is entitled to qualified immunity. (Doc. 76, at 22–23.)

Warrantless searches of a home's curtilage, "the home (and) its immediate appurtenances," *Hodges v. United States*, 243 F.2d 281, 283 (5th Cir. 1957), are unreasonable absent a warrant or exigent circumstances. *United States v. Williams*, 581 F.2d 451, 453 (5th Cir. 1978).

Plaintiff's complaint alleges that Defendant violated Jefferson's Fourth Amendment rights when he "entered the side and rear of the property without probable cause or reasonable suspicion." (Doc. 74, at 21–22.) The complaint alleges that Defendant "opened the fence door [and] moved to a window on the side of the home and shined his flashlight into the window." (*Id.*, at 6.) Plaintiff contends that this was unlawful because Defendant had already approached the front of the home, the garage, and the driveway and observed "no signs of disturbance [or] . . . visible evidence of a break-in." (*Id.*)

In his motion to dismiss, Defendant cites no binding authority suggesting that responding to a suspected-burglary-in-progress call **alone** allows an officer to enter the home's curtilage. (See Doc. 76, at 22.) Defendant's reply merely repeats citations to these cases in which other courts have concluded that burglar alarms are sufficient exigencies to justify the warrantless search of a residence. (See Doc. 82, at 9.) Without commenting on their holdings, those cases are distinguishable. Plaintiff does not allege, nor does Defendant dispute, that Defendant was not

responding to an active alarm at the residence. Nor was Defendant responding to an emergency burglary-in-progress call. Indeed, Defendant was responding to a suspicious open-structure call placed on the police department's **non-emergency** line. (Doc. 74, at 4.)

Plaintiff adequately alleges that Defendant entered and searched the home's curtilage without a warrant or justifying exigency. "It is clearly established that warrantless entry into the curtilage of a home is unconstitutional." *Ybarra v. Davis*, 489 F.Supp.3d 624, 628 (N.D. Tex. Sept. 24, 2020) (Pittman, J.) (quoting *Collins v. Virginia*, ___ U.S. ___, 138 S.Ct. 1663, 1670 (2018) ("[T]he Fourth Amendment's protection of curtilage has long been black letter law."). Plaintiff thus pleads sufficient facts to overcome Defendant's assertion of qualified immunity. Accordingly, Defendant's motion to dismiss Plaintiff's unlawful-search claim will be denied.

Defendant alternatively raises the issue of damages for Plaintiff's unlawful-search claim. (Doc. 76, at 23.) Defendant contends that Plaintiff has not pleaded actual damages that were proximately caused by Defendant's alleged conduct. (*Id.*) But "[a] violation of constitutional rights is never *de minimis* . . . a party who proves a violation of his constitutional rights is entitled to nominal damages even when there is no actual injury." *Lewis v. Woods*, 848 F.2d 649, 651 (5th Cir. 1988) (citing *Memphis*

Comm. Sch. Dist. v. Stachura, 477 U.S. 299 n.11 (1986)). This alone defeats Defendant's argument, so the Court will not analyze the damages issue further.

III. Plaintiff's claims under Texas state law.

In his complaint, Plaintiff asserts: (1) a claim for all available wrongful-death damages under Texas law on behalf of Jefferson's parents; and (2) a claim for punitive and exemplary damages under Texas's survivorship statue on behalf of Jefferson's estate. (Doc. 74, at 21–22.)

As to the wrongful-death beneficiary, Defendant contends that Plaintiff has not "proven" that Jerome Escher is Jefferson's biological father. (Doc. 76, at 25–26.) Under Texas law, a wrongful-death action may be maintained for the "benefit of the surviving spouse, children, and parents of the deceased." TEX. Civ. Prac & Rem. CODE ANN. § 71.004. Plaintiff pleads that Jefferson's estate is bringing claims "on behalf of Yolanda Carr and all other persons entitled by law to recover damages." (Doc. 74, at 21.) At the complaint's outset, Plaintiff pleads that "Jerome Escher is the biological father of Atatiana Jefferson [and] Jerome Escher survives his daughter." (*Id.*, at 2.) That is all that is required to survive a motion to dismiss. See FED. R. CIV. P. 8. While the parties concede that Carr's wrongful-death claims were extinguished with her passing, Plaintiff nonetheless alleges that

Jefferson's biological father is still alive. Therefore, Defendant's motion to dismiss Plaintiff's wrongful-death claim for lack of a beneficiary will be denied.

As to the claim for punitive and exemplary damages under Texas law, Defendant focuses his argument on the unavailability of punitive and exemplary damages for wrongful-death beneficiaries. (Doc. 76, at 27–28.) But he does not address those available for Jefferson's estate. Under the Texas survivorship statute, exemplary and punitive damages may be recovered by a deceased's estate notwithstanding the death of the injured party. *Hofer v. Lavender*, 679 S.W.2d 470, 472 (Tex. 1984). Therefore, while Plaintiff may not recover these damages on behalf of Jefferson's wrongful-death beneficiaries, he may do so on behalf of Jefferson's estate. Defendant's motion to dismiss the claims for exemplary and punitive damages will therefore be denied.

CONCLUSION

Because Plaintiff adequately states a claim for excessive force, unlawful search, wrongful death, and exemplary or punitive damages, Defendant's motion to dismiss (doc. 76) is **DENIED.**

SIGNED March 15, 2024.

Terry R. Means

TERRY R. MEANS
UNITED STATES DISTRICT JUDGE