

United States Court of Appeals
For the Eighth Circuit

No. 21-2602

Thomas D. Sailors

Plaintiff - Appellant

v.

Maxwell Hubka, City of Lincoln Police Ofc. #1655, in his individual capacity;
Cole Jennings, City of Lincoln Police Ofc. #1650, in his individual capacity;
Daniel Keyes, Special Administrator of the Estate of Paul Keyes, US Marshal
#3483, in his individual capacity; United States of America; United States Marshal
Service

Defendants - Appellees

Appeal from United States District Court
for the District of Nebraska - Omaha

Submitted: March 7, 2022

Filed: March 10, 2022

[Unpublished]

Before LOKEN, BENTON, and SHEPHERD, Circuit Judges.

PER CURIAM.

Nebraska resident Thomas Sailors appeals the district court's¹ adverse grant of summary judgment on his excessive-force and Federal Tort Claims Act (FTCA) claims. We affirm the grant of summary judgment. See Greer v. St. Louis Reg'l Med. Ctr., 258 F.3d 843, 846 (8th Cir. 2001). As to the excessive-force claim, we agree with the district court that Marshal Keyes's use of force was not objectively unreasonable. See Tennessee v. Garner, 471 U.S. 1, 11-12 (1985); Tatum v. Robinson, 858 F.3d 544, 547 (8th Cir. 2017); Molina-Gomes v. Welinski, 676 F.3d 1149 (8th Cir. 2012). As to the FTCA claims, we agree with the district court that the United States was not liable on the battery claim, as Marshal Keyes's use of force was justified under Nebraska law. See Millbrook v. United States, 569 U.S. 50, 52-53 (2013); Eubank v. Kan. City Power & Light Co., 626 F.3d 424, 427 (8th Cir. 2010); see also Neb. Rev. Stat. §§ 28-1410, 28-1412. We also agree with the district court that the negligent supervision and training claim was derivative of the battery claim, see Schieffer v. Catholic Archdiocese, 508 N.W.2d 907, 913 (Neb. 1993), and conclude that the record does not support a negligence claim based on Marshal Keyes's discharge of his personal firearm, see Zeller v. County of Howard, 419 N.W.2d 654, 657 (Neb. 1988).

Accordingly, we affirm. See 8th Cir. R. 47B.

¹The Honorable Joseph F. Bataillon, United States District Judge for the District of Nebraska.