COURT OF APPEALS
DECISION
DATED AND FILED

May 29, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-2700 **Cir. Ct. No. 99-CV-783**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

FRANKIE GROENKE,

PLAINTIFF-APPELLANT,

V.

TOWN OF PEWAUKEE POLICE DEPARTMENT,
NEIL A. EVANS, PTM KRAEMER AND PTM RIPPLINGER,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Waukesha County: J. MAC DAVIS, Judge. *Affirmed.*

Before Brown, Anderson and Snyder, JJ.

¶1 PER CURIAM. Frankie Groenke appeals from the judgment granting the defendants' motion for summary judgment. He argues on appeal that the court erred when it granted the defendants' motion and denied his own motion

for summary judgment. Because we conclude that the circuit court properly granted summary judgment to the defendants, we affirm.

¶2 In November 1994, police officers searched the home of Groenke's mother pursuant to an arrest warrant.[1] Groenke's mother signed a consent form before the police searched her home. The police also had a search warrant for Groenke's car. As a result of the search, the police recovered various items of stolen property. Groenke was arrested and ultimately convicted of armed robbery and armed burglary.

¶3 Groenke brought this suit under 42 U.S.C. § 1983 against the Town of Pewaukee Police Department and certain police officers alleging unlawful search and seizure, due process violations, conversion and unjust enrichment, based on the search and seizure of property at his mother's home. Both parties moved for summary judgment. After a hearing, the circuit court granted summary judgment to the defendants.

¶4 Our review of the circuit court's grant of summary judgment is de novo, and we use the same methodology as the circuit court. ***M&I First Nat'l Bank v. Episcopal Homes Mgmt., Inc.***, 195 Wis. 2d 485, 496, 536 N.W.2d 175 (Ct. App. 1995). That methodology is well known, and we need not repeat it here. Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. ***Id.*** at 496-97.

¶5 We agree with the circuit court that the defendants were entitled to summary judgment. First, the Town of Pewaukee Police Department is not a

[1] The arrest warrant was for a person unrelated to this action.

suable entity under Wisconsin law. *See* ***Grow v. City of Milwaukee***, 84 F. Supp. 2d 990, 996 (E.D. Wis. 2000). The circuit court, therefore, properly granted summary judgment to the Police Department.

¶6 Secondly, we also agree with the circuit court that, under the facts presented in this case, the named officers enjoyed limited immunity from the federal and state claims brought against them. Under federal law, qualified immunity is a doctrine which protects government officials

> from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Qualified immunity is the best attainable accommodation of competing values. In situations of abuse of office, it is not a complete bar to an action for damages, which may offer the only realistic avenue for vindication of constitutional guarantees, as is absolute immunity. On the other hand, it protects the country from the danger that fear of being sued will dampen the ardor of all but the most resolute, or the most irresponsible public officials, in the unflinching discharge of their duties.

Kompare v. Stein, 801 F.2d 883, 886-87 (7th Cir. 1986) (quotations and citations omitted). Further, under Wisconsin law, police officers are generally immune from liability for acts done in their official capacity. *See* WIS. STAT. § 893.80(4) (1999-2000).

¶7 In this case, the circuit court found that the officers "were police, they were acting in their official capacity performing their duties in the usual fashion. There is no proof of any bad faith by any of the officers." We agree with the circuit court's findings. The police officers acted according to valid warrants. Further, they obtained Groenke's mother's signed consent before they searched her property. Consent to search is one of the well-established exceptions to the constitutional requirements of both a warrant and probable cause. ***Schneckloth v.***

Bustamonte, 412 U.S. 218, 219 (1973). This was a valid search and the officers are entitled to the immunity which the law provides them for performing their official duties in the prescribed manner.

¶8 For the reasons stated, we affirm the judgment of the circuit court.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.