IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DALE BRYANT,

Plaintiff,

vs.

Case No. 22-12066
Hon. Gershwin A. Drain

CITY OF TAYLOR, a municipal corporation, Officer MAX DORFLINGER, a Taylor police officer, in his individual capacity, Officer AARON LAYNE, a Taylor police officer, in his Individual capacity, and Animal Control Officer LANNY HALL, Taylor animal control officer, in his individual capacity,

Defendants.
_____/

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PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Plaintiff, Dale Bryant, respectfully requests that this Honorable Court deny Defendants' Motion for Summary Judgment, ECF No. 32, PageID.155, for the reasons more fully articulated in the attached brief.

Respectfully submitted,

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Attorneys for Plaintiff

Dated: January 17, 2024

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PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

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ISSUES PRESENTED

I. When, viewing the evidence in the light most favorable to Plaintiff, Defendants' response to Plaintiff's 911 call for assistance with his dog was to laugh at Plaintiff's disability, accuse Plaintiff of wrongdoing and charge him with a crime without undertaking any investigation to determine why the dog was in need of assistance, suggest that Plaintiff could not care for the dog because of his disability, contend that it was appropriate to respond to "rude" behavior by impounding the dog, and not only impound the dog after any exigency had been resolved but also refuse to return the dog for three months, is there a question of fact whether the seizure was unreasonable such that Defendants' motion for summary judgment on the grounds of qualified immunity should be denied?

Defendants' answer: No.
Plaintiff's answer: Yes.

II. Because there is at least a question of fact whether the City of Taylor's harmful written policies and failure to train contributed to the violation of Plaintiff's constitutional rights and continue to threaten to do so, and because the police chief ratified the officers' behavior and has long been on notice of a history of constitutional violations by his police force without taking steps to implement reforms, should Defendant City of Taylor's motion for summary judgment should be denied?

Defendants' answer: No.
Plaintiff's answer: Yes.

III. Given that under compelling circumstances the Michigan Constitution can offer more protection from unreasonable seizures than the United States Constitution, should Plaintiff's claim under the Michigan Constitution be permitted to proceed?

Defendants' answer: No.
Plaintiff's answer: Yes.

IV. Where Defendants have failed to make any argument in support of their request for dismissal of Plaintiff's malicious prosecution claim, should it survive summary judgment?

Defendants' answer: No.
Plaintiff's answer: Yes.

INTRODUCTION

When people with disabilities call 911 for help, they should not be afraid responders will falsely accuse them of wrongdoing, take away a beloved animal they depend on for companionship, and charge them with a crime—or that city policies will support and encourage such behavior. Yet that is exactly what happened in this case. Plaintiff Dale Bryant, a wheelchair user whose legs were amputated, called 911 for help after his puppy, King, became tangled in a lead line attached to his crate. City of Taylor officers responded to the call but, instead of simply providing the assistance Plaintiff needed, they made derogatory comments about his disability, treated him like a criminal, charged him with animal cruelty, and impounded King for three months. They were encouraged to act in this way by harmful and deeply offensive written policies that instruct officers to treat people with disabilities with suspicion and contempt.

In this lawsuit, Plaintiff challenges the unlawful seizure of King as a violation of his rights under the Fourth Amendment and the Michigan Constitution and brings a state-law claim for malicious prosecution. Viewing the evidence in the light most favorable to Plaintiff, King's seizure was unreasonable under clearly established law, and the city's policies and failures to train contributed to the violation of his rights and threaten to continue doing so. Therefore, Defendants' motion for summary judgment should be denied.

FACTS

Plaintiff adopts and trains King

In 1982, Plaintiff's legs were amputated after he was shot by an intruder. Bryant Dep., Ex. 1, at 7. He uses a wheelchair that allows him to lie face down while using his arms to power the wheels. *Id.* at 8; Compl., ECF No.1, PageID.2, ¶ 1.[1] He adopted King in approximately January 2021. Ex. 1 at 31.

Because Plaintiff cannot walk and his property is not fenced in, King is trained to relieve himself in a specific area of the house, which Plaintiff then cleans. Compl., ECF No.1, PageID.6, ¶ 18. When King was a puppy, Plaintiff crate-trained him by putting absorbent pads inside of King's crate to show King where to relieve himself. Ex. 1 at 45. Plaintiff learned this method from professionals and from his own experience with owning dogs. *Id.* at 46. King now relieves himself where the crate used to be. *Id.* at 47. To allow King to exercise, Plaintiff uses a long lead line attached to King's crate or the front of his home, which gives King freedom to run around outside but not go so far that he might get hit by a car. Ex. 1 at 57-58.

King becomes tangled in his lead line, and Plaintiff calls for help

[1] A declaration verifying the factual allegations in the Complaint is attached as Exhibit 2.

On April 15, 2021, Plaintiff placed King in his crate for the evening and went into his living room to watch the news. *Id.* at 17, 64. After hearing something coming from King's location, Plaintiff went to check on him and saw that he had pulled the lead line into the crate and his hind leg was tangled in the line. *Id.* at 64. He tried to reach into the crate to help King, but he was unable to do so. *Id.* Plaintiff called his sister, Kim, for assistance, but he was too worried to wait for her to arrive, so he called 911 for additional help. *Id.* at 64-65. At some point while King's leg was tangled, King likely lost control of his bowels in a panic and rolled around in his feces while struggling to get himself free. Compl., ECF No.1, PageID.8, ¶26.

Defendants arrive at Plaintiff's home, escalate the situation, and jump to unsupported conclusions with no investigation

Defendant police officers Dorflinger and Layne were dispatched to Plaintiff's house. Ex. 1 at 68. Upon arrival, Layne looked into Plaintiff's house from a window and exclaimed, "Oh my god. This guy's in a wheelchair and he's laying straight down." Dorflinger Dep., Def. Ex. 10, ECF No. 32-11, PageID.234; Bodycam Video, Def. Ex. 1, at 1:03. In response, Dorflinger laughed. Dorflinger Dep., ECF No. 32-11, PageID.234.

Once inside the house, before the officers got anywhere near King in his crate, Dorflinger instructed Layne to call animal control. *Id*. at 52. Once they reached King in his crate, they began to use expletives and exhibit an accusatory,

dismissive attitude toward Plaintiff. Defendants' own exhibit illustrates their general attitude toward Plaintiff and the situation:

> Officer 12: Yeah. Fuck this. Shut the gate out there. He ain't going nowhere, man.
> Officer 13: It is real hot in here and there's dog shit all in this cage.
> Male 1: Yeah. Because he's been [inaudible] around [inaudible].
> Officer 13: Uh, sir? Sir? There's – there's so much – there's so much dog feces in there that it's ridiculous.
> Officer 12: I'm taking him outside. I'm going to get him undone and we're going to talk about this. All right? Simple as that.
> Officer 13: It's all right, puppy. It's all right. I know.
> Male 1: [Inaudible] that stuff around. What are you talking about?
> Officer 13: Well, I'm talking about, that's not just from right now, is what I'm talking about. Okay.
> Officer 12: Sir, stop.

Transcript of Video, Def. Ex. 1, ECF No. 32-2, PageID.182-183;[2] Video beginning at 2:22.[3]

Plaintiff tried to explain the circumstances, and Dorflinger continued to draw his own conclusions without listening. He stated that King's leg had been tangled up so long that it was swollen, and dismissed Plaintiff when he tried to explain that everything had just happened within the hour. Def. Ex. 1, ECF No. 32-2,

[2] The transcript identifies Dorflinger as "Officer 12," Layne as "Officer 13," and Plaintiff as "Male 1."

[3] The timestamp of the video is provided because the transcripts are not accurate. For example, Defendants' transcript of Exhibit 2 at p. 22 states that in response to Layne stating, "there's dogshit all in this cage," Plaintiff responds, "Yeah. Because he been fucking around. He just sits [inaudible]." The video shows that Plaintiff was trying to explain that King had been *flopping* around, and "He just did that."

PageID.184; Video begins at 5:57. He concluded, with no basis, that there had been feces in the crate for "at least a week." *Id.* Plaintiff became upset and used profanity, to which Dorflinger responded, "Well, animal control's going to be coming for the dog," *Id.* at PageID.185; Video at 6:40.

In response to the officers' accusations, Plaintiff made several attempts to explain what happened. But because he used some profanity when talking to the officers, they effectively ended the conversation and again told Plaintiff that they were going to take King away and issue Plaintiff a ticket:

> Male 1: You talking about I haven't been taking care of my dog.
> Officer 13: Well, --
> Officer 12: Sir, look at the condition of your animal.
> Male 1: [Inaudible] motherfucker he just did that.
> Officer 13: Hey, watch your mouth, dude.
> Man 1: I ain't got to watch shit. I'm grown.
> Officer 13: All right. **Well, shut your door then because we're taking your dog anyways.**
> Male 1: I ain't going to shut shit.
> Officer 12: All right. I'm – **I'm going to be issuing you a ticket then, sir**, [inaudible], sir.

Id. at PageID.186-187; Video begins at 7:40 (emphasis added).

Unrecorded interactions of Hall, Dorflinger, and Plaintiff

Plaintiff's sister, Kim, and Defendant Hall, an animal control officer, subsequently arrived. Hall approached Plaintiff and attempted to convince him to surrender King or pay $50 per day in kennel fees. Ex. 1 at 85. Plaintiff refused,

prompting Dorflinger[4] to say, "Look at you. How you going to take care of your dog?" Plaintiff recalls that Dorflinger looked "like he was in disgust or something" while making the statement. *Id.* Hall offered to give Plaintiff a smaller dog instead of returning King, later admitting to this offer "if it was easier for him," and because "the house was small." Hall Dep., Ex. 3, at 65-66, 73, 85-86. There is no bodycam video for the time that Hall was at Plaintiff's home.

"Because of your attitude."

In addition to taking King, Dorflinger issued Kim a ticket. Def. Ex. 10, ECF No. 32-11, PageID.323. Dorflinger explained, on video, why he gave Kim a ticket:

> Officer 12: All right, Ms. Kim. I issued you a ticket for driving a regis- -- unregistered motor vehicle on a roadway and your brother a ticket here for the animal cruelty. You need to set up a court date within 15 days. Thank you.
> Ms. Kim: And you gave me what?
> Officer 12: I gave you, driving an unregistered motor vehicle on the roadway.
> Ms. Kim: Why –
> Officer 12: Your vehicle's been unregistered since May. **Because of your attitude.** I'm going to be straight up with you.

Transcript of Video, Def. Ex. 5, ECF No. 32-6, PageID.224-225 (emphasis added); Video begins at 1:11. During his deposition, Dorflinger further explained:

> " . . .I say this often, especially out on the road, that this interaction between police and citizens is – was a game of chess, right, and if we have good interaction. **And based on us having a good conversation, then nothing else has to happen.**"

[4] Plaintiff identified Dorflinger as the "bald-headed officer." Ex. 1 at 82.

Def. Ex. 10, ECF No. 32-11, PageID.313 (emphasis added).

Both officers also believed Plaintiff was rude and disrespectful. Def. Ex. 10, ECF No. 32-11, PageID. at 55; Dep. Layne, Ex. 4, at 44-45. During Plaintiff's criminal case on the animal cruelty charge, attorney Allison Kriger represented him pro bono. Decl. Kriger, Ex. 5. Hall told Kriger that the incident could have been resolved that evening, but that Defendants impounded King because Plaintiff and Kim were rude. Ex. 5. Hall did not deny making this admission in his deposition, and in other cases, he has simply instructed owners to clean their animals' cages rather than impounding them. Ex. 3 at 51, 68. Kriger also learned that Hall did not think that a cruelty ticket should have been issued. Ex. 5. Although Hall initially testified that he agreed with issuing a cruelty ticket, when confronted with the statement that he did not think a ticket should have been issued, he did not deny it. Ex. 3 at 52, 64.

Upon impoundment, the animal shelter completes an animal disposition card. *Id.* at 52. King's card does not indicate that he was malnourished, and instead states that "[h]ealth seems okay at intake." *Id.* at 54, 57; Disposition Cards, Ex. 6. Hall agreed that King's health seemed okay. Ex. 3 at 57. The shelter seeks medical treatment for malnourished animals, but King did not receive medical attention because Hall thought King was "just hungry." *Id.* at 58. Hall "couldn't tell if

[King's leg] was swollen," and King was not provided any medical attention for it. *Id.* at 59.

Other animal impoundments in the City of Taylor

The City of Taylor kept King for 97 days because, despite acknowledging that the ticket should not have been issued, Hall refused to agree to any resolution that involved returning King to Plaintiff. Ex. 3 at 65. This is an excessive and abnormally long time to keep impounded pets. In one instance, a dog was left in a hot car and returned to its owner after two days. *Id.* at 71; Reports, Ex. 7. Another dog left in a hot car was returned to its owner after only one day. *Id*. Two dogs, caged outside in extreme heat without food or water, were returned to their owner after approximately two weeks. *Id.* at 72-73; Ex. 7. A dog left in the rain was returned to its owner after three days. Ex. 3 at 73; Ex. 7. In one case where the owner was charged with animal cruelty, a dog was left in a car, at a temperature of over 110 degrees, and returned after five days. Ex. 3 at 77-78, 80; Ex. 7. In another case, six dogs were left "out in the freezing cold" and returned to the owner (who was not ticketed for animal cruelty) after four days. Ex. 3 at 83-84; Ex. 7.

Defendants did not investigate, and their report is unsupported by video.

Dorflinger's police report makes several statements that are not supported by video or photographic evidence. It states that the lead line was tangled around King's hind legs, torso, and neck, and that there were "several small piles of dog

feces" throughout the house. Police Report, Def. Ex. 9, ECF No. 32-10. The video only shows the lead line tangled around King's leg and includes clear shots into the living room and the hallway, none of which show piles of feces. *See*, Video, Def. Ex. 2, at 0:39.

The report also states that King was "confined to living inside of a small dog cage." Both Dorflinger and Hall testified that they were familiar with the process of crate training, but neither of them asked Plaintiff whether King was "confined to living in his cage." Def. Ex. 10, ECF No. 32-11, PageID.317-318; Ex. 3 at 42-43. Layne denied even concluding that King lived in the cage. Ex. 4 at 51. None of the defendants checked King's paws to see if there were feces embedded in or around his toenails. Def. Ex. 10, ECF No. 32-11, PageID.321-322; Ex. 3 at 46-47; Ex. 4 at 43. Nobody asked Plaintiff how old the feces in King's crate were, and Defendants did not test the feces. Ex. 4 at 43; Def. Ex. 10, ECF No. 32-11, PageID.318.

Despite allegations that King was malnourished, Hall did not ask Plaintiff about King's food and is not sure whether King was weighed upon impoundment. Ex. 3 at 47, 54-55. Inexplicably, there are two disposition cards issued for King's impoundment, issued four minutes apart. Ex. 6. One disposition card, issued at 12:00 a.m., notes that King was approximately 50 pounds. *Id*. A different card, issued the same day at 12:04 a.m., states that his weight was 30 pounds. *Id.*

The City of Taylor's policies, customs, and training

The Taylor Police Department's written policies on "Disabled Persons" support and encouraged Defendants' behavior by effectively criminalizing people who have disabilities. Policy, Ex. 8. The policy warns that "it is common for people with disabilities to seek sympathy as a way to lessen the outcome of the law enforcement response." *Id.* at 3. It also cautions that "persons with disabilities often rely on their disability to attempt to manipulate and control their environment." *Id.* 8 at 4. And it warns that mobility-impaired suspects "may be handicapped, but they are not stupid, and expect you to empathize with their overt condition." *Id.* at 5. The word "handicapped" appears throughout the policy – outdated language that even the chief admitted was an offensive term, even though the policy was adopted in 2019. Ex. 8; Dep. Blair, Ex. 9 at 46-47.

Moreover, officer training is sorely lacking. Layne did not recall whether Taylor offered any training regarding interactions with people with disabilities during his employment. Ex. 4 at 25. Dorflinger only remembered going over the Disabled Persons policy itself, with no training beyond that. Def. Ex. 10, ECF No. 32-11, PageID.273. De-escalation was addressed through roll-call training "maybe once." Ex. 4 at 28. There was no formal training with regard to animal cruelty or care. *Id*. at 29; Def. Ex. 10, ECF No. 32-11, PageID.274-275.

Additionally, Police Chief John Blair ratified and endorsed the officers' conduct in this case. He acknowledged that "there is a whole big thing with de-

escalation," Ex. 9 at 19, but nonetheless contends that the officers "responded appropriately" and "with commonsense" regarding Plaintiff—and in fact blamed Plaintiff for using "unprofessional language." *Id*. at 38-39. This statement is telling, as it reflects an apparent custom of his department. *See Cruise-Gulyas v. Minard*, 918 F.3d 494 (6th Cir. 2019) (holding that Taylor police officer violated Fourth Amendment by citing driver for flipping him off). Blair is also aware of a long history of misconduct within his department. Compl., ECF No.1, PageID.16-17, ¶¶ 58-61; Ex. 9 at 53.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate only when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Celotex Corp. v Catrett*, 477 U.S. 317, 322-23 (1986). In reviewing a motion for summary judgment, the court must view the evidence in the light most favorable to the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The court's function is not to weigh the evidence and determine the truth of the matter, but to determine whether there is a genuine issue for trial. *Jackson v. VHS Detroit Receiving Hosp., Inc.*, 814 F.3d 769, 775 (6th Cir. 2016).

ARGUMENT

I. The defendant officers are not entitled to summary judgment because, viewing the evidence in the light most favorable to Plaintiff, they

violated Plaintiff's clearly established rights under the Fourth Amendment.

A. Defendants do not contest that Plaintiff had a clearly established Fourth Amendment right not to have King unreasonably seized.

Plaintiff can prevail under 42 U.S.C. § 1983 by demonstrating the deprivation of a right secured by the Constitution or laws of the United States caused by a person acting under color of state law. *Sigley v. City of Parma Heights*, 437 F.3d 527, 533 (6th Cir. 2006). To evaluate the defendant officers' affirmative defense of qualified immunity, the Court must determine "(1) whether, considering the [facts] in a light most favorable to the injured party, a constitutional right has been violated, and if so, (2) whether that right was clearly established." *Campbell v. City of Springboro*, 700 F.3d 779, 786 (6th Cir. 2012).

The Fourth Amendment to the Constitution protects people from unreasonable seizures of their property. U.S. Const. amend. IV. A seizure "occurs when there is some meaningful interference with an individual's possessory interests in that property." *United States v. Jacobsen*, 466 U.S. 109, 113 (1984). "[T]here is a constitutional right under the Fourth Amendment to not have one's dog unreasonably seized." *Brown v. Battle Creek Police Dep't*, 844 F.3d 556, 566 (6th Cir. 2016). This right has been clearly established since at least 2013. *Id*. at 567. Indeed, Defendants do not appear to contest that Plaintiff's right was clearly established; they argue merely that their seizure of King was a reasonable one.

B. Defendants' seizure of King was unreasonable.

"Reasonableness is the touchstone of any seizure under the Fourth Amendment." *Id.* at 567 (citation omitted). To determine whether a seizure was reasonable, the court "must balance the nature and quality of the intrusion on the individual's [constitutional] interests against the importance of the governmental interest alleged to justify the intrusion and determine whether the totality of the circumstances justified the particular sort of seizure." *Id*. at 568 (citation omitted). The attachment between a dog and its owner is significant and could only be denied by "the most cold-hearted [] individual." *White v. City of Detroit*, 38 F.4th 495, 498 (6th Cir. 2022) (citing *Brown*, 844 F.3d at 568). Absent a warrant, consent, exigent circumstances, or probable cause, a seizure of private property is "presumptively unreasonable." *United States v. Place*, 462 U.S. 696, 701 (1983) (citation omitted).

1. There was no probable cause to seize King.

Probable cause exists when the police "have reasonably trustworthy information . . . sufficient to warrant a prudent man in believing that the petitioner had committed or was committing an offense." *Beck v. Ohio*, 379 US 89, 91 (1964). "Probable cause determinations involve an examination of all facts and circumstances within an officer's knowledge at the time of an arrest." *Gardenhire v. Schubert*, 205 F.3d 303, 315 (6th Cir. 2000) (citation omitted).

In *Gardenhire*, police officers arrested storeowners for suspected theft from an adjacent business. Allegedly stolen items were visible in the windows of the Gardenhires' store, but the officers noted that the placement of the items was odd for having been stolen. *Id.* at 316-17. The Gardenhires also noticed that several items were missing from their own store and tried to explain this to the officers. The officers refused to hear the Gardenhires' complaint, told Ms. Gardenhire to "shut up," and ordered her to leave the store and wait in her car. *Id*. at 309.

The Sixth Circuit upheld the denial of summary judgment based on qualified immunity due to the existence of both inculpatory and exculpatory information, noting that the officers "did not bother to investigate" the Gardenhires' claims and that

> [f]urther investigation was necessary at that point. And if the officers had asked further questions, they would have learned that Ms. Gardenhire and [the alleged victim] shared the facilities of both stores and were in the process of trading store fronts. Such information would lead a reasonable officer to consider that something other than a theft–such as misplacement or a simple misunderstanding–had occurred.

Id. at 315, 317.

As in *Gardenhire*, the officers here did not bother to hear Plaintiff's version of events or engage in further investigation. Plaintiff can be heard on the video attempting to explain multiple times, with Defendants telling him to "stop," "shut [his] door," or "watch [his] mouth." As soon as Plaintiff became frustrated and used profanity, Defendants announced that they were taking King. Before that, the

officers did not ask Plaintiff how King became tangled. Similarly, there are no questions about why King was in the crate or why there were feces in the crate and how long it had been there. Nor were there questions on either of these topics after King was freed. The video shows that there was never a discussion about what happened, and Defendants admitted as much in their depositions.[5]

Thus, there is a question of fact concerning *when* Defendants decided to impound King, whether their rationale for doing so was objectively reasonable, and whether they attempted any investigation before making their decision. Officers must "make reasonable efforts to gather information before acting." *King v. Montgomery Cnty.*, 797 F. App'x 949, 956 (6th Cir. 2020). Viewing the evidence in the light most favorable to Plaintiff, they did not do so here.

Defendants note that video evidence (where it exists) should be believed over the parties' blatantly contradictory version of events. *Scott v. Harris*, 550 U.S. 372, 380-81 (2007). Defendants' account conflicts with the video, stating that the lead line was tangled around King's torso and neck, and that there were piles of dog feces throughout the house. Def. Ex. 10, ECF No. 32-11, PageID.307-308,

[5] In support of an argument that Defendants tried to conduct an investigation, they may point to a video of Plaintiff closing the door when Layne tried to talk to him after King had been taken. But this argument does not account for the fact that Plaintiff had already attempted to explain multiple times, had already been told that King was going to be taken multiple times, and that King had in fact already been freed from the lead line but not returned to Plaintiff.

316; Ex. 4 at 49, 54. They offer no explanation of how King got tangled or how old the feces in the crate were, which is consistent with the video because it is clear that they did not attempt to obtain this information. When officers make misrepresentations in support of their charges, a triable issue of fact exists regarding whether the omissions demonstrate "deliberate[ness]" or a "reckless disregard for the truth," and qualified immunity should be denied. *See Wesley v. Campbell*, 779 F.3d 421, 437 (6th Cir. 2015).

In general, the existence of probable cause in a § 1983 action presents a jury question unless there is only one reasonable determination possible. *Pyles v. Raisor*, 60 F.3d 1211, 1215 (6th Cir. 1995). The court should rely only on the undisputed facts in determining whether there was probable cause. *Gardenhire*, 205 F.3d at 312. The undisputed facts relevant to the animal cruelty charge and seizure inquiry are:

- Defendants knew that they were being dispatched at the request of the owner to assist a pet who had become tangled in a lead line in a crate;
- King was stuck in his crate with his leg tangled in a lead line;
- King's crate had feces in it, and King had feces on himself; and
- Defendants did not inspect King or ask Plaintiff what happened.

Disputed facts that should not be resolved on a motion for summary judgment include:

- Whether a reasonable officer could conclude that King was in immediate danger after the cable was removed;
- When Defendants decided to take King and for what reason; and
- King's condition and the condition of the house.

The undisputed facts are not enough to provide probable cause for Defendants' seizure of King. Plaintiff called for help *because* King had become tangled in a lead line, and if Defendants had asked, they would have learned what had happened and why it did not justify taking King. There is no indication, even from Defendants, that this occurred regularly at Plaintiff's home. And the feces themselves were not enough to justify King's seizure, as Hall himself admitted that he has instructed other owners to simply clean their pets' cages. Ex. 3 at 51. Further, Dorflinger and Hall testified that they were familiar with crate-training, yet neither asked Plaintiff whether he was crate-training King.

Dragonwood Conservancy, Inc. v. Felician, No. 16-CV-534, 2019 WL 318400 (W.D. Wis. Mar. 21, 2019), is illustrative. In that case, Milwaukee police seized over 200 animals from the plaintiff's conservancy. *Id.* at *1. A curator of reptiles was present and opined that some of the animals were being kept in neglectful conditions, but that nearly all of them were in good health. *Id*. at *3. In an attempt to justify seizing some of the animals without a warrant, the officers argued that the condition of the premises, which included carcasses, urine, and excrement, gave them probable cause to believe that they were objects of criminal

mistreatment. *Id*. at *9. The plaintiff disagreed, stating that the property was "clean, habitable, and functional." *Id*. The court noted that "while certain factors suggested that the animals were neglected, nearly all of them were in good health," leading to the conclusion that "[i]t would be inappropriate for this Court to resolve those factual issues at the summary-judgment stage; that task is left to the ultimate trier of fact." *Id.* In denying summary judgment based on qualified immunity related to the seizure of the animals, the court noted that factual disputes existed as to the conditions under which the animals were housed. *Id*.

The same is true here. Defendants argue that it was reasonable for them to conclude that King was unsafe because of his living conditions, but Plaintiff disputes this characterization. Similar to the facts in *Dragonwood*, even though some officers state that they had concerns, the animal control disposition card notes that King's health was okay at intake. The issue of whether it was reasonable to impound King in light of the available information, and the factual disputes surrounding the available information, should be heard at trial.

Defendants' own actions create a fact question regarding whether probable cause existed. It is simply untrue that King was taken so that he "could receive immediate veterinary attention." Defs.' Br., ECF No. 32, PageID.164. Hall confirmed that King was not provided with veterinary care after he was impounded. He was not treated for his leg or any alleged malnourishment, as Hall

testified would have been the case if he were, in fact, malnourished (instead of "just hungry"). In fact, King did not see a veterinarian even once in the three months that Taylor detained him.

Since it has been established that King was not taken so that he could receive medical attention, questions of fact remain regarding when and why Defendants decided to take King. Hall did not testify consistently regarding whether he believed an animal cruelty charge should have been issued. And even on the scene, where he claims to have agreed that there was cause for an animal cruelty ticket to have been issued, he offered Plaintiff the opportunity to keep and care for another dog.

All three individual defendants concur that Plaintiff was "rude." Hall told Kriger that this was why King was impounded. This is supported by Dorflinger responding to Plaintiff's first use of profanity, before animal control was even on the scene, with his first statement that animal control was going to take King, and his refusal to engage with him after that. Rudeness is not illegal, punishable, or grounds for a seizure. *Cruise-Gulyas*, 918 F.3d at 495.

Further, Hall's testimony that he offered a smaller dog to Plaintiff "if that would be easier for him" and Dorflinger's uncontroverted statement that Plaintiff could not care for his dog based on his appearance support an argument that King was seized not because he was in danger, but because of Plaintiff's disability–

another rationale that does not pass the reasonableness requirement of the Fourth Amendment. Finally, the rationale that Plaintiff's house was "too small" does not make the seizure reasonable under the Fourth Amendment. While an officer's individual motivations are generally immaterial to the probable cause inquiry, in this case, the motivations illustrate whether the seizure was objectively reasonable. Taking a dog that needed immediate medical care to provide him with that care may be reasonable. Taking a dog because the owner is rude, has a disability, or has a small house is not.

2. There were no exigent circumstances.

The exigent circumstances exception applies when the needs of law enforcement are so compelling that proceeding without a warrant is reasonable. *Lange v. California*, 141 S. Ct. 2011, 2017 (2021). Typically, circumstances creating exigency are "now or never" situations with "real immediate and serious consequences." *Id*. at 2017-18. Exigent circumstances terminate when the factors creating the exigency are negated. *See Mincey v. Arizona*, 437 U.S. 385, 393 (1978). "The government bears the burden of proving exigent circumstances existed." *United States v. Bates*, 84 F.3d 790, 794 (6th Cir. 1996).

Hall testified that King's health was "in jeopardy with the cable and the feces." Ex. 3 at 50. When asked whether King was still in danger once the cable was removed, Hall responded, "Well, we're not going to leave him there to be

chained up on a lead again until we find out what's going on." *Id.* at 51. But nobody tried to find out what was going on. *Id*. With regard to the feces, Hall conceded that owners have been told to clean pet cages instead of animal control taking the pet. *Id*. Given this, Defendants cannot meet their burden of proving exigency based on the feces alone. The cable was the emergency, and it had been removed.

The circumstances in this case are a far cry from what the police found in *King*, 797 F. App'x 949. In that case, exigent circumstances existed because

> the house was in horrific disrepair. And the dogs were suffering in squalid conditions . . . Dog feces and urine covered the floor. Strong ammonia fumes made it hard to see and breathe. A dog was caged without food or water . . . A dog [was] trapped in a feces-covered room and a refrigerator [was] infested with cockroaches.

Id. at 952-53. Here, taking the facts in the light most favorable to Plaintiff (and as they appear on the video), King's leg was tangled up in a lead line inside his crate and there were feces in the crate. He had feces on him because he had been struggling to get himself free. There were also pads inside of the crate, showing that he was being crate trained.

If there had been a "now or never" situation with a "real serious and immediate need," Defendants would have obtained medical care for King. They did not. The circumstances inside Plaintiff's home were not even close to an "imminent and ongoing danger to the health" of his pet, which distinguishes it

from the circumstances in *United Pet Supply, Inc. v. City of Chattanooga*, 768 F.3d 464, 490 (6th Cir. 2014). Once the lead line was removed, there was no emergency. There were no exigent circumstances to justify seizing King.

3. King's seizure was unreasonable in its duration.

Even if the seizure had been lawful at its inception, it became unlawful because King was retained for an unreasonably long time. *Sandoval v. Cnty. of Sonoma*, 72 F. Supp. 3d 997, 1002 (N.D. Cal. 2014) (citing *Jacobsen*, 466 U.S. at 124 & n.25). In this case, Hall admitted that he refused to agree to any resolution that involved returning King to Plaintiff despite acknowledging that the ticket should not have been issued. As a result, the City of Taylor kept King for 97 days. The city keeps the majority of animals taken from their owners in the name of safety for less than a week. Even another animal cruelty case saw the dog returned to the owner in just five days. In light of this, and especially given the fact that King did not receive any medical attention, there was no reason to keep him for 97 days. The duration of the seizure was unreasonable and violates the Fourth Amendment.

II. The City of Taylor is not entitled to summary judgment on Plaintiff's Fourth Amendment claim because it maintains policies that criminalize people with disabilities, does not adequately train its officers, and ratifies their misconduct.

A municipality can be held liable under § 1983 where the federal violation occurs because of a municipal policy or custom. *Monell v. New York City Dep't of*

Soc. Servs., 436 U.S. 658, 694 (1978). This includes cases in which a municipality has failed "to provide adequate training in light of foreseeable consequences that could result from the lack of instruction," *Kulpa for Estate of Kulpa v. Cantea*, 708 F. App'x 846, 856 (6th Cir. 2017) (citing cases), and where "an official with final decision making authority ratified illegal actions," *Burgess v. Fischer*, 735 F.3d 462, 478 (6th Cir. 2013).

Here, as discussed above, the City of Taylor maintains a written "Disabled Persons" policy that encourages officers to view people with disabilities with suspicion, distrust, and contempt, and both officers testified that the extent of their training with regard to interacting with people who have disabilities was the review of the policy itself. Training on animal cruelty/care is non-existent. Def. Ex. 10, ECF No. 32-11, PageID.274-275; Ex. 4 at 28-30. The police chief also ratified and endorsed the officers' conduct in this case, stating that they "responded appropriately," and that it was *Plaintiff* who was responsible for de-escalating the encounter because "he could have not used unprofessional language," Ex. 9 at 38, a reaction which is consistent with what appears to be a City of Taylor custom of its officers punishing people for being "rude," as illustrated by circumstances in *Cruise-Gulyas*, 918 F.3d 494. In addition to *Cruise-Gulyas*, the City of Taylor has long been on notice of an extensive pattern of police misconduct by its officers.

Compl., ECF No.1, PageID.16-17, ¶¶ 58-61 & nn. 8-10 (detailing long history and multiple incidents). Steps taken, if any, to address this are unclear.

The illegal seizure of King was thus caused in part by Taylor's policies, customs, and failures to train. Additionally, Plaintiff seeks declaratory and injunctive relief against the City to eliminate the customs and policies that not only gave rise to the incident in this case but also continue to threaten Plaintiff's constitutional rights. *See* Compl. ¶¶ 58-62, Relief ¶ c. As issues of fact remain on these points, summary judgment as to the City of Taylor must be denied.

III. Defendants are not entitled to summary judgment on Plaintiff's claim under the Michigan Constitution.

Contrary to Defendants' contention, the Michigan Supreme Court has held that, under compelling circumstances, "the Michigan Constitution offers more protection than the United States Supreme Court's interpretation of the Fourth Amendment." *Sitz v. Dep't of State Police*, 506 N.W.2d 209, 224 (Mich. 1993). As Defendants have not refuted this point, Plaintiff's state constitutional claim in Count II of his Complaint should proceed.

IV. Defendants failed to contest Plaintiff's claim for malicious prosecution.

Count III of Plaintiff's Complaint asserts a claim against Defendants for malicious prosecution under Michigan law. Defendants' motion appears to seek dismissal of this claim, but their brief fails to mention it at all and makes absolutely no argument, legal other otherwise, in support of this request. Issues adverted to in

a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived. *McPherson v. Kelsey*, 125 F.3d 989, 995-96 (6th Cir. 1997). And Defendants cannot raise this argument for the first time in their reply brief. *United States v. Lopez-Medina*, 461 F.3d 724, 743 (6th Cir. 2006). Thus, Plaintiff's claim for malicious prosecution must survive summary judgment.

CONCLUSION

For the foregoing reasons, Defendants' motion for summary judgment should be denied.

Respectfully submitted,

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