school football coaches on behalf of the estate of their son. The son had attended a voluntary outdoor workout session for his high school football team, and died the next day due to the intensity of the condition drills and the heat. The parents alleged that their son's substantive due process rights were violated because he was deprived of water after exhibiting signs of overheating, and there was a delay in his receiving medical attention after he collapsed, and these decisions resulted in the deprivation of his life, liberty, health and safety. The district court dismissed all the charges except the charges against the coaches. The court allowed the charges against the coaches to stand on the basis that the claims, if proven, would be enough to support a finding that the coaches acted willfully or maliciously with an intent to injure the son.

The U.S. Court of Appeals for the Eleventh Circuit vacated the order below and remanded the case back to the district court. Starting its analysis with *DeShaney v. Winnebago County Dep't of Soc. Servs.*, 489 U.S. 189 (1989), that "nothing in the language of the Due Process Clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors," the court further found that conduct by a government actor would only rise to the level of a substantive due process violation if the act could be characterized as arbitrary or conscience-shocking in a constitutional sense, pursuant to *County of Sacramento v. Lewis*, 523 U.S. 833 (1998). There were some cases where a high school coach's conduct was found to have met this standard, such as *Neal v. Fulton County Bd. of Educ.*, 229 F.3d 1069 (11th Cir. 2000) (where a coach intentionally struck a student with a metal lock as a form of punishment). In the instant case, however, the defendant coaches did not engage in corporal punishment, and "the complaint's allegations of deliberate indifference, without more, [did] not rise to the conscience-shocking level required for a constitutional violation." Accordingly, the claim should "be confined to the realm of torts." *Davis v. Carter*, 555 F. 3d 979 (11th Cir. 2009).

Land Use

Takings – Standing – Optionee

In a case addressing whether Toll Bros., Inc., a real estate developer with an option to buy a parcel of land, had standing to challenge zoning restrictions that prevent its planned development from going forward, the Third Circuit held that it did. Toll described itself as "the nation's leading builder of luxury homes," and carefully chose "the most scenic areas" in which to build. This included a 160-acre tract of land in the Township of Readington, owned by Readington Properties, LLC. In 2001, Toll entered into an option contract with the landowner that gave it an exclusive option to buy the tract at a fixed price, and barred the owner from entering into any lease, agreement of sale, or any other agreement affecting the property during the life of the agreement. In exchange, Toll promised to make periodic payments to Readington Properties. At the time, the land was zoned "research-office" and "rural-residential." Toll developed plans and submitted the first one for approval to the Township in 2002. The Town denied approval and passed an ordinance rezoning the entire tract as "agricultural residential." The only residential use allowed under this zoning was "one residential dwelling per six acres," which effectively ended the developments Toll had in mind. Toll apparently viewed this move as part of a nefarious plot hatched by Township officials to "reduce the fair market value of properties held by disfavored landowners." Toll maintained its option by rendering periodic payments to Readington Properties. It sued the Township, its planning commission, and various officials, claiming under the Equal Protection Clause; the Due Process Clause; the Takings Clause; The Fair Housing Act of 1968, and others, seeking to set aside the rezoning ordinance, and damages. The defendants moved to dismiss the complaint for lack of standing, pointing to the fact that Toll did not have any present interest in the Readington Properties parcel. The district court granted the motion.

On appeal, the Third Circuit held that the owner of an unexercised option to develop had Article III standing. Referring to *Warth v. Seldin*, 422 U.S. 490 (1975), and *Village of Arlington Heights v. Metropolitan Housing Dev. Co.*, 429 U.S. 252 (1977), the court found that Toll had satisfied the injury requirement. Toll had paid substantial sums in planning its proposed developments, and the rezoning thwarted its specific development, one for which a formal application had been submitted, on land for which it held the exclusive option to purchase. These economic harms amounted to a legally cognizable injury-in-fact, as the option was more than just a "phantom connection" to the affected parcel, being itself a "valuable property right." By driving down the value of the Readington Properties parcel, the Township had also driven down the value of the option. Dealing with the third element in standing, redressability, the court held it was sufficient for the plaintiff to establish a "substantial likelihood" that the requested relief would remedy the alleged injury in fact. Here, striking the ordinance would redress the injury by increasing the value of both the underlying real property and the option. Further, while all developments were subject to inherent uncertainties, the court did not require a guarantee of successful completion. Toll had stated its intent to exercise the option and move forward with construction if and when the Township approved its plans. This was sufficient to show that a favorable decision was substantially likely to result in construction of its planned developments. *Toll Bros., Inc v. Township of Readington*, 555 F. 3d 131 (3d Cir. 2009).

Personnel and Employment

Discrimination – "Secondhand" Motive

In a case of first impression in the circuit, the U.S. Court of Appeals for the Ninth Circuit considered the question of whether a final decision-maker's wholly independent, legitimate decision to terminate an employee could insulate, from liability, a lower-level supervisor involved in the process, who had a retaliatory motive to have the employee fired. Scott, the plaintiff, had been employed as an information systems specialist at Multnomah County's Department of Community Justice (DCJ). Her direct supervisor was Hogue, who reported to Gorton, who reported to Brown, who, in turn, reported to the DCJ director, Fuller. Scott complained to Hogue and Gorton about her coworkers' violations of County policies (including violations by Brown), and also accused Brown of favoring gay and lesbian employees in hiring and promotion decisions. Scott also filed a formal complaint with the Oregon Bureau of Labor and Industries ("BOLI complaint") about the

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