Cases



ADA
Threats to Co-Workers

Bodenstab was employed as an anesthesiologist at Cook County Hospital in Chicago. He called a friend to say that he had been diagnosed with cancer, and, that if the cancer metastasized, he was going to kill his supervisor and other co-workers. He allegedly further stated that he might die in the resulting gun battle with police. Out of concern for the safety of Bodenstab and his co-workers, his friend alerted the Chicago Police Department and the local FBI office. These, in turn, contacted the hospital's director, advising him that they considered the death threats credible. The hospital reviewed the police reports and decided to suspend Bodenstab, with pay, and told him to consult a forensic psychiatrist for a fitness for duty evaluation. The resulting assessment concluded that Bodenstab suffered from "paranoid and narcissistic personality features and occupational and interpersonal stressors." He was admitted to a day treatment program. Upon discharge, the recommendation was that, although Bodenstab was fit to return to practice, he could not work in an environment that was "emotionally, politically, or interpersonally charged, as [this] would likely strain his ability to work with others in a consensual and cooperative manner," and he should continue to be monitored by a psychiatrist. Given these concerns, Cook County asked its own psychiatrist to examine Bodenstab. After this psychiatrist advised that he felt concerned for his own safety, with Bodenstab exhibiting "paranoia and interpersonally charged issues," the hospital held a pre-disciplinary hearing, which concluded in a recommendation for discharge. This was confirmed on appeal by a hearing officer, who ruled that the hospital management was justified in not wishing to place Bodenstab's co-workers in harm's way. Bodenstab sued, claiming that his firing violated the First Amendment, the Americans with Disabilities Act (ADA), and his due process rights, and downplaying his threats as "conditional syllogisms." The district court granted the defendants' motion for summary judgment, and Bodenstab appealed.

The U.S. Court of Appeals for the Seventh Circuit affirmed. The ADA claims (including disparate treatment, failure to accommodate, and retaliation) failed. Under the ADA, an individual was not qualified if he presented a "direct threat" to his own health and safety or that of others. The undisputed evidence supported the County's belief that Bodenstab made the murder-suicide threats. Even if the County had improperly determined that he presented a "direct threat" within the meaning of the ADA, summary judgment on the termination claim was appropriate because the County had a legitimate, nondiscriminatory reason for firing Bodenstab – the threats he had already made. Likewise, the failure to accommodate claim failed because the evidence established that Bodenstab was fired for making threats to harm co-workers, and there was no legal obligation to "accommodate" conduct, as opposed to a disability, even if the conduct was somehow related to a disability. Dealing with the retaliation claim – that the firing was related to his writing a letter asking to be reinstated, his complaints about being forced to undergo psychiatric examinations, and his identifying reasonable accommodations – the court held that Bodenstab did not present sufficient evidence that he was fired for engaging in these activities. The First Amendment claim was dismissed for the same reason as his ADA claims: the County fired him for a legitimate, non-discriminatory reason – threats to co-workers – which defeated any First Amendment claim. Lastly, because Bodenstab was provided with adequate pre- and post-termination hearings, his due process claim was dismissed as well. *Bodenstab v. County of Cook*, 569 F. 3rd 651 (7th Cir. 2009).

Civil Rights
Kyle, Texas Prevails in FHA Price Increase Case

Following the article that appeared in the March/April 2009 *Municipal Lawyer* (*A New Twist on the Fair Housing Act*, by Bradford Bullock), the federal trial court's judgment in *NAACP et al. v. City of Kyle, Texas,* No. A-05-CA-979-LY (W.D. Tex. Mar. 30, 2009) has now been released. The ruling comes as a welcome reminder that federal courts are not particularly interested in sitting as super-zoning authorities. The plaintiffs in this case – including the National Association for the Advancement of Colored People, the National Association of Home Builders, and the Home Builders Association of Greater Austin – claimed that the City of Kyle had violated the federal Fair Housing Act when it passed a comprehensive zoning and subdivision ordinance amendment. Specifically, they claimed that, by increasing certain minimum standards in these ordinances, the City allegedly caused the price of new, single-family detached homes built to the revised standards to increase. Because minorities in Texas tend to have lower median incomes than whites, the plaintiffs asserted that this created a "disparate impact" and denied housing to minorities who would move to Kyle in the future. However, in ruling against the plaintiffs, the trial court concluded that the plaintiffs had conducted an "incomplete analysis" by failing to demonstrate that the amended ordinances would cause an *actual* shortage in housing available to the area's minorities. The court went on to find that, by failing to take into account other low-cost housing options permitted by Kyle's ordinances, the demand for the housing in question, and the number of grandfathered lots not subject to the amended ordinances (approximately

12,000), the plaintiffs could not meet their prima facie burden of establishing a significant disparate impact on a protected class. The plaintiffs have appealed the trial court's ruling to the U.S. Court of Appeals for the Fifth Circuit.

Search Warrants – Familial Connection

A county deputy sheriff was shot and killed during a traffic stop. After investigators identified Astorga as the primary suspect, Astorga's neighbors told police that a man matching Astorga's description had recently moved in with his "pregnant girlfriend." Astorga had listed his wife, M., in prior contacts with police, so police tried to locate her by contacting her father (Astorga's father-in-law). M's father, Poolaw, a retired state police officer, told investigators that M. was pregnant and had been with them on the night of the shooting, but was no longer at the house (he indicated she could not be reached as she had called in sick at work). When investigators were unable to locate Astorga, they determined that the Poolaw home should be searched. They prepared an affidavit stating, "[b]ased on the apparent fact that [M] resides at least part time at [her father's residence], it would be reasonable to assume that [Astorga] resides there at least part time as well and may have left or hidden evidence related to this crime at this residence." The warrant was executed on the Poolaw home, during which the in-laws were handcuffed and kept outside the house. The Poolaws brought a 42 U.S.C. §1983 action against the officers, alleging that the search and detention constituted an unreasonable search and seizure. The district court denied qualified immunity to the investigators, stating that the affidavit "established only that [Astorga] was married, that [M] stayed at [the Poolaws] home and did not go to work the next day. ... [The affidavit] provided only inferences and assumptions of dubious reliability ... which were simply not enough to provide probable cause to violate the Poolaws' right of privacy in their home."

On appeal, the U.S. Court of Appeals for the Tenth Circuit affirmed the denial of qualified immunity. In determining whether probable cause existed for the issuance of a warrant, the judge "must decide whether, given the totality of the circumstances, there is a fair probability that contraband or evidence of a crime will be found in a particular place." The Tenth Circuit followed a number of other circuits in stating that "a search warrant resting primarily on a familial relation is so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable."In this case, the facts that M. spent the night at the Poolaws' house, called in sick to work the next day, was listed as Astorga's emergency contact (on forms related to his unrelated prior arrests), and was pregnant with his child, were not enough to establish probable cause to search the Poolaws' home. The connection between Astorga and the Poolaw home was even more attenuated – nothing in the affidavit suggested that Astorga had any contact with the Poolaw's home during the time when he could have hidden evidence of the crime. As a result, the search violated the Poolaws' Fourth Amendment rights. *Poolaw v. Marcantel*, 565 F.3d 721 (10th Cir. 2009).

First Amendment

Ten Commandments – Context is Everything

After the Haskell County Board of Commissioners approved a constituent's request to erect a monument displaying the Ten Commandments on the lawn of the county courthouse, a county resident – James Green – and the American Civil Liberties Union (ACLU) filed suit, claiming that the placement violated the Establishment Clause of the First Amendment. The courthouse contained the courts and various county offices. The lawn outside of the courthouse already contained many monuments of various sorts, most of which were paid for by private donors. These included a log cabin, occupied by the local historical society; a sidewalk made of personal message bricks; two benches, dedicated to and inscribed by graduating students; a monument honoring the Choctaw Nation; a monument honoring all unmarked graves in the County; a memorial to the war dead (the largest monument); and additional monuments honoring those killed in action in Vietnam and Korea. The Ten Commandments monument was added after a local citizen, a minister, asked for approval from the Board, claiming that God had directed him to create the monument. The monument was paid for through funds raised by religious groups in the community, and was approximately eight feet tall and three feet wide. The Ten Commandments were inscribed on one side, with the Mayflower Compact on the other. The Board selected the location for the monument but had no other input into the text or design. The monument was unveiled in a ceremony organized by the donor. Two out of the three commissioners attended the ceremony, and 17 churches were represented. The ceremony opened with a prayer and included remarks by local pastors. Two commissioners, asked for their feelings about the monument, were quoted as saying, in essence, that "God died for me and I'm going to stand up for Him." Green objected to the monument because he did not "subscribe to a particular faith that [was] represented by this monument." He testified that he visited the County Historical Society on a weekly basis; that business occasionally took him to the courthouse; and that he was unable to avoid the monument in doing so. Subsequently, the monument supporters organized a rally – one poster (a young girl praying before an American flag and captioned "One Nation Under God") was placed on the courthouse door. The rally was held on the courthouse lawn. In the subsequent legal proceedings, the district court found in favor of the defendants.

The U.S. Court of Appeals for the Tenth Circuit reversed, finding that, "under the unique circumstances presented here, the Establishment Clause was violated because the reasonable observer would view the Monument as having the impermissible principal or primary effect of endorsing religion." Green had standing to bring his

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