Cases



Civil Rights

Equal Protection and Bidding

After the City of Atlanta solicited bids for a five-year contract to manage the advertising displays at its international airport, the plaintiff, Corey Airport Services, Inc., submitted a bid. However, when the City awarded the contract to the incumbent advertising contractor, Clear Channel Outdoor, Inc., Corey brought a 42 U.S.C. § 1983 action. It claimed that the bidding process was "rigged;" that the City and City employees conspired to ensure that Clear Channel, "a political elite," would get the contract; and that this discriminatory "classification between political insiders and outsiders" denied Corey equal protection of the laws. Specifically, the request for proposals (RFP) required bid proponents to project their gross receipts for the five-year term and to commit to a monthly rent payment of at least 60 percent of those receipts. The RFP also provided for a minimum annual guaranteed payment to the City if a contractor failed to attain the projected revenues, and each month, the contractor would pay the City the rent payment, or one-twelfth the minimum annual guaranteed payment (whichever was greater). The first payment would be due 31 days after execution of the contract. Corey alleged that, because Clear Channel was awarded the new contract, it could continue to receive revenue from advertisements it had installed under its old contract for the first month of the new contract, and the provision making the first rental payment due 31 days after execution of the contract offered Clear Channel a potential windfall equal to one month's advertising revenue. A new contractor would not likely generate any revenue during the first month; thus, the 31-day provision was evidence of a bias in favor of Clear Channel, built into the RFP. Corey also argued that Clear Channel's proposal included inflated revenue projections, projections that airport officials knew were inflated, and that his bid was treated less favorably. The City argued it evaluated bids by awarding points based on various criteria, including projected fees, past performance, the proponent's financial condition, and experience in airport advertising.

The district court denied the defendants' motion for summary judgment. It found that Corey had presented evidence showing that the general structure of the RFP and the overall selection process were "biased and manipulated by the City to the benefit of Clear Channel and to the detriment of any non-incumbent bid proponents," and that "the individual City defendants had fair notice that their alleged conduct and treatment of Corey would be unconstitutional." The defendants appealed.

The U.S. Court of Appeals for the Eleventh Circuit concluded that the defendants did not violate a clearly established constitutional right and were, therefore, entitled to qualified immunity. It was not disputed that the defendants acted within the scope of their discretionary authority. Applying *Pearson v. Callahan*, 129 S. Ct. 808 (2009), the court concluded that the examination of the "clearly established law" question alone would "best facilitate the fair and efficient disposition" of this case, and limited its inquiry to only this prong of the qualified immunity analysis. To hold that the defendants violated Corey's clearly established constitutional rights required a finding that the recitation of a "highly general principle" (the unequal application of facially neutral law with the intent to discriminate could violate the equal protection clause), in and of itself, offered the defendants "fair warning that their [treatment of Corey] was unconstitutional." The court declined to reach this far, noting that "we cannot conclude that [the cited] decisions made it clear that the conduct at issue here violated the Constitution. Nor are we aware of any other relevant cases decided prior to 2002 finding a violation of a constitutional right based on facts similar to those in this case." Given the finding that the defendants did not violate a clearly established constitutional right, they were entitled to qualified immunity. *Corey Airport Servs., Inc. v. DeCosta*, 587 F. 3d 1280 (11th Cir. 2009).

Due Process and Emergencies

Gary and Susan Clarke owned an old hotel through their company, WWBITV, Inc. Shortly after midnight on June 06, 2006, the building caught fire. Although firefighters from the Village of Rouses Point responded, the building was badly damaged. Later that morning, the Village Board of Trustees held a special meeting to discuss the situation, particularly because the public roads next to the hotel had to be closed because of the danger of falling debris. A notice of the meeting had been posted in the Village offices, but the Clarkes were not separately notified. The Board approved a motion, pursuant to its local code, authorizing the fire chief to take measures to stabilize the building's remains and to make the street and sidewalk safe, and hired a contractor to demolish the portion of the building most damaged by the fire. The burned portion of the building was torn down on June 06. Susan Clarke learned from a friend that the hotel was being demolished. She immediately attempted to stop the demolition, but was unsuccessful. The Clarkes brought a 42 U.S.C. § 1983 suit against the Village and Village officials, alleging a violation of their substantive and procedural due process rights, as well as their rights against unlawful seizure under the Fourth Amendment and against an unlawful taking of their property. The district court, finding that there was enough evidence for Village officials to believe that an emergency

existed and that nothing in the record indicated that the officials' decision was abusive or arbitrary, granted summary judgment in favor of the defendants. The Clarkes appealed.

The U.S. Court of Appeals for the Second Circuit affirmed. Although the Fourteenth Amendment prohibited a state from "depriv[ing] any person of life, liberty, or property without due process of law," the U.S. Supreme Court has held that, in emergency situations, a state could satisfy the requirements of procedural due process merely by making available "some meaningful means by which to assess the propriety of the State's actions at some time after the initial taking." *Parratt v. Taylor*, 451 U.S. 527 (1981). Second Circuit precedent also provided that "[t]he law should not discourage officials from taking prompt action to insure the public safety." *Catanzaro v. Weiden*, 188 F.3d 56 (2d Cir. 1999). In this case, the hotel's proximity to a public road created a danger that debris, falling from the burned building, would threaten individuals using public roads. In such a situation, "no reasonable trier of fact could conclude that the Village officials' decision to take emergency action was arbitrary or abusive;" and any "hindsight analysis of a municipality's means of dealing with an emergency would encourage delay and risk increasing the public's exposure to dangerous conditions." Because there was no violation of the plaintiffs' due process rights, the judgment of the district court was affirmed. *WWBITV, Inc. v. Village of Rouses Point*, 589 F. 3d 46 (2d Cir. 2009).

Due Process and Inspections

An ordinance of Calumet City, Illinois, prohibited home sales unless a home inspection was first done to determine compliance with the City's building code. It required a property owner to notify the government of a proposed sale of property. The City had 28 days after receiving such a notice to conduct a compliance inspection, and had to notify the owner prior to the inspection. If the owner objected, the City had ten days in which to obtain a warrant, one limited to authorizing an inspection for compliance with the building code. The plaintiff homeowners brought suit, claiming that their due process rights under the Fourteenth Amendment were violated and challenging the constitutionality of the ordinance "on its face." The lower court dismissed the suit for failure to state a claim, and they appealed.

The U.S. Court of Appeals for the Seventh Circuit affirmed. Insofar as the due process clause of the Fourteenth Amendment applied to the case, it prohibited a state or local government from depriving a person of property without due process of law. "No court thinks, however, that this means the state can't regulate property—can't, for example, enact building codes and zoning regulations even though such measures limit the property owner's right to do what he wants with his property." Further, such "point of sale" ordinances were common and had withstood constitutional challenge, particularly where, if the owner objected, the ordinance required city inspectors to obtain a warrant to carry out the inspection. The ordinance here contained such a requirement. This ordinance, the court stated, could not "be thought irrational." Without building codes, "more buildings would catch fire, collapse, become unsightly, attract squatters, or cause environmental damage and by doing any of these things reduce the value of other buildings in the neighborhood." Accordingly, the court affirmed the district court's decision. *Mann v. Calumet City, Illinois*, 588 F. 3d 949 (7th Cir. 2009).

Due Process and Access to Treatment

Officer Ruth was called to a scene and found McCargo running up and down the street, hallucinating and behaving strangely. He said he had smoked crack cocaine. Ruth arrested McCargo for public intoxication, and EMTs were called. They examined McCargo and decided he did not require hospitalization. Instead, Ruth took McCargo to the local jail, where the nurse also examined him. Testimony differed as to whether Ruth told the jail officers that McCargo admitted he had smoked crack cocaine. Because McCargo continued to act in an uncontrollable manner, he was placed in a restraint chair "for his own safety," and was even tased by jail officers in order to "relax his muscles." After spending over three hours in the chair, McCargo was released. He began shaking and spitting up blood, and lost consciousness. He was rushed to a hospital, where he was diagnosed with respiratory and cardiac failure resulting from cocaine use. He never recovered and died after eleven months in a coma. McCargo's family alleged that Officer Ruth acted with deliberate indifference when he failed to inform the EMTs and the jail staff that McCargo stated he had ingested cocaine, and had violated his constitutional right to receive medical care. Two conflicting police department policies regarding the transportation of individuals for medical services existed. One policy instructed police who encountered detainees exhibiting signs of "excited delirium" to transport them to a hospital for treatment, but made no provision to allow officers to engage the services of an EMS vehicle instead. However, the police chief's concurrent written directive prohibited officers from transporting any individual to the hospital in a police vehicle for medical services.

The district court granted summary judgment for the defendants on all grounds except Ruth's request for summary judgment based on qualified immunity on the charge of violating McCargo's Fourteenth Amendment right to adequate medical care; and second, the City's request for summary judgment on the plaintiffs' theory as to the police chief's "no transport" policy. Ruth and the City sought interlocutory review of these rulings.

The U.S. Court of Appeals for the Sixth Circuit reversed, finding that the record as a whole did "not support the inference that a reasonable trier-of-fact could find a causal connection between either Officer Ruth's actions or [the police chief's] no-transport policy and McCargo's injuries."

Although pre-trial detainees had a right under the Fourteenth Amendment to adequate medical treatment, a claim under 42 U.S.C. § 1983 alleging a failure

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