Cases



Civil Rights

EMT Response and Weather

The plaintiffs in this case, the representatives of the estate of Curtis Mitchell, claimed that the City of Pittsburgh and its staff violated Mitchell's right to substantive due process granted by the Fourteenth Amendment by failing to come to his rescue and take him to the hospital.

At 4:30 p.m. on February 5, 2010, a record snow storm began in the City of Pittsburgh. It would result in an accumulation of more than 21 inches of snow over an approximately 24-hour time-span. At 2:00 a.m. on February 6, Mitchell's girlfriend called 911 asking for an ambulance, as Mitchell was experiencing abdominal pains. Due to the heavy snow, the ambulance was unable to cross a bridge approximately a quarter-mile from Mitchell's home. The emergency medical technicians (EMTs) called Mitchell to ask him to walk to the ambulance. Mitchell's girlfriend said he was unable to walk and that she couldn't carry him. The EMTs abandoned the call and left. The same occurred when a second ambulance was called. A third ambulance was able to get to within a block of Mitchell's home, but EMTs were told that Mitchell had fallen asleep and would not walk the remaining distance. Early on February 7, the girlfriend call 911 to say that Mitchell had died. Firefighters responded and arrived at the home in a few minutes.

The plaintiffs claimed that the City's failure to establish policies and procedures, and failure to train its EMTs, resulted in Mitchell being abandoned while in need of medical assistance; further, that the defendants, acting under color of state law, affirmatively created a danger to Mitchell because he relied upon assurances from the defendants that emergency aid was forthcoming and did not seek alternative forms of assistance. The defendants moved to dismiss the Section 1983 claim on the basis that the plaintiffs failed to plead allegations sufficient to state a substantive due process violation. The district court agreed and granted the motion.

Accepting the plaintiffs' allegations as true, it held they failed to state a claim of a substantive due process violation. Under *DeShaney v. Winnebago County Dep't of Social Servs.*, 489 U.S. 189, 195 (1989), there was no affirmative right to government aid — including rescue services, competent or otherwise. Addressing the "state-created danger" exception advanced by the plaintiffs, the court, referring to *Brown v. Commonwealth of Pennsylvania, Dep't of Health Emergency Med. Serv. Training Inst.*, 318 F.3d 473, 475 (3d Cir.2003), held that reliance on a 911 operator, without more, could not establish state-created danger liability because the plaintiffs had no constitutionally-recognized reliance interest in the first place. Assurances that ambulances would be dispatched to assist Mitchell (and, in fact, were dispatched) did not constitute affirmative acts that rendered him more vulnerable to danger than had the defendants not acted at all, and Mitchell's freedom to seek outside help was not restrained by these assurances. "[U]nder clearly established controlling law, a citizen not in state custody has no constitutional entitlement to rescue services from the State, even if the State has undertaken to provide them. Indeed, even if in providing such services, the State does so in an incompetent manner, it still does not rise to a constitutional violation." *Thornton v. City of Pittsburgh*, No. 10–1436, 2011 WL 1327662 (W.D. Pa. April 06, 2011).

Section 1983 and "Right" to Referendum

In 2008, the Howard County Council in Maryland passed a zoning ordinance that substantially increased the size of a store to be built in one community. A group, Howard County Citizens for Open Government (HCCOG), sought to challenge the ordinance by way of referendum, as permitted by the County Charter. This allowed a referendum petition to be submitted to the registered voters of the County, to approve or reject at the polls any law or part of any law of the Council. The Maryland Code set out the requirements for a valid referendum petition. In November 2008, HCCOG filed requests with the Board of Elections, seeking an advance determination regarding the sufficiency of the proposed referendum petition language and signature sheet, and on December 1, 2008, the County Board found that the proposed petition complied with the necessary local and state law requirements. On December 19, the Court of Appeals of Maryland issued a decision, *Doe v. Montgomery Cnty. Bd. of Elections*, 962 A.2d 342 (Md. 2008), interpreting Maryland Code provision § 6–203 as requiring that the voter sign his or her name "as it appears on the statewide voter registration lists or the individual's surname of registration and at least one full given name and the initials of any other names;" adding that these provisions were mandatory, not suggestive.

Twelve days later, HCCOG presented the County Board with the necessary amount of signatures to get an extension of time for the collection of the referendum petition signatures, and these were found to be adequate and sufficient. By February, HCCOG presented the County Board with an additional 6,079 signatures. However, in March, the County announced it was reversing its decision to certify the first set of signatures on the petition, based on the decision in *Doe*. (The Board had conducted a second review of a statistically valid sample of signatures from the initial set and, using the *Doe* criteria, found 87% of these were now invalidated.)