Cases



Civil Rights

Liability and "Sanctuary City" Policies

In 2008, Edwin Ramos, an illegal immigrant, allegedly shot and killed Anthony Bologna and his sons, Michael and Matthew, as they were stopped in traffic in San Francisco. Ramos was allegedly a known gang member and a citizen of El Salvador who had lived in the United States for years in violation of the federal Immigration and Nationality Act (INA). The victims' family members sued the City and County of San Francisco, its mayor, and others in tort and alleged a violation of mandatory duties imposed by law. They claimed that San Francisco's policy of providing sanctuary to illegal immigrants was a legal cause of the decedents' murders because it shielded Ramos from deportation in violation of state and federal statutes, the Cal. Health & Safety Code § 11369 (West 2011) (requiring state authorities to notify federal authorities about the immigration status of drug arrestees), and part of the Illegal Immigration Reform and Responsibility Act of 1996 (8 U.S.C. § 1373) (invalidating all restrictions on the voluntary exchange of immigration information between federal, state, and local government entities and officials and federal immigration authorities).

The complaint alleged that Ramos had been arrested by San Francisco police officers on multiple occasions (as both a minor and later, as an adult offender) for violent crimes and drug offenses, and had been identified as a suspect in other serious crimes, including murder. It claimed that San Francisco's "sanctuary polices," pursuant to which City officials harbored individuals they knew to be illegal aliens who had committed crimes, violated state and federal laws. The plaintiffs asserted that police officers knew that they were required by state law to report Ramos's drug-related arrests and detentions to federal immigration officials, but were prevented from doing so by the sanctuary policies; that it was reasonably foreseeable that Ramos would continue to commit violence upon San Francisco citizens; and that, had San Francisco officials reported Ramos previously to U.S. Immigration and Customs Enforcement (ICE), it was a certainty that ICE would have initiated removal proceedings and deported him.

The trial court found that the alleged breaches of the two statutes supported neither a legally viable claim of negligence per se, nor breach of mandatory duties under state law. On appeal, the California Court of Appeal affirmed. Central to claims asserting both negligence per se and a violation of a mandatory duty was the requirement that the harm allegedly caused be of the precise nature the statute was designed to prevent. The State's Health & Safety Code was enacted to combat the illegal drug trade, and facilitate the deportation of persons arrested for selling or using illegal narcotics. "The fact that reporting suspected illegal immigrants arrested for drug offenses to the federal immigration authorities may also prevent them from committing violent crimes is not enough to warrant our conclusion that section 11369 creates an actionable tort on behalf of the general public." The court reached the same conclusion on the federal law relied upon by the plaintiffs: "the federal statute was not designed or intended to prevent the type of harm that plaintiffs suffered." *Bologna v. City and County of San Francisco,* 192 Cal. App.4th 429 (Cal. Ct. App. 2011).

Privacy: Disclosure of Medical Condition

Matson worked as a teacher for a public school, and also served as a director-conductor for the New York Scandia Symphony, a private orchestra. From 2003 through 2005, Matson took sick leave from her teaching job. After one request for sick leave, the school principal reminded Matson that she was scheduled to conduct a student orchestra that week. Matson insisted that she would have to miss the concert because she was ill. On Matson's return, the principal confronted her about a suspected abuse of her sick time: he had listened to a radio performance of the Scandia Symphony that Matson was conducting while on sick leave. After another absence by Matson for sick leave, the principal filed a complaint with the New York Department of Education, accusing her of "theft of services." The final report issued by the investigator for the New York City School District (SCI) verified that Matson had conducted the orchestra several times while on sick leave from her public school job. The report contained specific references to a conversation that the investigator had with Matson's doctor, who stated, among other things, that Matson had fibromyalgia, a medical condition that was exacerbated by stress at work. He informed the investigator that Matson needed time off from her teaching position, but could be able to conduct an orchestra. The report was publicly issued by SCI (as it was authorized to do) and made available on the SCI website. The investigation and report ended up being covered by the local press.

Matson filed a Section 1983 suit against the SCI, the board of education of the school district, and the City of New York, alleging that her constitutional privacy rights had been violated by the disclosure of her medical condition (however, she did not challenge the SCI finding that she abused sick leave or its recommendation that she be terminated). The district court granted the defendants' motion to dismiss on the basis that fibromyalgia was not a condition that gave rise to a constitutionally-protected privacy right. On appeal, the U. S. Court of Appeals for the Second Circuit affirmed.

As a general matter, a right to privacy protected "the individual interest in avoiding disclosure of personal mat-