Cases



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Civil Rights

Seizure of Dogs

"This is perhaps the dog-gonest case ever to reach a federal appellate court," noted Circuit Judge Ronald Lee Gilman in *O'Neill v. Louisville/Jefferson County Metro Government*, No. 10-5699, 2011 U.S. App. LEXIS 22530 (6th Cir. Nov. 08, 2011). There, the court ruled that a municipality's code enforcement officers stepped over the line in seeking to enforce, allegedly, an animal control ordinance.

The O'Neills owned two adult American bulldogs, which produced a litter of puppies. The O'Neills advertised these dogs for sale in a local paper, which attracted the attention of the Louisville Metro Animal Services (LMAS) office. Two undercover agents posing as interested buyers entered the O'Neills' home and left, after which uniformed officers entered the home and demanded to see a "breeder's license." They allegedly stated they could confiscate all the dogs because the O'Neills did not have a breeder's license; further, if more than one dog was unlicensed, they claimed LMAS could seize all the animals on the premises. The officers did confiscate the O'Neills' dogs, without a warrant and without consent.

The O'Neills were told the next day, when they went to reclaim their dogs, that the dogs would not be released without being microchipped and vaccinated, and the adult dogs would be neutered or spayed. The O'Neills protested, but claimed that Meloche, the LMAS Director, told them that he had "created" the animal-control ordinance, and it gave him the right to impound the dogs and alter them prior to release. Instead of fining the O'Neills up to $3,000 or arresting them, Meloche offered to release the dogs immediately if the owners paid $1,020.95. He "also threatened the O'Neills with the possibility of arrest if they did not accept his 'deal.'" The O'Neills paid. While in the custody of the LMAS, the adult dogs were neutered or spayed, and microchips were implanted in all nine animals. (The O'Neills also claimed that, during the dogs' short stay at the LMAS facility, they contracted various infections that required expensive veterinary treatment.) No formal charges were lodged against the O'Neills, and they were not provided with any written notice of their alleged violations of the animal control ordinance.

The O'Neills brought a 42 U.S.C. § 1983 lawsuit alleging that their Fourth Amendment rights were violated by the warrantless search of their home and the seizure of their dogs, that their right to procedural due process was violated by the failure of LMAS to provide meaningful notice of, or an opportunity to be heard on, the charges against them, and that the officers violated their substantive due process and equal protection rights. The district court dismissed all of the O'Neills' claims, finding that the O'Neills were operating an unlicensed Class A kennel in violation of the animal-control ordinance (which defined a kennel as an "establishment where dogs and/or puppies ...are kept for the primary purpose of breeding, buying, or selling such animals and which establishment is so constructed that the dogs [and/or] puppies... cannot stray therefrom"), and that none of their constitutional claims had merit.

On appeal, the U.S. Court of Appeals for the Sixth Circuit affirmed the dismissal of the O'Neills' substantive due process and equal protection claims, reversed the dismissal of the Fourth Amendment and procedural due process claims, vacated the grant of qualified immunity to the individual defendants, and remanded. The O'Neills were not operating a Class A kennel and were not required to have a breeder's license: the primary purpose of the building was not for breeding dogs; further, "establishment" typically meant an institution or place of business. The land use code distinguished between commercial and non-commercial kennels. It defined a "non-commercial kennel" to include a "residence," and specifically stated that selling up to three litters of puppies per year did not make the residence a "commercial kennel." The court also found it significant that this was apparently the first time that LMAS applied the kennel definition to a private home.

On the Fourth Amendment claim, the court held that the second and warrantless entry into the home, by uniformed officers, was not supported by the consent to enter afforded to the undercover officers. The municipality had relied on the consent-once-removed doctrine (where an undercover agent or informant, who initially enters by consent, "paves the way" for entry by law enforcement to effect an arrest). The court found that the doctrine did not stand for the general proposition that achieving one consensual entry permitted law enforcement agents to thereafter enter and exit a home at will. Significantly, it found that the LMAS officers "never intended to effectuate an arrest in this case," which was sufficient to remove the case from the narrow confines of the doctrine.

On the due process argument, the ordinance provided that a violation notice had to be in writing, include a statement of the charges, and indicate a right of appeal was available. The O'Neills were not made aware of the charges or violations that they were purportedly subject to, much less the elements of any of those offenses, and should, "at the very least have had some document memorializing the agreement with Meloche so that, in the event charges were later brought against them, they would have the ability to plead res judicata." The lack of notice was unconstitutional.