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Trials: Reopening Dormant Child Abuse Case Against Officer Who Files Section 1983 Action Against City Is Grounds for Prosecutorial Misconduct

Marshall v. City of Farmington Hills, No. 13-2011 (6th Cir. Aug. 27, 2014).

The Sixth Circuit has held that where the City of Farmington Hills (Michigan) reopened a dormant child abuse case against an officer who had brought a Section 1983 excessive force action against the City relating to his arrest on other grounds, the issue of prosecutorial misconduct had been sufficiently raised. The court also found that because the parties had not agreed on the text of a press release, a release-dismissal agreement between the officer and the City was not final and the office was not collaterally estopped from further litigation.

In December 2006 Officer David Marshall was heading home in his police uniform from work in Detroit when he was pulled over by the Farmington Hills Police – his hometown police force. He was ordered out of the vehicle and officers asked for his gun. Marshall called for a sergeant to come to the scene and refused to turn over his weapon. The sergeant arrived and reached for Marshall's weapon, but Marshall brushed him aside, whereupon the supervisor returned to his patrol car, obtained a taser, and shocked Marshall twice. Marshall was then arrested, ordered to strip at the police station, and charged with obstructing law enforcement.

In mid-2006, Marshall had physically disciplined his son and the Farmington Hills police investigated the incident. The lead detective had turned the case over to the City attorney, but never heard back and, according to her, the case had been closed as of August 2006.

The same day of Marshall's arrest for obstruction, the child abuse case was reinvestigated and turned over to the county attorney, who filed charges. Marshall subsequently went to trial on the child abuse charge and won. Meanwhile, the obstruction charge remained pending.

At this point the City and Marshall entered a release-dismissal agreement, wherein Marshall would release the City of all liability and the City would dismiss the obstruction charge, contingent on the parties agreeing to 1) the terms of a civil liability release and 2) the language of a press release. The parties never agreed to press release language, and Marshall requested the trial court set a trial date for the obstruction charge. The trial court refused to grant the request and instead, despite the parties' failing to agree on the press release, held the release-dismissal agreement valid. The court said that "[f]rankly, something that happened [earlier], now that it's August 14th is probably moot anyway. I'm not sure that the press has any great interest in this file . . . ." Marshall filed suit, alleging violations of §§ 1983 and 1985, excessive force, battery, and loss of consortium. The City countered that the suit was barred by collateral estoppel and the District Court agreed, dismissing Marshall's suit. This was appealed and the Sixth Circuit reversed and remanded, ordering the lower court to consider whether the agreement was voluntary, whether there was prosecutorial misconduct, and whether the agreement would adversely affect the public interest.

The District Court evaluated the issues on remand and ultimately decided against Marshall on all of them, granting the city's motion to dismiss. Marshall appealed again to the Sixth Circuit.

HELD: The Sixth Circuit reversed the District Court again, holding the agreement was not voluntary, that there was evidence of prosecutorial misconduct, and that enforcing the agreement would adversely affect the public interest.

DISCUSSION: A release-dismissal agreement is only enforceable if a court specifically determines that "(1) it was entered into voluntarily; (2) there is no evidence of prosecutorial misconduct; and (3) enforcing the agreement will not adversely affect relevant public interests."

As to voluntariness, the Sixth Circuit majority determined Marshall did not voluntarily enter the agreement and was instead judicially compelled to do so. The parties had consented to enter the agreement only if the press release could be agreed to, which did not occur.

As to prosecutorial misconduct, the majority found the City did not carry its burden of rebutting substantial evidence. Looking at Sixth Circuit precedent the majority noted prosecutorial misconduct includes "following their use of [(1)] excessive force, [(2)] police officers file unfounded criminal charges as bargaining chips to cover up their own conduct or to induce the victim to give up his cause of action; or where [(3)] a prosecutor, upon discovering that the victim has a meritorious civil claim, files frivolous criminal charges in order to protect the police officers." The majority saw all three parts of this pattern in Marshall's facts, and thus easily found the possibility of prosecutorial misconduct.

As to what the court considered the most elusive of the three elements--whether the public interest was adversely impacted--it did find an adverse impact, holding that "when criminal prosecution is threatened after it becomes clear that the victim is considering a civil claim—as here, where the City filed otherwise dormant child abuse charges—the public interest in vindicating constitutional rights and deterring police misconduct is apparent."