Cases



Civil Rights

Qualified Immunity – Deadly Force

On March 9, 2005, John Garczynski handed his estranged wife Leigh a large packet and told her not to open it unless something happened to him. Leigh opened it almost immediately and saw the packet contained her husband's last will and testament, an obituary listing his date of death as March 9, 2005, a journal containing references that he intended to kill himself, and other documents. Leigh called 911. While the police were trying to locate him, Garczynski called Leigh and had a lengthy conversation with her. The police monitored the call, hoping to determine his whereabouts. After locating Garczynski, the police approached his car and found him holding a gun to his head. One of the officers yelled at him to drop the gun. Garczynski appeared to aim the gun at the officers, at which point one of the officers shot and killed him. Garczynski's estate brought a civil suit pursuant to 42 U.S.C. § 1983, seeking damages in excess of ten million dollars and claiming the use of excessive and deadly force. The district court granted summary judgment on the Section 1983 claims, holding that the officers were entitled to qualified immunity because the officers' use of deadly force was "objectively reasonable under the circumstances."

The U.S. Court of Appeals for the Eleventh Circuit affirmed the ruling. Based on the facts, the burden was on the decedent's estate to show that qualified immunity should not apply because the officers violated a constitutional right, and the right violated was clearly established at the time of the incident. The court analyzed the excessive force claim under the Fourth Amendment's "reasonableness" standard, as determined by the "totality of circumstances." Only arguable probable cause was needed to qualify for immunity. Here, the threat to the officers and Graczynski's refusal to drop his gun contributed to a situation in which the officers' use of force was "objectively reasonable given all the circumstances from a reasonable officer's viewpoint." *Garczynski v. Bradshaw*, 573 F. 3d 1158 (11th Cir. 2009).

Probable Cause – Entry into Former Marital Home

Geneva Finigan was in the middle of divorce proceedings with her estranged husband. Although they both shared the title to their former marital residence, she had moved out and resided elsewhere. Her estranged husband still lived at the marital home and had changed the locks. After learning that her husband would be out of town, Finigan went to the house and decided to remove some items without his knowledge. Marshall, a police officer, responded to a report of a burglary in progress, and recognized the address because Finigan's husband was his friend. Marshall knew that Finigan had moved out and that divorce proceedings were pending. A neighbor, who was looking after the house, advised Marshall that the husband had changed the locks and expressed uncertainty as to how Finigan had obtained access to the premises. Finigan admitted to Marshall that she had removed property without her husband's knowledge, but stated that she had legal title to the residence, had removed only her own property, and that her divorce attorney told her she could do so. Marshall made no attempt to verify these claims and arrested Finigan. When she was later released without being charged, Finigan brought a 42 U.S.C. § 1983 suit alleging false arrest and abuse of process. The district court concluded that Marshall failed to investigate whether Finigan was legally entitled to enter the residence by virtue of her title and, therefore, lacked probable cause to make the arrest. As a result, the court denied Marshall's motion to dismiss based on qualified immunity.

The U.S. Court of Appeals for the Second Circuit vacated the ruling and remanded, finding that Marshall had probable cause to arrest Finigan. Under New York law, a person was guilty of criminal trespass when he or she "knowingly enter[ed] and remain[ed] unlawfully in a dwelling." Probable cause to arrest Finigan existed based on the following facts: a report of a burglary had been made; Marshall knew that divorce proceedings were pending and Finigan no longer resided at the premises, that the locks had been changed, and that Finigan's husband had not consented to her entry; and based on Finigan's admission that she entered and removed property from the premises. Finigan's main argument relied heavily on her telling Marshall that she shared title to the home and Marshall's failure to follow up on this assertion. The court, however, stated that the right of entry did not turn solely on the existence of an ownership interest – an owner could be convicted of burglarizing premises he owned but which were occupied by another. As stated by the court, Finigan's entry may have occurred "without great danger," but the law was in place to prevent "angry title-holding spouses" from entering property, and to prevent "looting of the premises by non-residence spouses." *Finigan v. Marshall*, 574 F. 3d 57 (2d Cir. 2009).

Section 1983 – Required "State Action"

Philips, a physician who practiced at Pitt County Memorial Hospital, contended that his practice privileges had been suspended by the hospital's governing board in violation of 42 U.S.C. § 1983, based on putative infringements of his Fourteenth Amendment due process rights. However, because a plaintiff alleging a violation of Section 1983 is required to prove that a "state actor" deprived the plaintiff of his rights, the status of the hospital became a critical issue. Private conduct, no matter how discriminatory or wrongful, failed to qualify as "state action." Until 1998, Pitt County owned all of the property repre-

senting the hospital, which it leased to PCMHI, an entity formed to operate the hospital. In 1998, the County and PCMHI entered into an agreement to change the status of the hospital from a public facility to a private, not-for-profit hospital, and the County sold the hospital to PCMHI. The County had the right to appoint eleven members of the 20-member board governing the facility, and retained additional rights arising out of the indebtedness over the purchase price. The hospital received some state and federal funds but the County was not involved in its day-to-day operations. In arguing that the board was a state actor, Philips argued that a sufficiently close nexus existed between the government and the defendants' decision to suspend him, pointing to the County's control and the fact that the board was appointed exclusively by state actors. The hospital, arguing that it was a private, non-profit organization, moved dismiss the action. The district court granted the motion and, on appeal, the U.S. Court of Appeals for the Fourth Circuit affirmed.

Any control by the County was "largely embodied in the reverter provision which help[ed] assure that PCMHI [met] Pitt County's objectives of care for the indigent and payment to the County of specified monetary obligations." The state's involvement with the board ended as soon as the members were approved; thus, the plaintiff needed to present additional evidence that the state actor used its authority to influence hospital practice or physician privilege decisions. The County representatives were entitled to attend the board meetings but they did not have voting rights, and were not, in fact, actually present for the consideration of the plaintiff's suspension. Therefore, the suspension of the plaintiff's privileges was not state action. *Philips v. Pitt County Memorial Hospital*, 572 F.3d 176 (4th Cir. 2009).

First Amendment
Animal Slaughter Ordinances

To follow up on an article that appeared in the last issue of the *Municipal Lawyer (Regulating Noah's Ark – Religious Freedom and Animal Control Issues*, by Bradford Bullock, in the July/August 2009 issue), the U.S. Court of Appeals for the Fifth Circuit has since released its ruling in the case involving the City of Euless's animal control ordinance. The ordinance permitted the keeping and slaughter of up to four "tablefare" birds in residential areas, regardless of the purpose for which the poultry were kept, but prohibited the keeping and slaughter of four-legged animals within its borders. The exceptions include the killing of vermin (which was permitted) and the killing of animals by animal control officers. The purpose for the keeping and slaughter ban was public health and safety, primarily based on the runoff of animal waste, flies, smells, noise, possible disease transmission. The ban allegedly prevented practitioners of the Santeria faith from performing ceremonies essential to their religion (Santeria rituals often involve the sacrifice of live animals). The plaintiff, José Merced, was a Santeria priest who performed the sacrifices at his residential property. After the City learned of this, Merced was told to stop, as this violated the ordinance. He sued the city, seeking a permanent injunction that prohibited Euless from enforcing an ordinance that burdened his religious practice, and alleging violations of state law (the Texas Religious Freedom and Restoration Act, or TRFRA), the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc, and the First, Fifth, and Fourteenth Amendments. The district court dismissed the RLUIPA claim because no zoning laws were at issue, and concluded that the ordinance did not burden Merced's religious practice, and that it furthered compelling governmental interests and was the least restrictive means of advancing them.

The U.S. Court of Appeals for the Fifth Circuit affirmed in part, reversed in part, and remanded. Under TRFRA, the ordinance substantially burdened the plaintiff's free exercise of religion without advancing a compelling governmental interest using the least restrictive means. The court held this finding obviated the need to address the remaining constitutional questions. It was undisputed that Merced's sincere religious beliefs motivated his conduct, and that his killings were sacrifices and not mere slaughter. A government's ban of conduct sincerely motivated by religious belief substantially burdened an adherent's free exercise of that religion, and Merced's ability to perform some ceremonies did not mean the ordinance did not burden other Santeria practices. The court found that, in essence, Merced had to choose between living in Euless and practicing his religion. The City had "absolutely no evidence" that Merced's religious slaughter undermined any of its interests, and the exception that allowed the keeping, slaughter, and disposal of a small number of fowl on a regular basis had "the same corrosive effect on the city's interests as infrequent sacrifices of a larger number of animals." Possibly less restrictive alternatives to the ban included a permit scheme for animal sacrifices, requiring Santeria adherents to comply with conditions designed to safeguard the City's interests. *Merced v. Kasson*, Nos. 08-10358, 08-10506, 2009 WL 2343172 (5th Cir. July 31, 2009).

Establishment Clause – Bible Distribution in School

Members of Gideons International had been allowed to hand out Bibles to students at the South Irons Elementary School for the past 30 years. In 2005, the School District Superintendent advised the school board that several attorneys (including the district's own attorney) had recommended discontinuing the practice on the basis that it was unconstitutional. The board declined to do so. A lawsuit followed in 2006, brought by the parents of several students, against the school district, members of the Board of Education, and school officials, alleging that the Bible distribution violated the Establishment Clause of the First Amendment. The district court granted a preliminary injunction enjoining the District from "allowing distribution of Bibles to elementary school children on school property at any time during the school day." In the meantime, the school district adopted a new policy. This provided that an organization wishing to distribute "any printed material" had to submit the material, in advance, to the superintendent for approval. All requests "shall be approved" unless

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