International Municipal Lawyers Association



e-News: Issue 1 January 4, 2018

In This Issue: 6 Cases

Attorney's Fees: Fees Collectible Where Non-Fee Claim Arises out of Common Nucleus of Fact with Fee-Generating Claim

Immunity: 2013 Decision did not Provide Clear Notice that 2010 Regulation was Rendered Invalid

Immunity: Eleventh Circuit Dismisses Complaint Based on Overly-Tight Handcuffs

Immunity: Officers Executing Facially Valid Court Order Have Absolute Quasi-Judicial Immunity

Trials: Neither Failure to Communicate with Town about Settlement nor Intervening Death of Son Justifies Relief from Judgment

Trials: RLUIPA Claim is Moot Where Prison Provides Requested Relief; Later Deprivation on Intervening Grounds Does Not Unmoot Claim

Click Here To Print This Issue

Quick Links

IMLA Website

Webinar Calendar

Municipal Jobs Board

Become a Member

Join The IMLA Community

Attorney's Fees: Fees Collectible Where Non-Fee Claim Arises out of Common Nucleus of Fact with Fee-Generating Claim

St. Louis Effort for AIDS v. Lindley-Myers, No. 16-3647 (8th Cir. Dec. 18, 2017).

Reversing the district court, the Eighth Circuit has allowed attorney's fees in a case where the plaintiff won summary judgment against a preemption defense, even though the underlying "fee-generating" portion of the case had not been litigated-because that claim arose out of a common nucleus of fact as the preemption issue.

St. Louis Effort for AIDS (Effort) challenged numerous provisions of the Health Insurance Marketplace Innovation Act of 2013 on preemption, due process, and First Amendment grounds. It and its co-plaintiffs won on summary judgment based on the preemption issues. Effort then sought attorney's fees under §1988(b), but was denied on the basis that the successful claim was not a fee-generating claim (rather only the filed but unaddressed claims had the potential for attorney's fees under §1988(b)). Effort appealed.

The Eighth Circuit reviewed the history of §1988(b), noting that a footnote in the House

Committee report provided a glimpse into Congressional will and reasoning. Specifically, it showed that Congress expressly contemplated cases where a plaintiff would have multiple claims, only one of which included the right to attorney's fees. Moreover, Congress said that in "instances . . . [when] the claim with fees involve[s] a constitutional question which the courts are reluctant to resolve if the non-constitutional claim is dispositive . . . . [i]f the claim for which fees may be awarded meets the 'substantiality' test, *see Hagans v. Lavine* . . ., attorney's fees may be allowed even though the court declines to enter judgment for the plaintiff on that claim, so long as the plaintiff prevails on the non-fee claim arising out of a 'common nucleus of operative fact.'"

The Eighth Circuit refined this to a two-part test: "(1) the potential fee-generating claim must be substantial, and (2) it and the successful claim must arise from a common nucleus of operative fact." The prong at issue was the second, for which Effort argued the *statute* at issue was itself a common nucleus of fact, whereas the state argued the statute itself was not enough because the claims were not "reasonably related." The court sided with Effort, finding that all the claims arose from Missouri's passage of the statute and that they were "reasonably related" since both the fee-generating, unaddressed claims and the successful one all derived from that same set of common fact. It reversed the lower court.

LINK

Immunity: 2013 Decision did not Provide Clear Notice that 2010 Regulation was Rendered Invalid

Sebesta v. Davis, No. 16-1355 (7th Cir. Dec. 21, 2017).

The Illinois Department of Children and Family Services and a hospital social worker are entitled to qualified immunity in a case brought by a mother whose newborn was temporarily taken from her, because the primary precedent relied on by the plaintiff did not clearly put the defendants on notice that the regulation under which they acted had been invalidated.

In September 2010 Elizabeth Sebesta (Sebesta) gave birth to a daughter at the University of Illinois Medical Center. Sebesta had recently been there for mental health issues and had been hospitalized. The pediatric team sent notice to a social worker at the hospital - Andrea Davis (Davis) - seeking a review of the case. Davis found that Sebesta was hostile and easily angered; exhibited a lack of insight into her psychiatric needs; fought with her mother; that her mother refused a toxicology screen of her daughter; and that her mother denied her daughter's documented mental illness. As a result, Davis reported the case to the Illinois Department of Children and Family Services (DCFS) as required under state law. Ultimately, DCFS required "intact family services," which involved in-home counseling and child-welfare services and, facing removal proceedings otherwise, Sebesta agreed to these services. These services were continued through May 2011 at which point DCFS determined no credible evidence of neglect existed and severed the services. Sebesta sued under § 1983, alleging her parental rights were interfered with - specifically her substantive due process right to familial integrity. The district court dismissed the case, granting summary judgment to the defendants.

Briefly put, the question facing the Circuit in this case was weighing the "parental interests in familial integrity [] against the state's interest in protecting children from harm." The court summarized the constitutional morass, but then analyzed a critical threshold issue first that resolved the case: qualified immunity. It found Sebesta failed to meet the specificity criteria the Supreme Court set out for finding a right "clearly established." Sebesta cited three cases, but the Court found the culmination of these was insufficient to put the defendants on notice of her familial right alleged. Specifically, it held that the *2013 case* cited by Sebesta could not be used to hold

that the defendants were *clearly* on notice about the invalidity of the *2010 regulation* they relied on. It thus held the defendants were entitled to qualified immunity.

LINK

Immunity: Eleventh Circuit Dismisses Complaint Based on Overly-Tight Handcuffs

Trotter v. Shull, No. 17-13295 (11th Cir. Dec. 19, 2017).

Upholding the district court, the Eleventh Circuit has found that a plaintiff did not produce precedents clearly establishing a constitutional violation where officers apply handcuffs so tightly that the arrestee is permanently injured.

On August 7, 2014 a deputy observed a vehicle following another vehicle too closely and pulled the vehicle over, ultimately arresting Jimmy Grady Trotter (Trotter) on suspicion of DUI. Once arrested, Trotter alleged he complained that his handcuffs were too tight, but that nothing was done by the officer. Trotter filed an excessive force claim under §1983, alleging the handcuffs caused serious injury to his right wrist, including a chronic scapholunate ligament tear that required surgery, and that he is now unable to grip or grasp with his right hand and continues to experience regular pain. The district court dismissed the complaint on qualified-immunity grounds, and Trotter appealed.

The Eleventh Circuit first noted there was no dispute about Schull performing within the scope of his discretionary authority, meaning the heart of the appeal was whether Trotter could defeat immunity by showing "(1) [Schull] violated a constitutional right, and (2) this right was clearly established at the time of the alleged violation." Using its discretion to evaluate either of these required showings first, the Circuit chose to analyze whether the law was clearly established such that Shull was on notice that his conduct violated the Fourth Amendment. It found it was not, pointing out that the three cases Trotter highlighted were all off-point, so much so that none established that Schull violated the Fourth Amendment by ignoring Trotter's complaints about the tightness of his handcuffs. Without noting whether it had found precedent that created established law on the issue, it affirmed the lower court.

LINK

Immunity: Officers Executing Facially Valid Court Order Have Absolute Quasi-Judicial Immunity

Welch v. Saunders, No. 17-1202 (10th Cir. Dec. 29, 2017).

Explaining that sheriff's deputies were not required to scrutinize or analyze a court order ostensibly directing plaintiff to vacate a Colorado residence, the Tenth Circuit has upheld a finding that the officers involved were protected by absolute quasi-judicial immunity.

In 2013 Leslie William Welch (Welch) and his two minor children rented a house and barn in Golden, Colorado, from Kenneth Mueller, the property owner. Mr. Mueller's former wife obtained a county-court protection order against Mr. Mueller in August of 2013 that included a provision that

"no tenants and or caretakers employed by [Kenneth Mueller are] authorized to live on [the] property." This provision was deleted from the Protection Order in early October 2013. Later in October 2013, Ms. Mueller sought to have Welch and his children evicted from the property using an unlawful-detainer action, but the court dismissed the case. Then in March 2014 county sheriff's deputies directed Welch to vacate the property based on the August Protection Order and one deputy misstated in his report that the Protection Order had been amended on January 16, 2014--but it had not, and a review of the court record would have evidenced this.

Welch and his children vacated the property and did not move back in until July 2014, at which point he noticed that personal possessions were either missing or damaged. He filed suit asserting claims against the sheriff's deputies under § 1983 for violation of their Fourth, Fifth, and Fourteenth Amendment rights, and against Ms. Mueller as a private party who "participated in and fully facilitated the actions of" the deputies. The district court dismissed the case entirely, granting summary judgment for all defendants.

As to the various sheriff's deputies involved, the Tenth Circuit noted the lower court found they were entitled to absolute quasi-judicial immunity. This doctrine holds that "officials charged with the duty of executing a facially valid court order enjoy absolute immunity from liability for damages in a suit challenging conduct prescribed by that order." The heart of the appeal came down to what "facially valid" means in the order execution context. As the descriptor implies, "facially valid" simply means valid on its face. On the policy side, the Tenth Circuit elucidated that "[s]tate officials must not be required to act as pseudo-appellate courts scrutinizing the orders of judges," and that officers are tasked with executing orders, not scrutinizing them or researching the law upon which they are based, or reviewing court records; in short, "'Facially valid' does not mean 'lawful.' An erroneous order can be valid."

Herein was the problem for Welch and his children because no facts indicated the deputies had any knowledge of the August Protection Order being superseded. They were provided a facially valid order and executed it as required, the lower court was therefore affirmed. As for Ms. Mueller, the Court noted one of two conditions needed to be met to hold her liable under §1983 for her private actions "under color of state law": either the state law being applied had to be unconstitutional or she had to conspire with the sheriff's deputies. Neither was alleged here and thus the grant of summary judgment on that §1983 claim was also affirmed.

LINK

Trials: Neither Failure to Communicate with Town about Settlement nor Intervening Death of Son Justifies Relief from Judgment

Skrabec v. Town of North Attleboro, No. 17-1385 (1st Cir. Dec. 18, 2017).

Where plaintiffs' counsel did not maintain communication with the defendant Town, the Town's unopposed motion for summary judgment was properly granted-and the plaintiffs did not demonstrate how the death of their son, while tragic, supported their claim of "excusable neglect" as a basis for relief.

In December 2012 Patrick Skrabec was arrested after telling high school classmates that "he would like to shoot up the school." The case went to trial and he was acquitted. Thereafter Patrick's parents filed a §1983 suit alleging the Town of Attleboro (Town) and staff thereof "(1) conspired to violate and violated Patrick's constitutional rights under . . . § 1983, (2) acted negligently, (3) negligently inflicted emotional distress, (4) committed malicious prosecution, and (5) deprived Neil and Mary Ann Skrabec [Skrabecs] of consortium with their son, Patrick." The Town filed a motion for summary judgment and, simultaneous with the Skrabecs' looming

deadline for opposing that motion, the parties' attorneys exchanged some emails about settlement. The deadline passed and eventually the district court granted the Town's unopposed motion for summary judgment, prompting the Skrabrecs to file a FRCP 60(b) motion seeking relief from the judgment based on excusable neglect. The district court denied that motion and an appeal was filed.

The First Circuit began its analysis forebodingly for the Skrabrecs, noting "Federal Rule of Civil Procedure 60(b) relieves parties from final judgments only under exceptional circumstances." The bare minimum for obtaining such relief requires a party to show "his motion is timely; that exceptional circumstances exist, favoring extraordinary relief; that if the judgment is set aside, he has the right stuff to mount a potentially meritorious claim or defense; and that no unfair prejudice will accrue to the opposing parties should the motion be granted." The four factors in a 60(b) commonly evaluated for missing a deadline are "(1) the danger of prejudice to the nonmoving party, (2) the length of the delay and its potential impact on the judicial proceedings, (3) the reason for the delay, including whether it was within the control of the movant, and (4) the movant's good faith." Here, the Skrabrecs argued their attorney missed the deadline based on a good faith belief that settlement negotiations were proceeding. The Circuit found this unsound, first noting the sparse emails between the attorneys never discussed extending the deadline and that such a belief by the Skrabrecs' attorney was nothing more than an assumption - a completely unfounded one. The Skrabrecs' second argument - that the death of their son disrupted settlement negotiations and the preparation of their case - fared no better since it was made untethered to how it contributed to the attorney's belief that he needn't file a response to the Town's summary judgment motion. The Circuit affirmed the lower court.

LINK

Trials: RLUIPA Claim is Moot Where Prison Provides Requested Relief; Later Deprivation on Intervening Grounds Does Not Unmoot Claim

Robertson v. Biby, No. 17-3068 (10th Cir. Dec. 15, 2017).

Where prison authorities allowed an inmate to have a digital Bible, mooting his RLUIPA claim, the fact that they later removed the device because he accessed radio stations did not unmoot his RLUIPA action.

Joshua James Robertson (Robertson) is a Messianic Jew jailed in Kansas--specifically in long-term administrative segregation. As a result of this particular housing Robertson was prevented from hearing his bible read aloud to him. He filed suit under the Religious Land Use and Institutionalized Persons Act (RLUIPA), alleging the restriction substantially burdened his religious exercise and requested to be allowed to possess a "my-iBible," an MP3 player loaded with an audio recording of the Bible. The case previously went to the Tenth Circuit after the lower court dismissed Robertson's case for failure to state a claim and the Tenth Circuit reversed the lower court, remanding the case. This ultimately resulted in the prison officials providing Robertson his iBible and related accessories (like earbuds) necessary to listen with some limits, including that he not use them in violation of prison policies. On remand - as a direct result of the prison officials' actions - the lower court dismissed the case, deeming it moot. Robertson appealed that decision.

The Tenth Circuit upheld the lower court this time. First, it discussed constitutional standing and the specific directive that a case is moot when "the relief sought can no longer be given or is no longer needed." That was particularly relevant since at the time of the last appeal Robertson asked to be able to listen to the iBible and that since then prison officials provided just that relief. Robertson argued the subsequent events of the last year - namely, that prison officials seized his

iBible for violating prison policy by listening to the radio - unmooted the case. Courts do not supplement the record on appeal for mootness based on subsequent events, however; rather, the Circuit pointed out without stating an opinion on the matter, Robertson may have a new claim.

The Circuit also touched on prudential standing, noting it occurs when "a plaintiff starts off with a vital complaint but then a coordinate branch of government steps in to promise the relief []he seeks." Robertson precisely fit this description since the prison officials granted the exact relief he sought when he was permitted to listen to the iBible. Again, the subsequent event of his iBible being taken away from him does not unmoot the prudential standing but, again, could form the basis for a separate and distinct claim about his iBible being taken away. The second appellate case in this controversy was thus affirmed by the Circuit.

LINK

IMLA

www.imla.org
51 Monroe Street
Suite 404
Rockville, MD 20850
202-466-5424

