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FEATURED CASES:

Sixth Circuit Rules: Plausible Allegation of Due Process Violation, but No Takings Violations

***O'Connor v. Michigan*, No. 22-1780 (6th Cir. Oct. 6, 2023)**

The court ruled that Dennis O'Connor's ("O'Connor") due process claims against Michigan officials were valid because he wasn't provided with notice or process before the state took his property. However, his takings claims were dismissed because the state didn't take full ownership of his property under the Michigan Uniform Unclaimed Property Act. The state held the property temporarily and O'Connor retained certain rights, leading the court to reject his takings claims.

Background: The central issue revolved around the government's authority to take custody of unclaimed property under Michigan's Uniform Unclaimed Property Act ("UUPA") and the subsequent obligations regarding compensation and due process. O'Connor had unclaimed property taken by the state, and a dispute arose over his rights. Michigan reimbursed O'Connor for the original value of his property but not for any interest earned after liquidation. Additionally, O'Connor claimed he was not provided with the necessary pre-deprivation process, leading him to file a lawsuit against the State and two officials. The district court dismissed O'Connor's case, stating that the officials were entitled to qualified immunity, and the State was entitled to sovereign immunity. The trial court also held that O'Connor's claims against the State were dismissed with prejudice.

Appeal: The Circuit court affirmed the dismissal of the takings claims against the officials and the State but vacated the dismissal of O'Connor's due process claims against the officials and the State, directing further proceedings.

Analysis:

Qualified Immunity: To overcome qualified immunity, a plaintiff must demonstrate two key elements: 1) the government official's actions violated a constitutional right; and 2) the e right was "clearly established."

The court ruled that O'Connor had a property right in the net interest on his property and that the State was required to provide due process before depriving him of that interest. O'Connor alleged that he received no notice or process before the State took custody of his property and liquidated it, which the officials did not contest. Therefore, the court concluded that O'Connor plausibly alleged a violation of his clearly established right to notice and process. As a result, the two state officials were not entitled to qualified immunity on O'Connor's due process claims.

Takings Claim: The court ruled that O'Connor's claims did not constitute takings claims because the Michigan government did not acquire outright ownership of his property under the UUPA. The court explained that the UUPA allows the state to take custody, but not ownership, of unclaimed property after following certain procedural requirements. The state holds this property "in trust for the benefit of the rightful owner." Furthermore, the state sells or liquidates unclaimed property within three years after receiving it, and the proceeds are deposited into the state's general fund, subtracting reasonable administration costs. Property owners can still recover the "net proceeds" from the sale but only if the property was interest-bearing before the state took custody.

The court reasoned that under these provisions, Michigan did not outright take ownership of O'Connor's property but rather held it temporarily, and he had certain rights, including the right to recover the net proceeds from the sale of his property. O'Connor had a right to the interest earned on his property but only if the property accrued interest before the state took custody.
In summary, the court ruled that O'Connor's claims did not qualify as takings claims because the state did not take full ownership of his property under the UUPA, and he retained certain rights related to the proceeds and interest. Therefore, his takings claims were not valid. However, the court allowed his due process claims to proceed because it found that O'Connor had plausibly alleged that his right to notice and process was violated by the state officials.

O'Connor v. Michigan

SHORT SUMMARIES:

9th Circuit – 5th Amendment – Takings

Appellants, rental housing companies, raised constitutional challenges to eviction moratoriums enacted in response to COVID-19 by the City of Seattle in 2020. Like many other localities at the time, the City hoped to reduce the spread of the pandemic by allowing tenants to self-isolate in their current residence regardless of individual circumstance. Appellants claimed this was a physical taking by denying their right to exclude presence on their property, in violation of the Fifth Amendment. The trial court granted summary judgment in favor of the City, and the Fifth Circuit affirmed. *Yee v. Escondido* foreclosed the appellants' physical takings claim. The City's eviction restriction did not impose a physical taking on the landlords like *Cedar Point Nursery v. Hassid,* therefore the court found no violation of the Fifth Amendment. Judgment affirmed.

El Papel v. City of Seattle

8th Circuit - QI – Wrongful Death – Sec. 1983 – Inmate Death

This case concerns a wrongful death and deliberate indifference claim filed by the personal representative of Louis Payton ("Payton"), an inmate who passed away while incarcerated near St. Louis. At trial, the district court denied the City's motion for summary judgment on grounds of qualified immunity. On appeal, the Eighth Circuit reversed the denial of summary judgment and remanded for further proceedings. Payton was detained in a medium security facility which allowed inmates to move freely between the "dormitory-style sleeping quarters" and "recreation room." Though inmates were supervised by officers in a nearby guard station, Payton unfortunately received and consumed a fatal dose of fentanyl. Only some of these events were captured in the facility's surveillance footage.

When the three responding officers arrived, they witnessed other inmates attempting to resuscitate Payton. Instead of attempting to revive Payton themselves, the officers waited for trained medical personal to arrive a few minutes later. By this time, it was too late to resuscitate Payton, and he died of an overdose.

This appeal concerns plaintiff's claims against the City of St. Louis and the three responding officers for deliberate-indifference and wrongful-death. Defendants immediately moved for a stay of discovery and summary judgment on the grounds of qualified immunity. The district court granted the stay of discovery but denied summary judgment. This appeal followed.

The Eighth Circuit points to two legal errors by the district court. The first is applying the incorrect summary judgment standard. Rather than allowing the officers to rely on the absence of evidence supporting the plaintiff's claims, the district court relied on the lack of evidence *disproving* the plaintiff's claims in its decision. The district court "emphasized that the officers had not come up with any evidence definitively defeating the plaintiff's claims," and consequently denied summary judgment. A correct application of the summary judgment standard, however, allows the moving party to shift their burden of proof to the plaintiff where they can accurately show "an absence of evidence supporting the nonmoving party's case."

The second legal error discussed is the district court's decision to stay discovery and rely on the limited evidence presented in pleadings to justify denying summary judgment. The Eighth Circuit rejects the reasoning applied to deny summary judgment, asserting that the district court improperly relied on unsupported allegations from the plaintiff's unverified complaint to compensate for a lack of evidence to rebut the officers' claims. Furthermore, the opinion argues that this "compounded" the district court's initial error and resulted in findings which "mirrored" the allegations from the plaintiff's unverified complaint. The issue here is "whether unverified factual allegations can substitute for actual evidence in determining whether a genuine issue of material fact exists;" the Eighth Circuit concludes it may not.

In sum, "[t]he district court tilted the scales too far in the plaintiff's favor" by failing to apply the correct standard for summary judgment and allowing unsworn allegations to rebut evidence. Accordingly, the Eighth Circuit vacated the denial of summary judgment. The question of summary judgment is remanded for further proceedings.

Washington v. City of St. Louis

10th Circuit – Excessive Force – Qualified Immunity – Felony Warrant

In this case the lower court denied Qualified Immunity to officers who shot and killed an armed man for whom they had a felony warrant. The specific incident began (other facts occurred before the incident) when the officers staked out a highway where the subject of the warrant was likely to pass and when he did they stopped him. Rather than obey the commands of the officers, the man pulled a handgun and then walked on a bridge towards the Colorado River where he seemed ready to commit suicide by jumping or by shooting himself. Whatever went through his mind we'll not know, but he returned from the precipice and began fleeing from the officers towards the city. One of the officers shot him twice in the back. The officer explained that because the man first showed signs of suicidal ideation but then began fleeing, the officer believed that the man was more likely to use the gun on the police or the public as he was pursued and that firing when he did was the last opportunity to do so before shooting would be dangerous to the public at large. The panel reversed and remanded with directions to grant summary judgment to the defendants on the basis of Qualified Immunity.

George v. City of Rifle

7th Circuit – 2nd Amendment – Gun regulation

The state and several cities adopted regulations limiting the possession of certain guns. The court explained at the outset: "The present cases, which we have consolidated for disposition, relate to the types of "Arms" that are covered by the Second Amendment. This presents a line-drawing problem. Everyone can agree that a personal handgun, used for self defense, is one of those Arms that law-abiding citizens must be free to "keep and bear." Everyone can also agree, we hope, that a nuclear weapon such as the now-retired M388 Davy Crockett system, with its 51-pound W54 warhead, can be re[1]served for the military, even though it is light enough for one person to carry." The subject of the controversy were assault weapons and those with large capacity magazines and while the court noted that these weapons lie somewhere between the two extremes it described, they are more likely military weapons than those of the militia. Accordingly the court refused to enjoin the laws.

Bevis v. City of Naperville

8th Circuit – Protests – Use of Force – Qualified Immunity

In this very polarized world in which we live, some folks, relying on the freedoms we have arising from the Revolutionary Era, engage in protests. In this case, upon being asked politely not to drag dump trucks off a bridge and to stay off a bridge, a crowd of protesters approached the officers who used various tactics to defend themselves and to mitigate the violence of the protest. Some protesters sued asserting claims for injuries. The lower court dismissed the claims and the panel on appeal affirmed. As to one claim the court noted: "Even assuming that the plaintiffs could proceed against unnamed police officers, cf. Roe v. Nebraska, 861 F.3d 785, 789 (8th Cir. 2017), the protestors have not shown that it was clearly established as of November 2016 that a use of force designed to disperse a crowd constituted a seizure."

Dundon v. Kirchmeier