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SHORT SUMMARIES:

7th Circuit – Takings Clause – Lawful Search Warrant

In June of 2022, a South Bend, Indiana, SWAT team executed a search warrant on a house belonging to Amy Hadley. The police executing the warrant believed that a murder suspect was located at the house based on a login to his Facebook account from an IP address located at the house. However, the suspect was not at the house, and Hadley had no connection to the suspect. The execution of the warrant caused major damage to Hadley's home, with windows broken, walls perforated, tear gas, and other destructive measures that rendered the home uninhabitable for days.

After being denied compensation from the city, Hadley filed a Section 1983 claim alleging violations of her 5th and 14th Amendment rights under the Takings Clause. The district court dismissed her takings claim, reasoning that damages arising from lawful police activity are not compensable under the Fifth Amendment. The appellate court again dismissed her claim, once again holding that *Johnson v. Manitowoc County*, 635 F.3d 331 (7th Cir. 2011) is controlling law on these types of claims in the 7th Circuit. Hadley's attempts to distinguish and overturn *Johnson* were also unsuccessful, further cementing it as controlling law in the 7th Circuit. For 7th Circuit practitioners, this serves as a solid clarifying case for Takings Clause claims related to the execution of search warrants.

Hadley vs. City of South Bend

9th Circuit – Employment Law – Age Discrimination

Three Circle K employees brought suit under the Age Discrimination in Employment Act (ADEA) and California's Fair Employment and Housing Act (FEHA), alleging that Circle K denied them the opportunity to apply for promotion to a West Coast regional director position because of their age. When the position became available, the company did not announce the vacancy or solicit

applications, as it had done in the past. Instead, it selected a younger candidate, who had previously served as a regional director in another area, without giving the plaintiffs a chance to apply.

The District Court dismissed the case, arguing that the plaintiffs had not established a prima facie case for age discrimination because they had not actually applied for the promotion. Additionally, the employer had a non-pretextual reason for their hiring decision. But upon appeal, the Ninth Circuit held that when an employer does not announce a vacancy or solicit applications, plaintiffs are not required to show that they applied for the position to establish a prima facie case of age discrimination. Furthermore, the appellate court discussed that even a relatively small age gap, as was in this case, can still be enough for an age discrimination claim, provided the plaintiffs can prove that age was still a factor in the hiring decision. The court in this case found that the plaintiffs had presented sufficient evidence to make it a triable issue and remanded the case accordingly.

Caldrone vs. Circle K Stores Inc.

7th Circuit – First Amendment – Employment - Unlawful Termination – Defamation

A trainee got hold of what he believes to be a study guide when, in fact, it's the answers to the test he will soon be taking to become a law enforcement officer. Believing it to be a study guide, he offers to help his classmates by sharing it with them. A more astute classmate perceives the document as more than a study guide, seeing it as a crib sheet, and alerts the supervisors. The investigation results indicate that the investigator recommends the student continue in employment because the investigator believed his version. The Sheriff's department management team concluded otherwise and terminated the trainee. The letter of termination detailing the basis was transmitted to a couple of people in the department and to the Merit board. The trainee sought employment elsewhere but the baggage of the termination was heavy. Finally, he found a position with another sheriff about two years after the incident. He sued, asserting loss of "occupational liberty," among other things.

The court concluded that there really wasn't a publication and that Illinois' immunity law applied to the state count of defamation. As an added bonus, the court included in its factual summary that the trainee failed a lie detector test during one of his attempts at employment based on whether he had used or dealt with narcotics. One of the issues raised involved whether the Sheriff's department could be sued. The panel seemed to believe that *Monell* concluded they could say:" In general, local branches of govern[1]ment are 'persons' under § 1983. *Monell v. Dep't of Soc. Servs*., 436 U.S. 658, 690 (1978)." The panel noted that in Illinois, a sheriff's department is a "municipal entity" so could be sued.

Jones vs. Lake County Sheriff's Department

9th Circuit – Excessive Force

Ann Tierney Smith owned property in West Virginia and, having failed to pay her 2016 real property taxes, a tax lien was sold to Ed Boer. Boer then sought a tax deed, and pursuant to West Virginia law, he was obligated to notify certain individuals, including Smith, of their right to redeem the property. Boer submitted to the Auditor a list of mailing addresses for Smith, but he did not include her then-current mailing address, despite it being listed in county records. Notices sent by certified and regular mail were returned as undeliverable or unclaimed. When personal service attempts

failed, notices were posted at the property and at other addresses listed for Smith. After she did not redeem the property by the deadline, Rollyson (an official in the Auditor's Office) issued the tax deed to Boer. Smith later learned of the deed; after her death, her estate's representatives sued Rollyson (in his individual capacity) under § 1983, alleging a deprivation of property without due process.

The district court granted summary judgment to Rollyson on qualified immunity grounds, concluding that although Rollyson might have directed Boer to search county records for Smith's current address after the mailed notices failed, doing so was not clearly required by existing law at that time. On appeal, the Fourth Circuit affirmed. The court held that on April 1, 2019, the date the deed was issued, it was not "clearly established" that a state actor like Rollyson must, as a constitutional mandate, compel or require a tax-buyer or lienholder to conduct an additional county-record search for a property owner's current address after initial notices were returned undeliverable. While the court acknowledged that precedent imposes a duty of "reasonable efforts" under the Due Process Clause to attempt further notice when mailed notice fails, those cases do not prescribe a rigid follow-up rule. Because Rollyson's choice of personal service plus posting fell within the realm of permissible approaches, he was entitled to qualified immunity and summary judgment.

Ann deWet v. G. Russell Rollyson, Jr.

6th Circuit – Res Judicata

The gist of the case involves an outdoor advertising company's irritation with a city's sign laws that it believes prevent it from destroying the aesthetic landscape along an interstate highway within the city. A few years ago, the company exercised its rights under the Constitution to complain, and the Circuit told it that it lacked standing. The company claims, both then and now, that being forced to seek a variance for its eyesores violates the First Amendment due to the unfettered discretion given to those deciding whether to grant the variance. The company, therefore, claimed it had declined to enter the process and was thus denied its rights protected by the Constitution. Recognizing that this argument had not really changed since the last time it was litigated, the lower court and circuit panel agreed that res judicata in one or the other forms of its Anglicized version applied. However, unlike the lower court, the panel fell prey to the company's argument that, since the last time, it had intended to put up additional billboards and had not applied for a variance due to the previously mentioned issue of unfettered discretion. So, the panel concluded there are changed facts and preclusion does not apply.

Outdoor One Communications vs Charter Township of Canton, MI