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Ransdell v. Clark County,
124 Nev. Adv. Op. No. 73 (September 25, 2008)¹

Property – Sovereign Immunity – Constitutional Law

Summary

Appeal from a district court order dismissing Plaintiff's complaint of negligence and entering orders of partial summary judgment for other tort and constitutional claims.

Disposition/Outcome

Affirmed. The Nevada Supreme Court held that NRS 41.032(2) provides immunity to the County with regard to nuisance abatement because the process is discretionary and performed by a sovereign entity. Likewise, Plaintiff's due process and equal protection claims were denied.

Factual and Procedural History

Appellant Gary Ransdell owned residential property in Clark County, Nevada. The County Public Response office received a nuisance complaint regarding the condition of his property. The complaint noted that his property was cluttered with trailers, vehicles and trash items. Per County procedure, the inspector Al Dixon, inspected the property on May 2, 2003 and issued the first notice that Ransdell was in violation of various Clark County code provisions. After no response from Ransdell, Dixon issued a formal notice of violation, specifically noting the existence of solid waste, junk vehicles, unlicensed and inoperable vehicles and using a residential zone for storage.

After further formal notices, with no response from Ransdell, Dixon forwarded the case to the County Inspector. The County Inspector evaluated the property on September 22, 2003 at which time she posted a notice of abatement. This notice indicated that Ransdell had the right to pursue an administrative appeal within ten days or the County would begin abatement procedures. Although Ransdell failed to appeal formally, he requested and had an on site meeting with the County Inspector. After this meeting he was given until January 29, 2004 to comply with the notice of abatement. He, however, failed to remove any of the nuisance items by the necessary date.

The justice court then issued a warrant that allowed the County to enter onto the property and seize items and record the items that were taken pursuant to the abatement order. The county completed the abatement over a three day period and seized various items including vehicle parts, tires, engines, parts of bicycles, tarps, chairs and garbage. Following this removal Ransdell filed a civil complaint that included eight causes of action and punitive damages.

¹ By Matthew J. Orme

Ransdell claims that his constitutional procedural and substantive due process and equal protection rights had been violated and also pleaded tort claims, including trespass to land and chattels, conversion, nuisance and negligence. In its answer, the county denied allegations and included several affirmative defenses. One of the primary defenses was sovereign immunity for discretionary governmental actions. Ransdell also filed a motion to return the items seized but was denied by the district court because there appeared to be adequate due process and the warrant was issued and abatement performed with probable cause and was reasonable.

The County filed motions to dismiss and for orders of partial summary judgment. The district court granted the County's motion and found that the County was entitled to immunity under NRS 41.032(2) for all of the tort claims. It also found that the substantive due process claim failed as the law was not "impermissibly vague." They further found that because Ransdell failed to exercise his administrative appeal and the County fulfilled its requirements under the warrant, no genuine issue of fact remained. The punitive damages were likewise covered by the immunity statute on which the court had previously relied.

Discussion

Sovereign Immunity – Tort Claims

Ransdell raised several arguments on appeal. The first questioned the sovereign immunity from tort liability provided by NRS 41.032(2), which states: No action may be brought against ... the state or its agencies based upon the ... failure to perform a discretionary function or duty...." The court used *Martinez v. Maruszczac*², a recently decided case which dealt with the same issue. The same test was used to determine whether this statute providing sovereign immunity applies.

The test as found in *Martinez*, which originated in *Berkovitz v. United States*³ provides that government actions fall within the scope of discretionary-act immunity when they 1) involve an element of individual judgment or choice and 2) are based on considerations of social, economic or political theory.⁴ The court reasoned that the first element of this test was met as individual judgment or choice was exercised⁵ as the county had to use its discretion to apply the code which provided that abatement was possible where visible debris or rubbish would be offensive to the public. Thus the inspectors used their own judgment as to the condition of the property.

The second part of the test was also met. The court found that generally speaking, the procedures dealing with abatement have strong public policy motives oriented to issues of health, safety and public welfare. In *Goodman v. City of Le Claire*⁶ the Iowa

² 123 Nev. ___, 168 P.3d 720

³ 486 U.S. 531 (1988).

⁴ *Id.* at 536.

⁵ Clark County Code § 11.06.010(c).

⁶ 587 N.W. 2d 232 (Iowa 1998).

Supreme Court used this test and under similar factual elements concluded that waste and nuisance cause damage to the environment and also subject the community to adverse economic consequences.⁷ This Court followed the reasoning in *Goodman* and found that environmental, health, and economic policies supported the relevant wording in the code. Therefore the two part test of discretion and public policy concerns applied to Clark County in this instance.

Constitutional Claims

The term “inoperative automobiles” was not unconstitutionally vague. The court noted that the County Code is presumed to be constitutionally valid and to prove vagueness a plaintiff must show that the law is impermissibly vague in all of its applications. Ransdell knew that the abatement order and warrant contained information about the removal of the vehicles and failed to avail himself of the administrative appeal process. The Court used this fact to show that had Ransdell really thought the provision was vague, he would have questioned the abatement notices earlier in the process. Also, his procedural due process claim was without merit as the seizure was based on probable cause and set forth with particularity. The reasonable nature of the abatement procedures to protect public health and safety further validated the removal of these items. Equal protection also did not apply to Ransdell because as a property owner he is not a member of a protected class and he did not claim that he was the only individual to be targeted by these specific code provisions.

Conclusion

The County’s action of abatement of property falls under the sovereign immunity statute 41.032(2) because the process of abating a nuisance involves discretion and the structure is in place in furtherance of public policy goals. Procedural and substantive due process claims were also denied by the court as Ransdell was not denied reasonable and fair procedural process and the terms of the County Code and warrant were not unconstitutionally vague. The Supreme Court affirmed the decision of the district court in dismissing or entering summary judgment in favor of the county for the various tort and constitutional claims of the plaintiff.

⁷ *Id.*