

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

Grimm v. Sweeney

249 F. Supp. 2d 571 (E.D. Pa. 2003) · No. Civil Action No. 01-431 · Decided March 7, 2003

SUMMARY

The United States District Court for the Eastern District of Pennsylvania entered judgment for municipal defendants in a nonjury civil-rights action brought under 42 U.S.C. § 1983. The plaintiffs alleged First Amendment retaliation, substantive due process violations, retaliation for exercising Fourth Amendment rights, and violations of the Pennsylvania Constitution arising from property condemnations and code-enforcement actions. The court found that the defendants' actions were justified by legitimate safety and code-enforcement concerns and were not retaliatory.

CASE DETAILS

COURT	United States District Court for the Eastern District of Pennsylvania
WRITING FOR THE COURT	Van Antwerpen, District Judge
JURISDICTION	Pennsylvania
DECIDED	March 7, 2003
DOCKET	Civil Action No. 01-431
DISPOSITION	other
PROCEDURAL POSTURE	After a bench trial on remaining federal and state constitutional claims, the district court entered judgment for the defendants on all claims.
STANDARD OF REVIEW	For the substantive due process claims, executive action affecting a protected property interest must be sufficiently arbitrary or egregious to shock the conscience. For First Amendment retaliation, plaintiffs bore the initial burden to show protected conduct was a substantial or motivating factor, after which defendants could show they would have taken the same actions absent the protected conduct. The court also evaluated whether defendants had probable cause for the challenged citations.
PRECEDENTIAL VALUE	Published federal district court opinion; persuasive authority within the Eastern District of Pennsylvania and elsewhere, subject to controlling Third Circuit and Supreme Court precedent.

PARTIES

Gary Grimm, Grimm Brothers Realty Company v. Charles R. Sweeney, Thomas M. O'Donnell

TOPICS

section 1983 first amendment substantive due process municipal law civil procedure

PRACTICE AREAS

civil rights constitutional law real estate municipal law civil procedure

QUESTIONS PRESENTED

1. Whether defendants violated plaintiffs' First Amendment rights by issuing citations and condemnation orders in retaliation for plaintiffs' participation in litigation against the Borough and criticism of Borough code-enforcement policies.
2. Whether defendants violated plaintiffs' substantive due process rights by taking arbitrary or conscience-shocking actions affecting plaintiffs' property interests.
3. Whether defendant O'Donnell violated plaintiffs' Fourth Amendment rights by citing Grimm Brothers Realty for refusing access to 857 Cherry Street for inspection.
4. Whether the condemnations of 857 Cherry Street and 837 Swede Street violated Article I, Section 8 of the Pennsylvania Constitution.
5. Whether defendants were entitled to qualified immunity.

HOLDINGS

1. Plaintiffs failed to prove that their participation in lawsuits, their public criticism of Borough code-enforcement policies, or Grimm's state-court condemnation action was a substantial or motivating factor in defendants' challenged actions. Defendants also established nonretaliatory reasons for the citations and condemnations and that they would have taken the same actions absent the protected conduct.
2. Defendants' actions did not violate plaintiffs' substantive due process rights because the challenged citations, condemnations, and related enforcement actions were not arbitrary, irrational, egregious, or conscience-shocking.
3. Defendants were entitled to judgment on all claims remaining for trial.

KEY QUOTATIONS

"We grant judgment for defendants on all claims presented by the plaintiffs." (574)

"We therefore find, as a matter of law, that none of the defendants' actions taken against the plaintiffs were taken out of a desire to retaliate against the plaintiffs for their involvement in the NAIL I lawsuits, for Grimm's suit to lift the condemnation of 837 Swede Street or for Grimm's public comments regarding Borough code enforcement policies." (608)

FACTUAL BACKGROUND

Plaintiffs owned and operated several mixed-use properties in Norristown, Pennsylvania, including 837 Swede Street and 857 Cherry Street. After a major fire at 837 Swede Street, Borough officials condemned the property and required electrical certification and additional fire-safety measures; officials later cited plaintiffs for allowing occupancy of condemned premises, unsafe electrical practices, and other code violations. Plaintiffs alleged that the condemnations and citations were retaliation for participation in lawsuits against the Borough, criticism of Borough code-enforcement policies, and a state-court action challenging the condemnation. The court found that the challenged actions were supported by safety and code-enforcement concerns rather than retaliatory motives.

PROCEDURAL HISTORY

Plaintiffs filed suit under 42 U.S.C. § 1983 and the Pennsylvania Constitution based on alleged retaliation, substantive due process violations, a Fourth Amendment violation, and allegedly unlawful condemnations. The court dismissed certain state claims against the Borough of Norristown and dismissed the claims for declaratory and injunctive relief, later denied plaintiffs' summary-judgment motion and granted defendants partial summary judgment, and conducted a nonjury trial on the remaining claims. Following the trial and posttrial submissions, the court entered judgment for defendants on all claims.

DISPOSITION

other

CASES CITED

- Grimm v. Borough of Norristown, 226 F. Supp. 2d 606 (E.D. Pa. 2002)
- Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)
- Gruenke v. Seip, 225 F.3d 290, 298 (3d Cir. 2000)
- Parratt v. Taylor, 451 U.S. 527, 535 (1981)
- Monroe v. Pape, 365 U.S. 167 (1961)
- Albright v. Oliver, 510 U.S. 266, 271 (1994)
- Anderson v. Davila, 125 F.3d 148, 161 (3d Cir. 1997)
- Rauser v. Horn, 241 F.3d 330, 333 (3d Cir. 2001)
- Trotman v. Board of Trustees of Lincoln University, 635 F.2d 216, 224-25 (3d Cir. 1980)
- Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274, 287 (1977)
- Baldassare v. New Jersey, 250 F.3d 188, 195 (3d Cir. 2001)
- Woodwind Estates, Ltd. v. Gretkowski, 205 F.3d 118, 123 (3d Cir. 2000)
- Independent Enterprises, Inc. v. Pittsburgh Water & Sewer Authority, 103 F.3d 1165, 1179 n.12 (3d Cir. 1997)
- DeBlasio v. Zoning Board of Adjustment, 53 F.3d 592, 600-01 (3d Cir. 1995)
- County of Sacramento v. Lewis, 523 U.S. 833, 846-47 (1998)
- United Artists Theatre Circuit, Inc. v. Township of Warrington, 316 F.3d 392, 400-01 (3d Cir. 2003)

- *Brinegar v. United States*, 338 U.S. 160, 175 (1949)
- *Carroll v. United States*, 267 U.S. 132, 162 (1925)
- *Rich v. Bailey*, No. 95-6932, 1996 WL 745298, at *5 (E.D. Pa. Dec. 23, 1996)
- *Barrie v. Grand County, Utah*, 119 F.3d 862, 867 (10th Cir. 1997)
- *Jones v. Witinski*, 931 F. Supp. 364, 369 (M.D. Pa. 1996)
- *Webb v. McCullough*, 828 F.2d 1151, 1158 (6th Cir. 1987)

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