

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Watertown Equipment Company and Edward Moe, Jr. v. Norwest Bank Watertown, N.A., formerly First National Bank of Watertown; Jerry Miller, Vice President of Norwest Bank Watertown, N.A.; Thomas Green, Attorney for Norwest Bank Watertown, N.A.

830 F.2d 1487 (8th Cir. 1987) · No. No. 86-5448 · Decided December 23, 1987

SUMMARY

The Eighth Circuit addressed a 42 U.S.C. § 1983 challenge to a prejudgment attachment of a business's property under South Dakota law. The court held that the attachment procedure violated clearly established procedural due process requirements and that qualified immunity, reliance on counsel, and the attorney's participation required further consideration or did not provide immunity on the record presented; it reversed and remanded.

CASE DETAILS

COURT	United States Court of Appeals for the Eighth Circuit
WRITING FOR THE COURT	Heaney, Circuit Judge; Lay, Chief Judge; Larson, Senior District Judge, sitting by designation
JURISDICTION	Federal
DECIDED	December 23, 1987
DOCKET	No. 86-5448
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiffs appealed from summary judgments entered for the defendants in a 42 U.S.C. § 1983 action challenging a prejudgment attachment of property under a South Dakota statute.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. Qualified immunity presents a question of law ordinarily capable of resolution at the summary-judgment stage, although factual disputes may require remand.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Watertown Equipment Company, Edward Moe, Jr. v. Norwest Bank Watertown, N.A., formerly First National Bank of Watertown, Jerry

Miller, Vice President of Norwest Bank Watertown, N.A., Thomas Green, Attorney for Norwest Bank Watertown, N.A.

TOPICS

section 1983 qualified immunity procedural due process summary judgment civil procedure

PRACTICE AREAS

civil rights constitutional law commercial litigation civil procedure remedies

QUESTIONS PRESENTED

1. Whether the defendants were entitled to qualified immunity in a § 1983 action arising from enforcement of the South Dakota prejudgment attachment statute.
2. Whether Norwest Bank and Jerry Miller's reliance on advice from attorney Thomas Green insulated them from liability despite the allegedly clearly established unconstitutionality of the attachment procedure.
3. Whether Green's advice and participation in instituting the attachment constituted action under color of state law.

HOLDINGS

1. Although private parties acting jointly with public officials under creditor-remedies statutes may invoke qualified immunity, Norwest, Miller, and Green were not entitled to qualified immunity because the unconstitutionality of the South Dakota attachment procedure was clearly established on October 25, 1982.
2. Norwest Bank and Miller's reliance on Green's advice did not insulate them from liability because they did not face a perilous or unique situation and Green's advice was equivocal.
3. There was a factual question whether Green acted under color of state law through joint participation with state officials in instituting the attachment proceeding; the issue had to be decided on remand.

KEY QUOTATIONS

"We agree with the appellees that the four Supreme Court decisions and our decisions such as Guzman point to five primary factors: (1) an affidavit accompanying the petition for the writ of attachment which contains facts alleged by a person with knowledge; (2) an opportunity for the debtor to dissolve the writ by posting a bond; (3) an "early" post-deprivation hearing at which the creditor bears the burden of proving the legality of the writ of attachment; (4) indemnification of the debtor for a wrongful attachment; and (5) judicial supervision of the attachment process." (830 F.2d at 1491)

"This procedure clearly was not constitutionally acceptable in 1982 when the attachment in this case occurred." (830 F.2d at 1493)

FACTUAL BACKGROUND

Norwest Bank extended Watertown Equipment Company a secured line of credit totaling approximately \$488,000, with Edward Moe personally guaranteeing most of the loans. After financial difficulties and concerns about collateral being moved or concealed, Norwest obtained a prejudgment attachment from the county clerk under South Dakota law, and the sheriff closed and secured the business. The attachment continued for several months, during which the business ceased operations, before the parties reached a settlement.

PROCEDURAL HISTORY

The appellants filed a federal action asserting procedural due process and pendent state-law claims. The district court granted summary judgment for Green on November 27, 1985, and partial summary judgment for Norwest Bank and Miller on October 6, 1986, dismissing the state claims without prejudice. The court of appeals reversed and remanded for consideration of the merits of the federal and state claims.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court was instructed to consider the merits of the federal and state claims and to determine factually whether Green acted under color of state law through joint participation with state officials.

CASES CITED

- Buller v. Buechler, 706 F.2d 844 (8th Cir. 1983)
- Flagg Brothers, Inc. v. Brooks, 436 U.S. 149 (1978)
- Lugar v. Edmondson Oil Co., Inc., 457 U.S. 922 (1982)
- Mitchell v. Forsyth, 472 U.S. 511 (1985)
- Harlow v. Fitzgerald, 457 U.S. 800 (1982)
- Arcoren v. Peters, 829 F.2d 671 (8th Cir. 1987) (en banc)
- Sniadach v. Family Finance Corp. of Bay View, 395 U.S. 337 (1969)
- Fuentes v. Shevin, 407 U.S. 67 (1972)
- Mitchell v. W.T. Grant Co., 416 U.S. 600 (1974)
- North Georgia Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601 (1975)
- Guzman v. Western State Bank of Devils Lake, 516 F.2d 125 (8th Cir. 1975)
- Black Hills Mercantile Co. v. Bender, 59 S.D. 241, 238 N.W. 883 (1931)
- Lewis Service Center, Inc. v. Mack Financial Corp., 696 F.2d 66 (8th Cir. 1982)
- Johnson v. American Credit Co. of Georgia, 581 F.2d 526 (5th Cir. 1978)
- Jones v. Preuit & Mauldin, 822 F.2d 998 (11th Cir. 1987)
- Slaughter v. Nolan, 41 S.D. 134, 169 N.W. 232 (1918)
- Duchesne v. Sugarman, 566 F.2d 817 (2d Cir. 1977)
- Tanner v. Hardy, 764 F.2d 1024 (4th Cir. 1985)

- Crowe v. Lucas, 595 F.2d 985 (5th Cir. 1979)
- Wentz v. Klecker, 721 F.2d 244 (8th Cir. 1983)
- Arnsberg v. United States, 757 F.2d 971 (9th Cir. 1985)
- Chapman v. Musich, 726 F.2d 405 (8th Cir. 1984)
- Dunn v. Hackworth, 628 F.2d 1111 (8th Cir. 1980) (per curiam)
- Briscoe v. LaHue, 460 U.S. 325 (1983)
- Tower v. Glover, 467 U.S. 914 (1984)
- Jones v. Preuit & Mouldin, 808 F.2d 1435 (11th Cir. 1987)

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