

SUPREME COURT OF NEVADA

Ransdell v. Clark County, 124 Nev. 847

192 P.3d 756 (2008) · No. No. 48592 · Decided September 25, 2008

SUMMARY

The Supreme Court of Nevada affirmed judgment for Clark County in an action arising from the abatement of nuisance conditions on Gary Ransdell's property. The court held that the County's investigation, decision to abate, and related inventory were discretionary acts based on public-policy considerations and therefore immune from tort liability under NRS 41.032(2). The court also rejected Ransdell's procedural due process, substantive due process, and equal protection claims.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Cherry, J.; Gibbons, C.J.; Maupin, J.; Hardesty, J.; Parraguirre, J.; Douglas, J.; Saitta, J.
JURISDICTION	Nevada
DECIDED	September 25, 2008
DOCKET	No. 48592
DISPOSITION	affirmed
PROCEDURAL POSTURE	Ransdell appealed from a district court judgment dismissing or granting summary judgment against his constitutional and tort claims arising from Clark County's nuisance abatement of his property.
STANDARD OF REVIEW	Questions of sovereign immunity under Nevada Revised Statutes Chapter 41 present mixed questions of law and fact; statutory construction is reviewed de novo, while factual findings supported by substantial evidence are not disturbed. Dismissal for failure to state a claim is reviewed by accepting factual allegations as true and construing reasonable inferences in the plaintiff's favor. Summary judgment is reviewed de novo.
PRECEDENTIAL VALUE	Published en banc opinion of the Supreme Court of Nevada; precedential.
PARTIES	Gary Ransdell v. Clark County, a political subdivision of the State of Nevada

TOPICS

sovereign immunity

municipal law

procedural due process

substantive due process

equal protection

PRACTICE AREAS

municipal law

constitutional law

civil rights

torts

civil procedure

QUESTIONS PRESENTED

1. Whether Clark County's investigation, declaration, and abatement of the alleged nuisance were discretionary acts protected by sovereign immunity under NRS 41.032(2).
2. Whether the term "inoperative automobiles" in the Clark County Code was unconstitutionally vague under substantive due process principles.
3. Whether Ransdell stated an equal protection claim based on the County's alleged selective enforcement of its nuisance-abatement code.
4. Whether the County's notice, administrative appeal opportunity, warrant, and abatement procedures satisfied procedural due process.
5. Whether punitive damages were available against Clark County.

HOLDINGS

1. Clark County's decisions and actions in investigating, declaring, and abating the nuisance were discretionary and were based on social, economic, and political policy considerations. They therefore fell within NRS 41.032(2)'s discretionary-function exception to Nevada's waiver of sovereign immunity.
2. Because the County was entitled to discretionary-act immunity, the district court properly dismissed or entered judgment for the County on Ransdell's negligence, trespass to land and chattels, conversion, and nuisance claims.
3. Ransdell's substantive due process vagueness claim was properly dismissed because he did not establish that the challenged term was impermissibly vague in all of its applications, and the term could be given reasonably certain meaning in context.
4. Ransdell failed to state an equal protection claim because property owners are not a protected class and he did not allege that he was the only person to whom the County's nuisance-abatement code had been applied.
5. The County afforded Ransdell procedural due process because he received notice, an opportunity to pursue an administrative appeal, and an administrative warrant supported by probable cause that particularly described the abatement's manner and scope.
6. Punitive damages were unavailable against Clark County under NRS 41.035(1), and the request was properly rejected.

KEY QUOTATIONS

“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 policy."” (762)

“Because a county's decision and actions in declaring and abating a nuisance are discretionary in nature and are made in furtherance of public policy goals, such decisions and actions are immune from civil liability under NRS 41.032(2).” (766)

FACTUAL BACKGROUND

Clark County investigated complaints that Ransdell's residential property contained trailers, vehicles, junk, trash, debris, and a green pool and was being used as a salvage or auto-repair yard. After repeated notices, opportunities to voluntarily abate, and notice of an administrative appeal, Ransdell neither pursued administrative relief nor abated the property. The County obtained an administrative warrant and removed numerous vehicles, vehicle parts, scrap metal, garbage, rubbish, and debris. Ransdell then sued, challenging the abatement and the term "inoperative automobiles" as vague.

PROCEDURAL HISTORY

After the County obtained an administrative warrant and abated alleged nuisance conditions on Ransdell's property, Ransdell sued in district court for constitutional violations, trespass, conversion, nuisance, negligence, and punitive damages. The district court denied his motion to quash the warrant and for an accounting and return of property, then dismissed or granted summary judgment for the County on all claims. The Supreme Court of Nevada affirmed.

DISPOSITION

affirmed

CASES CITED

- Martinez v. Maruszczak, 123 Nev. ___, 168 P.3d 720 (2007)
- Berkovitz v. United States, 486 U.S. 531 (1988)
- United States v. Gaubert, 499 U.S. 315 (1991)
- Goodman v. City of Le Claire, 587 N.W.2d 232 (Iowa 1998)
- Matter of T.R., 119 Nev. 646, 80 P.3d 1276 (2003)
- Hoffman Estates v. Flipside, Hoffman Estates, 455 U.S. 489 (1982)
- City of Las Vegas v. 1017 S. Main Corp., 110 Nev. 1227, 885 P.2d 552 (1994)
- Cairns v. Sheriff, 89 Nev. 113, 508 P.2d 1015 (1973)
- Wood v. Safeway, Inc., 121 Nev. 724, 121 P.3d 1026 (2005)
- Maiola v. State, 120 Nev. 671, 99 P.3d 227 (2004)
- Vacation Village v. Hitachi America, 110 Nev. 481, 874 P.2d 744 (1994)
- Edgar v. Wagner, 101 Nev. 226, 699 P.2d 110 (1985)

- Breliant v. Preferred Equities Corp., 109 Nev. 842, 858 P.2d 1258 (1993)
- Hampe v. Foote, 118 Nev. 405, 47 P.3d 438 (2002)
- Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. ___, 181 P.3d 670 (2008)
- City of Costa Mesa v. Soffer, 11 Cal. App. 4th 378, 13 Cal. Rptr. 2d 735 (1992)
- Com. v. Fossa, 31 Mass. App. Ct. 916, 576 N.E.2d 712 (1991)
- Gilman v. State, Bd. of Vet. Med. Exam'rs, 120 Nev. 263, 89 P.3d 1000 (2004)
- Mainor v. Nault, 120 Nev. 750, 101 P.3d 308 (2004)
- Sustainable Growth v. Jumpers, LLC, 122 Nev. 53, 128 P.3d 452 (2006)
- Allen v. State, 100 Nev. 130, 676 P.2d 792 (1984)
- Freeman v. City of Dallas, 242 F.3d 642 (5th Cir. 2001)