

U.S. Supreme Court Denies Due Process Claim Against Town's Failure to Enforce Restraining Order

The U.S. Supreme Court has held that the Castle Rock, Colorado Police Department did not violate the civil rights of Jessica Gonzales when it failed to enforce a domestic violence restraining order against her estranged husband. *Town of Castle Rock, Colorado v. Jessica Gonzales*, 545 U.S. _____ (2005).

The facts of the case are horrific. As part of her divorce proceedings, Jessica Gonzales was granted a restraining order by a Colorado trial court which ordered her estranged husband to not disturb the peace of her or any of her three children and to remain at least 100 yards from the family's home at all times. The order was later made permanent and modified to allow the husband limited visitation. On June 22, 1999, Jessica's husband, without making any advance arrangements, took his daughters from their home in violation of the order. Between the hours of 7:30 p.m. and 12:10 a.m. Jessica made repeated requests to the Castle Rock Police Department to enforce the restraining order. After the first request, the officers visited her home, but stated that there was nothing they could do to enforce the restraining order. After her subsequent requests, she was told to wait until a period of time had passed for her children to return, and only then to call back. At approximately 3:20 a.m., Jessica's husband entered the Castle Rock police station and opened fire. The police shot back, killing him. Inside his truck, the police found the murdered bodies of his three daughters.

Jessica filed a civil rights claim against the Town of Castle Rock, claiming that the Town had violated her due process rights under the 14th Amendment to the U.S. Constitution by ignoring her repeated pleas to enforce the restraining order. 42 U.S.C. § 1983. In order to prevail under this claim, Jessica would have had to show that she was denied the enforcement of a protected entitlement *guaranteed* by Colorado law.

The Court held that Colorado law, while showing a strong desire for peace officers to enforce restraining orders, did not give Jessica a *property right* to enforcement of the restraining order because enforcement was not *mandatory*. Even if Colorado law required such enforcement, Justice Scalia, writing for the majority, questioned whether such an entitlement to enforcement could rise to the level of a Constitutionally protected "property" interest, such as welfare benefits, utility services, or public employment. In the end, the Court determined that such a law did not provide any private entitlement to enforcement; thus, the protections afforded under the Due Process Clause were not triggered.

This case is important for Vermont municipalities because Vermont law does not have a mandatory arrest statute that would require police officers to investigate and make arrests in violations of temporary restraining orders. The law in Vermont remains that police officers are to use their training, experience, and discretion in enforcing court orders. Moreover, the U.S. Supreme Court's holding states unequivocally that police officers cannot be held liable for failing to protect a "benefit that a third party may receive from having someone else arrested for a crime." *Town of Castle Rock*, 545 U.S. _____

(2005). Nevertheless, this holding does not foreclose a state from enacting mandatory arrest statutes that would remove all police officer discretion from enforcement of restraining orders. Moreover, state law could also hold police officers liable for failure to enforce those orders. This could prove to be a difficult burden to meet for busy police departments, which are constantly forced to prioritize calls in a discretionary fashion.

– *Garrett Baxter, Associate, Municipal Assistance Center*

VLCT News, October 2005