

PROCEDURAL 1983 DUE PROCESS CLAIMS

By Ted Babbitt

The recent case of Crocker v Pleasant, 26 F.L.W. S61 (Fla. Feb. 1, 2001) is significant for its holding that an action for interference with an interest in a dead body exists under §1983 of the U.S. Code. It is more significant for Justice Pariente's well reasoned and scholarly analysis of 1983 actions.

The case arose as a result of the plaintiffs' 23 year old son having been found dead in West Palm Beach without identification. Because of the gross mishandling of the attempt to contact the plaintiffs by a West Palm Beach police officer, the plaintiffs' decedent was buried by the County and the plaintiffs did not find out about his death for approximately six months thereafter. When action was brought against the City alleging outrageous conduct and tortious interference with the right of burial, the trial court granted a judgment on the pleadings based upon the Supreme Court's opinions in State v Powell, 497 So.2d 1188 (Fla. 1986) and Gonzalez v Metropolitan Dade County Public Health Trust, 651 So.2d 673 (Fla. 1995). In Powell, supra, the Supreme Court upheld the constitutionality of a statute which authorizes the removal of corneal tissue from a dead body without the permission of relatives. In Gonzalez, supra, the Court found that an action for mental anguish based upon the negligent handling of a corpse had to be based on either physical injury or willful and wanton misconduct.

The Fourth District Court of Appeal sustained the trial court's ruling despite finding that the misconduct was even more egregious than the facts of Powell, supra, determining that the right of a relative to possess a body for burial was not a protected liberty or property interest within the meaning of §1983. The Fourth District certified that issue to the Supreme Court and the Supreme Court reversed, holding that an action for willful and wanton misconduct in the handling of a dead body still exists despite the Court's holding in Powell, supra.

In analyzing 1983 actions, Justice Pariente reviews both Federal and State law requirements for such an action.

Section 1983 provides as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. 42 U.S.C. §1983 (Supp. 1998).

The opinion points out that an action may be brought under the statute under three theories. First, when a State official deprives an individual of rights guaranteed by the Bill of Rights. Second, when there has been a denial of

substantive due process to such an extent that the action is both arbitrary and wrongful resulting in the violation of a right implicit in the concept of ordered liberty or that shocks the conscience. Lastly, a 1983 action can be brought for the deprivation of procedural due process under the 14th Amendment when there exists a constitutionally protected property or liberty interest that has been interfered with by the State.

In determining the latter basis for action and analyzing whether there is a constitutionally protected property interest, both State and Federal law must be reviewed.

Although the underlying substantive interest is created by 'an independent source such as state law,' federal constitutional law determines whether that interest rises to the level of a 'legitimate claim of entitlement....' Memphis Light, Gas & Water Div. v Craft, 436 U.S. 1, 9 (1978). The Eighth Circuit has explained this dichotomy as follows: 'Section 1983 does not create substantive rights; rather, state law establishes the property interest while federal constitutional law determines whether the state law property interest rises to a constitutionally protected property interest.' Riley v St. Louis County, 153 F.3d 627, 630 (8th Cir. 1998) (citation omitted), cert. denied, 525 U.S. 1178 (1999). Thus, whether labeled a property interest, a quasi-property interest or a legitimate claim of entitlement, the 'sufficiency of the claim of entitlement must be decided by reference to state law... Crocker, at 62.

Justice Pariente points out that mere negligence is not sufficient for a procedural due process action under §1983. She quotes from Daniels v Williams, 474 U.S. 327 (1986):

Historically, this guarantee of due process [under the Fourteenth Amendment] has been applied to deliberate decisions of government officials to deprive a person of life, liberty, or property. E.g. Davidson v New Orleans, 96 U.S. 97 (1878) (assessment of real estate); Rochin v California, 342 U.S. 165 (1952) (stomach pumping); Bell v Burson, 402 U.S. 535 (1971) (suspension of driver's license); Ingraham v Wright, 430 U.S. 651 (1977) (paddling student); Hudson v Palmer, 468 U.S. 517 (1984) (intentional destruction of inmate's property). No decision of this Court before Parratt supported the view that negligent conduct by a state official, even though causing injury, constitutes a deprivation under the Due Process Clause. This history reflects the traditional and common-sense notion that the Due Process Clause, like its forebear in the Magna Carta, see Corwin, *The Doctrine of Due Process of Law Before the Civil War*, 24 Harv. L. Rev. 366, 368 (1911), was 'intended to secure the individual from the arbitrary exercise of the powers of government.' Daniels, 330-31.

It is not enough to show that a constitutionally protected right has been deprived for a procedural due process claim under §1983. The deprivation must result from an unconstitutional procedure lacking due process.

The deprivation by state action of a constitutionally protected interest in 'life, liberty, or property' is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest without due process of law. The constitutional violation actionable under

§1983 is not complete when the deprivation occurs; it is not complete unless and until the State fails to provide due process. Therefore, to determine whether a constitutional violation has occurred, it is necessary to ask what process the State provided, and whether it was constitutionally adequate. This inquiry would examine the procedural safeguards built into the statutory or administrative procedure of effecting the deprivation, and any remedies for erroneous deprivations provided by statute or tort law. Zinermon, 494 U.S. at 125-26 (1990).

This decision reaffirms a right of action under §1983 for gross and willful misconduct in the mishandling of a dead body by a governmental agency. It analyzes and reviews the case law regarding §1983 actions, and procedural due process providing the trial lawyer with a primer for the necessary elements regarding such actions.

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