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Civil Liability and Domestic Violence Calls – Part Two

Contents

Introduction

In the first part of this three-article series, we examined an important U.S. Supreme Court decision on the constitutional parameters of police obligations in responding to domestic violence, and how federal courts have analyzed the issue, including in the context of a "state-created danger" doctrine. In this second article, the focus will be on municipal and supervisory liability, as well as domestic violence situations involving officers' own families. In a third article, the focus will be on liability issues under state law, including duties arguably imposed by state domestic violence statutes, and claims of gender, race, or sexual orientation discrimination in responding to domestic violence calls.

A prior article in this journal, which contains material that may be useful when read in conjunction with the section of this article on domestic violence situations involving officers is Civil Liability for Sexual Assault and Harassment by Officers, 2008 (2) AELE Mo. L.J. 101.

Municipal and Supervisory Liability

Federal civil rights liability for municipalities and their departments, such as police agencies, and for supervisory personnel, is different than liability for negligence or other culpability under state law. It cannot be based merely on vicarious liability, such as the existence of an employer-employee relationship, which may be adequate for liability under state law. In other words, the department and its supervisory personnel may not be held liable for damages for individual officers' inadequate or even arguably harmful responses to domestic

violence calls.

Liability for the municipality or police department, under the law set forth by the United States Supreme Court in Monell v. New York City Dept. of Social Services, #75-1914, 436 U.S. 658 (1978), must be based on a showing both that there was an official policy or custom, and that the policy or custom caused the claimed deprivation or injuries. Such policies or customs, in some cases, have been alleged to amount to discrimination in responding differently to domestic violence calls than to calls from the victims of other violent crimes, and some have focused on alleged inadequate supervision, discipline, or training of officers on the subject of how to respond to domestic violence situations.

Liability for supervisory personnel must be based on either their own direct personal involvement in the complained of conduct, or the showing of a connection between their own alleged failure to provide adequate supervision, training, or discipline, and the offending officer's actions.

The assertion that a municipal policy or custom, or inadequate supervision, training, or discipline has caused an act of domestic violence is very hard to establish. This is illustrated by Ricketts v. City of Columbia, Missouri, 35 F.3d 775 (8th Cir.1994), rehearing denied, 1994 U.S. App. Lexis 34477, cert. denied, 514 U.S. 1103 (1995). In that case, a jury initially held that a city was liable for $1.2 million for the rape of a wife by her estranged husband and his murder of wife's mother. The lawsuit alleged that city had an official policy of providing less protection to domestic violence victims than to other crime victims.

The trial judge subsequently set aside the damage award, and the federal appeals court upheld that result. The case involved a wife who initially obtained an order of protection against her abusive husband, but this did not prevent him from harassing her at her parent's home, where she went to get away from him. While police responded to her 911 calls, they never arrested her husband.

After initially moving back in with her husband, she sought and obtained a second order of protection, and went back to her parents' house. Her husband then raped her and shot her mother when she tried to intervene to prevent the rape.

The federal appeals court ruled that a reasonable jury could not have found, from the evidence at hand, that the wife and her mother were injured as a result of a "widespread custom" or policy of the city intended to discriminate against female victims of domestic violence.

In the case, the plaintiffs claimed, through the use of statistics and testimony that the city had a discriminatory custom of treating domestic abuse less seriously than non-domestic abuse cases, that victims of domestic abuse are most often women, and that this discriminatory custom "emboldened" the husband to continue his abusive behavior without fear of arrest.

The trial court, assuming without deciding that the city had an "unwritten policy or custom" that resulted in unequal treatment of domestic assaults in comparison to non-domestic assaults, still found that the plaintiffs had failed to prove that the custom caused the rape or the death, failed to prove that the custom was intended to result in "invidious discrimination" against women, and failed to identify the final policymaker who had knowledge of the discriminatory custom.

The appeals court agreed, commenting that it was "an exercise in pure speculation" to find that the husband's violent acts of sexual assault and murder would have been avoided had he been arrested for the prior harassment. Indeed, the court stated, it was equally plausible that an arrest for the prior harassment "might as easily have spawned retaliatory violence" from the husband.

In Navarro v. Block, #94-55701, 72 F.3d 712 (9th Cir. 1995), a federal appeals court ruled that evidence that 911 dispatchers treated domestic violence calls differently from other calls could be sufficient to show a county policy or custom regarding domestic violence which violated the right to equal protection of law. The court reinstated a lawsuit over an estranged husband killing his wife and four others after she made a 911 call that did not result in dispatch of police vehicle. In a subsequent decision in the same case, Fajardo v. County of Los Angeles, #96-55699, 179 F.3d 698 (9th Cir. 1999), the federal appeals court again ruled that giving domestic violence 9-1-1 calls a lower priority than other 9-1-1 calls may constitute an equal protection claim, and found that the trial court had not adequately explored whether such a policy existed or whether it was rationally based, improperly granting the defendants a judgment on the pleadings.

See also Cellini v. City of Sterling Heights, #92-7717, 856 F.Supp. 1215 (E.D. Mich 1994), in which the court ruled that the estate of a woman killed by her husband after she had reported the husband's abusive acts to police five times could sue the city on allegations that it had a policy of treating domestic violence assaults differently than other assaults.

In McLaurin v. New Rochelle Police Officers, #03 CIV. 10037, 373 F. Supp. 2d 385 (S.D.N.Y. 2005), a man arrested during officers' response to domestic violence call failed to show that excessive force was used against him. While officers allegedly hit him about the neck, shoulders, and wrist with their nightsticks and wrestled him to the ground, the arrestee refused to cooperate with

the officers, fought with them, disarmed one of them, and grabbed a second officer by the groin. Under these circumstances, the amount of force used by the officers was not objectively unreasonable. The plaintiff arrestee also failed to establish, as he claimed, that the city had a "widespread practice" of abusing "men of color" who dated white women.

Mere negligence in training officers concerning how to respond to domestic violence calls will be inadequate to establish municipal or supervisory liability. Instead, “deliberate indifference” to a known problem must be demonstrated. See Soltis v. Kotenski, #3:96-CV-01170, 63 F.Supp. 2d 187 (D. Conn. 1999), in which an officer who left the scene after helping man retrieve his radio from an ex-girlfriend's auto was not liable for a subsequent alleged assault the man committed on ex-girlfriend. The court ruled that there could be no liability for inadequate training in absence of a showing of deliberate indifference.

The mere fact that police supervisory personnel may fail to investigate particular complaints, standing alone, will not be a sufficient basis for supervisory liability. In Hayden v. Grayson, #97-1623, 134 F.3d 449 (1st Cir. 1998), the court ruled that a police chief's alleged failure to investigate minor females' charges that their father sexually abused them did not lead to federal civil rights liability, in the absence of proof that he took this action with intent to discriminate against them as females, minors, or victims of domestic abuse.

Other cases of possible interest involving, in part, issues of municipal or supervisory liability, include:

* Cole v. Summey, #1:04-CV-00189, 329 F. Supp. 2d 591 (M.D.N.C. 2004), in which a woman arrested for alleged violation of a domestic violence protective order that she claimed she had not yet been served with was told that she could not pursue a federal civil rights claim against the town. The court noted that there was no assertion that any official municipal policy had caused the arrest. The mere fact that the magistrate who issued the warrant for her arrest, and the sheriff who supervised the officer who allegedly failed to serve her with the protective order were both municipal employees did not alter the result.

* Bloomquist v. Albee, No. Civ. 03-276, 421 F. Supp. 2d 162 (D. Me. 2006), in which the court found that a man arrested in a domestic violence matter failed to show that any possible violation of his right to equal protection was based on a county policy of discrimination against males in such circumstances. Accordingly, he could not pursue his claims against the county.

* McLaurin v. New Rochelle Police Officers, No. 03-CIV-10037, 368 F. Supp. 289 (S.D.N.Y. 2005), holding that a county was not liable to a domestic violence

arrestee on his claim that his rights were violated by conditioning his release on bail on his attending a domestic violence program which was also utilized as part of the sentence for others convicted for the same offense. The plaintiff failed to show that this was imposed as a condition of his release on bail pursuant to an official county policy or custom. The arrestee, who was a black man who had been dating a white woman, also failed to show that there was a county policy of treating black men who date white women differently than others accused of domestic violence when it came to setting the conditions of their bail. In fact, the court ruled, the county did not make or control the making of bail decisions, which was solely within the powers of the county court.

* Soto v. Carrasquillo, #93-1594, 878 F.Supp. 324 (D.Puerto Rico 1995), ruling that a police officer and police superintendent were not liable for husband's murder of his two children after his wife went to the police station to report that he had assaulted her. The failure to arrest the husband did not cause the children's murder and evidence was insufficient to show a policy of denying protection to female victims of domestic violence

Cases Involving Officers and/or Their Families

The other portions of this series of articles focus on police response to domestic violence calls. Sometimes, of course, the domestic violence call may involve a police officer as either a perpetrator or victim of domestic violence. In a number of such cases, courts have grappled with issues that have included the question of whether the responses of the department or individual officers is different because of the involvement of an officer in the complained of situation.

Such calls involve situations involving spouses or former spouses, one or both of whom are police officers, as well as current and estranged boyfriends, girlfriends, and other family members. Sometimes there have been issues raised as to whether supervisors or departments knew or should have known that an officer was prone to violence, including domestic violence, and whether continued entrustment of the officer with a weapon contributed to the domestic violence incident.

In Hansell v. City of Atlantic City, No. 01-2908, 46 Fed. Appx. 665 (3rd Cir. 2002), for instance, a New Jersey police officer shot his way into a home and briefly held hostage his former wife, her current husband, and the couple's son and daughter. The hostages filed a federal civil rights lawsuit against the city and police officials alleging a "state-created danger" and failure to train or supervise the hostage taker and other officers.

A federal appeals court upheld summary judgment for the defendants. It stated that liability for a "state-created danger" must be based on a showing that the harm

caused was foreseeable and "fairly direct" and that the state actor acted in willful disregard for the safety of the plaintiff, as well as a showing of some relationship between the state and the plaintiff and that the "state actors used their authority to create an opportunity that otherwise would not have existed for the third party's crime to occur."

In this case, while the officer's former wife claimed that she had notified a defendant of some domestic disturbance on several occasions, the court found that these instances were "spread over a period of time and were unspecific." The most specific, as well as the most recent, reported incident "appears to have been negligently overlooked by" one of the defendants, "who was carrying a heavy workload." The court therefore concluded that the defendants were not "sufficiently notified of the danger to the plaintiffs for the hostage taking to be considered foreseeable under the state-created danger theory."

As for the claim on the failure to train or supervise, the plaintiffs only pointed to the police department's handling of the complaints against this one officer. "This one case fails to show a pattern or practice of ignoring domestic violence complaints against police officers."

Because the injuries alleged were psychological rather than physical, the court also ruled, the plaintiffs did not suffer compensable injuries under the New Jersey Tort Claims Act, N.J. Stat. Ann. Sec. 59:9-2(d).

In Mata v. City of Kingsville, Tex., No. 06-41518, 2008 U.S. App. Lexis 9211 (5th Cir.), a woman married to a police officer failed to show that she was denied equal protection regarding alleged incidents of domestic violence. The wife claimed that officers unjustifiably stopped her on a number of occasions, that her husband stalked her in his police vehicle, and that she was intentionally treated differently than other victims of domestic violence not married to police officers. To the contrary, the court found that officers took steps to try to protect the wife, even over the objections of both her husband and herself, including going to their home in response to a 911 call which was made and then "rescinded," and filing various reports. Any actual difference in treatment was the result of the wife's own requests, as she asked that only "informal" measures be taken to stop her husband's alleged violent actions.

In Farley v. County of Erie, #CA04-2649, 791 N.Y.S.2d 251 (A.D. 4th Dept. 2005), the court ruled that a county and deputy sheriff to whom a deputy surrendered his weapon under the terms of an order of protection obtained by his wife were not liable for his subsequent killing of his wife with another weapon he allegedly stole from a weapons locker. The Defendants did not have any special relationship with the wife imposing a duty to protect her under New York state law.

Failure to adequately respond to calls concerning domestic violence involving police officers has sometimes resulted in civil liability. In Stack v. Jaffee, #3:01-CV-260, 306 F. Supp. 2d 137 (D. Conn. 2003), for instance, the court found that a police officer's conduct in allegedly refusing to provide a man protection against his ex-girlfriend, a fellow police officer, following purported threats of physical violence, was "reprehensible" enough to support an award of punitive damages, but the court also found a $200,000 jury award of punitive damages excessive, ordering it reduced to $25,000, while upholding $2,000 award of compensatory damages. The plaintiff would be granted a new trial limited solely to the issue of punitive damages if he rejected the reduction.

See also Thomas v. Los Angeles Police Department, No BC086856, LA Superior Court Glendale, May 18, 1995, reported in Los Ang. Daily Jour. (Verd. & Stl.), page 4, June 16, 1995, in which a police department was held liable for $594,480 to the surviving family of man shot and killed by off-duty officer angry that he was having an affair with officer's wife. The lawsuit claimed that the department knew that officer had previously, while off-duty, beaten his own wife, but failed to take preventative measures to stem officer's "violent propensities"

If a police department or supervisory personnel respond to complaints of domestic violence by an officer by making assurances that preventative or remedial measures will be taken, and then fail to follow through, that itself can become a possible basis for liability. In Braswell v. Braswell, #88-35C463, 390 S.E.2d 752 (N.C. App. 1990), the estate of a wife shot by her estranged husband -- a deputy sheriff – was granted new trial on the question of whether she had reasonably relied to her detriment on Sheriff's promise to protect her against spousal violence

Other cases of interest in this area include:

* Meyer v. Board of County Commissioners of Harper County, Oklahoma, No. 04-6106, 482 F.3d 1232, 2007 U.S. App. Lexis 8629 (10th Cir.), in which a federal appeals court reinstated a lawsuit by a woman who claimed that when she tried to report her boyfriend's assault to deputies after she broke up with him, they would not allow her to file a complaint, and that they subsequently took her to a psychiatric center for commitment, which occurred because they lied about her actions. Her boyfriend was a town employee, and allegedly a personal friend of a number of the deputies. The appeals court found that the trial court improperly disregarded evidence which was sufficient to have allowed a jury to find that one or more of the deputies lied to get her committed, and that the plaintiff presented enough evidence that the deputies acted to have her committed in retaliation for her trying to file a complaint. In subsequent decisions, after further proceedings, the trial court granted summary judgment for the defendants on both federal and

certain state law claims. Meyer v. Town of Buffalo Oklahoma, 2007 U.S. Dist. Lexis 61928 (W.D. Ok. 2007).

* Zappone v. Town of Watertown, No. CIV. 3:99CV00944, 427 F. Supp. 2d 83 (D. Conn. 2006), ruling that several arrests of a police officer's wife, under valid arrest warrants, in connection with domestic disputes, did not violate her rights when the plaintiff failed to show that there were any false statements in the affidavits seeking the warrants. The failure of investigating officers to immediately arrest her husband when she stated that he had attacked her did not violate her due process rights. Investigating officer looked into both husband's and wife's versions of the incident, and two days later obtained arrest warrants for both of them.

* Zandhri v. Dortenzio, #3:99-CV-1776, 228 F. Supp. 2d 167 (D. Conn. 2002), a case in which a female former police officer failed to establish a claim for violation of her equal protection rights when there was no evidence of this other than her "conclusory allegation" that her arrest for disorderly conduct following a fight with her husband, combined with the failure to arrest her husband showed differing treatment due to gender. Additionally, arguable probable cause existed to arrest her and her arrest was carried out under an arrest warrant.

* Rideau v. Jefferson County, 1:94-CV-439, 899 F.Supp. 298 (E.D. Tex. 1995)., for instance, a county was denied summary judgment on a claim that its policy for handling complaints of domestic violence by its deputies was different from policy stated in sheriff's department manual. The lawsuit against the county, based on a deputy's shooting and killing of his ex-wife was allowed to proceed; while a "conspiracy" claim was dismissed.

* McRae v. Olive, No. CIV.A 03-00696, 368 F. Supp. 2d 91 (D.D.C. 2005), ruling that the District of Columbia’s failure to discipline a police officer for allegedly improperly assaulting and arresting her brother-in-law was not an adequate basis for a federal civil rights claim against the municipality for inadequate supervision. The officer's conduct was investigated, her police powers were suspended during the investigation, and the officer was then provided with counseling about being involved in domestic disputes, which showed that the District was not deliberately indifferent to any existing problem.

Resources

A number of useful resources were also listed in the first article in this series. Further useful resources include:

- Police Family Violence Fact Sheet, on the website of the National Center for Women & Policing. Has much useful information and links to a number of very helpful resources for victims of domestic violence by police officers as well as a discussion of departmental policies aimed at addressing this problem.

- Culp, M.H., Officer-involved orders for protection: A management challenge. *The Police Chief*, p. 10. (March 2000).

- Abuse of power: The clearinghouse on police-perpetrated domestic violence, a website found at http://www.abuseofpower.info/index.htm

- When the Batterer is a Law Enforcement Officer: Guide for Advocates. A 96 page guide for advocates working with women whose batterers are in law enforcement. Published by the Battered Women's Justice Project.

- Female Officers as Victims of Police-Perpetrated Domestic Violence, by Diane Wetendorf, for the Battered Women's Justice Project. (April 2007).

- "Law Enforcement Response to Domestic Violence Calls for Service," by Meg Townsend, Dana Hunt, Sarah Kuck, Caity Baxter, October 2006. 109 pgs., PDF format. Prepared for the National Institute of Justice (NIJ).

- Resources on Domestic Violence, a page on the website of the U.S. Department of Justice Office of Justice Programs with links to useful on-line resources.

- State Domestic Violence Resources. A state-by-state list of links to resources in various jurisdictions on this subject. Provided on the website of www.womenshealth.gov, the "federal government source for women's health information."

- Current Domestic Violence Legal Literature. A service provided by the University of Texas School of Law law library. New publications are listed, along with a link to a .pdf of the first page of each article which may be accessed on-line free of charge.

- Police Response to Violence Against Women. International Association of Chiefs of Police (IACP). A page of resources and publications on the subject.

- Survey of Recent Statistics on Domestic Violence. American Bar Association Commission on Domestic Violence. Contains a summary of some recent statistics on the prevalence of domestic violence, including statistics by race or ethnic origin, domestic violence involving immigrants, teens, elders, same-sex relationships, workplace incidents, offender recidivism, children, etc.

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