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Panel Stresses Priority of Domestic Violence Law

By Kelley Quinn

In a decision highlighting the importance of the Illinois Domestic Violence Act, a state appeals panel on Wednesday held that municipalities and police officers are not immune from liability if officers willfully and wantonly fail to prevent crimes against domestic violence victims.

The 1st District Appellate Court's decision means that the estate of Ronyale White can move ahead with a lawsuit against the City of Chicago and the two police officers who drove to White's house after receiving a 911 domestic disturbance call, but allegedly failed to investigate the matter.

White was fatally shot by her husband minutes after officers left the scene on May 3, 2002, according to the published opinion written by Justice Thomas E. Hoffman.

"The defendants maintain that, if exposed to potential liability for any domestic violence incident, local police would have to prioritize every domestic violence call over other emergency calls, no matter how serious those other calls may be," Hoffman wrote.

"We find that this argument rights hollow in light of the stated purposes of the Domestic Violence Act, which are to recognize domestic violence as a serious crime against individuals and society, recognize that the legal system has ineffectively dealt with family violence in the past, and expand the civil and criminal remedies for victims of domestic violence."

White had called 911 requesting police assistance, telling the dispatcher that Drexel was in her house, that he was in violation of a protection order and that he owned a gun.

"Neighborhood witnesses reported that two police officers drove in a marked car to White's house, but left the scene without investigating or assisting in the matter approximately five minutes before Drexel shot White," Hoffman wrote.

After the fatal shooting, Melissa Moore, the administrator of White's estate, filed a complaint against the city and two police officers, asserting wrongful death and survival actions.

Moore alleged that because White was a protected person under the Domestic Violence Act, officers had a duty under the statute to use all reasonable means to prevent further abuse.

The defendants moved to dismiss, claiming they were shielded from liability under sections 4-102 and 4-107 of the Local Governmental and Governmental Employees Tort Immunity Act. The motion to dismiss was denied, prompting the city to file a motion to reconsider, which was also denied.

Cook County Circuit Judge Philip L. Bronstein later filed a certified question to the appellate court, to which the 3d Division held on Wednesday that sections 4-102 and 4-107 of the Tort Immunity Act do not provide absolute immunity to a municipality and its police officers who are alleged to have willfully and wantonly failed to prevent a crime against a domestic violence victim.

In its ruling, the appeals panel held that section 305 of the Domestic Violence Act, which provides an exception to law enforcement immunity for willful and wanton conduct, controlled Moore's causes of action.

The court relied heavily on the Illinois Supreme Court's decision in *Calloway v. Kinkelaar*, 168 Ill.2d 312, 659 N.E.2d 1322 (1995).

In *Calloway*, the supreme court considered at length the stated purposes of the Domestic Violence Act and examined the legislative intent. The court ultimately held that the Domestic Violence Act created specific statutory duties for law enforcement officers.

"The language of section 305 (of the Act) plainly intends that officers are not to be held civilly liable for mere negligence in good-faith performance of their duties under the Act. However, the express limitation on liability does not apply if the act or omission in question is a result of 'willful or wanton misconduct.'" *Calloway*, 168 Ill.2d at 322

The 5th District Appellate Court relied on *Calloway* in ruling on *Sneed v. Howell*, 206 Ill.App.3d 1149, 716 N.E.2d 336 (1999), appeal denied, 187 Ill.2d 591, 724 N.E.2d 1275 (2000).

In *Sneed*, the appellate court considered whether a plaintiff alleged sufficient facts to defeat a motion to dismiss where she alleged that a municipality violated the Domestic Violence Act by willfully and wantonly failing to take action against her husband's repeated infractions of a protection order, Hoffman wrote.

"Relying on the supreme court's decision in *Calloway*, the *Sneed* court held that the plaintiff successfully did so, noting that the immunity provision set forth in the Domestic Violence Act, rather than the Tort Immunity Act, applied in determining whether the city was immune from liability," he added.

Hoffman noted, however, that a plaintiff seeking relief under the Domestic Violence Act "has a heavy burden to carry," as the supreme court noted in *Calloway*.

"We believe judicial recognition of a right of action for civil damages is necessary, provided that the injured party can establish that he or she is a person in need of protection under the Act, the statutory law enforcement duties owed to him or her were breached by willful and wanton acts or

omissions of law enforcement officers, and such conduct proximately caused the plaintiff's injuries." (Emphasis added.) *Calloway*, 168 Ill.2d at 324

Justices Allen Hartman and Leslie E. South joined in the ruling.

Melissa Moore v. Chicago Police Department Officer Christopher Green, et al., No. 1-03-2651.

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