In re Maria Avenue Natural Gas Explosion

1999 | Cited 0 times | Court of Appeals of Minnesota | June 22, 1999

Consolidated case C9-95-6556

Affirmed

Toussaint, Chief Judge

Randolph Parker appeals the district court's grant of summary judgment dismissing his 42 U.S.C. § 1983 action. Respondent City of St. Paul argues this appeal is untimely. Because the appeal was properly taken from a final judgment and the district court did not err or abuse its discretion in determining (1) the affidavit of Robert Eliason was untimely; (2) the municipal tort liability caps found in Minn. Stat. § 466.04 are constitutional; and (3) respondent is entitled to summary judgment on appellant's 42 U.S.C. § 1983 action, we affirm.

FACTS

On July 22, 1993, at approximately 8:30 a.m., a gas line was struck by one of respondent's work crews at the corner of Third and Maria Avenue. After the work crew radioed its dispatcher to notify Northern States Power (NSP), it began evacuating people in the vicinity. At 8:52 a.m., an explosion occurred. Three people were killed and several people, including appellant, were injured. Several buildings were destroyed. Appellant sued respondent, alleging a cause of action under 42 U.S.C. § 1983 and challenging the constitutionality of the municipal tort liability limits. Respondent moved for summary judgment. In opposition to respondent's motion, appellant submitted the affidavit of Robert Eliason, a former repair foreman for Minnegasco. The district court refused to consider Eliason's affidavit, determined the municipal tort liability limits found in Minn. Stat. § 466.04 were constitutional, and granted respondent's motion for summary judgment on appellant's § 1983 claim. This appeal followed.

DECISION

I.

Respondent argues this appeal is untimely because it should have been taken within 90 days after

judgment was entered on June 3, 1997. Respondent argues the deposit of its tort liability limit with the district court was all that was necessary for adjudication of all the claims.

However, this court previously determined that an appeal from the June 3, 1997 judgment was premature because that judgment did not determine all claims and damages had not yet been apportioned among the individual plaintiffs involved in the litigation. Thus, the June 3, 1997, judgment was not appealable under Minn. R. Civ. P. 54.02. See In re Commodore Hotel Fire & Explosion Case, 318 N.W.2d 244, 246 (Minn. 1982). This appeal is therefore properly taken from a final judgment dismissing all claims.

II.

On an appeal from summary judgment, we ask two questions:

"(1) whether there are any genuine issues of material fact and (2) whether the lower courts erred in their application of the law." State by Cooper v. French, 460 N.W.2d 2, 4 (Minn. 1990); see Admiral Merchants v. O'Connor & Hannan, 494 N.W.2d 261, 265 (Minn. 1992).

"A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law. On appeal, the reviewing court must view the evidence in the light most favorable to the party against whom judgment was granted." Fabio v. Bellomo, 504 N.W.2d 758, 761 (Minn. 1983) (citation omitted).

Under 42 U.S.C. § 1983, a plaintiff may bring a claim alleging deprivation of constitutional rights against a person acting under color of state law. The plaintiff in such a suit "must be able to point to specific articulable constitutional rights that have been transgressed." Armstrong v. Adams, 869 F.2d 410, 413 (8th Cir. 1989). The purpose of § 1983 is to "deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails." Wyatt v. Cole, 504 U.S. 158, 161, 112 S. Ct. 1827, 1830 (1992).

Appellant argues his right to substantive due process was violated because respondent has a policy, practice, or custom of not contacting emergency crews immediately when a gas line is struck, focusing instead on safeguarding people in the zone of danger. He insists respondent's failure to timely and properly warn him of the immediate danger caused his injury.

The Due Process Clause of the Fourteenth Amendment states "[n]o state shall * * * deprive any person of life, liberty, or property, without due process of law." The clause guarantees citizens protection from abusive government conduct or employment of government power as an instrument of oppression. Davidson v. Cannon, 474 U.S. 344, 348, 106 S. Ct. 668, 670 (1986). The guarantee applies only to deliberate decisions of government officials to deprive a person of life, liberty, or property.

Daniels v. Williams, 474 U.S. 327, 331, 106 S. Ct. 662, 665 (1986). The clause does not impose an affirmative obligation to protect or care for a particular individual. Carlton v. Cleburne County, Ark., 93 F.3d 505, 508 (8th Cir. 1996). Thus, "[m]ere negligence is not an actionable deprivation under the Due Process Clause." Williams v. Soligo, 104 F.3d 1060, 1061 (8th Cir. 1997). Collins v. City of Harker Heights, Tex., 503 U.S. 115, 112 S. Ct. 1061 (1992), is analogous and dispositive of this case. In Collins, the plaintiff brought a § 1983 action against the city alleging a policy of deliberate indifference about warning employees of work related hazards and providing safety equipment. This policy resulted in the death of plaintiff's husband. In rejecting plaintiff's claim, the Supreme Court stated:

"[Plaintiff's] claim is analogous to a fairly typical state-law tort claim: The city breached its duty of care to her husband by failing to provide a safe work environment. Because the Due Process Clause does not purport to supplant traditional tort law * * * we have previously rejected claims that the Due Process Clause should be interpreted to impose federal duties that are analogous to those traditionally imposed by state tort[.]" Id. at 128, 112 S. Ct. at 1070 (citation omitted).

In this case, state tort law covers any alleged wrongdoing by respondent. Appellant failed to allege any material facts establishing an abuse of governmental power by respondent, nor did he allege a deliberate decision on respondent's part to deprive him of his rights. His complaint therefore does not rise to the level that would allow redress through a § 1983 action. As respondent points out, its employees were merely following the procedures set out by NSP. Further, appellant does not allege other instances of respondent hitting gas lines and failing to contact city emergency departments. A single act of a government official or employee cannot be labeled as a "policy." Oklahoma City v. Tuttle, 471 U.S. 808, 823-24, 105 S. Ct. 2427, 2436 (1985); see also Yang v. Murphy, 796 F.Supp. 1245, 1249 (D. Minn. 1992) (§ 1983 complaint against city dismissed where single incident failed to establish existence of actionable "policy").

The district court therefore did not err in granting respondent's motion for summary judgment dismissing appellant's § 1983 claim.

III.

Appellant challenges the district court's refusal to consider the affidavit of Robert Eliason. The district court's case management order applied to appellant's action. Case management order number one concerned all pretrial activities, including expert witness disclosure and discovery. Although appellant's complaint was not filed and served until November 1996, appellant's counsel was involved in the litigation prior to the filing of the complaint and was aware of the deadlines for expert witness discovery. Under these circumstances, the district court did not abuse its discretion by refusing to consider the affidavit of Robert Eliason as untimely. Fairview Hosp. & Health Care Servs. v. St. Paul Fire & Marine Ins. Co., 518 N.W.2d 41 (Minn. App. 1994) (determining trial court did not abuse its discretion in refusing to consider expert's affidavit when expert was not disclosed to opposing party until after deadline for disclosure of expert witnesses had passed), aff'd & remanded,

535 N.W.2d 337 (Minn. 1995).

IV.

"In evaluating challenges to the constitutionality of statutes, this court recognizes that the interpretation of statutes is a question of law." In re Blilie, 494 N.W.2d 877, 881 (Minn. 1993). Accordingly, this court "is not bound by the lower court's Conclusions." Id. (citation omitted).

"Minnesota statutes are presumed constitutional, and our power to declare a statute unconstitutional should be exercised with extreme caution and only when absolutely necessary." In re Haggerty, 448 N.W.2d 363, 364 (Minn. 1989) (citation omitted). "The party challenging a statute has the burden of demonstrating beyond a reasonable doubt a violation of some provision of the Minnesota Constitution." Id. Appellant concedes the municipal tort liability limits in Minn. Stat. § 466.04 (1998) are constitutional under the rational basis test. See Snyder v. City of Minneapolis, 441 N.W.2d 781, 789 (Minn. 1989); Lienhard v. State of Minnesota, 431 N.W.2d 861, 868 (Minn. 1988). He nevertheless argues the intermediate scrutiny test should be applied because a suspect classification exists in the instant case. Appellant argues that the fact that city workers covered under workers' compensation were treated differently than citizens not covered by workers' compensation results in a suspect classification, citing O'Brien v. Estate of Moe, 370 N.W.2d 436 (Minn. App. 1985), aff'd, 381 N.W.2d 445 (Minn. 1985).

In O'Brien, and Bernthal v. City of St. Paul, 376 N.W.2d 422 (Minn. 1985), the respective courts held that distinguishing between victims covered or not covered by workers' compensation violates the Equal Protection Clauses of the state and federal constitutions. In Bernthal, however, the court determined that no suspect classification existed between the government workers and citizens not covered by workers' compensation, and applied the rational basis test. Further, neither Bernthal nor O'Brien involved a challenge to the constitutionality of the tort limits in Minn. Stat. § 466.04; rather, the equal protection challenge in those cases was to the immunity of a municipality to a victim covered by workers' compensation under Minn. Stat. § 466.03. Thus, Bernthal and O'Brien support application of the rational basis test analysis in this case. Minnesota courts have utilized the same rational basis test outlined by the United States Supreme Court. See Lienhard, 431 N.W.2d at 866. Application of the rational basis test here establishes that the tort liability limits have a legitimate purpose of maintaining a municipality's fiscal integrity, and that the legislature could have reasonably believed that the enactment of the liability caps would promote this legitimate purpose. Thus, Minn. Stat. § 466.04 is constitutional.

Appellant's other arguments concerning the legislature's prospective review of the tort limits are unpersuasive. By adjusting the tort limits, the legislature has continued to examine the opposing policies of making victims of municipal torts whole while balancing the municipality's fiscal integrity.

We therefore reiterate that the municipal tort liability limits found in Minn. Stat. § 466.04 are constitutional based on the rational basis test analysis.

Affirmed.

1 Retired Judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.