



Nishiyama v. Dickson County

751 F.2d 386 (1984) | Cited 0 times | Sixth Circuit | November 7, 1984

BEFORE: JONES and CONTIE, Circuit Judges; and GILMORE, District Judge*fn*

Per Curiam. In the district court, plaintiffs, Ralph and Gabrielene Nishiyama alleged violations of 42 USC § 1983 and § 1985(3) (1982), and asserted a pendant state claim for wrongful death in the alleged murder of their daughter by an inmate of the Dickson County, Tennessee jail. In September, 1983, the trial court entered a memorandum and order granting a motion by the defendants to dismiss. The Nishiyamas appeal only the dismissal of their section 1983 action for failure to state a claim upon which relief could be granted. We affirm the district court.

In the context of a motion to dismiss for failure to state a claim on which relief could be granted, the court treats all alleged facts as true. *Windsor v. The Tennessean*, 719 F.2d 155, 158 (6th Cir. 1983) (appeal pending).

On November 16, 1981, shortly after 8:30 p.m. Kathy Jane Hishiyama was driving home from her boyfriend's house. In response to the signals of a Dickson County Sheriff's Department patrol car, she pulled to the side of the road. Charles Edward Hartman, a felon "Trusty" of the Dickson County Jail, got out of the patrol car, approached Kathy Nishiyama and beat her to death.

Hartman was serving the balance of his Tennessee state sentence for burglary in the custody of the Dickson County Sheriff's Department. The district court below found that the Tennessee statute under which Hartman was apparently transferred from the state to the Dickson County Jail only permits nondangerous felons to be so assigned. The Nishiyamas assert that the defendants knew or should have known that Hartman was dangerous and has assaulted a young woman in the past.

Sheriffs Wall and Fiser placed Hartman on trusty status. They adopted a policy of allowing Hartman to have unsupervised use of Dickson County patrol cars to conduct official tasks for them, to perform tasks for their personal benefit and to perform tasks for his own benefit. The Nishiyamas allege that this policy had been in effect for several months at the time of the murder. The Nishiyamas do not challenge the Tennessee trusty system in general. On the night of the murder, Deputy Fiser instructed Hartman to drive him to his farm. Upon arriving at his farm, Fiser turned sole possession of the fully equipped and plainly marked patrol car over to Hartman.

After leaving Fiser's farm, Hartman proceeded to prowl the highways of Dickson, Houston, and Montgomery Counties. He stopped several motorists by flashing the patrol car's blue lights. Montgomery County officials learned that a Dickson County Sheriff's car was stopping motorists in



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their county. They notified the Dickson County dispatcher, who in turn notified Wall and Fiser. Wall and Fiser did nothing. Ten hours after he had left the jail, Hartman returned. The Nishiyamas contend that during the interim he used the patrol car's blue lights to pull over their daughter's car and that he then murdered her. They contend that Wall and Fiser's policy of placing Hartman on trusty status and allowing him unsupervised use of an official patrol car amounted to gross negligence which proximately caused their daughter's death.

Application of the following test determines whether the Nishiyama's stated a claim under section 1983:

- (1) Did the plaintiff's complain of conduct undertaken "under color of state law"?
- (2) Did that conduct cause the deprivation of constitutional rights?
- (3) Did the deprivation occur "without due process of law"?

See *Screws v. United States*, 325 U.S. 91 (1945). On the facts of this case, the answer to (2) above is decisive. Did the Dickson County Sheriff's policy of allowing trustys to use fully equipped patrol cars deprive Kathy Nishiyama of a right secured by the Constitution? We find that the Nishiyamas have not alleged facts which, if proved, would demonstrate that their daughter was deprived of a Constitutionally protected right. This Court does not determine whether the plaintiffs' complaint satisfied the other two elements of the test.

The Nishiyamas contend that an individual's interest in her life is one of constitutional dimension. While this is certainly correct, the Fourteenth Amendment does not guarantee citizens their lives. The Fourteenth Amendment guarantees that the state cannot legally deprive one of life without due process of law. The relevant inquiry thus becomes whether the state deprived the victim of her life by failing to prevent her murder when it owed her a duty of protection.

Martinez v. California, 444 U.S. 277 (1980), governs the issue of the state's duty. In *Martinez*, appellants sought to hold California parole-release officials liable under section 1983 for the release of a parolee who five months later killed their daughter. The parolee had been convicted of attempted rape. He had been committed to a state mental hospital as a "Mentally Disordered Sex Offender not amendable to treatment." Subsequently, he had been sentenced to one to twenty years in prison, with a recommendation that he not be paroled. Five years later the parole board in *Martinez* paroled the prisoner. The parole board knew of the prisoner's propensities, and it failed to observe all the "requisite formalities" in making the release determination. Five months after his release, the parolee tortured and murdered appellants' daughter. *Id.* at 279.

Martinez was appealed to the Supreme Court from a state court judge's order which sustained a demurrer to the appellants' complaint. The Court treated as true the complaints' allegations that the



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state officers "knew, or should have known, that the release . . . created a clear and present danger that such an incident would occur." Id. at 280. The Court held that state action -- in the form of the prisoner's release -- did not "deprive" the appellants' daughter of her life. The Court based its holding upon three considerations: the murder occurred five months following parole; the parolee was in no sense an agent of the parole board; and "the parole board was not aware that the appellants' decedent, as distinguished from the public at large, faced any special danger." Id. at 285.

The Nishiyamas acknowledge Martinez and attempt to distinguish its holding. First, they emphasize that in Martinez the parolee was released from custody through a formal, official determination, while Hartman's "release" resulted from discretionary informal action by the defendants. The Nishiyamas suggest that this distinction illustrates a degree of reckless governmental conduct which was not present in Martinez. The Court found in Martinez, however, that the released prisoner presented "a clear and present danger." Id. at 280. He was a convicted sex offender for whom parole was not recommended. He was considered mentally disordered and not amenable to treatment. Hartman had been convicted of burglary. He had been transferred from the state to the county as a nondangerous felon. The defendants had granted Hartman "trusty" status under a system which the Nishiyamas do not challenge. We do not minimize the recklessness of defendants Wall and Fiser. The plaintiffs' have not meaningfully distinguished the present defendants' behavior from the parole board's conduct in Martinez.

The Nishiyamas note that the Martinez murders occurred five months after the prisoner was paroled, while Hartman murdered their daughter within ten hours of his release. They state that this temporal relationship was of controlling significance for the Supreme Court's holding in Martinez. We disagree. In Martinez, the Court did not portray as merely incidental the additional considerations that the parolee was in no sense an agent of the government, and that the parole board was not aware that the parolee's release created special danger for the victim. The Nishiyamas concede that Hartman was in no sense an agent of the government. They do not allege that Hartman posed danger to their daughter which was distinct from the danger he posed to the general public. Nor have the Nishiyamas established a reasoned basis for treating as controlling the brief period during which Hartman was at large.

Finally, the plaintiffs stress as distinctively significant the fact that the parole board in Martinez merely released the prisoner while the present defendants affirmatively aided Hartman by entrusting the patrol car to his sole possession. The Nishiyamas cite *Bowers v. DeVito*, 686 F.2d 616 (7th Cir. 1982), for the proposition that section 1983 liability will lie where "the state puts a man in a position of danger from private persons and then fails to protect him." Id. at 618. Through the quoted language, however, the Seventh Circuit described the theory on which "state prison officials are sometimes held liable under section 1983 for the violence of one prison inmate against another." Id. at 618. The court found that theory inapplicable to the circumstances of *Bowers*. It is equally inapplicable to the present case.



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Bowers involved a man who had twice attacked young women with a knife. He had pled innocent by reason of insanity to the murder of the second victim. Five years later he had been freed from a state mental institution. A year later he murdered again. The Seventh Circuit followed Martinez and found that the state officials were not liable under section 1983 because they had not deprived the victim of a right protected by the United States Constitution. The court characterized as "monstrous" the state's failure to protect citizens from a murderer, but found "no federal constitutional duty" to do so. *Id.* The court found that the victim in Bowers had not been placed in a special position of danger by the defendants. Therefore, the defendants' failure to protect her had not deprived her of a constitutional right.

In the present case, the defendants' conduct in entrusting a fully equipped patrol car to Hartman was egregious dereliction of professional responsibility. The sheriff's failure to search out Hartman when they learned that a Dickson County Sheriff's car was stopping motorists in another county was a grave neglect of duty. Wall and Fiser, however, burdened the public in general. Kathy Nishiyama was the unfortunate, random victim of the murderer's private actions.

The Nishiyamas cite numerous circuit court decisions as support for the proposition that either "sufficiently egregious" official action, or omissions amounting to "deliberate indifference" by state officials will create a constitutional deprivation which satisfies section 1983. *Williams v. Kelley*, 624 F.2d 695 (5th Cir. 1980), cert. denied, 451 U.S. 1019 (1981); *Owens v. Haas*, 601 F.2d 1242 (2d Cir. 1976), (cert. denied, 444 U.S. 980 (1979)); *Parker v. McKeithen*, 488 F.2d 553 (5th Cir. 1974), cert. denied, 419 U.S. 838 (1974); *Curtis v. Everette*, 489 F.2d 516 (3d Cir. 1973), cert. denied, 416 U.S. 995 (1974); *Fitzke v. Shappell*, 468 F.2d 1072 (6th Cir. 1972); *Herst v. Gertzen*, 676 F.2d 1252 (9th Cir. 1982); *Sims v. Adams*, 537 F.2d 829 (5th Cir. 1976); *Byrd v. Brishke*, 466 F.2d 6 (7th Cir. 1972). In each case, however, the state had singled out the victim from the general population and had created a special vulnerability distinct from the general public. In each case, the victim was either a prisoner in state custody or being subjected to arrest by state officials. In each case, either officers of the state themselves, or a fellow prisoner violated the victim's rights. The Nishiyamas have not demonstrated that the state similarly singled out their daughter. Therefore these cases do not support the plaintiff's assertion of a cause of action under section 1983.

Our holding today solely addresses the question of whether the defendants' actions deprived Kathy Nishiyama of a constitutionally protected right. Our distinguished colleague, Judge Gilmore, has written a sensitive dissenting opinion. His restatement of the facts of this case emphasizes the utterly repulsive conduct which occurred. After acknowledging this, however, we must note that his dissent fails to address the question of what duty the government owed this particular plaintiff which it breached. We remain unpersuaded that the dissent's reasoning successfully distinguishes *Martinez*. Equally, however, we must note that section 1983 has not preempted state tort law. We express no view of the plaintiffs' rights under Kentucky tort law; it may be either that the defendants had a duty to prevent harm befalling Hartman's victim or that they were the legal cause of her death under Kentucky law.



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For the foregoing reasons, we AFFIRM the judgment of the district court.

Before: JONES and CONTIE, Circuit Judges, and GILMORE, District Judge.*fn*

GILMORE, District Judge (dissenting).I respectfully dissent from the majority, which affirms the dismissal of this case by the trial court on a motion under F.R.C.P. 12(b)(6).

The facts, which the Court must accept as true, are accurately set forth in the majority opinion, but I disagree with the majority that *Martinez v. California*, 444 U.S. 277 (1980), governs the issue in this case. In *Martinez*, the Court's decision turned on tort principles of causation and foreseeability, and the Court found that the injuries suffered were so remote from the release that causation could not be established.

Although the decision to release Thomas from prison was action by the State, the action of Thomas five months later cannot be fairly characterized as state action.

Her life was taken by the parolee five months after his release. He was in no sense an agent of the parole board. . . . Further, the parole board was not aware that appellants' decedent, as distinguished from the public at large, faced any special danger. We need not and do not decide that a parole officer could never be deemed to "deprive" someone of life by action taken in connection with the release of a prisoner on parole. But we do hold that at least under the particular circumstances of this parole decision, appellants' decedent's death is too remote a consequence of the parole officers' action to hold them responsible under the federal civil rights law. . . . (emphasis added)

Id. at 285.

It is thus clear that the only alleged abuse by the officials in *Martinez* was the decision to release the inmate on parole, and the harm stemming from their action occurred some five months later. The Court quite properly held that was too remote a consequence to hold the officers liable under the federal civil rights statute.

Here, however, officials had not only made a bad decision to place Hartman on "trusty" status, but they abused the trusty system by giving Hartman not only the limited freedom generally given to the trusties, but complete unsupervised freedom to use the Sheriff's patrol cars. Moreover, the harm to Nishiyama occurred while Hartman was being held within the state penal system as a trusty under the care and custody of county sheriffs. Furthermore, the officials were informed that Hartman was improperly using the patrol car to stop traffic, but did nothing to avert the harm that was to follow. Hartman was a trusty at the time of the killing, under the continuing supervision of the Sheriffs, and, while under the continuing supervision of the Sheriffs, used a county vehicle as an instrumentality to eventually assault and murder Ms. Nishiyama.



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It appears to me clearly that there is a cause of action stated under 42 U.S.C. 1983, and I respectfully dissent from the opinion of the majority.

* The Honorable Horace W. Gilmore, District Judge, United States District Court for the Eastern District of Michigan, sitting by designation. n* The Hon. Horace W. Gilmore, United States District Judge for the Eastern District of Michigan, sitting by designation.

