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Goldberg v. Town of Rocky Hill: Second Circuit Refuses to Extend Absolute Immunity to Municipal Defendant

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I. INTRODUCTION

In *Goldberg v. Town of Rocky Hill*,[1] the Second Circuit Court of Appeals held that municipalities sued under The Civil Rights Act, 42 U.S.C. § 1983,[2] were not entitled to absolute immunity from suit.[3] Kenneth Goldberg brought suit against the town of Rocky Hill, Connecticut ("the town"), its mayor, town manager, and councilmen in their official capacities, claiming he was wrongfully discharged. The town moved to dismiss under Federal Rule of Civil Procedure 12(b)(6) claiming absolute immunity from suit. The district court denied the motion holding that the town was not entitled to absolute immunity.[4] The town then brought an interlocutory appeal before the Second Circuit.[5] The town's interlocutory appeal and the split among the circuits on this issue are the focus of this Casenote.

II. FACTUAL STATEMENT

Goldberg commanded Rocky Hill's part-time supernumerary police officers. On April 7, 1987 a police lieutenant canceled the dispatch of a police cruiser to investigate two "suspicious looking" individuals described as "Puerto Ricans."[6] Later, a citizen filed a complaint when his car was stolen from the area in which the individuals were sighted. At a town

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1. 973 F.2d 70 (2d Cir. 1992).
2. 42 U.S.C. § 1983 (1992).
   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.

   Id.
3. 973 F.2d at 75.
4. *Id.* at 71.
5. *Id.*
6. *Id.*

council meeting, the chief of police refused to discipline the lieutenant for recalling the cruiser. Goldberg publicly supported the chief and stated that the mayor and town council were wrong to criticize the police chief.[7]

After the meeting, Goldberg began receiving official "slights." For example, the town stripped him of his title as commander, which he had held for two and a half years, and excluded him from plainclothes detail. The town also limited the amount of hours supernumerary officers could work, and finally eliminated them from the budget altogether. Although other supernumerary officers were rehired as "Special Constables," Goldberg was not offered a position.[8] Goldberg brought suit under 42 U.S.C. § 1983 alleging his discharge resulted from a valid exercise of his First Amendment rights. The district court held that 42 U.S.C. § 1983 did not provide the city immunity from suit. The town appealed.

III. The Second Circuit's Opinion

On appeal the Second Circuit affirmed the district court's ruling that the town was not entitled to absolute immunity from suit under 42 U.S.C. § 1983.[9] The court began the analysis by stating that "[D]iscussion of this immunity issue begins with, and indeed very nearly ends with, an examination of the Supreme Court's landmark decision in *Monell v. Department of Social Services.*"[10] In *Monell* the Court held that a municipality can be held liable for constitutional violations only when the violation is a result of the municipality's "policy or custom."[11] The court also cited the more recent case of *Owen v. City of Independence*,[12] in which the Supreme Court rejected a municipality's argument that it was entitled to qualified, good-faith immunity from suit.[13]

As a preliminary matter, the court stated that the parties agreed that the town's elimination of the supernumerary officers qualified as the kind of "policy" required by the Court in *Monell*.[14] With this established, the town first argued that since the action was also brought against town-council members and the mayor in their official capacities, the town should receive the council members' absolute immunity.[15] The court re-

7. *Id.*
8. *Id.*
9. *Id.* at 75.
10. *Id.* at 72 (citing 436 U.S. 658 (1978)).
11. *Id.* (quoting *Monell*, 436 U.S. at 694).
12. 445 U.S. 622 (1979).
13. 973 F.2d at 74.
14. *Id.* at 72.
15. *Id.* at 73. Legislative and municipal immunity are separate issues. The Supreme Court has not yet extended absolute legislative immunity to local legislators, but the Second Circuit is one of at least nine circuits to extend the immunity to local legislators. *Id.* at 72.

jected this argument citing *Monell* for the rule that official capacity suits are simply another way of pleading a case against the entity.[16] To establish *personal* liability under section 1983, plaintiffs establish a prima facie case by showing deprivation of a federal right by a person acting under color of law.[17] However, in an *official-capacity* action, the statute also requires that the unconstitutional conduct be a result of the entity's "policy or custom."[18] Thus, the municipality has no immunity from suit, but the plaintiff has the added burden of proving the wrong was a result of municipal policy.

The town's second argument sought "to avoid this clear inference from *Monell* and *Owen* by arguing that while a municipality may not have any immunities available to it in other contexts, liability stemming from municipal legislation should be treated differently."[19] The court noted that the town's argument relied on Connecticut state law which prevents legislators from testifying about the motives behind their legislation.[20] The court rejected this state law argument noting that the supremacy clause requires the court to use the applicable federal law to determine liability under section 1983.[21] The court concluded that federal constitutional litigation permits the examination of a legislator's motives, leaving defendant with no way to distinguish municipal legislation.[22]

IV. ANALYSIS

In *Goldberg* the Second Circuit Court of Appeals faced an issue that should be of little controversy: whether municipalities are entitled to absolute immunity from suit when the cause of action alleges a violation of constitutional rights.[23] The court logically extended Supreme Court precedent to provide no immunity for municipal defendants. The Supreme Court, in dicta, supports this conclusion as settled law.[24] However, despite the clear inference from the prior Supreme Court cases, two other circuits have not treated the issue as settled.[25]

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16. *Id.* at 73 (citing *Monell*, 436 U.S. at 658, 690 n.55).
17. *Id.*
18. *Id.*
19. *Id.* at 74.
20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.* at 70.
24. Leatherman v. Tarrant County, 1993 WL 52174 (U.S.) (1993). *See infra* text accompanying notes 42-45.
25. *See infra* text accompanying notes 46-59.

Supreme Court precedents on municipal immunity clearly support the court's ruling.[26] In *Monell v. Department of Social Services*,[27] the Court overruled *Monroe v. Pape*[28] insofar as it held that local governments were entirely immune from section 1983 suits.[29] The Court in *Monell* concluded that for purposes of 42 U.S.C. § 1983, municipalities are "persons" and as such are subject to suit;[30] however, to make out a prima facie case, plaintiff must prove that the constitutional violation came from the municipality's "policy or custom."[31]

The Court in *City of Los Angeles v. Heller*[32] held that municipal liability is derivative of the individual legislator's liability.[33] Thus, even though the legislator is personally immune from suit for unconstitutional legislative conduct because of the doctrine of legislative immunity,[34] the municipality can be liable for the legislator's conduct. A classic example of the necessary "policy or custom" includes "voting by elected officials, prepared reports, extended deliberation, or official records . . . ."[35]

The Supreme Court's decision in *Owen* presents the strongest arguments for the Second Circuit's opinion. The Court in *Owen* rejected a municipality's argument that it was entitled to good faith qualified immunity from suit when it fired the chief of police without stating reasons for dismissal or holding a hearing on the issue.[36] The Court's primary reason for rejecting municipal immunity stems from a fundamental purpose of the Civil Rights Act (the "Act"): to protect individuals from the misuse of official power.[37] Because legislators are already immune from suit, plaintiffs who have suffered constitutional violations by a state actor would be left without a defendant if the municipality was granted immunity also. The Act would have no effect, and society would suffer:

> How "uniquely amiss" it would be, therefore, if the government itself—"the social organ to which all in our society look for the promotion of liberty, justice, fair and equal treatment, and the setting of worthy

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26. In *Owen* Justice Brennan interpreted his (the majority) opinion in *Monell* to hold that municipalities are not entitled to absolute immunity. 445 U.S. at 624. Since the issue was not clearly before the Court, it cannot be considered the Court's holding.

27. 436 U.S. 658 (1978).

28. 365 U.S. 167 (1961), *overruled in part by* 436 U.S. 658 (1978).

29. 436 U.S. at 663.

30. *Id.* at 690.

31. *Id.* at 694.

32. 475 U.S. 796 (1986).

33. *Id.*

34. *See supra* note 15.

35. Pembaur v. Cincinnati, 475 U.S. 469, 500 (1985) (Powell, J., dissenting) citing 436 U.S. at 694.

36. 445 U.S. at 629, 638.

37. *Id.* at 650.

> norms and goals for social conduct"—were permitted to disavow liability for the injury it has begotten.[38]

There would also be no deterrent to future constitutional violations,[39] and granting municipal defendants absolute immunity would undermine prior Supreme Court cases.

Using statutory construction to support this conclusion, the Court has interpreted the Act to include only the immunities available at common law at the time the Act was passed.[40] The Court in *Owen* specifically stated that "there is no tradition of immunity for municipal corporations . . . ."[41] Further support for the Second Circuit is found in the recent case of *Leatherman v. Tarrant County*.[42] In *Leatherman* the Court, in dicta, stated that municipalities do not enjoy either qualified or absolute immunity.[43] The opinion concerned pleading requirements for civil rights cases that alleged municipal liability.[44] The Court traced the development of municipal liability and concluded from *Owen* that although municipalities are not entitled to any form of immunity, the wrong must be the result of municipal policy for there to be municipal liability.[45]

Even though the result in *Goldberg* clearly follows established precedent, *Hollyday v. Rainey*,[46] (a 1992 Fourth Circuit case) proves that the issue is still debatable. Writing for the three judge panel Judge Hall stated that a municipality is absolutely immune from suit when the cause of action turns upon the improper motives of legislators.[47] However, it is unclear whether this was the court's holding, since in the concurrence Judge Luttig only agreed with the judgment.[48]

The court in *Hollyday* relied only on Fourth Circuit cases concerning legislative immunity making no reference to *Monell* or *Owen*.[49] Apparently, the Fourth Circuit would agree with the town's argument that since a legislator cannot be compelled to testify about the motives behind his vote, the municipality should also receive immunity in order to prevent the legislator from having to testify.[50] "Legislators must be permitted to discharge their legislative duties without fear of being subjected to the

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38. *Id.* at 651 (citing Adickes v. Kress & Co., 398 U.S. 144, 190 (1970)).
39. *Id.*
40. *Id.* at 638.
41. *Id.*
42. No. 91-1657, 1993 WL 52174 (1993).
43. *Id.* at *2.
44. *Id.* at *1.
45. *Id.* at *2.
46. 964 F.2d 1441 (4th Cir. 1992).
47. *Id.* at 1443.
48. *Id.* at 1444.
49. *Id.* at 1443.
50. 973 F.2d at 74.

cost and inconvenience of a trial at which their motives come under scrutiny."[51]

Both the concurrence and dissent used the same Supreme Court cases. However, each reached different conclusions.[52] The concurrence decided the case on the basis that plaintiff did not establish *Monell's* requisite policy element for the prima facie case.[53] The dissent held that plaintiff established a prima facie case of constitutional tort and that the municipality was not entitled to any immunity from suit.[54]

In *Brown v. Crawford County, Georgia*,[55] the Eleventh Circuit also suggested the possibility of absolute municipal immunity.[56] In *Brown* local legislators appealed the trial court's denial of their claim to absolute legislative immunity for their legislative acts.[57] The Eleventh Circuit recognized their absolute legislative immunity, and, in footnote seventeen, sua sponte dismissed the case against the municipal defendant.[58] The court quoted an ambiguous proposition from *Spallone v. United States*[59]: "The city, for all practical purposes, therefore, acts through the city council when it comes to the enactment of legislation."[60] This quotation can be read in one of two ways. First, the court is granting the municipality absolute immunity. Second, since there is no ripe claim against the city, there is no ripe claim against the municipality. The text of the opinion concerned immunity, but footnote seventeen redirects the reader back to footnote three, which concerned several issues, one of which is ripeness.

V. CONCLUSION

By logical extension of Supreme Court precedent, the Second Circuit in *Goldberg v. Town of Rocky Hill* refused to extend absolute immunity to a municipal defendant in an action brought under 42 U.S.C. § 1983. Both public policy reasons and prior interpretation of the Civil Rights Act support the court's conclusion. In addition, the Supreme Court's recent decision in *Leatherman v. Tarrant County* sends a strong signal that the split

51. 964 F.2d at 1443.
52. *Id.* at 1445, 1448-49.
53. *Id.* at 1445-46.
54. *Id.* at 1448.
55. 960 F.2d 1002 (11th Cir. 1992).
56. *Id.*
57. *Id.* at 1003.
58. *Id.* at 1012 n.17.
59. 493 U.S. 265, 269 (1990).
60. 960 F.2d at 1012 n.17 (quoting 493 U.S. at 269).

among the circuits will be settled by refusing municipalities any immunity whatsoever.

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