



Significant Decision

No. 20-04

August 28, 2020

GUND V. COUNTY OF TRINITY

SUPREME COURT DECISION
(S249792)

FILED: AUGUST 27, 2020

A couple who knowingly provided assistance in active law enforcement service is precluded from pursuing a civil action against the County for injuries sustained during the encounter.

Significance: When members of the public engage in “active law enforcement service” at a peace officer’s request, Labor Code §3366(a) treats those members of the public as employees eligible for workers’ compensation benefits, and those benefits become the exclusive remedy.

Facts: In March 2011, the CHP received a 911 call from Kristine Constantino. She whispered, “help me” and said she lived at the end of a rural airstrip. A CHP dispatcher conveyed to the Trinity County Sheriff’s Office the information and an opinion that the caller was attempting to avoid being overheard. A dispatcher for the county then tried calling the phone number from which the 911 call had been placed. The call went unanswered, so the county dispatcher contacted Ron Whitman, a Trinity County deputy sheriff. Whitman was hours away and called James and Norma Gund, a pair of residents who did not work for the county but lived near the airstrip. Whitman asked the Gunds to check on Ms. Constantino. According to the Gunds, Whitman told them that Constantino had called 911 for help, but it was “probably no big deal.” He suggested that the call was likely prompted by the inclement weather, and allegedly did not mention her whispered plea for help. The Gunds drove to Constantino’s house. When they entered, they were attacked by a man with a knife who had already killed Ms. Constantino and her husband. The Gunds survived an attack that was described as gruesome and horrific. After the Gunds filed a lawsuit seeking \$10 million in damages from the County, the trial court issued a summary judgment dismissing the suit on the basis of LC §3366, which provides that for purposes of workers’ compensation any person “engaged in the performance of active law enforcement service” at the request of a peace officer will be deemed to be an employee of the public entity that he is assisting. The Gunds appealed to the Court of Appeal, claiming that Whitman had misled them about the nature of the requested activity. Although the Court of Appeal denied their claims, the Supreme Court subsequently ordered review on its own motion in order to determine the scope of workers’ compensation coverage available.

Holding: Affirmed. Since the Gunds knew they were responding to a 911 call, they were engaged in assisting in active law enforcement at Whitman’s request, and their only remedy against the defendants had to come through the workers’ compensation system.

Discussion: In reaching its decision, the Supreme Court examined whether Whitman requested “active law enforcement service” when he asked the Gunds to respond to Ms. Constantino’s 911 call. The Court adopted

a “more capacious” understanding of the terminology and concluded that while it falls short of encompassing every conceivable function a peace officer can perform, it is not limited to arrest and detention of criminals or the direct suppression of crime. Instead, “active law enforcement service” includes an officer’s duties directly concerned with functions such as enforcing laws, investigating and preventing crime, and protecting the public. Read in context, LC §3366 is best understood as an exception to the general rule that volunteers are excluded from coverage: “Such exceptions to exclusions are to be read broadly, consistent with the directive to construe workers’ compensation provisions with the purpose of extending coverage.”

The Court points out that its decision means that civilians can get compensation without having to litigate the specifics of an officer’s request for help or whether the request amounted to negligent misrepresentation. “This model makes it much simpler and quicker for injured civilians to get compensation.” Moreover, the Court pointed out that LC §4553 provides for increased benefits where the employee is injured by reason of the serious and willful misconduct of the employer.

Two justices dissented, arguing that the specific details of the exchange between Whitman and the Gunds had changed the essential nature of the request for assistance. The dissenting justices suggested a different test: whether an objectively reasonable person would understand the request to be one for assistance with a task that qualifies as active law enforcement service, taking into account all context, details -- and omissions.

The disturbing facts of this case were not lost on the majority, but according to the decision the Court was constrained by the failure of the plaintiffs to adequately plead their case. The decision confirms that a plaintiff may pursue tort claims for injuries where the employer’s motive violates a fundamental policy of the state, for intentional misconduct that has only a questionable relationship to the employment, for an injury that did not occur while the employee was performing a service incidental to and a risk of the employment, or where the employer stepped out of its proper role. However, the Gunds did not raise any of these arguments in the trial court, at the Court of Appeal, or in their Opening Brief. The first time the Gunds raised any form of these arguments was in their Reply Brief at the Supreme Court, and “[t]his argument is, therefore, forfeited.” Furthermore, the Court pointed out that even when an employer intentionally conceals and misrepresents hazards in order to induce an individual to accept employment, workers’ compensation is the exclusive remedy. “Allowing allegations of misrepresentation to take claims like this outside the workers’ compensation system would disturb the carefully balanced scheme the Legislature designed.”

While the Court acknowledged that Whitman’s omissions might have provided additional context to the Gunds about the potential for a dangerous situation, these omissions did not change the Court’s conclusion that Whitman’s request for the Gunds to respond to a 911 call for unspecified help falls within LC §3366. Because the officer requested that the Gunds assist in active law enforcement service, and because they were injured in the course of providing that service, LC §3366 applies and workers’ compensation benefits are the exclusive remedy.

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