

Lawyers USA

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3rd Circuit Rules Police Not Liable for Failing to Protect Officer's Wife

By Lawyers USA Staff

Police are immune from claims that they failed to protect a police officer's wife from domestic violence, even though she had obtained protection orders under the state's domestic violence law and had reported numerous incidents of abuse, the 3rd Circuit has ruled.

The plaintiff was married to a Philadelphia police officer, who shot and seriously injured her, and then shot and killed himself. Her husband had emotionally and physically abused her for years before the shooting. Although she had reported numerous incidents of abuse to police over the years, obtained several restraining orders, and told police that her husband continued threatening her despite the orders, police failed to arrest him.

She sued the city and several police officers, claiming that they violated her constitutional right to police protection from her husband's abuse.

The defendants objected, arguing that they had qualified immunity.

The court agreed, reversing a U.S. District Court.

"The facts [the plaintiff] alleges, if true, reveal a terrible deficiency on the part of the Philadelphia Police Department in responding to her complaints of domestic abuse. Binding precedent nevertheless compels our conclusion that the officers' failure to

arrest her husband, or to handle her complaints more competently, did not violate her constitutional right to due process or equal protection of the law,” the court said.

Despite changes to the state’s domestic violence law that required police to arrest those who violated protective orders, “absent a ‘clear indication’ of legislative intent, a statute’s mandatory arrest language should not be read to strip law enforcement of the discretion they have traditionally had in deciding whether to make an arrest. [A]lthough the Pennsylvania statute allows a victim of domestic violence to ‘file a private criminal complaint against a defendant, alleging indirect criminal contempt’ for violation of a protective order, or ‘petition for civil contempt’ against the violator, it is silent as to whether a victim can request, much less demand, an arrest,” the court said.

Burella v. City of Philadelphia (Lawyers USA No. 9938255) U.S. Court of Appeals, 3rd Circuit No. 04-1157/2495. Sept. 13, 2007.

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