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Castle Rock Case May Affect Cops Nationwide

By Joey Bunch, Denver Post Staff Writer

Castle Rock – A case involving the murder of three Castle Rock children by their father in 1999 could lead to police departments across the country being sued for failing to prevent violence, according to an appeal the U.S. Supreme Court agreed to consider Monday.

Jessica Gonzales, the mother of the girls – ages 10, 9 and 7 – said Castle Rock police failed to respond after she reported that her estranged husband took the children from her yard.

A restraining order had been issued against her husband, Simon Gonzales, a month earlier.

A favorable ruling would allow the mother to pursue a \$30 million lawsuit, claiming officers' failure to enforce the restraining order denied the family "due process of law" under the 14th Amendment.

Castle Rock's attorney, Thomas Rice of Denver, said the issue is far-reaching.

"It's not just for Castle Rock, but for law enforcement in general as to whether police can be answerable under a constitutional rights claim for failing to do whatever a plaintiff thinks they should have done to protect that plaintiff from violence at the hands of a criminal," he said.

On the day of the killings, Jessica Gonzales had reached her husband by cellphone. He said he had taken the children to Six Flags Elitch Gardens amusement park in Denver. The mother then called police and asked them to retrieve the children.

Authorities told her to wait to see if her husband brought the girls home, according to court documents.

Instead, Simon Gonzales went to the Castle Rock Police Department, opened fire on the building and was killed in a shootout with officers. The three girls were found dead, from their father's gun, in the cab of his pickup.

Neither Jessica Gonzales nor her attorney, Brian Reichel of Broomfield, could be reached Monday.

The town is asking the high court to dismiss the lawsuit, the only appeal justices agreed to hear Monday of 350 pending requests.

The case was initially dismissed by a federal judge in Denver. The Denver-based 10th U.S. Circuit Court of Appeals overturned that decision in a 6-5 vote.

Jessica Gonzales claims she showed officers the restraining order, and “police officers used no means, reasonable or otherwise, to enforce” it, according to the appeals court ruling.

“In general, if law enforcement does not respond to a call – whether in the end they can really do anything about it or not – then, yes, they should be sued,” said Jennifer Walker, executive director of Violence Prevention Institute, a crisis and education center in Castle Rock.

John Sadwith, executive director of the Colorado Trial Lawyers Association, said that while police have broad immunity, it is not absolute.

“There are always exceptions when civil rights are involved,” he said. “Any constitutional right can’t be taken away.”

Twenty states have laws on enforcing restraining orders, issuing thousands of protective orders each year, according to the National League of Cities, which filed a friend-of-the-court brief in the case.

Police in those states would be equally vulnerable to lawsuits if the Gonzales case is allowed to proceed, according to the league.

The case is a nuanced challenge to a 1989 Supreme Court decision that blocks failure-to-protect lawsuits under the Constitution’s due-process clause.

In that case, the Supreme Court voted 6-3 that social workers did not have a constitutional requirement to prevent a father’s abuse of a child.

The Associated Press contributed to this story.

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