

Email from Jeffrey R. Rion

National Crime Victim Bar Association

Gantt v. Security USA – Jury Verdict

February 10, 2005

The case of *Gantt v. Security USA*, for which we unsuccessfully petitioned the Supreme Court for Cert last fall. Has gotten a wonderful Jury verdict. We were worried that the 4th circuit ruling would hamstring the case by not allowing liability for the rape only the fear the victim experienced when she knew her batterer was on the way. We wondered “How much could that be worth?” The Answer: \$2.25 million.

This is an important verdict for victims of Domestic Violence and Stalking everywhere. It shows that employers need to pay attention to protective orders, because failing to do will increase their liability exposure.

Before you got involved, the attorney, Dawn Martin, had not been in contact with any of the advocacy groups. All of us were able to provide Dawn with invaluable guidance and support. Thanks for your cooperation on this. It was well worth it.

FYI

Today, the jury came back with a verdict in the amount of \$2,250,000, in *Gantt v. Security, USA*, a workplace violence case.

Because the 4th Circuit opinion allowed only recovery for the 1 hour that Ms. Gantt spent on Post 9, before Gary Sheppard abducted her, raped her and held her captive for six hours, threatening to kill her with his shotgun, and due to evidentiary rulings by the trial court, the trial was cut back from its originally scheduled two week period to 2 days.

The jury awarded \$2,000,000 in compensatory damages and \$250,000 in punitives.

Many of you may recall earlier e-mails regarding this case, *Gantt v. Security, USA*, 356 F.3d 547 (4th Cir. 2004). It has received press coverage and discussion on numerous EEO and employment websites, as well as mention in the Maryland Code Annotated and other legal commentaries.

When I petitioned the Supreme Court for certiorari to hear this case, based on a split decision by the 4th Circuit that restored part, but not all of Dominique’s claims, various women’s

organizations and crime victims bar association groups joined to file an amicus brief in support of our position.

The case has sparked controversy about an employer's obligation to honor and enforce protective orders in the workplace, even though, in this highly unusual case, Dominique's supervisor actually intentionally assisted the batterer in violating the protective order in the workplace, which is why we are suing for intentional infliction of emotional distress. We are requesting both compensatory and punitive damages.

For trial, Karen Khan, Esquire, of Khan, Rhomberger, in D.C., joined me as co-counsel, shortly before trial.

For those who have assisted with this case in the past, particularly Jeffrey Dion, of the Crime Victims' Bar, and Cintra Geairn, who volunteered her time to draft the amicus brief on behalf of the various women's and victims' groups, we send a special thanks. To Ann Parks, of the Daily Record, whose article below explains the facts and legal issues so well, special thanks as well.

Dawn Martin, Esquire

MARYLAND LAW FRIDAY COVER STORY

Dominique's nightmare

Dawn V. Martin, the Alexandria-based attorney who represents Dominique Gantt, wants the Supreme Court to hear her story. Martin is seeking to hold Security U.S.A. Inc. (a private company under contract with the government to provide security for federal buildings) liable for the emotional distress Gantt suffered as a result of being abducted by an estranged boyfriend, as well as for the government contractor's failure to protect her from sexual harassment. – Ann W. Parks

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Dominique's nightmare

How far does the law go to protect an employer?

By ANN W. PARKS

Daily Record Assistant Legal Editor

In December 1996, Dominique Gantt, a 25-year-old security guard, had a dream that her estranged boyfriend shot her while driving down a parkway.

Days later, her nightmare came within a trigger-pull of coming true.

Dominique Gantt, left, and attorney Dawn V. Martin have asked the Supreme Court to decide whether Gantt can sue her employer on allegations that her supervisor, who was friendly with Gantt's former boyfriend, violated a protective order and refused to call police when told the man had abducted Gantt at gunpoint.

Her eight-year relationship with Gary Sheppard had begun to sour a year or two earlier, and by 1996 Gantt found herself wondering how she was going to get out. Behavior that had started with pushing had escalated to the point where Sheppard was beating her with his fist, she said.

"It just got worse," she said. "I knew it was going to happen again."

So one day, the Lanham resident came home from her job with Security U.S.A. Inc. (a private company under contract with the government to provide security for federal buildings), grabbed her son a pushing had escalated to the point where Sheppard was beating her with his fist, she said.

On the way, she stopped at the Charles County Courthouse and obtained a restraining order directing Sheppard to stay away from her.

Returning to work at the Internal Revenue Service in Lanham the next day, Gantt provided Security U.S.A. Project Manager Earl Wood with a copy of the order. All supervisory personnel were informed, in turn, that Gantt was not to be assigned to an outside post.

"I went through the chain of command," Gantt said. "I did everything that I was supposed to do."

So when Sheppard showed up at the IRS building on the morning of Saturday, Dec. 7, 1996 – brandishing a shotgun under his trench coat – the idea that he could successfully abduct Gantt from the grounds of a federal building, escape unhindered to Delaware and subject her to six hours of assault and rape should never have been more than a bad dream.

But it happened.

'He just wants to talk'

Dawn V. Martin, the Alexandria-based attorney who represents Gantt, wants the Supreme Court to hear her story. The story is not about Sheppard – who, responding to Gantt's desperate promises to reconcile in order to save her life, drove her back to Maryland after the ordeal and is now serving 20 years in jail.

Martin is seeking to hold Security U.S.A. liable for the emotional distress Gantt suffered as a result of Sheppard's actions, as well as for the government contractor's failure to protect her from sexual harassment.

"In Dominique's case, she had specifically informed Wood that Sheppard presented a danger to her," Martin says. "He instructed all supervisors not to put Dominique on an outside post."

So how did Gantt end up, on the morning of Dec. 7, guarding the entrance to an underground garage – a place where Sheppard could easily find her? And how was Sheppard able to escape with her, especially since two of her fellow security guards witnessed and reported the abduction at gunpoint?

“Angela Claggett, Gantt’s supervisor, repeatedly violated the protective order,” Martin says. Less than an hour before the attack, Gantt begged Claggett to be moved inside, according to court filings; yet Claggett ignored those pleas as well as a reminder by another supervisor, Sgt. Willie Jones. “She specifically ordered Dominique to Post 9, where she was not supposed to be.”

Claggett, according to court filings, was friendly with Sheppard. They had worked together at another security firm, and he had confided in her about his relationship with Gantt.

On the day of the abduction, Gantt alleged, Claggett had even transferred a phone call from Sheppard to her line at Post 9 in violation of the protective order.

Most damning, though, are the allegations of what Claggett did when another guard called to tell her of the abduction.

“Claggett admitted ordering Officer Darren Harvey not to call the police,” Martin asserts. “She said, ‘Don’t call the police, he doesn’t want to harm her; he just wants to talk to her.’ She was more concerned about him going to jail.”

Claggett relented five to 10 minutes later and called the authorities herself, the lawyer says. But by then, Sheppard and Gantt were gone.

The Case

Martin claims the facts are undisputed. But Virginia attorney F. Nash Bilisoly – who is opposing Gantt’s petition for a writ of certiorari to the Supreme Court – says Oakland, Calif.-based Security U.S.A. has denied Gantt’s allegations concerning Claggett’s actions.

“The only issue is whether [Gantt] can put on enough evidence to get to a jury,” Bilisoly said, since at this stage, the court has made no findings of fact.

“On summary judgment, they have to assume that everything took place,” he explained. “They never did get into the very specifics that she alleged.”

Gantt filed suit against her employer in December 1999, alleging a variety of theories of recovery for the physical and emotional injuries she suffered as a result of her abduction. In January 2001, a federal judge in Greenbelt dismissed her federal constitutional sexual harassment claim because, although it was patrolling government property, Security U.S.A. was not a government actor.

Also dismissed were her common-law negligence-related claims, for which workers' compensation provides the exclusive remedy.

"If there's any degree of negligence involved, boom! It falls squarely within the Workers' Compensation Act," says Matt M. Paavola, legislative chairman of the Workers' Compensation Committee of the Maryland Trial Lawyers Association.

Under Maryland law, the employer is immune from common law liability for injuries sustained in the course of employment in more than 99 percent of cases, Paavola said.

That immunity, known as the exclusive remedy rule, does not apply if the employer deliberately intended to injure the worker.

"This statute is very onerous; only in the clearest circumstances will courts find intentional conduct outside the act," Paavola explained. "The clearest case is if an employer strikes you."

Because of the intentional tort exception, the district court at first refused to dismiss Gantt's claim for intentional infliction of emotional distress. But to prevail on that claim, Gantt had to show the existence of intentional, extreme and outrageous conduct causing severe levels of distress.

Under that standard, U.S. District Judge Deborah K. Chasanow ultimately concluded, even if everything Gantt alleged were true, it was not enough to put her case before a jury.

While there was evidence to show Claggett acted intentionally in placing Gantt at an outside post, the fear Gantt suffered prior to her abduction would not be severe enough to qualify under the standard. On the other hand, the distress from the resulting abduction and rape would likely be sufficient – but that conduct was Sheppard's, not Claggett's, Chasanow ruled.

Three-way Split

Reviewing the case in January, a three-judge panel of the 4th U.S. Circuit Court of Appeals issued three separate opinions. Judge Paul V. Niemeyer would have affirmed the lower court ruling in full; Judge J. Michael Luttig would have reversed it almost entirely, with the exception of the dismissal of the sexual harassment claim.

The swing vote (and thus, the majority opinion) came from Judge Diana G. Motz, who concluded Gantt's claim for intentional infliction of emotional distress should be reinstated – but only as to Claggett's actions in assignass <body>. Most damning, though, are the allegations of what Claggett did when another guard called to tell her of the abduction.

All three appellate judges focused on the exclusive remedy rule of the workers' compensation law, and the intent-to-injure exception.

While Motz and Luttig treated Claggett's actions as those of the company – something Security U.S.A. had not disputed – Niemeyer pointed out Claggett was disobeying a direct order from the project manager, Wood.

But, like Motz, Niemeyer found no evidence that Claggett intended for Gantt to be abducted or assaulted.

“The record shows that Claggett was intending to act, however clumsily, as counselor or peacemaker, assuring Gantt that Sheppard only wanted to talk to her and repair their relationship,” Niemeyer wrote. “Claggett's misguided judgment and perhaps even recklessness, however, cannot support a finding that she deliberately intended to injure Gantt.”

Luttig, however, dissented on that point.

“A reasonable jury need not reach such an innocent conclusion as to Claggett's motivations,” he wrote, given the friendly relationship between Claggett and Sheppard, her knowledge of his prior threats against Gantt, her violation of the protective order, and other factors – not the least of which was her delay in calling police after “frantic” security guards reported Gantt had been abducted at gunpoint and was being driven away in a van.

A jury could “determine that Claggett's actions, taken as a whole, demonstrated a deliberate intent ‘to bring about the consequences of [her] act[s]*,’” Luttig wrote, “Gantt's abduction, torture and rape, as well as the emotional injuries that attended each.”

Judge Luttig had it right, according to Russell P. Butler, executive director of the Maryland Crime Victims' Resource Center Inc., and Jeff Dion, deputy director of the Washington, D.C. – based National Crime Victim Bar Association, a group of attorneys who handle civil claims on behalf of crime victims.

“She was fully justified in bringing suit against her employer,” said Dion, who felt the 4th Circuit should have imputed to Security U.S.A. liability for all the damages Gantt incurred. “It was reasonably foreseeable that this woman was at risk; she had a protective order and they placed her in harm's way.”

Artificial Divide

Although the partial remand is technically a victory for them, Gantt and her attorney feel the court was splitting hairs.

“There was an artificial division, to cut off the liability of the employer when Gary Sheppard showed up,” Martin said.

She also believes the 4th Circuit erred in concluding that as a private entity, Security U.S.A. had no constitutional duty to protect Gantt from workplace sexual harassment.

“The court should hold that Security U.S.A. is a state actor,” Martin said, since it performed duties that would have been performed by U.S. Federal Protective Service officers and local police, but for the General Services Agency’s contract with the security firm. “The security officers are not like night watchmen; there’s an extensive GSA training procedure operated by the government and certified by the government.”

Paavola of the Maryland Trial Lawyer’s Association thinks that may be Gantt’s best chance for getting the case reviewed by the Supreme Court.

“Private companies are increasingly performing government functions,” he said. “Maybe we need clarification as to when these entities must be deemed a state actor.”

If the case is reviewed, Paavola said, it is likely the MTLA would file an amicus brief on the applicability of the Workers’ Compensation Act.

“Claggett’s behavior should be imputed to her employer under common law, not under the act,” he said. “The facts support the exception to the act.”

Precedent

Whether the high court reviews it or not, the case has attracted attention far from Maryland. Texas employment attorney Michael Fox writes on his Web site that while the tort of intentional infliction of emotional distress is not a favorite of his, there are situations where he would be “hard pressed to deny” such a claim might exist.

“*Gantt v. Security USA* is such a case,” Fox writes. “Just on the question of whether the underlying facts state a cause of action, this one does not offend.”

“The case is horrible,” adds Dion, of the National Crime Victim Bar Association, which is also considering filing an amicus brief.

It is common for stalkers and batterers to show up at the workplaces of their victims and commit acts of violence, Dion says; employers have been held liable in tort for failing to protect employees from acts of domestic violence that occur on their premises, “particularly when they’re on notice of the threat.”

“Employers and other responsible parties that * take it upon themselves to mediate the situation are opening themselves up to liability,” he said.

What makes this case unusual is the almost conspiratorial nature of the supervisor’s actions, Dion notes.

“It creates terrible precedent to have employers absolved from the actions of the perpetrator when they facilitated the kidnapping, the sexual assault,” he said.