UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-4727 & 93-4079

JAMES EDMONSON, d/b/a Canton Bail Bonds,

Plaintiff-Appellee,

VERSUS

THE COUNTY OF VAN ZANDT, PAT JORDAN, D.W. (WAYNE) MILLER and BETTY T. MILLER, d/b/a Free State Bail Bond Service,

Defendants-Appellants.

No. 93-4431

JAMES EDMONSON, d/b/a Canton Bail Bonds,

Plaintiff-Appellee,

VERSUS

THE COUNTY OF VAN ZANDT,

Defendant,

PAT JORDAN and D.W. (WAYNE) MILLER,

Defendants-Appellants.

Appeals from the United States District Court
for the Eastern District of Texas
(6:90 CV 373)

(January 14, 1994)

Before GOLDBERG, JONES and DUHÉ, Circuit Judges.[*]

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[*]Judge Jones did not sit for oral argument due to illness, but will participate in the opinions with the aid of tape recordings.

DUHÉ, Circuit Judge:[1]

Plaintiff James Edmonson, owner of Canton Bail Bonds, brought this § 1983 action alleging a conspiracy to violate his constitutional rights. Edmonson alleged that Defendants conspired to monopolize the bail bond business in Van Zandt County and drive him out of business. The constitutional violations were deprivations of property and liberty interests in violation of the Due Process Clause and arbitrary and irrational treatment in violation of the Equal Protection Clause. The district court found defendants Sheriff Pat Jordan, the former Chief Deputy Wayne Miller, Betty Miller d/b/a Free State Bail Bond Service (wife of Wayne Miller), and Van Zandt County, liable under § 1983 for conspiracy and enjoined them from impeding Plaintiff's bail bond business. Defendants appealed (no. 92-4727).

After a bench trial on damages, Defendants were adjudged jointly and severally liable for $359,305 in compensatory damages and separately liable for punitive damages as follows: Pat Jordan (individually) for $25,000, Wayne Miller (individually) for $25,000, and Betty Miller for $83,300. Only the issue of attorney fees remained pending in district court. Defendants again appealed (no. 93-4079).

The County then settled with Plaintiff all the claims for

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[1] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

compensatory damages and attorney's fees.[2] After the district court denied relief on the attorney's fee issue as moot, Defendants Jordan and Wayne Miller filed a third appeal (no. 93-4431), out of concern that this court would regard the latest district court order as the final judgment for purposes of appeal. The third appeal was unnecessary, however, since an unresolved issue of attorney fees does not prevent a judgment on the merits from being final. Budinich v. Becton Dickinson & Co., 486 U.S. 196, 202 (1988). Accordingly, the third appeal, no. 93-4431, is dismissed. Otherwise, we agree with the parties that we have jurisdiction of these appeals.

The only remaining issues concern the denial of qualified immunity for Sheriff Jordan and Wayne Miller, the sufficiency of evidence of Betty Miller's participation in the conspiracy, and the punitive damage awards.

I.

We first address the question whether the court erred in denying the qualified immunity defense of Defendants Jordan and Wayne Miller. This court reviews a denial of qualified immunity de novo. McDuffie v. Estelle, 935 F.2d 682, 684 (5th Cir. 1991). Qualified immunity shields officials from personal liability for conduct which does not violate well-established law. See Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). However, the qualified immunity defense fails if a reasonable official would know that the

[2] The appeals of Van Zandt County and Sheriff Jordan and Wayne Miller in their official capacities were dismissed on May 11, 1993.

action taken would violate the plaintiff's constitutional rights. See id. at 815.

The reasonableness test is measured in light of clearly established legal rights at the time the action was taken: "the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." Anderson v. Creighton, 483 U.S. 635, 640 (1987).

Defendants first challenge the district court's conclusion that Edmonson had a clearly established property right in operating his bail bond business such as would entitle him to some due process protection. It is well established that "a reasonable, continued expectation of entitlement to a previously acquired benefit constitutes a cognizable property interest for purposes of due process protection." Ramirez v. Ahn, 843 F.2d 864, 867 (5th Cir. 1988) (citing Board of Regents of State Colleges v. Roth, 408 U.S. 564, 579 (1972)), cert. denied, 489 U.S. 1085 (1989). We need not determine what process was due to agree with the district court that a due process violation occurred. Sheriff Jordan's policies provided no process either pre- or post-deprivation. Jordan revoked Edmonson's license at least three times without providing any pre-deprivation notice and refused to give Edmonson access to the information upon which suspension was based. No prompt post-deprivation hearing was offered. In sum, it was clearly established that some process was due before Edmonson could be deprived of his license; the sheriff's department provided none.

Defendants also contend that they violated no clearly

established liberty interest. We reject this challenge as well. Edmonson had a liberty interest under clearly established notions of due process in operating a business free from arbitrary interference from state officials. Pursuit of one's livelihood is a constitutionally protected liberty interest. See generally Phillips v. Vandygriff, 711 F.2d 1217, 1222-23 (5th Cir. 1983) (characterizing the right to work for a living as the very essence of personal freedom secured by the Fourteenth Amendment), clarified on rehearing, 724 F.2d 490 (5th Cir.), cert. denied, 469 U.S. 821 (1984).

Defendants next argue that the court erred in considering the constitutional rights in a much too general sense, eviscerating the purpose of qualified immunity. See Anderson, 483 U.S. at 639-40 (requiring that test of "clearly established law" be applied in a more particularized sense rather than at a very general level, such as the general right to due process. According to Defendants, the more narrow and properly framed issue under Anderson is whether a reasonable officer would know that Defendants' particular acts--preferring another bail bonding company over Edmonson's business--was unlawful.

To deny qualified immunity, the court need not conclude that "the very act in question has previously been held unlawful, but . . . in light of pre-existing law the unlawfulness must be apparent." Anderson, 483 U.S. at 640. The contours of the rights at issue were sufficiently clear that a reasonable official would understand that Defendants' particular acts did violate those

rights: they enforced discriminatory treatment of Edmonson by instructing employees to deny Edmonson and his company privileges enjoyed by Betty Miller and Free State, by harassing or intimidating jailers who questioned the policy of favoritism towards Betty Miller's business, by rewarding jailers or trusties who approved of their policy or treated her business preferentially, by harassing Edmonson, and by allowing and encouraging solicitation of business only for Free State. No reasonable officer could conclude that such invidiously discriminatory conduct and policies would not infringe Edmonson's rights.

II.

We next address the issue whether the district court clearly erred in finding that Betty Miller conspired with Sheriff Jordan and Wayne Miller to deprive Edmonson of his constitutional rights. Betty Miller argues that there is no evidence to support the district court's conclusion that she was part of the conspiracy, or that the conspiracy theory is supported only by "snippets of testimony." She specifically argues that there is no evidence that she agreed, jointly acted, or reached an understanding with the state actors to violate the rights of Plaintiff.

In order to prevail on a §1983 conspiracy claim, a plaintiff must establish that Defendants agreed to commit an unlawful act. Crowe v. Lucas, 595 F.2d 985, 993 (5th Cir. 1979). Plaintiff must show both the existence of a conspiracy involving state action and a deprivation of civil rights in furtherance of the conspiracy by

a party to the conspiracy. Pfannstiel v. City of Marion, 918 F.2d 1178, 1187 (5th Cir. 1990). The district court found that Defendants Sheriff Jordan, Wayne Miller, and Betty Miller conspired to impede Edmonson's bail bond business and assist Betty Miller's business. The finding that Betty Miller participated in such a conspiracy is not clearly erroneous.

Some evidence showed that Betty Miller willingly accepted business knowing it had been illegally solicited. With full knowledge that there was a rule against solicitation, she told jail employees that solicitations were permitted. Further evidence showed that Betty Miller repeatedly went to the jail despite her knowledge of a rule that bailbond agents were not allowed into the jail. When confronted about her continued access to the jail, she replied that she could do whatever she wanted because she was the chief deputy's wife.

Evidence showed that Betty Miller brought gratuities or treats to trusties who recommended her as a bondsman. She violated posted rules regarding giving out food and suggested to jail employees that she had special influence with the sheriff's department.

For his part, Jordan condoned the solicitation of business for Free State and allowed Miller special privileges denied Edmonson. Wayne Miller solicited business for his wife on at least three occasions. Though he was in charge of disciplining trustees, Wayne Miller encouraged them to solicit business for Free State when some admonishment would have been in order. Based on this circumstantial evidence, a fact finder could reasonably infer that

Betty Miller had agreed with the sheriff and her husband to monopolize the bailbond business at the expense of Plaintiff.

III.

We finally reach the question of punitive damages. The fact finder may assess punitive damages in a §1983 action "when the defendant's conduct . . . involves reckless or callous indifference to the federally protected rights of others." Smith v. Wade, 461 U.S. 30, 56 (1983). Defendants Jordan and Wayne Miller maintain that Plaintiff failed to establish his entitlement to punitive damages. More specifically, they complain that the court failed to enumerate what factors distinguish their conduct as reckless or callous indifference to Edmonson's rights.

The infliction of punitive damages is within the discretion of the trier of fact. Fairley v. Jones, 824 F.2d 440, 444 (5th Cir. 1987); Hale v. Fish, 899 F.2d 390, 404 (5th Cir. 1990). The trial court correctly recognized that in assessing punitive damages a fact finder is required to evaluate "'the nature of the conduct in question, the wisdom of some form of pecuniary punishment, and the advisability of a deterrent.'" Fairley, 824 F.2d at 444 (quoting Lee v. Southern Home Sites Corp., 429 F.2d 290, 294 (5th Cir. 1970)). See Findings of Fact and Conclusions of Law at 11-12 (no. 93-4079, I R. 180-81).

The district court found that Jordan and Wayne Miller "acted maliciously and with reckless or callous indifference" to Edmonson's federally protected rights, referring to their actions described at length in findings numbered 21-76 of the liability

phase of the trial. The court also noted that these Defendants were aware that their actions violated county policy.

No further or more specific explanation of the Defendant's conduct meriting punitive damages is required. In those fifty-six findings of the liability opinion, the court found the conspiracy, explained how Sheriff Jordan and Wayne Miller permitted and encouraged solicitation of business for Free State, found that Sheriff Jordan allowed Betty Miller special privileges not granted to Plaintiff, found that Sheriff Jordan repeatedly suspended Edmonson's bail bond license without procedural safeguards, and found that Wayne Miller repeatedly improperly solicited business for his wife. We find no abuse of discretion on the part of the district judge in concluding that these Defendants exhibited reckless or callous indifference to Edmonson's rights.

Defendants Jordan and Wayne Miller also argue that some (selected) testimony does not support an inference of reckless or callous disregard of the Plaintiff's rights. We review facts underlying a punitive damage award only for clear error. Raley v. Fraser, 747 F.2d 287, 290 (5th Cir. 1984). The court as trier of fact had sufficient evidence of conduct constituting callous or reckless disregard.

Defendants Wayne Miller and Jordan finally complain that a deterrent is not needed because the injunctive relief succeeds in serving this purpose. This argument ignores the fact that punishment and deterrence of others is a proper purpose of punitive damages. Punitive damages serve both to punish the defendant for

his conduct and to deter him *and others like him* from similar behavior. Smith v. Wade, 461 U.S. at 54.

As for Betty Miller, most of her complaints about damages are moot in view of the settlement of all compensatory damages. However, she expands one argument--that the damage awards are speculative--to the punitive damage award, too. Specifically, she complains that a witness calculated her ability to pay punitive damages based not on the value of Betty Miller's business alone but rather on the combined values of her business and her daughter-in-law's bond business.

The amount of punitive damages lies within the discretion of the trier of fact and is never proven by a plaintiff with certainty. See Lee, 429 F.2d at 294. Betty Miller's argument that the award is speculative assumes that either the court's finding that the two entities were operating as one company was clearly erroneous, or that the court abused its discretion in considering the value of both businesses in assessing punitive damages.

We find neither clear error nor abuse of discretion. The finding regarding the operation of two companies as one was based on ample evidence. E.g., III R. 9, 43-45, 85, 236-40 (no. 93-4079). If Betty Miller attempted to show modest means in mitigation of a punitive damage award (by showing that the value of her business alone should be considered), the trial court was not persuaded. Our only other inquiry is whether the district judge abused his discretion in considering the value of the two businesses in view of the finding that they operated as one. We

find no abuse of discretion.

Because we find no error regarding the punitive damage awards, we affirm.

Conclusion

Appeal number 93-4431 is DISMISSED; with respect to the other two appeals, the judgment of the district court is in all respects AFFIRMED.