Wait for response & then — CF

X

CF

3/4/88 —

Resp. rec'd, 4/3/87. CA6 was correct to remand this case for a new trial because the City could be held liable on the grounds that it had an official regulation which granted shift commanders unfettered discretion to deny medical treatment, coupled with inadequate training.

Reply rec'd, 4/10/87. This case presents the issue raised but not decided in Kibbe, & therefore the Court should take the case.

Comments: I see no need to take this case now.

X CF 4/20/87

Preliminary Memo

~~February 20~~ April 24, 1987 Conference
List ~~7~~, Sheet ~~3~~

No. 86-1088 — CFX

Canton, Ohio (§1983 deft) v. Harris et al. (§1983 plaintiffs)

Cert to CA6 (per curiam) (Lively, [Merritt], Jones) (Merritt, dissenting)

Federal/Civil

Timely

1. SUMMARY: Petr argues that CA6 erred in remanding this case for trial on an "inadequate training" theory of municipal liability.

2. FACTS AND DECISION BELOW: This case involves a §1983 claim brought against Canton, Ohio, for damages resp allegedly suffered as a result of inadequate medical attention following her arrest. The evidence at trial was as follows: Geraldine

Harris (resp[1]), a fifty-two-year-old black woman, was driving her teenaged daughter to school when she was stopped for speeding by a Canton, Ohio, police officer. The officer ultimately arrested resp because, as he claimed, she became uncontrollably upset and uncooperative. Resp was put in a patrol wagon by two officers who arrived to transport her to the police station. Resp testified that she was pushed and thrown about violently, and shoved in the ribs. The officers said a minimal amount of force was used, and that resp was lifted and placed in the vehicle because she could not or would not walk on her own.

When the vehicle arrived at the station, the shift commander, Captain Maxson, was present. He had been notified by the officers of a possible need for his presence. He testified that resp was "'just lying there,'" which was unusual because "'I don't know of anyone that rides in a wagon on the floor.'" Petn App. 2a. Capt. Maxson thought resp might need medical attention, and asked her if she needed a doctor or medication. She did not respond to the question, but asked incoherently about "Ronnie" (which turns out to be her son's name). No medical care was ordered.

During booking, resp was standing against a wall when she suddenly slumped to the floor. Officers helped her to a chair, but she slumped to the floor again. She was again put back in the chair, and again fell. Capt. Maxson testified that resp was

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[1]Other resps include Geraldine Harris's husband and daughter. I will use "resp" to refer to Geraldine Harris.

left on the floor ten minutes or less to avoid further falls. He explained that emotional behavior is common upon incarceration, and that he and the other officer present believed that resp was merely excited and would calm down (as most arrestees do) if left alone and permitted to see her family.

Resp was released on bond after having been detained at the jail for 30 to 40 minutes. Her family had her taken to a hospital by ambulance. She was diagnosed as suffering from gross stress reaction, anxiety, and depression, with symptoms including immobility and respiratory difficulty. She was hospitalized for one week, and after her release received psychiatric treatment for more than a year.

Resp sued the City and various police officers. The DC granted a motion for directed verdict for Canton's mayor and police chief, and the jury found in favor of all the remaining individual defts. The jury found that the City had violated resp's constitutional rights by denying her necessary medical treatment while she was incarcerated at the City jail. The jury awarded resp $200,000 in damages.

The City filed a motion for jnov which the DC described as being "less than two pages long and [without] citation to either case law or to specific evidence presented at trial." Petn App. 12a. The City argued, among other things, that "[t]here was no evidence of a custom, policy, or practice on the part of the City of Canton that it denies medical treatment to prisoners of its jail." Petn App. 13a. The DC held that the City could be held liable for failure to train its officers or for training them in

a such a reckless or grossly negligent manner that police misconduct was almost certain to result. See Hays v. Jefferson County, 668 F.2d 869 (CA6 1982), cert denied, 103 S.Ct. 75 (1983). The court further stated that "[a] municipality may be found liable by a jury when it permits decisions concerning the medical treatment of prisoners to be rendered by supervisors exercising only their common sense." Petn App. 16a. The court concluded that the jury could reasonably have found that the City liable on such a theory.

The City appealed to CA6, which reversed and remanded because the jury instructions permitted a finding of liability based on the mere participation of "supervisory personnel" in the constitutional violation. On the failure-to-train issue, CA6 noted that Canton Police Regulation §334.7 provides as follows:

> "[The jailer] shall, when a prisoner is found unconscious or semi-conscious, or when he or she is unable to explain his or her condition, or ... complains of being ill, have such person taken to a hospital for medical treatment, with permission of his supervisor before admitting the person to the City Jail."

The testimony of a former police chief had been that shift commanders are authorized to make decisions under §334.7 in their sole discretion based on personal observation. CA6 noted that "[i]n the face of this grant of discretion, there was no evidence offered that the City provided any training or instructions to shift commanders, other than minimal first aid instruction, to prepare them for making such determinations." Petn App. 4a. The court held that to prevail on a failure-to-train theory resp must

prove (1) that the City acted recklessly, intentionally, or with gross negligence, see Hays, supra, 668 F.2d, at 872, and (2) that "the lack of training was so reckless or so grossly negligent that deprivations of persons' constitutional rights were substantially certain to result," Petn App 5a (citing Rymer v. Davis, 754 F.2d 198, 201 (CA6), vacated, 105 S.Ct. 3518, reinstated on remand, 775 F.2d 756 (1985)). The court concluded that because the City had produced no evidence that its police supervisors were adequately trained, there was a jury question on liability under an inadequate training theory.

Dissenting, Judge Merritt argued that the delegation of unregulated discretion to police supervisors to decide when medical attention is needed should not be actionable. The city has no choice but to delegate full authority to the supervisor, Judge Merritt argued; the only alternative is having a paramedic on hand. He concluded that use of common sense by the supervisor should pass constitutional muster.

3. CONTENTIONS: The City argues that Canton Police Regulation §334.7 was clearly intended to protect arrestees' rights, and should not be the basis for holding the City liable. Furthermore, CA6 erred in shifting the burden to the City to prove the adequacy of its training policy once the arrestee proved a constitutional violation.

The City also argues that there was no evidence that any inadequacy in its training policy was deliberate or even reckless. There was no evidence that any other prisoner had ever suffered injury due to a denial of medical treatment. Nor was

there a showing that the alleged inadequacy of the policy had ever been brought to the attention of the relevant City policy-makers. Moreover, it can't be said that the City's training caused the harm resp suffered; any violation of resp's rights occurred in spite of the City's actions, not because of them. Resp should have to show a deliberate policy of inadequate training by the City, and there was no such evidence.

The City asks that this case be held for City of Springfield v. Kibbe, No. 85-1217, which presents the questions whether municipal liability can be based on inadequate training, and if so, what the standard of proof is.

4. DISCUSSION: A hold for Kibbe appears in order. Normally I would recommend a CFR, but that doesn't appear necessary, because resps have requested and been granted an extension of time until March 16 for filing a response. (The case has been stricken from the February 20th Conference List.)

If Kibbe is dismissed as improvidently granted, I assume the Court will look for a replacement. My reservation about this case is that it's not clear what arguments the City made before the DC and CA6. Though the City now has able outside counsel, the representation below by the Canton Law Department was seriously deficient, if the the City's motion for jnov was representative. The result is that the City is now raising points, such as the lack of evidence of prior incidents of inadequate medical care for arrestees, that were not addressed by CA6, and that would require this Court to review the evidence.

It will be clearer how much of an obstacle this poses when the response arrives.

5. RECOMMENDATION: Wait for the response, or, if the Court wants to make doubly sure that it arrives, CFR.

There is no response.

February 6, 1987 Dimon Opinion in petn

My inclination would be to deny. On these facts, I do not think the City should ultimately be held liable, but the standard CA6 established is sufficiently strict that I doubt the City would be held liable in this case. As far as taking a case to substitute for Kibbe, I imagine that is inevitable — but I wouldn't like to rush that along.

Wait for response + then X CF 2/12/87