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November 4, 1991

Mr. Justice:

Re: Collins v. Harker Heights, No. 90-1279

In my benchmemo, I urged reversing and remanding to the dct rather than creating new law further limiting § 1983. There is another possibility that would also avoid creating new law, but would permit a 12(b)(6) dismissal.

Petr alleges that the city acted with more than negligence because it was aware of the dangers of gases accumulating in sewer lines. Petr claims that the city was aware because ^{just} a few months before Collins' ^{own} supervisor was rendered unconscious in a manhole. According to petr's allegations, therefore, although the city had a pattern and practice of never training or providing equipment to its sewer workers only one person had passed out from the gas and nobody had been permanently injured. Based on that evidence, I think as a matter of law the city has not acted with deliberate indifference or recklessness. The city was clearly negligent, but I do not think petr's complaint supports anything more.

Accordingly, it is possible to dismiss petr's complaint at this stage in the litigation without reaching the issue whether employer/employee due process claims are ever permissible under § 1983.

well
I also note that this morning's breakfast companion is arguing on behalf of the city in this case.

She also has money?

Molly