



The Seventh Circuit affirms the District Court's summary judgment order in favor of law enforcement, finding that the police department's response to the Plaintiff's complaints regarding abuse did not violate her right to substantive due process



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In *Wilson-Trattner v. Campbell*, ___ F.3d ___, 2017 WL 2952260 (7th Cir. July 11, 2017), the United States Court of Appeals for the Seventh Circuit was asked to review the District Court's order that granted summary judgment in a police department's favor on a claim brought against the department by a victim of domestic violence. Specifically, the Plaintiff Jennifer R. Wilson-Trattner argued to the Seventh Circuit that the District Court committed reversible error in granting summary judgment in favor of officers of the Hancock County, Indiana Sheriff's Department on her three claims against them: (1) a substantive Due Process claim; (2) a failure to train claim; and (3) an intentional infliction of emotional distress claim. The relevant facts are as follows.

Plaintiff Jennifer Wilson-Trattner began dating Scott Roeger (then a deputy with the Hancock County Sheriff's Department) in 2010. By 2012, the couple's relationship had become combative.

On June 17, 2012, Roeger locked Wilson-Trattner out of her house by stealing her house key and reprogramming her garage door opener. When she called the police, officers from both Hancock County and another agency (the McCordsville, Indiana Police Department) responded. Lieutenant Jeff Rasche of Hancock County asked Roeger to return the key to Wilson-Trattner, but Roeger refused. Wilson-Trattner also showed Rasche a text message that she had received from Roeger that said: "you have fucked with the wrong person." However, Rasche did not find that message to be inappropriate. Rasche later told Wilson-Trattner: "we can't help you; this is between you and him." Rasche also instructed Roeger that, though Roeger's personal life is not typically a department issue, it becomes a department issue when Wilson-Trattner contacts the police. Thereafter, Rasche drafted an internal memorandum regarding this incident, but no disciplinary action was taken against Roeger.

On June 29, 2012, Roeger became angry after learning that Wilson-Trattner had made plans on his night off. Roeger yelled at Wilson-Trattner, threw her against a wall, and choked her to the point where she could not speak. Wilson-Trattner wanted to avoid an official police response, so she called an officer who she believed to be off-duty to get Roeger out of her house. That officer then called his supervisor, and four or five officers ultimately arrived at Wilson-Trattner's home—both from the Hancock County and McCordsville departments. The officers first spoke with Roeger downstairs

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who told them that Wilson-Trattner had hit him and that he pushed her away to defend himself. The officers then met with Wilson-Trattner who was upstairs in her bedroom. The officers told Wilson-Trattner that she could go to jail based on what Roeger had said. Wilson-Trattner felt intimidated and was too scared to fully provide her side of the story. Rather, she denied Roeger's account, stated that she did not hit Roeger until he slammed her head into the wall, and declined to talk further. A McCordsville officer encouraged Wilson-Trattner to speak when she was ready to do so and left her with a domestic violence handout and a business card.

Following this incident, Hancock County Deputy Jarrod Bradbury drafted a memorandum to Captain Bobby Campbell which stated that Roeger had been ordered to not return to Wilson-Trattner's house or to contact her. Hancock County Sheriff Mike Shepherd also assigned Detective Ted Munden to draft a report. Detective Munden spoke with Wilson-Trattner, but she was unwilling to discuss the incident and said that she did not want Roeger to get in trouble. Detective Munden also interviewed Roeger who said that he had acted in self-defense. Detective Munden concluded that Roeger had violated departmental regulations, though did not specifically recommend any personnel action. While Detective Munden delivered his report to Sheriff Shepherd on or before July 23, 2012, Sheriff Shepherd does not remember receiving it. He later found it in a filing cabinet, but he does not recall putting it there.

On July 8, 2013, Roeger became angry after seeing Wilson-Trattner get a phone call from another man. Roeger sent that other man and Wilson-Trattner numerous lewd and threatening text messages, including sexually explicit photos and videos of Wilson-Trattner. Roeger also told Wilson-Trattner that she had "fucked with the wrong person" and wished that she would die. This prompted Wilson-Trattner to file a formal complaint with Captain Campbell. Captain Campbell said that he did not see anything threatening about Roeger's text messages. Rather, Captain Campbell told Wilson-Trattner that he was "sick of dealing with this shit" and that she "shouldn't call [Hancock County] for this personal shit." Captain Campbell then advised Wilson-Trattner to obtain a protective order. Captain Campbell also told Roeger that his conduct was inappropriate and instructed him not to contact Wilson-Trattner. Captain Campbell initiated an internal investigation, but he said that he misplaced the investigation paperwork in the trunk of his car. Captain Campbell never delivered the findings of his investigation to Sheriff Shepherd.

Things culminated on October 6, 2013, when Roeger broke into Wilson-Trattner's house while he was extremely intoxicated. When Wilson-Trattner confronted him, Roeger pushed her out of the way. He then saw a male friend of Wilson-Trattner's and became enraged. Roeger screamed and punched a hole in a door and knocked three pictures off of the wall. He left the house briefly, only to return and threaten Wilson-Trattner and her friend. Wilson-Trattner's friend then called 911, and Roeger left before the police arrived. Hancock County Deputy Gary Achor responded and told Wilson-Trattner "we're sick of getting these calls from you" and "if you keep crying wolf, we're just going to stop responding." The McCordsville Department subsequently arrested Roeger. Roeger pled guilty to criminal charges and resigned from the Hancock County Sheriff's Department following the initiation of termination proceedings against him.

Wilson-Trattner filed a lawsuit on June 27, 2014 against Roeger, Sheriff Shepherd, Captain Campbell, Detective Munden and Hancock County Officer Brad Burkhart. The District Court granted summary judgment for the defense on Wilson-Trattner's substantive Due Process claim, on her

failure to train claim, and on her intentional infliction of emotional distress claim. Wilson-Trattner then sought review on appeal of the District Court's order.

The Seventh Circuit began its opinion by noting that the Due Process clause generally confers "no affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty, or property interests." *DeShaney v. Winnegabo Cty. Dep't of Soc. Servs.*, 489 U.S 189, 196 (1989). As such, a state's failure to protect an individual against private violence does not constitute a violation of the Due Process clause. Under the state-created danger doctrine, however, a substantive Due Process claim can proceed where the state "affirmatively places a particular individual in a position of danger the individual would not otherwise have faced." *Doe v. Village of Arlington Heights*, 782 F.3d 911, 916 (7th Cir. 2015).

To prevail under such a theory, the plaintiff must show that (1) the state by its affirmative acts created or increased a danger to her, (2) the state's failure to protect her from danger was the proximate cause of her injury and (3) the state's failure to protect her shocks the conscience. This is a narrow doctrine that applies only in "rare and often egregious" circumstances.

Wilson-Trattner argued that the law enforcement officers who she sued conveyed the unmistakable message that they would not interfere with Roeger's on-going abuse, thereby emboldening him to do it again. As a result, Wilson-Trattner asserted that they placed her at a greater risk of domestic violence than she would have faced had they done nothing at all.

The Seventh Circuit disagreed. The Seventh Circuit stated that there was no evidence that Defendants did anything to place Wilson-Trattner at a greater risk of domestic violence even though the Hancock County Sheriff Department may have "fallen short of an optimal response." Regardless, the Seventh Circuit held that inaction or inefficient responses by an internal affairs department is not a sufficient basis to support a claim under the state-created danger doctrine in violation of the Due Process clause.

Finally, the Seventh Circuit agreed with the District Court on Wilson-Trattner's other two claims. As for the failure to train claim, the Seventh Circuit held that there cannot be a failure to train claim without an underlying constitutional violation, and the Seventh Circuit had found that none occurred. As for the intentional infliction of emotional distress claim, the Seventh Circuit opined that none of the conduct by Roeger as alleged by Wilson-Trattner was sufficiently egregious to support her intentional infliction of emotional distress claim.

Accordingly, the Seventh Circuit affirmed the District Court's summary judgment order in favor of the law enforcement officials. Even though the Seventh Circuit tacitly acknowledged that the Hancock Sheriff's Department may not have conducted the most thorough internal investigation or investigation whatsoever into the alleged domestic abuse of Wilson-Trattner by one of their fellow officers, the Seventh Circuit could not say that a violation of Wilson-Trattner's Constitutional rights occurred as a result.

Note: *Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal adviser regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.*