

Filarsky v. Delia

--- U.S. --- (2012)

Decided April 17, 2012

FACTS: Delia (a Rialto, California, firefighter) was accused of doing construction work at his home while off on an injury leave. Filarsky, a local employment attorney, was hired by the city to investigate the matter. During an interview with Peel and Bekker (fire department officials, along with Filarsky, Delia admitted having purchased building materials, but denied that he'd actually done any work. At a break, Filarsky suggested resolving the matter by having Delia produce the purchased materials (several rolls of insulation) and the Fire Chief, Wells, agreed. When they reconvened, however, Delia refused the request to allow Peel to enter the home to see the materials and also to bring the requested items outside where they could be viewed. Filarsky then ordered him to produce the materials.

Delia argued, through counsel, that to do so would violate the Fourth Amendment. When they failed to sway Filarsky, his attorney "threatened to sue the City and everyone involved, including Filarsky. Filarsky signed the order and Peel and Bekker followed Delia to the house. The rolls of insulation were brought outside and Peel and Bekker thanked him and left.

Delia filed suit against all parties under 42 U.S.C. §1983, claiming the order violated his Fourth and Fourteenth Amendment rights. The District Court granted qualified immunity and summary judgment to all defendants, holding that Delia had not "demonstrated a violation of a clearly established constitutional right." Delia appealed, and the Ninth Circuit Court of Appeals affirmed that decision, with respect to all defendants but Filarsky. (The Court of Appeals agreed that the order did violate the Fourth Amendment, but agreed that it was not clearly established at the time the order was given.) However, the Court concluded that since Filarsky was a private attorney, not a city employee, he could not claim the protections of qualified immunity. The Court did note, however, this conflicted with the decision in Cullinan v. Abramson¹ but felt it was bound by Circuit precedent.

Filarsky requested certiorari and the U.S. Supreme Court granted review.

ISSUE: Is a private individual performing a government function entitled to the protections of qualified immunity?

HOLDING: Yes

DISCUSSION: The Court reviewed the historical basis behind the defense of qualified immunity, especially with respect to 42 U.S.C. §1983. The logic behind common law immunity was that "government actors were afforded certain protections from liability, based on the reasoning that 'the public good can best be secured by allowing officers charged with the duty of deciding upon the rights of others, to act upon their own free, unbiased convictions, uninfluenced by any apprehensions.'"²

¹ 128 F.3d 301 (6th Cir. 1997).

² Wasson v. Mitchell, 18 Iowa 153 (1864).

The Court went on to explore what existed in 1871, at the time §1983 was enacted. It noted that at that time, government was “smaller in both size and reach” and in fact, there were far fewer employees at all, let alone full-time employees who did nothing but government work. It was common, even expected, that a public servant did not devote all of their efforts to public duties, but would often carry on other regular business. It was common in the 1800s, or even the 1900s, for a private attorney to “conduct criminal prosecutions on behalf of the State,” in fact, Abraham Lincoln served in that role on several occasions.

“Given all this, it should come as no surprise that the common law did not draw a distinction between public servants and private individuals engaged in public service in according protection to those carrying out government responsibilities.” Case law had ruled that judicial immunity applied to judges who worked “on a part-time or episodic basis” as well as those employed so full-time.³ The Court noted that some officials (naming specifically justices of the peace) did not even draw a salary, but collected fees, a concept that would apply in modern day to, for example, Kentucky constables. In addition, “private detectives and privately employed patrol personnel often were publicly appointed as special policemen, and the means and objects of detective work, in particular, made it difficult to distinguish between those on the public payroll and private detectives.”⁴ The Court addressed in particular, the law that “Sheriffs executing a warrant were empowered by the common law to enlist the aid of the able-bodied men of the community in doing so.”⁵ When so serving, the private individual “had the same authority as the sheriff, and was protected to the same extent.”⁶

The Court concluded that nothing in modern times “counsels against carrying forward the common law rule” because “such immunity ‘protect[s] government’s ability to perform its traditional functions.’”⁷ Allowing those who are performing a governmental function to claim the protections of such helps to ensure that the most talented are not deterred from “entering public service.” In fact, “it is often when there is a particular need for specialized knowledge or expertise that the government must look outside its permanent work force to secure the services of private individuals, which is precisely what happened in the case at bar.

The Court continued:

Because government employees will often be protected from suit by some form of immunity, those working alongside them could be left holding the bag—facing full liability for actions taken in conjunction with government employees who enjoy immunity for the same activity. Under such circumstances, any private individual with a choice might think twice before accepting a government assignment.

In addition, if the lawsuit against the private individual, working in conjunction with government officials, moves forward, the government officials will of necessity still be drawn into the case,

³ *Bradley v. Fisher*, 80 U.S. 335 (13 Wall. 335) (1872).

⁴ Sklansky, *The Private Police*, 46 UCLA L. Rev. 1165.

⁵ In Kentucky, this concept is codified in KRS 70.060, Sheriff may command power of county.

⁶ *Robinson v. State*, 93 Ga. 77, 18 S. E. 1018 (1893).

⁷ *Wyatt v. Cole*, 504 U. S. 158 (1992).

which “substantially undermine[s] an important reason immunity is accorded public employees in the first place.” It would also prove difficult, if not impossible, to distinguish between those that would be entitled to such protections, given the myriad ways an individual could be employed by a government agency (as a part-time employee, on a limited project, etc.)

The Court concluded:

New York City has a Department of Investigation staffed by full-time public employees who investigate city personnel, and the resources to pay for it. The City of Rialto has neither, and so must rely on the occasional services of private individuals such as Mr. Filarsky. There is no reason Rialto’s internal affairs investigator should be denied the qualified immunity enjoyed by the ones who work for New York.

The Court reversed the Ninth Circuit holding denying qualified immunity to Filarsky.

Full Text of Opinion: <http://www.supremecourt.gov/opinions/11pdf/10-1018.pdf>.