

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
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Environment

Numerous environmental organizations filed this action alleging claims under the National Forest Management Act, the National Environmental Policy Act, and the Administrative Procedures Act concerning a proposed expansion of the Mt. Hood Meadows ski area. Judge King dismissed many of the claims in summary judgment but found two NEPA violations. He concluded that the Forest Service failed to assess a reasonable alternative which would have allowed the expansion in numbers of skiers, but reduced the parking areas, thus requiring skiers to use other forms of transportation, such as a shuttle service from a parking area off the mountain. He also concluded that NEPA was violated concerning a reclassification of 96 acres from a B-9 Wildlife/Visual land use allocation to an A-11 Winter Recreation allocation. Friends of Mt. Hood v. United States Forest Service, CV97-1787 (Opinion and Order, Dec. 15, 2000).

Plaintiffs' Counsel:

Karl Anuta

Defense Counsel:

Eric Gould, Mark Nitzczynski,
Per Ramfjord

Civil Rights

A mentally disabled resident of Lake Oswego filed a civil rights action against the City claiming that police officers unlawfully entered his home and used excessive force during his arrest. Plaintiff had previously been arrested in 1997 and was conditionally released under the supervision of the state Psychiatric Review Board and Clackamas County mental health authorities. While on supervision, plaintiff was scene attempting to direct traffic in front of his home. The police were called to the scene and, upon approaching plaintiff and directing him to stop, plaintiff ran into his home. The officers phoned for back-up, found the plaintiff's phone number, and attempted to contact plaintiff by telephone. Plaintiff kept hanging up on them. During this time, the officers learned that plaintiff was on state psychiatric supervision. The

officers then entered the plaintiff's home to effect an arrest, claiming probable cause based upon a mental hold under ORS 426.228, disorderly conduct and attempting to elude.

No charges were ever filed, but plaintiff's supervision was revoked based upon the incident. The state Psychiatric Review Board found that plaintiff had violated the conditions of his release and that he was no longer amenable to community supervision.

Defendants moved for summary judgment on grounds of collateral estoppel based upon the state board's findings. Judge Ann Aiken held that issue preclusion under 28 U.S.C. § 1738 and O.R.S. 43.130 were unavailable because the issues decided by the board were different than the issue presented in this case relative to whether the defendants violated plaintiff's 4th amendment rights during the entry and arrest. The court also rejected a defense argument that there was probable cause for the arrest as a matter of law. Judge Aiken found that because the warrantless arrest

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took place in the plaintiff's home, it was presumptively unreasonable and defendants had failed to show the existence of exigent circumstances. Finally, the court denied summary judgment on qualified immunity grounds, finding a factual dispute as to whether the officers could reasonably have believed that they had probable cause to support the arrest and/or exigent circumstances to justify their entry into plaintiff's home. Lousky v. City of Lake Oswego, CV 99-1130-AA (Opinion, December, 2000).

Plaintiff's Counsel:

James Mitchell, Spencer Neal

Defense Counsel:

Steven Kraemer

Procedure

Plaintiff filed an action in Yamhill County which included a federal RICO claim. Thereafter, plaintiff decided to withdraw the federal claim and prepared an amended complaint accordingly. Plaintiff's amended complaint was delivered to the County clerk's office but, due to a docketing error, was not docketed until the next day. Just five minutes before plaintiff's amended complaint was docketed, but one day after plaintiff delivered the amended complaint to the county clerk's office, defendant filed a notice of removal of the action to federal

district court. Plaintiff then moved to remand the action. Judge Haggerty held that plaintiff's amended complaint was effectively "filed" on the date of delivery and not on the date and time of the file stamp. Thus, there was no federal claim asserted when the defendant filed its notice of removal and remand was appropriate. The court declined to award fees for an improvident removal. Velde v. Van Noy, CV 00-1360-HA (Opinion, Dec., 2000).

Plaintiff's Counsel:

Thomas Anderson

Defense Counsel:

Edwin Storz

Habeas

Judge Aiken denied a habeas corpus petition in which the defendant claimed that he was actually innocent of the drug charge to which he pled guilty and that his plea was the result of coercion by his court appointed counsel. The court found sufficient evidence of guilt based upon the evidence reflected in the presentence report. The court also rejected defendant's claims regarding the involuntary nature of his plea as belied by the record of the plea colloquy. James v. USA, CR 98-30026-AA (Opinion, Nov., 2000).

Plaintiff: Pro Se

Defense Counsel: Doug Fong

Rule 26

The new discovery rule, Fed. R. Civ. P. 26, effective December 1, 2000, may still be waived by agreement of the parties pursuant to a new local rule adopted by the District Court. Local Rules 26.1 and 26.2 note that a form is available whereby the parties may agree to "forgo the disclosures required by Fed. R. Civ. P. 26(a)(1)" if the agreement is signed and filed with the court.

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