

GOVERNMENT OFFICIALS

Government Officials: Qualified Immunity

Town of Southwest Ranches v. Kalam,
980 So. 2d 1121 (Fla. 4th Dist. App. 2008)

Town officials are entitled to qualified immunity from suit, regardless of their subjective intent, so long as they (1) act within their discretionary authority and (2) do not violate any clearly established law.

FACTS AND PROCEDURAL HISTORY

Shahab Kalam (Kalam) wanted to build a home on a 2.01-acre lot he purchased in the Town of Southwest Ranches (Town). This lot was previously subdivided from a 3.8-acre lot. Unbeknownst to Kalam, a local land-use plan made it unlawful to build on subdivided property if one of the contiguous properties was less than two acres. When Kalam applied for a building permit, the Town's building official returned his application and attached a letter from a deputy attorney of the town, explaining that Kalam could not build on the property because the lot next to Kalam's lot was subdivided from the original 3.8-acre property and only netted 1.79 acres; consequently, building on the land would violate the local land-use plan.

Kalam filed a civil rights action, claiming that the building official and deputy attorney improperly denied him the use of his property in violation of both the United States Constitution and 42 U.S.C. § 1983. Kalam alleged that the Town's delay was calculated to depress the property's value in anticipation of acquiring the property to construct a fire station. The Town filed a motion to dismiss, asserting that the town officials had qualified immunity, but the court denied the motion.

ANALYSIS

On appeal, the Fourth District Court of Appeal held that the Town officials were entitled to qualified immunity and granted its motion to dismiss. The court adhered to United States Supreme Court precedent, which provides qualified immunity to government officials performing discretionary functions unless a reason-

able person would have known that the questionable conduct violated clearly established law. The court separated the Supreme Court's rule into a two-part test, placing the initial burden on the Town to prove that it acted within its discretionary authority. While Kalam contended that the building official's failure to process his application was evidence that the building official acted beyond her discretionary authority, the court disagreed. On the contrary, the court concluded that even if the failure to process Kalam's building application was wrong, the building official was still within her discretionary authority to do so. Consequently, the defendants properly shifted the burden to Kalam.

Kalam, in order to satisfy the second part of the test, needed to show that the Town officials violated his rights in contravention of clearly established law. The court determined that Kalam did not meet his burden. First, the court noted that Kalam's constitutional rights are not implicated in land-use disputes of this nature. Moreover, even if the Town officials had questionable motives, their actions were consistent with the language in the local land-use plan, as Florida law mandates. The court explained that it could not find that Kalam's "right to have his permit application further processed was such a clearly established right that any reasonable town official would know that rejecting his application would violate the federal constitution." *Kalam*, 980 So. 2d at 1124. Accordingly, the court reversed the lower court's decision and held that the Town officials were entitled to qualified immunity from Kalam's suit.

SIGNIFICANCE

Kalam reflects the difficulty involved in alleging civil rights violations relating to adverse land-use determinations by municipal officials. Officials are not considered to be acting outside of their discretionary authority for delaying or failing to process a development application. Further, subjective intent is not relevant to the qualified immunity defense.

RESEARCH REFERENCES

- 15 Am. Jur. 2d *Civil Rights* § 119 (2000 & Supp. 2008).
- 9 Fla. Jur. 2d *Civil Servants* § 73 (2004 & Supp. 2008).

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