

Federal Appeals Court Allows Failure to Protect Claim Against Police Department

**[Provided to Brigner E-mail Service by Betty J. Wytias, Assistant Attorney General,
Domestic Violence Policy Advisor, Colorado Attorney General's Office]**

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The long-awaited 10th Circuit decision in "Jessica Gonzales v. City of Castle Rock" was announced April 29, 2004. The eleven-judge en banc panel affirmed the three-judge 10th Circuit's decision that reversed the U.S. District Court's dismissal of Ms. Gonzales procedural due process claim.

In sum, Ms. Gonzales had a restraining order (now called protection orders in Colorado) excluding Mr. Gonzales from the family home and the children, except for very specific visitation times. Mr. Gonzales kidnapped the three daughters from in front of the family home. When Ms. Gonzales discovered they were missing, she began calling the Castle Rock police department and asked them to enforce the restraining order, which they refused to do. The three girls were murdered by Mr. Gonzales, and he was then "suicided by cop" when he was shooting at the Castle Rock police station.

In distinguishing DeShaney, the Court stated, "DeShaney makes clear that all individuals do not possess a substantive right to protection by the state from the harm of third parties But such a ruling does not foreclose a state from creating through its own laws an entitlement for particular citizens in having their court-issued restraining order enforced. Our opinion is therefore not contrary to DeShaney [W]e are persuaded Ms. Gonzales' complaint states a claim that she possessed a protected property interest in the enforcement of the terms of her restraining order and that the officers' arbitrary denial of that entitlement violated her procedural due process rights."

You can access the decision through Findlaw <http://laws.findlaw.com/10th/011053v2.html> or Westlaw.

Thanks to:
Betty J. Wytias
Assistant Attorney General
Domestic Violence Policy Advisor
Colorado Attorney General's Office
1525 Sherman Street
Denver, CO 80203
(303) 866-2446
FAX: (303) 866-5671
e-mail: betty.wytias@state.co.us