University of Baltimore Law Forum

Volume 21
Number 2 *Spring, 1991*

Article 9

1991

Recent Developments: Illinois v. Rodriguez: Warrantless Entry Valid if Based on the Reasonable Belief That a Consenting Third Party Possessed Common Authority over the Premises

Daryl D. Jones

interpreted the "purpose" element of §1985(3) such that "gender-based animus" fulfilled its terms. *Id.* The circuit court also referred to *New York NOW v. Terry,* 886 F.2d 1339 (2d Cir. 1989), *cert. denied,* 110 S. Ct. 2206 (1990). In *New York NOW,* a factually similar case, the second circuit court of appeals held that blocking access to abortion facilities that served interstate clientele violated the constitutional right to travel. *NOW v. Operation Rescue,* 914 F.2d at 585.

In determining whether the district court acted properly in granting the injunction, the circuit court noted *Prendergast v. New York Tel. Co.,* 262 U.S. 43, 50-51 (1923), as providing the appropriate standard of review. In *Prendergast,* the Court held that the factors to be considered in reviewing whether there was an abuse of discretion are the entry, duration, and scope of the injunction. The circuit court held there was no abuse of discretion in *NOW v. Operation Rescue* because the lower court ruling substantially conformed to the rulings of other circuit courts on the relevant questions of law. *NOW v. Operation Rescue,* 914 F.2d at 585. The court of appeals also found that the scope of the injunction was reasonable because, although the district court limited the injunction to Northern Virginia for a definitive period of time, it was implicit in the district court opinion that the relief was granted against particular individuals and particular acts. The circuit court also affirmed the district court's decision not to expand the injunction to encompass activities tending to "intimidate, harass or disturb patients or potential patients" on the grounds that those activities were protected by the first amendment. *NOW v. Operation Rescue,* 914 F.2d at 584. Members of Operation Rescue were free, by verbal means, to attempt to persuade women not to seek the services of abortion facilities and to "'impress upon members of society' the moral rightness and intensity of their opposition to abortion." *Id.* at 586 (quoting *NOW v. Operation Rescue,* 726 F. Supp. 1483, 1488 (E.D. Va. 1989)).

By its ruling, the United States Court of Appeals for the Fourth Circuit established that right-to-life demonstrators could be enjoined from blocking access to abortion and abortion related facilities located in the fourth circuit jurisdiction. In addition, *NOW v. Operation Rescue* is significant as it holds that a woman's right to travel cannot be infringed upon by demonstrators' first amendment rights to freedom of speech.

—Michael Scott Cohen

Illinois v. Rodriguez: WARRANTLESS ENTRY VALID IF BASED ON THE REASONABLE BELIEF THAT A CONSENTING THIRD PARTY POSSESSED COMMON AUTHORITY OVER THE PREMISES

The Supreme Court recently expanded the scope of third party consent upon which government authorities may rely when entering a defendant's home. In *Illinois v. Rodriguez,* 110 S. Ct. 2793 (1990), the Supreme Court held that a warrantless entry by police was valid when based upon the consent of a third party whom police reasonably believed possessed common authority over the premises.

Gail Fischer, who previously lived with Edward Rodriguez in his apartment, was assaulted by Rodriguez and summoned police to her mother's home to report the assault. Facilitating Rodriguez's arrest, Fischer accompanied police to Rodriguez's apartment and consented to their entry using a key that she possessed. The police had neither an arrest warrant for Rodriguez nor a search warrant for the apartment. The police believed that Fischer had authority to consent based upon several references to the apartment as "our" apartment and her statement that she had clothing and furniture in the apartment. Upon entering Rodriguez's apartment, the police observed drug paraphernalia and cocaine in plain view and, discovering Rodriguez asleep in his bedroom, they arrested him. *Rodriguez,* 110 S. Ct. at 2797 (1990).

Rodriguez moved to suppress all evidence seized at the time of the arrest, claiming that Fischer had vacated the apartment several weeks earlier and thus no longer possessed authority to consent to the entry. The trial court agreed and granted Rodriguez's motion to suppress. The Appellate Court of Illinois affirmed, and the Illinois Supreme Court denied the state's Petition for Leave to Appeal. The United States Supreme Court granted certiorari. *Id.* at 2797.

The Court began its analysis by examining *United States v. Matlock,* 415 U.S. 164 (1974) and the fourth amendment's general prohibition against warrantless entry into a person's home. *Rodriguez,* 110 S. Ct. at 2797 (citing *U.S. v. Matlock,* 415 U.S. 164 (1974)). In *Matlock,* police officers entered premises without a warrant but with the consent of a third party who, because of joint access or control of the premises, possessed common authority to consent to the entry. *Id.* at 2797 (1990) (citing *U.S. v. Matlock,* 415 U.S. at 171 (1974)). The Court upheld the validity of the police entry, reasoning that when an individual permits another joint access to or control of his home, his expectation of privacy is lowered. However, the *Matlock* Court left unresolved the issue of the validity of a warrantless entry based upon consent of a third party, whom the police reasonably believe has common authority to consent. *Id.* at 2801 (1990) (citing *U.S. v. Matlock,* 415 U.S. at 177 (1974)).

The *Rodriguez* Court, addressing the unresolved issue in *Matlock,* held that the reasonableness, and not the correctness, of the police officers' belief in the third party's authority to consent is the standard by which fourth amendment rights should be measured. *Id.* at 2800. The Court found *Stoner v. California,* 376 U.S. 483 (1964) consistent with its reasoning in *Rodriguez. Rodriguez,* 110 S. Ct. at 2800 (1990). In *Stoner,* the Court held that police improperly entered Stoner's hotel room because it was unrealistic to believe in the "apparent authority" of a hotel clerk. *Id.* at 2801 (citing *Stoner v. California,* 376 U.S. 483 (1964)).

In distinguishing *Rodriguez* from *Stoner,* the Court emphasized that it was unreasonable for police to believe that a hotel clerk possessed common authority to consent to an entry, whereas Fischer may have appeared to have such authority because of her joint control. *Id.* at 2801. The Court, therefore, remanded the case for a determination as to whether the police had sufficient grounds to support a reasonable belief that Fischer had authority to consent. *Id.* at 2801. If on remand it was determined that the police officers were reasonable in believing that Fischer had authority,

such a finding would be sufficient to validate the entry. *Id.* at 2801.

The Court rejected Rodriguez's argument that permitting entry based on the "reasonable belief" of common authority vicariously waives a defendant's fourth amendment rights. *Id.* The Court, in rejecting this contention, de-emphasized Rodriguez's waiver of his fourth amendment rights and highlighted the reasonableness of the officers' belief in Fischer's authority to consent. *Id.* at 2800. The Court stated that "at issue in a claim where apparent consent is raised is not whether the right to be free of searches has been *waived,* but whether the right to be free of *unreasonable* searches has been *violated.*" *Id.* at 2801 (emphasis original). Noting that the fourth amendment is the source from which Rodriguez's trial rights regarding the exclusionary rule derives, the Court reasoned that to violate a defendant's rights against the admission of exclusionary evidence, the fourth amendment itself must first be violated. *Id.* In analyzing whether a fourth amendment violation occurred, the Court reasoned that the fourth amendment itself does not assure that a government search of a home will not occur, but assures only that an "unreasonable" search will not occur. *Id.* at 2799.

As the Court stated in *Schenckloth v. Bustamonte,* 412 U.S. 218 (1973), "[n]othing, either in the purposes behind requiring a 'knowing' and 'intelligent' waiver of trial rights, or in the practical application of such a requirement suggests that it ought to be extended to the constitutional guarantee against unreasonable searches and seizures." *Rodriguez,* 110 S. Ct. at 2799 (1990) (quoting *Schneckloth v. Bustamonte,* 412 U.S. at 241 (1973)). The *Rodriguez* Court, therefore, reasoned that the fourth amendment only guaranteed Rodriguez protection against "unreasonable" governmental searches, not freedom from searches without his consent.

Justice Marshall wrote a lengthy dissent, joined by Justices Brennan and Stevens. The dissent contended that a search pursuant to an officer's reasonable but erroneous belief that a third party had authority to consent differs from valid third party authority to consent to governmental entry. *Id.* at 2802 (Marshall, J., dissenting). The dissent reasoned that giving a third party authority to consent to entry limits an owner's ability to challenge the reasonableness of a search because allowing another person access to or control of property reduces an owner's expectation of privacy. *Id.* at 2802 (Marshall, J., dissenting). The dissent believed that where no actual relinquishment of access or control occurs, and a third party lacks actual authority to consent, there cannot be an exception to the warrant requirement because there would remain an expectation of privacy. *Id.* The dissent reasoned that subjecting a person to a warrantless search without authorized consent or exigency would erode the fourth amendment's protection of a home from "unreasonable" governmental intrusion. *Id.* at 2807 (Marshall, J., dissenting).

Rodriguez is significant in that it broadens the third party consent exception to the warrant requirement for entry into an individual's home. The practical effect of the decision is that if a third party convinces law enforcement officials of his apparent authority to consent to entry, no warrant for entry will be required and thus, the homeowner's expectation of privacy will be diminished. In addition, *Rodriguez* illustrates the present Court's reluctance to restrict governmental action in drug related cases.

— *Daryl D. Jones*

In re Moore: DEBTORS' INTERESTS IN ERISA-QUALIFIED PROFIT-SHARING AND PENSION PLAN BEYOND THE REACH OF BANKRUPTCY TRUSTEE.

The United States Court of Appeals for the Fourth Circuit in *In re Moore,* 907 F.2d 1476 (4th Cir. 1990) reconciled provisions of the U.S. Bankruptcy Code with those of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001 et seq. (1976) (ERISA). The court found that debtors' interests in an ERISA-qualified profit-sharing and pension plan were not subject to turnover to the trustee in bankrutpcy, because ERISA constitutes applicable non-bankruptcy law.

A number of employees of Springs Industries who participated in their company's comprehensive retirement program became involved in Chapter 7 bankruptcy proceedings. The program's Profit-Sharing and Pension Plan and Trust and Retirement Plan and Trust contained anti-assignment provisions which prohibited the employees from alienating their interests. The anti-assignment provisions were necessary to qualify the employees' interests in the plans as ERISA funds and maintain their tax-exempt status. Under the plans, distributions were to be made to beneficiaries "only upon retirement, disability or termination of service." *Moore,* 907 F.2d at 1477. The debtors had received no distributions from the plans at the time they petitioned for bankruptcy and were not eligible to do so in the near future.

The trustee in bankruptcy sought to compel the Profit-Sharing and Pension Plan and Trust administrator to turn over the employees' interests to the bankruptcy estates. The trustee argued that the interests in the plan were not subject to restrictions on transfer, because the plan was not a spendthrift trust under South Carolina law. Without addressing whether the plan was a spendthrift trust under South Carolina law, the bankruptcy court determined that since the plan was ERISA-qualified, the debtors' interests in the plan were non-alienable and thus excludable from the bankruptcy estates. The trustee in bankruptcy appealed the decision. *Id.*

The United States Court of Appeals for the Fourth Circuit noted that under the Bankruptcy Code, the property of a bankrupt's estate consists of "all legal or equitable interests of the debtor in property as of the commencement of the case." *Moore,* 907 F.2d at 1477 (citing 11 U.S.C. §541(a)(1)). However, the Code excludes the debtors' interests in certain trusts from their bankruptcy estates by recognizing restrictions on transfers of such interests. Specifically, "[a] restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable non-bankruptcy law is enforceable in a case under this title." *Id.* (citing 11 U.S.C. §541(c)(2)). Thus, if ERISA constitutes applicable nonbankruptcy law, and the debtors' interests are enforceable under ERISA, the trustee would be precluded from reaching those interests.

The trustee in bankruptcy argued that "applicable nonbankruptcy law" under