Showdown In El Dorado

In the classic 1967 Howard Hawks Western, *El Dorado*, the title song powerfully tells the tale of "A man with a dream...That will never let go . . . ."

This month's feature similarly takes us out West, complete with a pair of hardy protagonists, a sheriff, and even an assist from *Bonanza*. Showing now is *Hardy v. County of El Dorado*, decided on January 28, 2008 by the United States District Court for the Eastern District of California.

According to the Court, Tim and Darlene Hardy owned a fenced and gated hilly two-acre residential property in El Dorado County, Calif. Mr. Hardy allegedly restored classic vehicles as a hobby and vocation.

El Dorado Deputy Sheriff David Cook was responsible for implementing the County's vehicle abatement program. On or about April 26, 2005, Deputy Cook entered the Hardys' property without notice or warrant, and without their consent or presence, to inspect a suspected nuisance condition. Deputy Cook placed County abatement notices on various "vehicular and non-vehicular items." He did not ask Mr. Hardy about the ownership of the vehicles, nor whether the vehicles were abandoned.

The Hardys alleged that the vehicles (and parts thereof) stored on their property were used for restoring classic vehicles and were neither "abandoned" nor "junk."

Other steps, including notices, further inspections (similarly without warrant, permission or consent), and hearings followed. Finally, in June and August 2005, the County, through its towing contractor, Tony's Tow and Transport, seized and removed approximately 35 vehicles from the property.

Bonanza Auto Dismantlers, an auto wrecking yard, provided vehicle abatement services in connection with the removal of the vehicles.

On April 26, 2007, the Hardys sued El Dorado, Cook, Tony's Tow, and Bonanza alleging civil rights violations and a state law claim arising out of the seizure and removal of the vehicles from their property. The defendants moved individually to dismiss the Hardys' claims.

In a lengthy decision discussing the various claims and defenses and the law and the facts relating to them, the Court granted some of the relief requested by the defendants and denied others.

The Court discussed aspects of the Hardys' claims that their Constitutional protections against unreasonable searches and seizures had been violated.

"The Fourth Amendment provides: 'The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.'"

"'[T]he warrant requirement of the Fourth Amendment applies to entries onto private land to search for and abate suspected nuisances.' . . . Entry to abate a known nuisance also falls within the warrant requirement . . . . [I]mpoundment of an automobile is a seizure within the meaning of the Fourth Amendment."

"'[A]bsent exigent circumstances, "officials engaged in the abatement of a public nuisance must have a warrant" to enter an enclosed backyard; "it is the prospective invasion of constitutionally protected interests by an entry onto property and not the purpose of the entry which calls forth the warrant requirement.'" . . . '[E]xcept in certain carefully defined classes of cases, a search of private property without proper consent is unreasonable unless it has been authorized by a valid search warrant.' . . . 'A seizure conducted without a warrant is per se unreasonable under the Fourth Amendment-subject only to a few specifically established and well delineated exceptions.'"

"One exception to the warrant requirement is the 'open fields' doctrine, which provides that the Fourth Amendment does not protect 'open fields' from government interference or surveillance because individuals do not have a reasonable expectation of privacy in such areas." "The Fourth Amendment protects the home and its curtilage (i.e., the area to which extends the intimate activity associated with the sanctity of a man's home and the privacies of life), but not the 'open fields.'"

"In the present case, dismissal of Plaintiffs' Fourth Amendment claim is inappropriate because the [complaint] alleges sufficient facts to state a cognizable Fourth Amendment claim."

"The [complaint] alleges that Plaintiffs' property is a fully fenced and gated residential property that is hilly and covered with trees and other vegetation [and] . . . that '[n]ot all of the vehicles parked on the property could be seen from the highway below.'"

"While the County, Deputy Cook and Tony's Tow argue that dismissal is appropriate because Plaintiffs did not have a reasonable expectation of privacy in the area where their vehicles were taken from based on the 'open fields' doctrine, . . . resolution of this fact-specific issue is more appropriately addressed at the summary judgment stage of the litigation."

* * * * *

Thus, when the dust settled, the Court allowed certain of the Hardys' claims to survive dismissal and proceed on their journey toward a final showdown upon further motions or at trial. And as the credits roll, we hear the command of the film's haunting title song: "So ride, boldly ride, to the end of the rainbow...Ride, boldly ride, 'til you find El Dorado."

Lawrence Savell (lsavell@chadbourne.com) is a litigator with the law firm Chadbourne & Parke LLP. This article provides general information and cannot substitute for consultation with an attorney; additional background is at www.lawrencesavell.com. Savell's humorous original lawyer music CDs are available at www.LawTunes.com.