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Court Case Mirrors LI [Long Island] Killing

By Katie Thomas, Staff Writer

A husband violates a restraining order.

His frantic wife calls police, who fail to arrest him.

Hours later, the story ends in death.

The details are similar to those of Merline Port-Louis, the New Cassel woman whose family announced a notice of claim against Nassau County yesterday. Police say she was killed by her ex-boyfriend, Marlon Fann.

But instead, they describe a recent U.S. Supreme Court case in which a Colorado woman, Jessica Gonzales, sued the town of Castle Rock after police there failed to arrest her husband, who had violated a restraining order by kidnapping her three daughters while they played in the yard. Police later found the bodies of the children in the cab of his pickup truck.

In June, in a 7-2 ruling, the Supreme Court found that restraining orders do not give victims a constitutional right to police protection.

Because the ruling is so new, experts said yesterday it's too soon to tell exactly what impact it will have on cases such as the notice of claim filed by the Port-Louis family.

"I think there will be a lot of laws that will be subjected to tests because of *Gonzales*, and I don't know what will happen," said Esta Soler, president of the San Francisco-based Family Violence Prevention Fund, which filed a friend-of-the-court brief in the case.

Jeffrey Lisabeth, the Mineola lawyer representing the Port-Louis family, said the decision does not apply to his lawsuit because that ruling dealt specifically with Colorado state law. In the *Gonzales* case, the Supreme Court found that, even though Colorado law required police to "use every available means to enforce a restraining order," in practice police often used discretion when deciding whether or not to arrest. "It does not appear that state law truly made such enforcement mandatory," Justice Antonin Scalia wrote in the majority opinion.

However, Lisabeth said, “New York’s law is such that, once you establish a ‘special duty,’ the municipality owes a direct obligation to Merline Port-Louis because she relied on assurances that actions would be taken for her protection,” Lisabeth said.

He said a 1985 New York State Court of Appeals decision bolsters his argument. In that case, the state’s highest court upheld a jury decision that found that New York City police were liable in the case of a Bronx father who kidnapped and severely injured his young daughter. Because he had a history of violence toward the girl’s mother and was restricted by an order of protection, the court found a “special relationship” existed between the police and the girl that required an extra level of protection.

“That’s what you had here,” Lisabeth said.

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