

**Denver Post—June 28, 2005**

**Justices deny mom's right to sue police**

Court: Castle Rock cops couldn't have known dad would kill kids

By Joey Bunch

Denver Post Staff Writer

The U.S. Supreme Court ruled that Jessica Gonzales does not have the right to sue Castle Rock police for not enforcing a restraining order against her husband just hours before he killed her three daughters in 1999.

In a 7-2 decision Monday, the court said police had no way of predicting - even after a worried Jessica Gonzales called the police - that Simon Gonzales would kill the couple's children and then start a shootout at a police station, where he was killed.

"The Supreme Court has spoken, and we're satisfied," said Castle Rock Police Chief Tony Lane. "It's time to move on."

Jessica Gonzales sought to sue the town for \$30 million, arguing that the restraining order required police to arrest her husband to protect her children.

If Gonzales had prevailed, it would have had sweeping ramifications for departments nationwide, possibly making police liable when they fail to prevent a crime, legal observers say.

In Colorado, as in most other states, police are immune from lawsuits over the way they carry out their duties, except in cases of extreme negligence.

"This is a big win for local government," said Brad Bailey, an assistant city attorney for Littleton.

Municipal and police officials across the country had worried that a ruling in favor of Gonzales would spawn a slew of costly lawsuits that second-guess police actions. "Anytime the cops don't get there fast enough, we're looking at a lawsuit," said Bailey, who wrote a brief to the court on behalf of the National League of Cities, the International Municipal Lawyers Association and the National Sheriffs' Association. Writing for the majority, Justice Antonin Scalia cited another ruling that stated it is "simply 'common sense' that all police officers must use some discretion in deciding when and where to enforce city ordinances."

Writing in dissent, Justice John Paul Stevens, joined by Justice Ruth Bader Ginsburg, said police "lacked the discretion to do nothing."

Mandatory-arrest laws were passed in many states, including Colorado, because lawmakers found the "crisis of under-enforcement had various causes, not least of which

was the perception by police departments and police officers that domestic violence was a private ... matter and that arrest was to be used as a last resort," Stevens wrote. Since her children's deaths, Jessica Gonzales has remarried and moved to California. She said she would continue to push for enforcement of restraining orders, "so that my daughters will not have died in vain."

"We need to put pressure on our elected officials to pass laws that offer real protection to women and their families," she said in a statement released by the American Civil Liberties Union, which championed her cause.

After the court defeat, the ACLU urged state legislatures to adopt tougher laws on restraining orders and police negligence.

Gonzales' lawyer, Brian Reichel of Broomfield, doubted that would happen in Colorado, considering the immunity the state already has extended to police.

"For us, there's nowhere to go," Reichel said. "For Jessica Gonzales, the fight is over." Reichel said the Supreme Court had "given the green light" to police to ignore restraining orders. "Police now have unfettered discretion to ignore these directives."

Police did all they could to help Jessica Gonzales as the facts unraveled the night her children were killed, said Lane, Castle Rock's police chief.

"Obviously, we have a difference in opinion on how this case was handled," he said. "But we all feel bad for Jessica because she lost her three children. The community feels horrible for her."

*Staff writer Joey Bunch can be reached at 303-820-1174 or [jbunch@denverpost.com](mailto:jbunch@denverpost.com).*