

SUPREME COURT OF VIRGINIA

Robinson v. Salvation Army

791 S.E.2d 577 (Va. 2016) · No. Record No. 160039 · Decided October 27, 2016

SUMMARY

The Supreme Court of Virginia affirmed summary judgment for the Salvation Army and Joel DeMoss in Frances Robinson’s wrongful-termination action. The court held that Virginia Code § 18.2-344, which criminalized fornication, could not support a Bowman public-policy claim based on private consensual sexual activity between adults because the statute was unconstitutional as applied in that context. Robinson had not alleged facts showing that she was asked to engage in public sexual activity or another remaining criminal act.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Justice Cleo E. Powell; All the Justices
JURISDICTION	Virginia
DECIDED	October 27, 2016
DOCKET	Record No. 160039
DISPOSITION	affirmed
PROCEDURAL POSTURE	Robinson appealed from the Circuit Court of Prince William County's final order granting summary judgment to the Salvation Army and Joel DeMoss and dismissing with prejudice her common-law wrongful-termination claim.
STANDARD OF REVIEW	Review of a grant of summary judgment, with the court considering whether the record showed no genuine dispute of material fact and whether the defendants were entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Virginia
PARTIES	Frances L. Robinson v. Salvation Army, Joel DeMoss

TOPICS

- wrongful termination
- employment at-will
- employment law
- statutory interpretation
- due process

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Code § 18.2-344 could provide the public-policy basis for a Bowman wrongful-termination claim when the alleged termination resulted from an employee's refusal to engage in private, consensual sexual activity with an adult supervisor.
2. Whether the alleged conduct supported a wrongful-termination claim based on a request to engage in public fornication or another criminal act.
3. Whether *VanBuren v. Grubb* preserved or expanded the availability of Code § 18.2-344 as a basis for a wrongful-discharge claim.

HOLDINGS

1. Code § 18.2-344 does not support a public-policy Bowman wrongful-termination claim based on private, consensual sexual activity between adults because the statute is unconstitutional as applied to that conduct.
2. The record did not support a Bowman claim based on public fornication or another criminal act because Robinson alleged no request to engage in public sexual activity.
3. *VanBuren v. Grubb* does not support Robinson's claim because it concerned different criminal statutes and did not overrule *Martin*.

KEY QUOTATIONS

“Because we have ruled that Code § 18.2-344 is unconstitutional as applied to private consensual sexual activity between adults, demands regarding such activity can no longer provide the basis for a valid allegation of wrongful termination whether the employee accedes to the demands or is terminated for refusing the demands.” (at 6)

FACTUAL BACKGROUND

Robinson worked as an at-will employee of the Salvation Army for approximately three years before being fired in June 2012. She alleged that store manager Joel DeMoss made repeated sexual comments and requests, including requests that she engage in sexual activity with him, and that she was terminated shortly after reporting or recording his conduct. The record did not show that DeMoss requested public sexual activity or conduct constituting public fornication.

PROCEDURAL HISTORY

Robinson, an at-will employee, sued after being terminated, alleging that she was fired for refusing her supervisor's requests to engage in fornication. The circuit court granted the defendants' motion for summary judgment, concluding that Code § 18.2-344, having been held unconstitutional as applied to private consensual sexual conduct between adults, could not supply the public policy supporting a Bowman wrongful-termination claim. The Supreme Court of Virginia affirmed.

DISPOSITION

affirmed

CASES CITED

- Bowman v. State Bank of Keysville, 229 Va. 534, 331 S.E.2d 797 (1985)
- City of Virginia Beach v. Harris, 259 Va. 220, 523 S.E.2d 239 (2000)
- Lawrence Chrysler Plymouth Corp. v. Brooks, 251 Va. 94, 465 S.E.2d 806 (1996)
- Mitchem v. Counts, 259 Va. 179, 523 S.E.2d 246 (2000)
- Martin v. Ziherl, 269 Va. 35, 607 S.E.2d 367 (2005)
- Lawrence v. Texas, 539 U.S. 558 (2003)
- McDonald v. Commonwealth, 274 Va. 249, 645 S.E.2d 918 (2007)
- VanBuren v. Grubb, 284 Va. 584, 733 S.E.2d 919 (2012)

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