

DISTRICT OF COLUMBIA COURT OF APPEALS

Padou v. District of Columbia

998 A.2d 286 (D.C. 2010) · Decided June 17, 2010

SUMMARY

The District of Columbia Court of Appeals reversed summary judgment for the District in a First Amendment challenge involving the selective removal of political rally posters from public lampposts. The court held that the pro se plaintiffs had adequately raised an as-applied constitutional claim and were entitled to an opportunity for discovery before further dispositive proceedings or trial. The case was remanded for discovery and further proceedings.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Reid, Associate Judge; Kramer; Nebeker; Reid
JURISDICTION	District of Columbia
DECIDED	June 17, 2010
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Padous appealed the trial court's grant of the District of Columbia's alternative motion for summary judgment on their First Amendment claims concerning removal of political posters.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The court independently examines the whole record when First Amendment issues are involved.
PRECEDENTIAL VALUE	published
PARTIES	Abigail Padou, Don Padou v. District of Columbia

TOPICS

- free speech
- first amendment
- overbreadth doctrine
- summary judgment
- discovery dispute

PRACTICE AREAS

- constitutional law
- civil rights
- civil procedure
- municipal law
- appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court erred by granting summary judgment before the pro se plaintiffs had a meaningful opportunity to conduct discovery relevant to their as-applied First Amendment challenge.
2. Whether the trial court improperly construed the Padous' selective-enforcement allegation as an equal-protection claim rather than an as-applied First Amendment claim.
3. Whether the trial court properly addressed the Padous' facial overbreadth challenge to 24 DCMR § 108.

HOLDINGS

1. The trial court erred in granting summary judgment without affording the Padous a fair opportunity to conduct discovery relevant to their as-applied First Amendment claim.
2. The trial court improperly treated the Padous' selective-enforcement allegation as an equal-protection claim instead of addressing it as an as-applied First Amendment challenge.
3. A court ordinarily should address a properly raised as-applied First Amendment challenge before reaching a facial overbreadth challenge, because overbreadth invalidation is a strong remedy and should generally be used only as a last resort.

KEY QUOTATIONS

“We are constrained to reverse the trial court’s grant of summary judgment in favor of the District, and we remand this case with instructions to afford the parties an opportunity to conduct discovery, followed by further proceedings (dispositive motions or trial).” (288)

“This was a “special circumstance” requiring “special care” under MacLeod, Moore, and Reade, supra.” (294)

“Accordingly, for the foregoing reasons, we are constrained to reverse the trial court’s grant of summary judgment in favor of the District, and we remand this case with instructions to afford the parties an opportunity to conduct discovery, followed by further proceedings (dispositive motions or trial).” (295)

FACTUAL BACKGROUND

The Padous and other Brookland residents formed the group Leave the Trees to criticize the District's failure to bury overhead utility lines and planned a political rally. They paid for approximately 400 posters, which were placed on utility poles before the rally and removed by a District worker for alleged violations of District regulations. The Padous alleged that their posters were selectively removed because of their critical political content while commercial posters on the same poles were not removed. They contended that discovery, including depositions of District employees, was necessary to determine whether the enforcement was content- or viewpoint-based.

PROCEDURAL HISTORY

The Padous filed an amended complaint alleging, among other things, that the District selectively removed their posters announcing a political rally and thereby violated the First Amendment. They sought a preliminary injunction, which the trial court denied after evidentiary hearings. Before the Padous had conducted discovery or attended an initial status conference, the District moved to dismiss or alternatively for summary judgment. The

trial court granted summary judgment for the District, treating the selective-enforcement claim as an equal-protection claim and declining to reach the merits of the facial challenge. The Court of Appeals reversed and remanded for discovery and further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Afford the parties an opportunity to conduct discovery, followed by further proceedings, including dispositive motions or trial.

CASES CITED

- New York Times Co. v. Sullivan, 876 U.S. 254, 270, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964)
- Carson v. United States, 419 A.2d 996, 998-99 (D.C. 1980)
- Leiss v. United States, 364 A.2d 803, 807 (D.C. 1976)
- Clark v. Community for Creative Non-Violence, 468 U.S. 288, 293 (1984)
- Bloch v. District of Columbia, 863 A.2d 845, 850 (D.C. 2004)
- Milkovich v. Lorain Journal Co., 497 U.S. 1, 17 (1990)
- Guilford Transportation Industries v. Wilner, 760 A.2d 580, 591-92 (D.C. 2000)
- Fry v. Diamond Construction, Inc., 659 A.2d 241, 246 (D.C. 1995)
- Joyner v. Sibley Memorial Hospital, 826 A.2d 362, 368 (D.C. 2003)
- MacLeod v. Georgetown University Medical Center, 736 A.2d 977, 979-80 (D.C. 1999)
- Abell v. Wang, 697 A.2d 796, 804 (D.C. 1997)
- Moore v. Agency for International Development, 994 F.2d 874, 876 (D.C. Cir. 1993)
- Berkley v. D.C. Transit, Inc., 950 A.2d 749, 756-57 n.12 (D.C. 2008)
- Reade v. Saradji, 994 A.2d 368, 373 (D.C. 2010)
- United States v. Stevens, 130 S. Ct. 1577, 1593-94, 176 L. Ed. 2d 435 (2010)
- Board of Trustees of State University of New York v. Fox, 492 U.S. 469, 484-85 (1989)
- Embassy of Pakistan, IIS v. Lenkin Co. Management, 996 A.2d 817, 819 (D.C. 2010)
- Tompkins v. Washington Hospital Center, 433 A.2d 1093, 1099 (D.C. 1981)
- Travelers Indemnity Co. v. United Food & Commercial Workers International Union, 770 A.2d 978, 994 (D.C. 2001)
- Ben Ezra, Weinstein, & Co. v. America Online, Inc., 206 F.3d 980, 987 (10th Cir. 2000)
- Board of Airport Commissioners of the City of Los Angeles v. Jews for Jesus, Inc., 482 U.S. 569, 574 (1987)
- Hill v. Colorado, 530 U.S. 703, 731-32 (2000)
- Broadrick v. Oklahoma, 413 U.S. 601, 612 (1973)

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