

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Hall v. Witteman

584 F.3d 859 (10th Cir. 2009) · No. Nos. 08-3251, 08-3299 · Decided October 19, 2009

SUMMARY

The Tenth Circuit affirmed the dismissal of George Hall's federal claims arising from the alleged replacement of his newspaper advertisement with an advertisement supporting a judicial candidate. The court held that the complaint failed to allege state action necessary for claims under 42 U.S.C. §§ 1983 and 1985(3), and failed to allege the continuity required for a RICO pattern of racketeering activity. The court also upheld denial of leave to amend because Hall did not explain how an amendment would cure the deficiencies.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	Hartz, Circuit Judge; Brorby, Senior Circuit Judge; Tymkovich, Circuit Judge
JURISDICTION	Federal
DECIDED	October 19, 2009
DOCKET	Nos. 08-3251, 08-3299
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the United States District Court for the District of Kansas's dismissal of federal civil-rights and RICO claims under Federal Rule of Civil Procedure 12(b)(6), denial of leave to amend, and dismissal without prejudice of state-law claims after declining supplemental jurisdiction.
STANDARD OF REVIEW	The court reviewed the Rule 12(b)(6) dismissal de novo and reviewed denial of leave to amend for abuse of discretion.
PRECEDENTIAL VALUE	Published precedential opinion of the United States Court of Appeals for the Tenth Circuit.
PARTIES	George Milam Hall v. Douglas P. Witteman, Phillip M. Fromme, Coffey County Commissioners, Coffey County, Kansas, Anderson County Commissioners, Coffey County Bar Association, James R. Campbell, City of Garnett, Kansas, Terry Solander, Brad Jones, Brian K. Joy, Bryan M. Hastert, Linda McMurray, Thomas Robrahn, Brenda

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QUESTIONS PRESENTED

1. Whether Hall adequately alleged state action sufficient to support his 42 U.S.C. § 1983 claims based on alleged violations of free speech and equal protection.
2. Whether Hall adequately alleged a conspiracy involving state action or state influence under 42 U.S.C. § 1985(3).
3. Whether Hall adequately alleged the continuity necessary to establish a RICO pattern of racketeering activity.
4. Whether the district court abused its discretion by denying Hall leave to amend his complaint.

HOLDINGS

1. Hall failed to state a § 1983 claim because his complaint did not plausibly allege that Witteman or any other defendant used or abused governmental power or otherwise acted under color of state law.
2. Hall failed to state a § 1985(3) claim because he did not adequately allege state involvement in the alleged conspiracy or that the conspiracy aimed to influence state activity.
3. Hall failed to allege a RICO pattern because the alleged predicate acts lacked the continuity necessary to show ongoing racketeering activity.
4. The district court did not abuse its discretion in denying leave to amend because Hall did not submit a proposed amendment or explain how amendment would cure the identified deficiencies.

KEY QUOTATIONS

“Exploiting the personal prestige of one’s public position is not state action absent at least some suggestion that the holder would exercise governmental power.” (867)

“At best, what plaintiff alleges is a closed-ended series of predicate acts constituting a single scheme to accomplish a discrete goal [publication of the Responsive Advertisement in lieu of Plaintiff’s Advertisement] directed at only one individual [the plaintiff] with no potential to extend to other persons or entities.” (868)

FACTUAL BACKGROUND

Hall paid a local newspaper to publish an advertisement opposing Judge Phillip Fromme's retention election on October 31 and November 3, 2006. The newspaper published the advertisement on October 31 but instead

published a paid advertisement supporting Fromme on November 3, signed by several attorneys including Coffey County Attorney Douglas Witteman. Hall alleged that the defendants coerced or threatened the newspaper, thereby violating his First and Fourteenth Amendment rights and supporting § 1983, § 1985, RICO, and state-law claims.

PROCEDURAL HISTORY

Hall filed a nine-count federal complaint alleging claims under 42 U.S.C. §§ 1983 and 1985, RICO, and various state-law theories arising from the nonpublication of one of his political advertisements. The district court dismissed the federal claims with prejudice, denied Hall's request to amend, and declined supplemental jurisdiction over the state-law claims. Hall appealed, and the Tenth Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- Cory v. Allstate, 583 F.3d 1240, 1244 (10th Cir. 2009)
- Christy Sports, LLC v. Deer Valley Resort Co., 555 F.3d 1188, 1191 (10th Cir. 2009)
- Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949, 1951 (2009)
- Van Deelen v. Johnson, 497 F.3d 1151, 1153 n.1 (10th Cir. 2007)
- Garrett v. Selby Connor Maddux & Janer, 425 F.3d 836, 840 (10th Cir. 2005)
- West v. Atkins, 487 U.S. 42, 48 (1988)
- Dennis v. Sparks, 449 U.S. 24, 27-28 (1980)
- Jojola v. Chavez, 55 F.3d 488, 492 (10th Cir. 1995)
- American Manufacturers Mutual Insurance Co. v. Sullivan, 526 U.S. 40, 50 n.8 (1999)
- Lugar v. Edmondson Oil Co., 457 U.S. 922, 935 n.18, 937 (1982)
- Polk County v. Dodson, 454 U.S. 312 (1981)
- Montano v. Hedgepeth, 120 F.3d 844, 851 (8th Cir. 1997)
- Screws v. United States, 325 U.S. 91, 111 (1945)
- D.T. v. Independent School District No. 16 of Pawnee County, 894 F.2d 1176, 1186 (10th Cir. 1990)
- United States v. Classic, 313 U.S. 299, 326 (1941)
- Brown v. Reardon, 770 F.2d 896, 906 (10th Cir. 1985)
- United Brotherhood of Carpenters & Joiners v. Scott, 463 U.S. 825, 830 (1983)
- Tilton v. Richardson, 6 F.3d 683, 687 (10th Cir. 1993)
- Gillmor v. Thomas, 490 F.3d 791, 797 (10th Cir. 2007)
- Tal v. Hogan, 453 F.3d 1244, 1267 (10th Cir. 2006)
- H.J. Inc. v. Northwestern Bell Telephone Co., 492 U.S. 229, 240 (1989)
- Duran v. Carris, 238 F.3d 1268, 1271 (10th Cir. 2001)

- *Calderon v. Kansas Department of Social & Rehabilitation Services*, 181 F.3d 1180, 1186-87 (10th Cir. 1999)
- *Lewis v. B.F. Goodrich Co.*, 850 F.2d 641, 645 (10th Cir. 1988)

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