

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Joseph C. McComas II v. Mercer County Board of Education

No. 16-0734 (Mercer County 15-C-127) · No. No. 16-0734 (Mercer County 15-C-127) · Decided September 5, 2017

SUMMARY

The West Virginia Supreme Court of Appeals affirmed summary judgment for the Mercer County Board of Education in a defamation action arising from the posting of employment-termination hearing minutes. The court held that the petitioner waived his appellate argument concerning an alleged resignation because he had not raised it before the circuit court, and it found no prejudicial error in the judgment based on qualified immunity.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Allen H. Loughry II; Justice Robin Jean Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Elizabeth D. Walker
JURISDICTION	West Virginia
DECIDED	September 5, 2017
DOCKET	No. 16-0734 (Mercer County 15-C-127)
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed from the Circuit Court of Mercer County's order granting the Mercer County Board of Education's motion for summary judgment and dismissing his defamation suit.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. Summary judgment is appropriate when there is no genuine issue of material fact and the record could not lead a rational trier of fact to find for the nonmoving party.
PRECEDENTIAL VALUE	Published memorandum decision
PARTIES	Joseph C. McComas II v. Mercer County Board of Education

TOPICS

- summary judgment
- defamation
- waiver
- appellate procedure
- standard of review

PRACTICE AREAS

civil procedure

defamation

appellate procedure

employment law

QUESTIONS PRESENTED

1. Whether the circuit court erred in granting summary judgment to the Board in McComas's defamation action.
2. Whether McComas could obtain appellate relief based on his assertion that he had submitted a resignation letter before the termination hearing when he did not raise that argument in the circuit court.

HOLDINGS

1. The circuit court's order granting the Board's motion for summary judgment was affirmed. McComas did not demonstrate prejudicial error or explain why the asserted factual dispute defeated the circuit court's qualified-immunity ruling.
2. McComas waived his argument that his attempted resignation created a genuine issue of material fact because he did not raise that argument before the circuit court.

KEY QUOTATIONS

"A circuit court's entry of summary judgment is reviewed de novo." (at 1)

"This Court's general rule is that nonjurisdictional questions not raised at the circuit court level will not be considered to the first time on appeal." (at 2)

FACTUAL BACKGROUND

McComas's employment with the Mercer County Board of Education was terminated after an April 2014 hearing at which the Board considered alleged poor performance, inappropriate language in the classroom, failure to follow lesson plans, and falling asleep in class. The Board memorialized its findings in meeting minutes and posted those minutes on its website in accordance with its normal practice. McComas alleged that the posting defamed him and impaired his ability to obtain new employment, and he disputed the finding concerning inappropriate language.

PROCEDURAL HISTORY

McComas filed a defamation action in April 2015 based on the Board's posting of minutes from an employment-termination hearing. The Board moved for summary judgment in January 2016, and after a June 2016 hearing, the circuit court granted the motion on qualified-immunity grounds. McComas appealed, arguing that a genuine issue of material fact existed, but he did not challenge the qualified-immunity ruling or show that his resignation argument had been presented below.

DISPOSITION

affirmed

CASES CITED

- Painter v. Peavy, 192 W. Va. 189, 451 S.E.2d 755 (1994)
- Aetna Casualty & Surety Co. v. Federal Insurance Co. of New York, 148 W. Va. 160, 133 S.E.2d 770 (1963)
- Andrick v. Town of Buckhannon, 187 W. Va. 706, 421 S.E.2d 247 (1992)
- Toth v. Board of Parks & Recreation Commissioners, 215 W. Va. 51, 593 S.E.2d 576 (2003)
- State v. Jessie, 225 W. Va. 21, 27, 689 S.E.2d 21, 27 (2009)

OPINION

Joseph C. McComas II v. Mercer County Board of Education

PER CURIAM.

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

Joseph C. McComas II, Plaintiff Below, Petitioner FILED September 5, 2017 vs) No. 16-0734
(Mercer County 15-C-127) RORY L. PERRY II, CLERK

SUPREME COURT OF APPEALS

OF WEST VIRGINIA

Mercer County Board of Education, Defendant Below, Respondent

MEMORANDUM DECISION

Petitioner Joseph C. McComas II, by counsel Anthony M. Salvatore, appeals the Circuit Court of Mercer County's July 8, 2016, order granting respondent Mercer County Board of Education's motion for summary judgment and dismissing his defamation suit. Respondent, by counsel Kermit J. Moore and W. Blake Belcher, filed a response. On appeal, petitioner argues that the circuit court erred in granting respondent's motion for summary judgment because a genuine issue of material fact existed. This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision affirming the circuit court's order is appropriate under Rule 21 of the Rules of Appellate Procedure. In April of 2015, petitioner initiated his lawsuit against respondent for defamation. According to the record, petitioner's claims stemmed from a hearing held in April of 2014 during which petitioner's employment with respondent was terminated. During the hearing, respondent accepted evidence of petitioner's alleged conduct that supported the decision to terminate his employment. Based on this evidence, respondent found that petitioner engaged in "willful neglect of duty due to continued poor performance on substitute evaluations, use of inappropriate language in the classroom, not following lesson plans, and falling asleep in class on multiple occasions." These findings were memorialized in the meeting's minutes. Following the hearing, and in accordance with its normal practice, respondent posted the minutes of the meeting to its website. In support of his defamation lawsuit, petitioner testified that the sole

basis for his claim was the posting of the subject minutes, which he alleged rendered him unable to find new employment. Further, petitioner claimed that the finding regarding use of inappropriate language was incorrect, as he denied using such language. 1 In January of 2016, respondent filed a motion for summary judgment, after which petitioner filed a response. In June of 2016, the circuit court held a hearing on the motion. Following the hearing, the circuit court granted respondent's motion for summary judgment on the basis of qualified immunity. Because the circuit court found qualified immunity applied, it declined to address the remaining arguments raised. It is from the order granting respondent's motion for summary judgment that petitioner appeals. "A circuit court's entry of summary judgment is reviewed de novo." Syl. Pt. 1, *Painter v. Peavy*, 192 W.Va. 189, 451 S.E.2d 755 (1994). Our review is guided by the principle that "[a] motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law." Syllabus Point 3, *Aetna Casualty & Surety Co. v. Federal Insurance Co. of New York*, 148 W.Va. 160, 133 S.E.2d 770 (1963)." Syllabus Point 1, *Andrick v. Town of Buckhannon*, 187 W.Va. 706, 421 S.E.2d 247 (1992). *Painter*, 192 W.Va. at 190, 451 S.E.2d at 756, Syl. Pt. 2. Furthermore, "[s]ummary judgment is appropriate where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, such as where the nonmoving party has failed to make a sufficient showing on an essential element of the case that it has the burden to prove." Syllabus point 4, *Painter v. Peavy*, 192 W.Va. 189, 451 S.E.2d 755 (1994). Syl. Pt. 5, *Toth v. Bd. of Parks & Recreation Comm'rs*, 215 W.Va. 51, 593 S.E.2d 576 (2003). Upon our review, we find no error below. On appeal, petitioner raises no argument as to why the circuit court's granting of summary judgment in favor of respondent on the basis of qualified immunity is improper. Instead, petitioner simply alleges that a genuine issue of material fact exists because he argues that he submitted a letter of resignation to respondent on April 3, 2014, which respondent failed to recognize at the April 10, 2014, hearing at which his employment was terminated. Not only does petitioner fail to argue how this fact, if assumed as true, creates a genuine issue of material fact sufficient to overcome respondent's motion for summary judgment, he also fails to show that this argument was submitted for the circuit court's consideration below. While it is true that petitioner testified to having submitted a letter of resignation to respondent, the record is devoid of any instance wherein petitioner argued to the circuit court that his attempted resignation created a genuine issue of material fact as to whether or not respondent terminated his employment. Indeed, petitioner's response to respondent's motion for summary judgment lacks any argument regarding an alleged resignation and, instead, simply states that his "entire deposition . . . is sufficient to create a genuine issue of fact" According to petitioner's response below, respondent "argued that [petitioner's] testimony should be interpreted a certain way" while the jury was free to "interpret [his] testimony in such a way to establish a prima facie case" as set forth in his complaint. This constitutes petitioner's entire 2 argument in response to respondent's motion for summary judgment. Because he clearly did not raise any argument in regard to his alleged resignation, we

find that petitioner has waived this argument on appeal. See *State v. Jessie*, 225 W.Va. 21, 27, 689 S.E.2d 21, 27 (2009) (“This Court’s general rule is that nonjurisdictional questions not raised at the circuit court level will not be considered to the first time on appeal.”). For this reason, we decline to grant petitioner relief in this regard. For the foregoing reasons, the circuit court’s July 8, 2016, order granting respondent’s motion for summary judgment is hereby affirmed. Affirmed. ISSUED: September 5, 2017 CONCURRED IN BY: Chief Justice Allen H. Loughry II Justice Robin Jean Davis Justice Margaret L. Workman Justice Menis E. Ketchum Justice Elizabeth D. Walker 3