

SUPREME COURT OF ALASKA

Trask v. Ketchikan Gateway Borough

253 P.3d 616 (Alaska 2011) · No. No. S-13590 · Decided June 17, 2011

SUMMARY

The Supreme Court of Alaska held that Leta Trask had standing to assert a 42 U.S.C. § 1983 claim alleging that the Ketchikan Gateway Borough unconstitutionally enforced its roof-sign ordinance against her religious message. The court concluded that her allegations stated an actionable First Amendment claim against the Borough and that the superior court erred by dismissing it. The court reversed the dismissal, vacated the attorney's-fee award, and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Stowers, Justice; Carpeneti, Chief Justice; Fabe, Justice; Winfree, Justice; Christen, Justice
JURISDICTION	Alaska
DECIDED	June 17, 2011
DOCKET	No. S-13590
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Trask appealed the superior court's dismissal of her 42 U.S.C. § 1983 counterclaim and its refusal to award enhanced attorney's fees under Alaska Civil Rule 82(b)(3).
STANDARD OF REVIEW	The court reviewed the trial court's dismissal and standing determinations de novo. It analyzed the § 1983 dismissal in the context of a Civil Rule 12(b)(6) motion, while noting that the allegations also would have defeated summary judgment under Civil Rule 56(c).
PRECEDENTIAL VALUE	precedential
PARTIES	Leta Trask v. Ketchikan Gateway Borough

TOPICS

[free speech](#)[first amendment](#)[section 1983](#)[municipal liability](#)[appellate procedure](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Trask had standing to assert a § 1983 claim based on the Borough's enforcement actions even though she did not remove the roof message and was not prosecuted.
2. Whether Trask's counterclaim alleged sufficient facts to state an actionable § 1983 claim for violation of her First Amendment right to free speech.
3. Whether the superior court's attorney's-fee award should stand after reversal and remand of the § 1983 dismissal.

HOLDINGS

1. Trask had interest-injury standing because the Borough directly ordered her to remove her protected message, threatened citations, and filed an enforcement action seeking injunctive relief and a civil penalty; her allegations that the enforcement chilled future speech were sufficient.
2. Trask's counterclaim stated a claim for relief under § 1983 because it alleged that the Borough, acting under color of state law, applied its ordinance in a manner that violated her First Amendment speech rights and that the Borough was responsible for the resulting constitutional injury.
3. The Borough was not entitled to absolute immunity under *Imbler v. Pachtman* because that doctrine concerns prosecutors and malicious-prosecution claims, not municipalities defending against a First Amendment claim.
4. A § 1983 claimant alleging a First Amendment violation need not plead specific actual damages or prove that speech was completely chilled; nominal damages may be available without proof of actual injury, and allegations that official acts would chill a person of ordinary firmness are sufficient at the pleading stage.
5. The superior court's Civil Rule 82 attorney's-fee award was vacated because the § 1983 claim was being remanded for further proceedings; the court did not decide whether enhanced fees were warranted.

KEY QUOTATIONS

"We REVERSE the superior court's dismissal of Trask's § 1983 claim because Trask had standing to assert a § 1983 claim and she alleged a set of facts stating a claim that the Borough violated her right to free speech." (623)

"A litigant may recover nominal damages for a § 1983 claim for violation of First Amendment rights "even without proof of actual injury."" (623)

FACTUAL BACKGROUND

Leta Trask owned a house in the Ketchikan Gateway Borough and painted a Biblical message, along with a cross and two hearts, on her relatively flat roof. The Borough initially told Trask that the message did not require a permit, but after neighbors complained it changed position, ordered her to remove the message, threatened citations, and filed an enforcement action seeking an injunction and a \$200 fine. Trask alleged that the Borough's

content-based or otherwise unconstitutional application of its roof-sign ordinance chilled her speech and prevented her from refreshing or modifying the roof message.

PROCEDURAL HISTORY

The Borough sued to enjoin Trask from displaying a religious message painted on her roof and sought a \$200 fine. The superior court determined that the message was not a sign covered by the Borough's ordinance and dismissed the Borough's enforcement action, but dismissed Trask's § 1983 counterclaim for lack of standing and absence of a constitutional violation. It awarded Trask 20% of her actual reasonable attorney's fees under Rule 82(b)(2), declined enhanced fees, and Trask appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The § 1983 claim was remanded for further proceedings consistent with the opinion. The Civil Rule 82 attorney's-fee award was vacated; the court did not decide the request for enhanced fees.

CASES CITED

- Lybrand v. Trask, 31 P.3d 801 (Alaska 2001)
- Varilek v. City of Houston, 104 P.3d 849, 851 (Alaska 2004)
- Neese v. Lithia Chrysler Jeep of Anchorage, Inc., 210 P.3d 1213, 1217 (Alaska 2009)
- State v. Planned Parenthood of Alaska, 35 P.3d 30, 34 (Alaska 2001)
- Trustees for Alaska v. State, Department of Natural Resources, 736 P.2d 324, 327 (Alaska 1987)
- Christensen v. Park City Municipal Corporation, 554 F.3d 1271, 1279-80 (10th Cir. 2009)
- Faustin v. City of Denver, Colorado, 268 F.3d 942, 948 (10th Cir. 2001)
- PETA v. Rasmussen, 298 F.3d 1198, 1203 (10th Cir. 2002)
- Dias v. City of Denver, 567 F.3d 1169, 1178 (10th Cir. 2009)
- Winsness v. Yocom, 433 F.3d 727, 732 (10th Cir. 2006)
- Harmon v. City of Kansas City, Missouri, 197 F.3d 321 (8th Cir. 1999)
- Catholic Bishop of Northern Alaska v. Does 1-6, 141 P.3d 719, 722 (Alaska 2006)
- Collins v. City of Harker Heights, Texas, 503 U.S. 115, 120 (1992)
- City of Ladue v. Gilleo, 512 U.S. 43, 48, 56-58 (1994)
- Crawford v. Lungren, 96 F.3d 380, 384 (9th Cir. 1996)
- Turner Broadcasting System, Inc. v. FCC, 512 U.S. 622, 642 (1994)
- Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989)
- Board of County Commissioners v. Brown, 520 U.S. 397, 404 (1997)
- Imbler v. Pachtman, 424 U.S. 409, 422-23 (1976)
- Pace v. City of Des Moines, 201 F.3d 1050, 1055 (8th Cir. 2000)

- Owen v. City of Independence, Missouri, 445 U.S. 622, 657 (1980)
- Yniguez v. Arizonans for Official English, 42 F.3d 1217, 1243 (9th Cir. 1994)
- Mendocino Environmental Center v. Mendocino County, 192 F.3d 1283, 1300 (9th Cir. 1999)

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