

SUPREME COURT OF VERMONT

Nelson v. Town of St. Johnsbury Selectboard, LaMotte, Oddy,
Ruggles, Rust, Timson and Town of St. Johnsbury

2015 VT 5 (Vt. 2015) · No. 2013-386 · Decided January 16, 2015

SUMMARY

The Vermont Supreme Court considered whether 24 V.S.A. § 1233 permits a town manager to be terminated at will or only for cause. The court held that the statute requires removal only for cause and reversed summary judgment on the plaintiff’s wrongful termination, federal due process, and state constitutional claims, remanding for further proceedings. It affirmed dismissal of the promissory estoppel claim and the grant of summary judgment on qualified immunity.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Dooley, J.; Reiber, C.J.; Skoglund, J.; Robinson, J.; Crawford, J. (present for oral argument but did not participate)
JURISDICTION	Vermont
DECIDED	January 16, 2015
DOCKET	2013-386
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the superior court's grant of partial summary judgment to the Town and individual selectboard members on claims for wrongful termination, procedural due process under 42 U.S.C. § 1983, violation of Chapter I, Article 4 of the Vermont Constitution, and promissory estoppel.
STANDARD OF REVIEW	Summary judgment is reviewed de novo under the same standard applied by the trial court: viewing the evidence in the light most favorable to the nonmoving party, summary judgment is proper only when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Ralph Nelson v. Town of St. Johnsbury Selectboard, Rodney LaMotte, Kevin W. Oddy, Alan Ruggles, James L. Rust, Bernard Timson, Town

TOPICS

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legislative intent

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QUESTIONS PRESENTED

1. Whether 24 V.S.A. § 1233 permits a town manager to be terminated at will or requires removal only for cause.
2. Whether the statute gave Nelson a protected property interest in his employment and entitled him to notice and an opportunity to be heard under procedural due process principles and 42 U.S.C. § 1983.
3. Whether Chapter I, Article 4 of the Vermont Constitution is self-executing and may support an action alleging deprivation of due process.
4. Whether Nelson established a promissory-estoppel claim based on statements by the Town's attorney concerning termination only for cause.
5. Whether the individual selectboard members were entitled to qualified immunity because the right asserted by Nelson was not clearly established when they acted.

HOLDINGS

1. Section 1233 requires that a town manager be removed only for cause; the phrase "at the will of" does not authorize termination for any reason without cause.
2. Because § 1233 limited removal to cause, Nelson had a constitutionally protected property interest in his employment and was entitled to notice of the charges and an opportunity to be heard. The record presented genuine factual disputes concerning whether the Town provided adequate pre-termination and post-termination process.
3. Chapter I, Article 4 is self-executing and may support a properly pleaded action for due process protection; it can protect a substantive property interest against deprivation without due process.
4. Nelson failed to establish promissory estoppel because the Town attorney's statements were, at most, legal opinions and not a specific and definite promise by the selectboard to act in a particular way.
5. The selectboard members were entitled to qualified immunity because, when they acted, it was not clearly established that § 1233 required cause for removal.

KEY QUOTATIONS

"We therefore conclude that § 1233 requires a town manager be removed only for cause." (¶ 31)

"As we held above, § 1233 authorizes the selectboard to remove the town manager only for cause, entitling plaintiff to notice of the charges against him and an opportunity for a hearing." (¶ 36)

“We therefore hold that Chapter I, Article 4, of the Vermont Constitution is self-executing and that plaintiff properly invoked the Article in his complaint.” (¶ 52)

“We therefore conclude that the law was not clearly established and the selectboard is entitled to qualified immunity.” (¶ 66)

FACTUAL BACKGROUND

Nelson was formally hired as St. Johnsbury's town manager in September 2010 after serving briefly as interim manager. Although no written employment contract was negotiated, the Town's attorney allegedly told Nelson that he could be removed only for serious misconduct. After disputes concerning a proposed renovation and lease of the Town's Pomerleau Building, the selectboard investigated Nelson's performance, raised additional allegations, asked him to resign, and then voted no confidence before issuing a press release announcing his termination. Nelson claimed that the Town terminated him without cause and without adequate notice or an opportunity to be heard.

PROCEDURAL HISTORY

Nelson, a former town manager, sued after the selectboard terminated his employment following an investigation and a vote of no confidence. The trial court denied preliminary injunctive relief, then granted the defendants partial summary judgment, ruling that Nelson was an at-will employee, that the individual defendants had qualified immunity, that Article 4 supplied no private right of action, and that promissory estoppel was not established. The Supreme Court of Vermont reversed as to wrongful termination, the § 1983 due process claim, and the Article 4 claim; affirmed the promissory-estoppel ruling and qualified-immunity ruling; and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must determine whether Nelson was wrongfully terminated under the requirement that removal be for cause; develop the facts and determine whether Nelson received the process due under the federal and state constitutional theories and whether he waived any process; and address any remaining issues and remedies consistent with the opinion. The promissory-estoppel judgment and qualified-immunity ruling remain affirmed.

CASES CITED

- Demag v. Better Power Equipment, Inc., 2014 VT 78, ___ Vt. ___, 102 A.3d 1101
- In re Porter, 2012 VT 97, 192 Vt. 601, 70 A.3d 915
- Brownington Center Church v. Town of Irasburg, 2013 VT 99, 195 Vt. 196, 87 A.3d 502
- Rutter v. Burke, 89 Vt. 14, 93 A. 842 (1915)
- Brennan v. Town of Colchester, 169 Vt. 175, 730 A.2d 601 (1999)
- Turnley v. Town of Vernon, 2013 VT 42, 194 Vt. 42, 71 A.3d 1246
- Quinn v. Grimes, 2004 VT 89, 177 Vt. 181, 861 A.2d 1108

- *Herrera v. Union No. 39 School District*, 2006 VT 83, 181 Vt. 198, 917 A.2d 923
- *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985)
- *Rowe v. Brown*, 157 Vt. 373, 599 A.2d 333 (1991)
- *Shields v. Gerhart*, 163 Vt. 219, 658 A.2d 924 (1995)
- *In re Town Highway No. 20*, 2012 VT 17, 191 Vt. 231, 45 A.3d 54
- *Woolaver v. State*, 2003 VT 71, 175 Vt. 397, 833 A.2d 849
- *Foote v. Simmonds Precision Products Co.*, 158 Vt. 566, 613 A.2d 1277 (1992)
- *Brower v. Holmes Transportation, Inc.*, 140 Vt. 114, 435 A.2d 952 (1981)
- *Baptie v. Bruno*, 2013 VT 117, 195 Vt. 308, 88 A.3d 1212
- *Anderson v. Creighton*, 483 U.S. 635 (1987)
- *Pearson v. Callahan*, 555 U.S. 223 (2009)
- *Ashcroft v. al-Kidd*, 563 U.S. 731 (2011)

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