

SUPREME COURT OF NORTH DAKOTA

Fish v. Dockter, 2003 ND 185

671 N.W.2d 819 (N.D. 2003) · No. No. 20030080 · Decided December 2, 2003

SUMMARY

The Supreme Court of North Dakota affirmed summary judgment dismissing Gerald D. Fish’s slander action against Neil E. Dockter. The court held that Dockter’s statements to Fish’s employer were protected by a qualified privilege that was not abused, and that his testimony during federal administrative proceedings was absolutely privileged. The court also rejected Fish’s claim that he was denied a full and fair hearing on the summary judgment motions.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Sandstrom, Justice; Gerald W. Vande Walle, C.J.; William A. Neumann, J.; Mary Muehlen Maring, J.; Carol Ronning Kapsner, J.; Sandstrom, J.
JURISDICTION	North Dakota
DECIDED	December 2, 2003
DOCKET	No. 20030080
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from summary judgment dismissing a slander action.
STANDARD OF REVIEW	Summary judgment is reviewed de novo as a question of law. Summary judgment is appropriate when there is no dispute as to material facts or reasonable inferences, or when resolving factual disputes would not alter the result, and when the opposing party fails to establish a factual dispute on an essential element for which that party bears the burden of proof.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential
PARTIES	Gerald D. Fish v. Neil E. Dockter

TOPICS

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

PRACTICE AREAS

torts

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether summary judgment was proper on Fish's slander claim based on Dockter's report to Fish's employer concerning the condition of Fish's truck.
2. Whether statements made by Dockter while testifying in federal administrative proceedings were absolutely privileged.
3. Whether Fish was denied a full and fair hearing on the parties' cross-motions for summary judgment because he could not cross-examine Dockter at the motion hearing.

HOLDINGS

1. Dockter's report to his employer was a qualifiedly privileged communication, and Fish failed to present specific evidence of actual malice or abuse of the privilege. Summary judgment was therefore proper on that portion of the claim.
2. Statements made by Dockter while testifying during the federal administrative hearing were entitled to an absolute privilege under N.D.C.C. § 14-02-05(2).
3. Fish received a full and fair hearing because the court accepted and considered timely pleadings and affidavits and was not required to permit testimony or cross-examination at the summary judgment hearing.

KEY QUOTATIONS

“Summary judgment is a procedural device for promptly and expeditiously disposing of an action without a trial if either party is entitled to judgment as a matter of law and if no dispute exists as to either the material facts or the reasonable inferences to be drawn from undisputed facts, or if resolving the factual disputes will not alter the result.” (671 N.W.2d at 822)

“The rule does not call for testimony at the motion hearing but rather for supplementation by depositions, answers for interrogatories, and further affidavits.” (671 N.W.2d at 824-25)

FACTUAL BACKGROUND

Fish was a truck driver for H & R Transfer, whose owners also owned Fargo Freightliner, where Dockter worked as shop manager. On March 17, 2000, Fish brought his truck to Fargo Freightliner, and Dockter reported that it was low on coolant, had no oil showing on the dipstick, and had an extremely dirty cab. Fish was terminated several days later, partly because of poor truck maintenance. Dockter later testified about the truck's condition during federal administrative proceedings, after which Fish sued Dockter for slander.

PROCEDURAL HISTORY

Fish sued Dockter in North Dakota state court, alleging that Dockter made defamatory statements about the condition and maintenance of Fish's truck to Fish's employer and during federal administrative proceedings.

Both parties moved for summary judgment, and the district court granted Dockter's motion and dismissed the action. Fish appealed, arguing that disputed facts required an evidentiary trial and that he was denied a full and fair hearing on the summary judgment motions.

DISPOSITION

affirmed

CASES CITED

- BTA Oil Producers v. MDU Resources Group, Inc., 2002 ND 55, ¶ 11, 642 N.W.2d 873, cert. denied, 537 U.S. 974, 123 S. Ct. 436, 154 L. Ed. 2d 331 (2002)
- Dalan v. Paracelsus Healthcare Corp., 2002 ND 46, ¶ 7, 640 N.W.2d 726
- Jose v. Norwest Bank North Dakota, 1999 ND 175, ¶ 23, 599 N.W.2d 293
- Mr. G's Turtle Mountain Lodge, Inc. v. Roland Township, 2002 ND 140, ¶¶ 23, 33, 651 N.W.2d 625
- Rykowsky v. Dickinson Public School Dist. No. 1, 508 N.W.2d 348, 351 (N.D. 1993)
- Soentgen v. Quain & Ramstad Clinic, P.C., 467 N.W.2d 73, 78-79 (N.D. 1991)
- Richmond v. Nodland, 552 N.W.2d 586, 589 (N.D. 1996)
- Wagner v. Miskin, 2003 ND 69, ¶ 14, 660 N.W.2d 593
- Pulkrabek v. Sletten, 557 N.W.2d 225, 228 (N.D. 1996)
- Kellar v. VonHoltum, 568 N.W.2d 186, 192 (Minn. Ct. App. 1997)
- Anderson v. Meyer Broadcasting Co., 2001 ND 125, ¶ 14, 630 N.W.2d 46