

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Sheward v. City of Henryetta

No. 19-7036, United States Court of Appeals for the Tenth Circuit (April 24, 2020)

SUMMARY

The Tenth Circuit affirmed summary judgment against the plaintiff, holding that he waived appellate review by failing to adequately brief any issue under Fed. R. App. P. 28(a)(8)(A). The court declined to consider his First Amendment retaliation (42 U.S.C. § 1983), conspiracy (42 U.S.C. § 1985), and malicious prosecution/abuse of process claims because his opening brief lacked reasoned legal argument, citations to authority, and improperly incorporated by reference district court filings. Key concepts: waiver of appellate arguments, inadequate briefing, incorporation by reference barred, and the requirement to develop arguments with supporting authority.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	Mary Beck Briscoe; Carolyn B. McHugh; Nancy L. Moritz
JURISDICTION	Federal
DECIDED	April 24, 2020
DOCKET	19-7036
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the United States District Court for the Eastern District of Oklahoma granting summary judgment to defendants.
PRECEDENTIAL VALUE	unpublished
PARTIES	Howard Sheward, Jr. v. City of Henryetta; Jennifer Clason; Fountain View Manor, Inc.

TOPICS

- appellate procedure
- waiver
- summary judgment
- civil rights
- first amendment

PRACTICE AREAS

- Civil Rights
- Appeals

QUESTIONS PRESENTED

1. Whether the district court erred in granting summary judgment on Sheward's First Amendment retaliation claim under §1983
2. Whether the district court erred in granting summary judgment on Sheward's conspiracy claim under §1985
3. Whether the district court erred in granting summary judgment on Sheward's malicious prosecution/abuse of process claim under §1983

HOLDINGS

1. Sheward waived his right to appellate review by failing to develop and advance a reasoned argument to support any of his three assignments of error, as required by Federal Rule of Appellate Procedure 28(a)(8)(A).

KEY QUOTATIONS

“Mr. Sheward has waived his right to appellate review by failing to adequately brief any issue on appeal.” (p. 2)

“Because Mr. Sheward failed to adequately brief the issues on appeal, he has waived his right to appellate review, and so we AFFIRM the district court's grant of summary judgment to defendants on all claims.” (p. 13)

FACTUAL BACKGROUND

Howard Sheward is a politically active resident of Henryetta, Oklahoma. He used initiative petitions to audit the city. The city and mayor filed a declaratory judgment action against him. The city sent a letter to residents about a \$6 charge for the audit. FVM sued him for defamation, which was dismissed as a SLAPP suit. Sheward filed federal suit alleging retaliation.

PROCEDURAL HISTORY

Howard Sheward filed suit in federal court against the City, Clason, and FVM alleging First Amendment retaliation under §1983, conspiracy under §1985, and malicious prosecution/abuse of process under §1983. The district court granted summary judgment to defendants on all claims. Sheward appealed.

DISPOSITION

affirmed

CASES CITED

- *Bronson v. Swensen*, 500 F.3d 1099 (10th Cir. 2007)
- *Utahns for Better Transp. v. U.S. Dep't of Transp.*, 305 F.3d 1152 (10th Cir. 2002)
- *Phillips v. Calhoun*, 956 F.2d 949 (10th Cir. 1992)
- *Am. Airlines v. Christensen*, 967 F.2d 410 (10th Cir. 1992)

- United States v. Patterson, 713 F.3d 1237 (10th Cir. 2013)
- Fulghum v. Embarq Corp., 785 F.3d 395 (10th Cir. 2015)
- Beedle v. Wilson, 422 F.3d 1059 (10th Cir. 2005)
- Perry v. Woodward, 199 F.3d 1126 (10th Cir. 1999)
- Dodds v. Richardson, 614 F.3d 1185 (10th Cir. 2010)
- Burnett v. Sw. Bell Tel., L.P., 555 F.3d 906 (10th Cir. 2009)
- Dow v. Chilili Co-op Assn., 728 P.2d 462 (N.M. 1986)

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