

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Inman v. Thawley

297 F. App'x 683 (9th Cir. 2008) · Decided October 28, 2008

SUMMARY

The Ninth Circuit affirmed summary judgment for the defendants in an action involving defamation, First Amendment retaliation, and due process claims by a public employee. The court held that the Nevada System of Higher Education was immune under the Eleventh Amendment, while the individual-capacity claims were not barred on that basis. It concluded that the plaintiff failed to establish defamation, an adverse employment action supporting retaliation, or a due process violation because Nevada law provided a post-termination hearing.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
JURISDICTION	Federal
DECIDED	October 28, 2008
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed a summary judgment entered in favor of the defendants.
STANDARD OF REVIEW	The opinion does not expressly state a standard of review; it reviewed the entry of summary judgment and the sufficiency of the asserted claims.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	John W. Inman v. University and Community College System of Nevada, Nevada System of Higher Education, David Thawley, John Lilley

TOPICS

[first amendment](#) [retaliation](#) [defamation](#) [due process](#) [eleventh amendment immunity](#)

PRACTICE AREAS

[civil rights](#) [constitutional law](#) [employment law](#) [torts](#)

QUESTIONS PRESENTED

1. Whether the Nevada System of Higher Education was immune from suit under the Eleventh Amendment.
2. Whether the claims against David Thawley and John Lilley in their individual capacities were barred.
3. Whether statements in Inman's performance evaluations and media publications supported a defamation claim.
4. Whether Inman established an adverse employment action sufficient for a First Amendment retaliation claim.
5. Whether Inman's defamation-plus claim could proceed when the underlying defamation and First Amendment claims failed.
6. Whether Nevada law required a pre-termination hearing in addition to a post-termination hearing.

HOLDINGS

1. The Nevada System of Higher Education is immune from suit under the Eleventh Amendment.
2. The claims against Thawley and Lilley in their individual capacities were not barred by the asserted immunity.
3. Inman's defamation claim failed because the performance-evaluation statements expressed opinions rather than facts, and the media statements were not false, defamatory, or specifically about Inman.
4. Inman's First Amendment retaliation claim failed because he did not show an adverse employment action.
5. The defamation-plus claim failed because Inman failed to establish either a successful defamation claim or a successful First Amendment claim.
6. Inman's due process claim failed because Nevada law afforded public employees a post-termination hearing rather than a pre-termination hearing.

KEY QUOTATIONS

“The Nevada System of Higher Education is immune from suit under the Eleventh Amendment.” (at 683)

“The alleged ultimatum that the University would withhold recommendation letters was, at most, an isolated verbal threat that was not actually carried out.” (at 685)

“This disposition is not appropriate for publication and is not except as provided by 9th Cir. R. 36-3.” (at 685)

FACTUAL BACKGROUND

John W. Inman, a public employee, challenged performance evaluations and statements published in the media. He alleged defamation, First Amendment retaliation based in part on an alleged threat to withhold recommendation letters, and due process violations arising from the termination of his employment. The alleged threat was an isolated verbal ultimatum that was never carried out, and Nevada law provided a post-termination hearing.

PROCEDURAL HISTORY

The district court entered summary judgment for the University and Community College System of Nevada, David Thawley, and John Lilley. Inman appealed, and the Ninth Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- Disabled Rights Action Comm. v. Las Vegas Events, Inc., 375 F.3d 861, 883 n. 17 (9th Cir. 2004)
- Cerrato v. S.F. Cmty. Coll. Dist., 26 F.3d 968, 973 (9th Cir. 1994)
- Nev. Indep. Broad. Corp. v. Allen, 99 Nev. 404, 664 P.2d 337, 341 (1983)
- Simpson v. Mars Inc., 113 Nev. 188, 929 P.2d 966, 967 (1997)
- Coszalter v. City of Salem, 320 F.3d 968, 973 (9th Cir. 2003)

OPINION

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PER CURIAM.

MEMORANDUM **

Plaintiff John W. Inman appeals the summary judgment entered in favor of Defendants University and Community College System of Nevada, now known as the Nevada System of Higher Education, David Thawley, and John Lilley. We affirm. The Nevada System of Higher Education is immune from suit under the Eleventh Amendment. *Disabled Rights Action Comm. v. Las Vegas Events, Inc.*, 375 F.3d 861, 883 n. 17 (9th Cir.2004). The claims against Defendants Thawley and Lilley in their individual capacities, however, are not barred. *Cerrato v. S.F. Cmty. Coll. Dist.*, 26 F.3d 968, 973 (9th Cir.1994). Plaintiffs defamation claim fails. The statements in Plaintiffs performance evaluations expressed opinions, not facts, and therefore do not give rise to a defamation claim. *Nev. Indep. Broad. Corp. v. Allen*, 99 Nev. 404, 664 P.2d 337, 341 (1983). The statements made in media publications were not false, were not defamatory, and did not concern Plaintiff specifically. These statements thus fail to meet the criteria for defamation established in *Simpson v. Mars Inc.*, 113 Nev. 188, 929 P.2d 966, 967 (1997). *685Plaintiffs First Amendment retaliation claim also fails because Plaintiff did not show an adverse employment action. *Coszalter v. City of Salem*, 320 F.3d 968, 973 (9th Cir.2003). The alleged ultimatum that the University would withhold recommendation letters was, at most, an isolated verbal threat that was not actually carried out. Because Plaintiff failed to allege either a successful defamation or First Amendment claim, his “defamation plus” claim must also fail. Finally, Plaintiffs due process claim fails because Nevada law affords public employees a post-termination hearing, not a pre-

termination hearing. Nev. Rev.Stat. § 284.390(1). AFFIRMED. This disposition is not appropriate for publication and is not except as provided by 9th Cir. R. 36-3.