

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

**Inman v. Thawley**

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

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**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.

**OPINION**

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.