

COURT OF APPEALS OF MARYLAND

Sheila Montgomery v. Eastern Correctional Institution, 377 Md. 615

835 A.2d 169 (2003) · No. No. 13, Sept. Term, 2003 · Decided November 10, 2003

SUMMARY

The Maryland Court of Appeals considered whether a state employee's grievance alleging harassment and a hostile work environment by her supervisor constituted a protected disclosure under Maryland's Whistleblower Law. The court held that the grievance concerned the employee's individual employment rights rather than disclosure of government illegality, waste, abuse of authority, or threats to public health or safety. It affirmed the administrative, circuit court, and intermediate appellate decisions against Montgomery.

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	Harrell, Judge; Bell, C.J.; Eldridge, J.; Raker, J.; Wilner, J.; Cathell, J.; Harrell, J.; Battaglia, J.
JURISDICTION	Maryland
DECIDED	November 10, 2003
DOCKET	No. 13, Sept. Term, 2003
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petition for review of an administrative decision rejecting a state employee's whistleblower complaint alleging retaliation for filing a personnel grievance.
STANDARD OF REVIEW	Judicial review of an administrative adjudicatory decision is limited to determining whether substantial evidence in the record supports the agency's findings and conclusions and whether the decision is based on an erroneous conclusion of law. Courts ordinarily give considerable weight to an agency's interpretation and application of the statute it administers, while legal conclusions remain subject to judicial review.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Sheila Montgomery v. Eastern Correctional Institution, Respondents

TOPICS

whistleblower

employment law

administrative law

judicial review of agency action

statutory interpretation

PRACTICE AREAS

employment law

administrative law

whistleblower law

statutory interpretation

QUESTIONS PRESENTED

1. Whether a state employee's grievance alleging that a supervisor created a hostile work environment constitutes a protected disclosure under Maryland's Whistleblower Law.
2. Whether Montgomery's allegations concerning rude, discourteous, and allegedly harassing supervisory conduct evidenced gross mismanagement, abuse of authority, or a violation of law.
3. Whether Montgomery had an election of remedies between the Maryland Whistleblower Law and the State employee grievance procedures.
4. Whether the administrative law judge properly resolved the complaint by summary decision without an evidentiary hearing.

HOLDINGS

1. A state employee's grievance complaining that a supervisor treated the employee improperly or created a hostile work environment is not a protected disclosure under the Maryland Whistleblower Law when it does not disclose public illegality, gross mismanagement, gross waste, abuse of authority, or a substantial and specific danger to public health or safety.
2. Allegations that a supervisor made rude, discourteous, belittling, or harassing remarks to one or two employees do not, without more, establish gross mismanagement or abuse of authority under the Maryland Whistleblower Law.
3. A state employee alleging reprisal for filing a personnel grievance does not have an election between the Maryland Whistleblower Law and the State employee grievance procedures unless the employee first alleges facts showing a protected whistleblower disclosure.
4. Summary disposition was proper because the written disclosures were undisputed and, even when viewed in Montgomery's favor, did not allege facts constituting a protected disclosure.

KEY QUOTATIONS

“Only the former—described in [5 U.S.C.] § 2302(b)(8)—are entitled to “whistle blower protection.”” (at 179)

“We hold that a state employee has no such election when, as here, the employee failed to allege facts showing that he or she made a disclosure that was protected under the Whistleblower Law.” (at 187)

FACTUAL BACKGROUND

Sheila Montgomery worked as an administrative assistant in the Warden's Office at Eastern Correctional Institution. She filed a personnel grievance alleging that Acting Warden George Kaloroumakis's derogatory demeanor and belittling comments created a hostile work environment. After a new warden reassigned her to the Maintenance Department at the same pay and classification, Montgomery alleged that the transfer was retaliation for her grievance and characterized the supervisor's conduct as gross mismanagement, abuse of authority, and a violation of law. The court concluded that the disclosures concerned personal treatment and workplace harassment, not public wrongdoing within the scope of the Maryland Whistleblower Law.

PROCEDURAL HISTORY

Montgomery filed a personnel grievance alleging harassment and a hostile work environment created by her supervisor. After she was reassigned without a reduction in pay or classification, she filed a complaint under the Maryland Whistleblower Law alleging that the reassignment was retaliatory. The Department found no violation, and an OAH administrative law judge dismissed the complaint by summary decision. The Circuit Court for Somerset County affirmed, the Court of Special Appeals affirmed in an unreported opinion, and the Court of Appeals of Maryland granted certiorari and affirmed.

DISPOSITION

affirmed

CASES CITED

- *Montgomery v. State of Maryland*, No. 02-1998, 2003 WL 21752919, 2003 U.S. App. LEXIS 15068 (4th Cir. July 30, 2003) (per curiam)
- *United Parcel v. People's Counsel*, 336 Md. 569, 576-77, 650 A.2d 226, 230 (1994)
- *Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 69, 729 A.2d 376, 381 (1999)
- *Lussier v. Maryland Racing Commission*, 343 Md. 681, 696-97, 684 A.2d 804, 811-12 (1996)
- *McCullough v. Wittner*, 314 Md. 602, 612, 552 A.2d 881, 886 (1989)
- *Fogle v. H & G Restaurant*, 337 Md. 441, 455, 654 A.2d 449, 456 (1995)
- *Christ v. Department of Natural Resources*, 335 Md. 427, 445, 644 A.2d 34, 42 (1994)
- *Board of Education for Dorchester County v. Hubbard*, 305 Md. 774, 792, 506 A.2d 625, 634 (1986)
- *Fioretti v. Maryland State Board of Dental Examiners*, 351 Md. 66, 75-76, 716 A.2d 258, 262 (1998)
- *Spruill v. Merit Systems Protection Board*, 978 F.2d 679, 681-82, 690-93 (Fed. Cir. 1992)
- *Ellison v. Merit Systems Protection Board*, 7 F.3d 1031, 1035 (Fed. Cir. 1993)
- *Serrao v. Merit Systems Protection Board*, 95 F.3d 1569, 1576 (Fed. Cir. 1996)
- *Horton v. Department of the Navy*, 60 M.S.P.R. 397 (1994)
- *Nogales v. Department of the Treasury*, 63 M.S.P.R. 460 (1994)
- *Williams v. Department of Defense*, 46 M.S.P.R. 549 (1991)
- *Fisher v. Department of Defense*, 47 M.S.P.R. 585 (1991)
- *Williams v. Department of Veterans Affairs*, 47 M.S.P.R. 578 (1991)

- Peterson v. Department of Transportation, 54 M.S.P.R. 178 (1992)
- Ford v. Department of Public Safety and Correctional Services, 149 Md. App. 488, 501-02, 817 A.2d 264, 272-73 (2003)
- Pulcini v. Social Security Administration, 2000 WL 772728, at *2, 2000 U.S. App. LEXIS 13567, at *5-*6 (Fed. Cir. June 13, 2000)
- Embree v. Department of the Treasury, 70 M.S.P.R. 79, 85 (1996)
- D'Elia v. Department of the Treasury, 60 M.S.P.R. 226, 236-38 (1993)
- Nafus v. Department of the Army, 57 M.S.P.R. 386, 395-96 (1993)
- McCollum v. Department of Veterans Affairs, 75 M.S.P.R. 449, 455 (1997)
- Herman v. Department of Justice, 193 F.3d 1375, 1381 (Fed. Cir. 1999)
- Appeal of Leonard, 147 N.H. 590, 809 A.2d 762, 764-67 (2002)
- Caffrey v. Department of Liquor Control, 370 Md. 272, 292, 805 A.2d 268, 280 (2002)
- Megonnell v. United Services Automobile Association, 368 Md. 633, 659, 796 A.2d 758, 774 (2002)
- Engineering Management Services v. Maryland State Highway Administration, 375 Md. 211, 225, 825 A.2d 966, 974 (2003)
- Frazier v. Merit Systems Protection Board, 672 F.2d 150, 154-56 (D.C. Cir. 1982)

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