

SUPREME COURT OF NEVADA

State of Nevada, Office of the Attorney General v. The Eighth
Judicial District Court of the State of Nevada

118 Nev. 140 (2002) (Nev. 2002) · No. No. 38185 · Decided March 13, 2002

SUMMARY

The Supreme Court of Nevada granted a petition for extraordinary relief arising from a wrongful-termination action against the Nevada Attorney General's office. The court held that the plaintiff's defamation, tortious-discharge, emotional-distress, 42 U.S.C. § 1983, and Title VII retaliation claims could not proceed and directed the district court to grant summary judgment to the petitioners. Justice Shearing dissented, concluding that the writ petition should be denied.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Nevada
DECIDED	March 13, 2002
DOCKET	No. 38185
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Petitioners sought extraordinary relief by mandamus or prohibition after the district court denied their motion to dismiss a former employee's wrongful-termination complaint. Because matters outside the pleadings had been presented, the motion was treated as one for summary judgment. The Supreme Court of Nevada granted the writ and directed the district court to grant summary judgment to petitioners on Anzalone's claims.

STANDARD OF REVIEW	Extraordinary writ relief is discretionary and generally is unavailable to review orders denying motions to dismiss or summary judgment unless no factual dispute exists and clear statutory or rule authority requires dismissal, or an important legal issue requires clarification and judicial economy favors intervention. Summary judgment is proper when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Questions concerning the application of the conditional privilege of reply are reviewed as questions of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	State of Nevada, Office of the Attorney General, Frankie Sue Del Papa, Donald Haight, David Thompson, J.T. Healy v. The Eighth Judicial District Court of the State of Nevada, Hon. James C. Mahan

TOPICS

writ of certiorari appellate procedure summary judgment defamation wrongful termination

PRACTICE AREAS

civil procedure appellate procedure torts employment law civil rights constitutional law remedies

QUESTIONS PRESENTED

1. Whether extraordinary writ relief was appropriate to review the district court's denial of a motion to dismiss that had become a summary-judgment motion because matters outside the pleadings were presented.
2. Whether Del Papa's newspaper response was protected by a common-law conditional privilege of reply and whether Healy's alleged statement was actionable defamation.
3. Whether Anzalone presented sufficient evidence to support tortious discharge, emotional-distress, or alleged blacklisting claims.
4. Whether Anzalone could establish § 1983 claims based on deprivation of employment or reputational interests.
5. Whether Anzalone's statements to a newspaper supported a Title VII retaliation claim.
6. Whether laches barred consideration of the writ petition.

HOLDINGS

1. The Supreme Court may review a district court's denial of a motion to dismiss or summary judgment by extraordinary writ in limited circumstances, including when an important legal issue and considerations of judicial economy warrant intervention. This case qualified for extraordinary relief.

2. Laches did not bar the writ petition because petitioners did not unreasonably delay seeking relief, did not knowingly acquiesce in the existing conditions, and did not cause legally sufficient prejudice.
3. Nevada recognizes a common-law conditional privilege of reply protecting a person who responds to defamatory public statements, and Del Papa's response fell within that privilege. The same privilege protected the related public-disclosure-of-private-facts claim.
4. Healy's statement that he would expect to be fired for conducting an investigation that was 'crappy or half-assed' was opinion rather than an actionable assertion of fact.
5. Anzalone's speculation about what Thompson meant and his lack of evidence that petitioners blacklisted him could not establish the concrete, outrageous conduct and causation required for tortious discharge, emotional distress, or related damages.
6. Anzalone could not maintain his § 1983 claims because officials sued in their official capacities are not persons for purposes of § 1983, he had no property interest in at-will employment, and the stated reason for his termination did not implicate a liberty interest based on moral turpitude.
7. Anzalone's retaliation claim failed because his statements concerned an alleged unauthorized intelligence investigation and his termination, not opposition to a practice made unlawful by Title VII or participation in a Title VII proceeding.

KEY QUOTATIONS

"We have emphasized, however, that "very few writ petitions warrant extraordinary relief" and that "[t]he interests of judicial economy, which inspired the Thompson rule, will remain the primary standard by which this court exercises its discretion."" (238)

"The common law privilege of reply grants those who are attacked with defamatory statements a limited right to reply." (239)

"The privilege may be lost, however, if the reply: (1) includes substantial defamatory matter that is irrelevant or non-responsive to the initial statement; (2) includes substantial defamatory material that is disproportionate to the initial statement; (3) is excessively publicized; or (4) is made with malice in the sense of actual spite or ill will." (240)

"Accordingly, since no allegation or proof of discrimination has been made, we conclude that the district court should have granted summary judgment as to Anzalone's retaliation claim." (243)

FACTUAL BACKGROUND

Mike Anzalone worked for the Nevada Attorney General's Office from 1993 until he resigned in 1996. He alleged that he was pressured to obtain telephone and bank records of Gaming Control Board officials by illegal means and that he was forced to resign after refusing. After a newspaper article discussed his departure and alleged an unauthorized intelligence investigation, Attorney General Frankie Sue Del Papa published a response letter describing Anzalone as a disgruntled former employee and stating that she had lost confidence in him. Anzalone also alleged defamation, privacy violations, tortious discharge, emotional distress, civil-rights violations, and retaliation based on the termination and subsequent statements.

PROCEDURAL HISTORY

Mike Anzalone filed claims arising from his resignation from the Nevada Attorney General's Office, including defamation, invasion of privacy, tortious discharge, emotional-distress claims, a claim under 42 U.S.C. § 1983, and retaliation. The district court dismissed two causes of action, denied the remaining dismissal arguments without prejudice, and later denied petitioners' motion after discovery; it separately granted summary judgment to Wheatly and Del Papa in specified capacities. Petitioners filed a writ petition as trial approached, and the Supreme Court exercised extraordinary-writ jurisdiction based on important legal questions and judicial economy.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The clerk was directed to issue a writ of mandamus directing the district court to grant summary judgment to petitioners on Anzalone's claims.

CASES CITED

- State ex rel. Department of Transportation v. Thompson, 99 Nev. 358, 662 P.2d 1338 (1983)
- Advanced Countertop Design v. District Court, 115 Nev. 268, 984 P.2d 756 (1999)
- Smith v. District Court, 113 Nev. 1343, 950 P.2d 280 (1997)
- Ashokan v. State, Department of Insurance, 109 Nev. 662, 856 P.2d 244 (1993)
- Round Hill General Improvement District v. Newman, 97 Nev. 601, 637 P.2d 534 (1981)
- Building & Construction Trades v. Public Works, 108 Nev. 605, 836 P.2d 633 (1992)
- Buckholt v. District Court, 94 Nev. 631, 584 P.2d 672 (1978)
- Posadas v. City of Reno, 109 Nev. 448, 851 P.2d 438 (1993)
- Foretich v. Capital Cities/ABC, Inc., 37 F.3d 1541 (4th Cir. 1994)
- Lubin v. Kunin, 117 Nev. 107, 17 P.3d 422 (2001)
- Montesano v. Donrey Media Group, 99 Nev. 644, 668 P.2d 1081 (1983)
- K-Mart Corporation v. Washington, 109 Nev. 1180, 866 P.2d 274 (1993)
- Nevada Independent Broadcasting v. Allen, 99 Nev. 404, 664 P.2d 337 (1983)
- Yeager v. Harrah's Club, Inc., 111 Nev. 830, 897 P.2d 1093 (1995)
- D'Angelo v. Gardner, 107 Nev. 704, 819 P.2d 206 (1991)
- Wayment v. Holmes, 112 Nev. 232, 912 P.2d 816 (1996)
- Collins v. Union Federal Savings & Loan, 99 Nev. 284, 662 P.2d 610 (1983)
- Shoen v. Amerco, Inc., 111 Nev. 735, 896 P.2d 469 (1995)
- Star v. Rabello, 97 Nev. 124, 625 P.2d 90 (1981)
- Lebbos v. Judges of Superior Court, Santa Clara County, 883 F.2d 810 (9th Cir. 1989)

- Will v. Michigan Department of State Police, 491 U.S. 58 (1989)
- Northern Nevada Association of Injured Workers v. SIIS, 107 Nev. 108, 807 P.2d 728 (1991)
- Devereaux v. Perez, 218 F.3d 1045 (9th Cir. 2000)
- Graham v. Connor, 490 U.S. 386 (1989)
- Portman v. County of Santa Clara, 995 F.2d 898 (9th Cir. 1993)
- Rea v. Matteucci, 121 F.3d 483 (9th Cir. 1997)
- Brady v. Gebbie, 859 F.2d 1543 (9th Cir. 1988)
- Bollow v. Federal Reserve Bank of San Francisco, 650 F.2d 1093 (9th Cir. 1981)
- Wheaton v. Webb-Petett, 931 F.2d 613 (9th Cir. 1991)
- Wrighten v. Metropolitan Hospitals, Inc., 726 F.2d 1346 (9th Cir. 1984)
- Cohen v. Fred Meyer, Inc., 686 F.2d 793 (9th Cir. 1982)
- Lumbermen's Underwriting v. RCR Plumbing, 114 Nev. 1231, 969 P.2d 301 (1998)

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