

SUPREME COURT OF RHODE ISLAND

DaPonte v. Ocean State Job Lot, Inc.

21 A.3d 248 (R.I. 2011) · No. No. 2010-29-Appeal · Decided May 12, 2011

SUMMARY

The Supreme Court of Rhode Island considered whether an employer's forceful placement of a price sticker on an employee's shoulder constituted an unreasonable intrusion upon physical solitude or seclusion under Rhode Island's privacy statute, G.L. 1956 § 9-1-28.1(a)(1). The court held that the touching occurred in a public workplace, involved a fleeting and nonsexual contact with an outer garment, and did not invade something entitled to privacy or expected to be private. The court affirmed dismissal of the employee's privacy and respondeat superior claims.

CASE DETAILS

COURT	Supreme Court of Rhode Island
WRITING FOR THE COURT	Justice Flaherty; Chief Justice Suttell; Justice Goldberg; Justice Robinson; Justice Indeglia
JURISDICTION	Rhode Island
DECIDED	May 12, 2011
DOCKET	No. 2010-29-Appeal
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from a Superior Court judgment dismissing with prejudice her statutory invasion-of-privacy claim and associated respondeat superior claim after a jury-waived trial.
STANDARD OF REVIEW	The Supreme Court reviews a trial justice's factual findings in a jury-waived case for clear error or whether the justice overlooked or misconceived material evidence; questions of law and statutory interpretation are reviewed de novo.
PRECEDENTIAL VALUE	Published Rhode Island Supreme Court opinion; precedential.
PARTIES	Irene DaPonte v. Ocean State Job Lot, Inc., Marc Perlman

TOPICS

[invasion of privacy](#)[statutory interpretation](#)[standard of review](#)[appellate procedure](#)[torts](#)

PRACTICE AREAS

torts

privacy law

statutory interpretation

appellate procedure

employment law

QUESTIONS PRESENTED

1. Whether forcefully placing a price sticker without consent on an employee's shoulder in a public retail workplace constitutes an unreasonable intrusion upon physical solitude or seclusion actionable under G.L. 1956 § 9-1-28.1(a)(1).
2. Whether the trial justice overlooked or misconceived material evidence or was clearly wrong in dismissing the statutory privacy claim.

HOLDINGS

1. A brief, nonsexual touching of an employee's outer garment on the shoulder in a public business work area does not constitute an actionable invasion of physical solitude or seclusion under G.L. 1956 § 9-1-28.1(a)(1), even if the touching is offensive and unconsented.
2. The trial justice did not overlook or misconceive material evidence and was not clearly wrong in determining that the conduct was not actionable under the privacy statute.

KEY QUOTATIONS

“To establish a claim under this section of the privacy statute, some invasion of a person's physical solitude or seclusion must have occurred, and this Court will not rewrite the statute contrary to its plain meaning to cover alleged psychological invasions caused by mere observations of public activities that do not also involve the requisite physical invasion mandated by the statute.” (252)

“A work area of a business, unlike, for example, a bathroom or a bedroom, is not a place of solitude or seclusion.” (252)

FACTUAL BACKGROUND

Irene DaPonte was an assistant manager working at Ocean State Job Lot's North Kingstown store. During a store inspection, company president Marc Perlman, upset about a misplaced price tag, forcefully placed the tag on DaPonte's shoulder without asking permission or receiving consent. The trial court found that the contact was offensive and unconsented to, but concluded that the incident did not constitute an actionable intrusion upon physical solitude or seclusion under Rhode Island's privacy statute.

PROCEDURAL HISTORY

DaPonte filed suit in Washington County Superior Court after Ocean State president Marc Perlman forcefully placed a price sticker on her shoulder without consent. Claims for negligent hiring and supervision and intentional infliction of emotional distress did not proceed to trial. Following a jury-waived trial, the Superior Court entered final judgment on March 6, 2009, dismissing the remaining privacy and respondeat superior claims with prejudice. The Rhode Island Supreme Court affirmed.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The record was remanded to the Superior Court following affirmance.

CASES CITED

- Donnelly v. Cowsill, 716 A.2d 742, 747 (R.I. 1998)
- Newport Realty, Inc. v. Lynch, 878 A.2d 1021, 1032 (R.I. 2005)
- Webster v. Perrotta, 774 A.2d 68, 75 (R.I. 2001)
- Nassa v. Hook-SupeRx, Inc., 790 A.2d 368, 370 (R.I. 2002)
- Matter of Falstaff Brewing Corp. Re: Narragansett Brewery Fire, 637 A.2d 1047, 1049-1050 (R.I. 1994)
- In re Doe, 717 A.2d 1129, 1132 (R.I. 1998)
- Blanchette v. Stone, 591 A.2d 785, 786 (R.I. 1991)
- Brennan v. Kirby, 529 A.2d 633, 637 (R.I. 1987)
- Swerdlick v. Koch, 721 A.2d 849, 853-858 (R.I. 1998)
- Ulrich v. K-Mart Corp., 858 F. Supp. 1087, 1095 (D. Kan. 1994)
- Liu v. Striuli, 36 F. Supp. 2d 452, 458-460, 479 (D.R.I. 1999)