

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Tripp v. Cole

425 F.3d 5 (1st Cir. 2005) · No. No. 04-2588 · Decided September 27, 2005

SUMMARY

The First Circuit affirmed summary judgment for the town manager and Town of Bethel in a former police chief’s retaliation lawsuit. The court held that the plaintiff’s conduct was not protected whistleblowing under Maine law because a reasonable person would not have believed the town manager’s request to seek dismissal of a summons constituted obstruction of government administration, and that the plaintiff’s speech did not address a matter of public concern under the First Amendment.

CASE DETAILS

COURT	United States Court of Appeals for the First Circuit
WRITING FOR THE COURT	Lipez, Circuit Judge; Torruella, Circuit Judge; Lynch, Circuit Judge
JURISDICTION	Federal
DECIDED	September 27, 2005
DOCKET	No. 04-2588
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed the district court's grant of summary judgment to defendants on his First Amendment retaliation claim under 42 U.S.C. § 1983 and his Maine whistleblower-retaliation claim.
STANDARD OF REVIEW	De novo review of the district court's grant of summary judgment and its determination whether the employee's speech involved a matter of public concern.
PRECEDENTIAL VALUE	Published First Circuit opinion; precedential.
PARTIES	Darren M. Tripp v. Scott Cole, Town of Bethel

TOPICS

- free speech
- first amendment
- retaliation
- whistleblower
- section 1983

PRACTICE AREAS

- constitutional law
- employment law
- civil rights
- municipal law

QUESTIONS PRESENTED

1. Whether Tripp engaged in activity protected by the Maine Whistleblowers' Protection Act by reporting conduct that he reasonably believed violated Maine's obstruction-of-government-administration statute.
2. Whether Tripp's statements to Cole and two Bethel selectmen addressed a matter of public concern protected by the First Amendment.
3. Whether summary judgment was proper on the whistleblower-retaliation and First Amendment retaliation claims.

HOLDINGS

1. Tripp did not engage in protected activity because a reasonable person in his position could not have believed that Cole's request to ask the prosecutor to dismiss the summons constituted obstruction of government administration under Maine law. Summary judgment was therefore proper on the whistleblower claim.
2. Tripp's statements to Cole that he was not comfortable asking the district attorney to dismiss the summons, and his statements to selectmen that his relationship with Cole had cooled, did not address a matter of public concern. Summary judgment was therefore proper on the First Amendment retaliation claim.

KEY QUOTATIONS

"Under the MWPA, "[n]o employer may discharge . . . or otherwise discriminate against an employee . . . because[] [t]he employee, acting in good faith, . . . reports orally or in writing to the employer or a public body what the employee has reasonable cause to believe is a violation of a law." (at 8)

"Whether an employee's speech addresses a matter of public concern must be determined by the content, form, and context of a given statement, as revealed by the whole record." (at 10)

"An opaque statement such as 'I'm not comfortable doing this' is not 'clearly a legitimate matter of inherent concern to the electorate.'" (at 12)

FACTUAL BACKGROUND

Darren Tripp, chief of police for Bethel, Maine, issued a summons to a resident whose dog had been at large. Town Manager Scott Cole asked Tripp to ask the district attorney to dismiss the summons, and Tripp responded that he was not comfortable doing so. Several months later, Cole suspended Tripp and later terminated him for stated reasons that included matters unrelated to the dog summons; the Board of Selectmen upheld the termination. Tripp alleged that the adverse employment actions were retaliation for his opposition to Cole's request and for comments to two selectmen about his cooled relationship with Cole.

PROCEDURAL HISTORY

Tripp sued the town manager and the Town of Bethel after being suspended and terminated as chief of police, alleging retaliation for protected speech and whistleblowing. The parties cross-moved for summary judgment. A

magistrate judge recommended judgment for defendants, the district court reviewed the recommendation de novo and adopted it in full, and the First Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- Smith v. Robertshaw Controls Co., 410 F.3d 29, 31, 34 (1st Cir. 2005)
- Guilloty Perez v. Pierluisi, 339 F.3d 43, 53 (1st Cir. 2003)
- Bard v. Bath Iron Works Corp., 590 A.2d 152, 154-55 (Me. 1991)
- Higgins v. New Balance Athletic Shoe, Inc., 194 F.3d 252, 262 (1st Cir. 1999)
- Porter v. Nutter, 913 F.2d 37, 41 (1st Cir. 1990)
- State v. Matson, 818 A.2d 213, 214-15 (Me. 2003)
- State v. Janischak, 579 A.2d 736, 738 (Me. 1990)
- Mihos v. Swift, 358 F.3d 91, 102 (1st Cir. 2004)
- O'Connor v. Steeves, 994 F.2d 905, 912-14 (1st Cir. 1993)
- Connick v. Myers, 461 U.S. 138, 147-48 (1983)
- Baron v. Suffolk County Sheriff's Department, 402 F.3d 225, 234-35 (1st Cir. 2005)
- Markos v. City of Atlanta, 364 F.3d 567, 570 (5th Cir. 2004)
- Schlear v. Fiber Materials, Inc., 574 A.2d 876, 878-79 (Me. 1990)
- Tripp v. Cole, No. 03-289, 2004 WL 2185840 (D. Me. Sept. 24, 2004)
- Tripp v. Cole, 2004 WL 2326391 (D. Me. Oct. 13, 2004)