

SUPREME COURT OF NORTH DAKOTA

William P. Zuger v. State of North Dakota

2004 ND 16 (N.D. 2004) · No. No. 20030170 · Decided January 20, 2004

SUMMARY

The Supreme Court of North Dakota affirmed summary judgment dismissing William P. Zuger's claims against the State arising from his nonselection for an Attorney II position. The court held that Zuger failed to present evidence establishing a genuine issue of material fact or a property interest in an interview or prospective employment under North Dakota law. The court also concluded that the State's conduct was not sufficiently extreme and outrageous to support an intentional infliction of emotional distress claim.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Mary Muehlen Maring; William A. Neumann; William F. Hodny, S.J.; Cynthia Rothe-Seeger, D.J.; Dale V. Sandstrom, Acting C.J.
JURISDICTION	North Dakota
DECIDED	January 20, 2004
DOCKET	No. 20030170
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a summary judgment dismissing Zuger's complaint against the State of North Dakota.
STANDARD OF REVIEW	Summary judgment is reviewed de novo on the entire record. The appellate court determines whether the information before the trial court precluded a genuine issue of material fact and entitled the moving party to judgment as a matter of law.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential
PARTIES	William P. Zuger v. State of North Dakota

TOPICS

- summary judgment
- standard of review
- civil procedure
- employment law
- torts

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the State's alleged violations of North Dakota's merit-selection law supported a claim under the State's tort claims statute.
2. Whether North Dakota's merit-selection law created a constitutionally protected property interest in an interview or prospective employment opportunity under the Fourteenth Amendment.
3. Whether the State's conduct supported a claim for intentional infliction of emotional distress.

HOLDINGS

1. A party resisting summary judgment may not rely on pleadings, unsupported conclusory allegations, or leave the court to search the record and determine the significance of the evidence; the party must present competent admissible evidence identifying a genuine issue of material fact. Zuger failed to do so.
2. North Dakota's merit-selection law did not create a constitutionally protected property interest in a prospective employment opportunity or a right to an interview, and Zuger failed to identify a legal basis for a claim against the State under the State's tort claims statute.
3. The State's decision not to interview Zuger, based on his ranking under a scoring device, was not sufficiently extreme and outrageous to support intentional infliction of emotional distress.

KEY QUOTATIONS

"When the trial court considers matters outside the pleadings in ruling on a motion to dismiss, the motion is treated as one for summary judgment and disposed of under N.D.R.Civ.P. 56." (¶ 6)

"Summary judgment is a procedural device for promptly disposing of a lawsuit without a trial if there are no genuine issues of material fact or inferences which can reasonably be drawn from undisputed facts, or if the only issues to be resolved are questions of law." (¶ 7)

"A party resisting a motion for summary judgment may not simply rely upon the pleadings or upon unsupported, conclusory allegations." (¶ 8)

"The 'extreme and outrageous' threshold is narrowly limited to conduct that exceeds 'all possible bounds of decency,' and which would arouse resentment against the actor and lead to an exclamation of 'Outrageous!' by an average member of the community." (¶ 14)

FACTUAL BACKGROUND

The State advertised an Attorney II position with the Protection and Advocacy Project and decided to interview only the four highest-ranked applicants. Zuger's application ranked fifth, so he was not interviewed, and the Project hired one of the interviewed applicants. Zuger alleged that the State used undisclosed or improperly applied screening criteria, failed to investigate or credit his qualifications adequately, and thereby violated state merit-selection law, constitutional rights, and the tort law governing emotional distress.

PROCEDURAL HISTORY

Zuger sued the State alleging violations of North Dakota's merit-selection law, a constitutionally protected property interest, and intentional infliction of emotional distress arising from the State's failure to interview him for an Attorney II position. The trial court initially denied the State's Rule 12 motion, but after considering depositions and exhibits treated the State's later motion under Rules 12 and 56 as a summary-judgment motion and granted it. The North Dakota Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Towne v. Dinius, 1997 ND 125, ¶ 9, 565 N.W.2d 762
- Tarnavsky v. McKenzie County Grazing Ass'n, 2003 ND 117, ¶ 7, 665 N.W.2d 18
- Iglehart v. Iglehart, 2003 ND 154, ¶ 9, 670 N.W.2d 343
- Wahl v. Country Mut. Ins. Co., 2002 ND 42, ¶ 6, 640 N.W.2d 689
- Keator v. Gale, 1997 ND 46, ¶ 7, 561 N.W.2d 286
- Kemp v. City of Grand Forks, 523 N.W.2d 406, 408 (N.D. 1994)
- Anderson v. Meyer Broad. Co., 2001 ND 125, ¶ 14, 630 N.W.2d 46
- Kummer v. City of Fargo, 516 N.W.2d 294, 297 (N.D. 1994)
- First Nat'l Bank & Trust Co. v. Jacobsen, 431 N.W.2d 284, 288 (N.D. 1988)
- Muchow v. Lindblad, 435 N.W.2d 918, 923-24 (N.D. 1989)
- Kautzman v. McDonald, 2001 ND 20, ¶ 19, 621 N.W.2d 871