Cases



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Civil Rights

Councillor's "Retaliation"

Virgil Novotny was a member of the Tripp County Commission, and his neighbor and political ally, Roger Turnquist, was a member of the County's Weed Board. Virgil's nephew, Stephen Novotny, was "openly critical" of the County Commission and had a "long history of hostility" with both of these public officials. As part of this, Stephen wrote letters to the local newspaper and spoke at County Commission meetings. His uncle allegedly approached the local newspaper and ordered it to stop publishing Novotny's letters, telling the editor that if the newspaper continued to publish these letters, the County would use another newspaper for the publication of its legal notices. Novotny also claimed retaliatory enforcement: that members of the County Commission and County Weed Board had heavier weed infestations than Novotny, but weed abatement procedures were only instituted against Novotny. He sued the County, the County commissioners, members of the County's Weed Board, and the County sheriff in a Section 1983 suit, complaining of a deprivation of his First Amendment rights, deprivation of his Fourteenth Amendment rights, and civil conspiracy under 42 U.S.C. § 1985. The district court granted summary judgment in favor of the defendants, dismissing his claims on the basis, among other things, that (1) there was no evidence that the uncle was acting on behalf of the County in threatening to withdraw business from the newspaper, and (2) even if he was, any potential damages claim would belong to the newspaper.

On appeal, the U.S. Court of Appeals for the Eighth Circuit affirmed. To state a claim under Section 1983, a plaintiff was required to allege that the defendant acted under color of state law, and that the alleged conduct deprived the plaintiff of a constitutionally-protected federal right. An individual did not possess a constitutional right to require that a privately owned newspaper publish his letters to the editor, and the publisher had the discretion to determine what content ran on the editorial page. "Accordingly, any potential First Amendment claim arising from Virgil's threats to the newspaper belong[ed] to the newspaper and not to Novotny." Turning to the Fourteenth Amendment claim, Novotny failed to present sufficient evidence to support a prima facie substantive due process claim. Although he asserted "a property right in his chosen profession and business and a right not to have same wrongfully interrupted or interfered with by the actions of Tripp County," he failed to show how his profession was unlawfully interfered with by County officials or how any interference rose to the necessary "shocks the conscience" level. Moreover, he had not presented sufficient evidence to support an equal protection claim: there was no first-hand knowledge as to whether weed ordinances were being unequally enforced. In any event, the enforcement of county weed ordinances was based on "a number of subjective factors within the purview of the county officials' discretionary authority," and was not the result of arbitrary government action. *Novotny v. Tripp County*, 664 F.3d 1173 (8th Cir. 2011).

Prosecutorial Immunity

Howell, a high-school teacher, approached the principal to deny rumors that she had a sexual relationship with a minor student, JS. The principal spoke with JS, who initially agreed with Howell, but later changed his story to say he had sex with Howell several times at her apartment. The school called the police. JS gave police a description of the apartment and its location, and a tattoo and skin graft on Howell's body. Howell continued to deny a sexual relationship or that JS was ever in her apartment, but allowed police to photograph the interior of her apartment, and her tattoos. After confirming the photos matched the descriptions provided by JS, the detective determined to seek an arrest warrant. Howell offered to take a polygraph to clear herself, but this did not occur for reasons that were unclear (Howell claimed that the polygraph exam was called off by Sanders, the Commonwealth's Attorney whose office brought the charges; the record suggested that the exam may have been cancelled by the polygrapher himself). JS significantly changed his testimony at trial, and the jury acquitted Howell. Howell filed a lawsuit against Sanders, claiming violations of 42 U.S.C. § 1983 for false arrest, malicious prosecution, and violations of due process.

The district court held that Sanders's actions were taken in the course of his prosecutorial duties, entitling him to absolute immunity, and, in any event, his actions were not in violation of clear constitutional rights, thereby entitling him to qualified immunity. It reviewed the record and determined that Sanders took action only after the issuance of the arrest warrant, specifically, the decision to execute the arrest warrant without giving Howell the opportunity to take a polygraph. Howell raised three arguments on appeal with respect to the grant of absolute immunity: the arrest warrant was not supported by probable cause; even if there was probable cause, Sanders's acts of commanding Howell's arrest and denying Howell's request to take a polygraph were not related to advocacy and were investigatory; and last, none of Sanders's actions could be considered advocacy because he was not the attorney who prosecuted her case.

On appeal, the U.S. Court of Appeals for the Sixth Circuit af-