THE MARK O. HATFIELD

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the U.S. District Court for the District of Oregon
A Court Publication Supported by the Attorney Admissions Fund
Vol. VI, No. 6, March 3 , 2000

Torts

Following a 2-day court trial, Judge Hubel issued Findings of Fact and Conclusions of Law in a tort case where plaintiff alleged that defendants had drafted and circulated letters hostile to her because of her sexual orientation. Although one of the defendants had pleaded guilty to a criminal misdemeanor charge for the same conduct, Judge Hubel rejected plaintiff's argument that the defendant's Alford plea should be given preclusive effect in this civil case because the record in the this case did not show that there had been an assessment of the factual basis for the plea or its voluntariness. Nonetheless, based on the record at trial, Judge Hubel found that the defendant had drafted and circulated the letters and that the other had assisted in their preparation and mailing to some degree. He found both defendants jointly liable on plaintiff's claims of intentional infliction of emotional distress, invasion of privacy, and a civil claim of intimidation. He found for defendants on plaintiff's defamation claim because he concluded that the statements at issue were either opinion or not sufficiently factual to be susceptible of being proved true or false. Judge Hubel also determined that the statements in the letters amounted to true threats and that as such, an award of punitive damages was appropriate because the statements were no longer constitutionally protected. He awarded plaintiff $200,000 in non-economic damages, $52,500 in economic damages, and $5,000 in punitive damages.
Simpson v. Burrows, No. CV-97-6310-HU, Findings of Fact and Conclusions of Law issued February 22, 2000.

Habeas

A state defendant entered an Alford plea to a murder charge under the impression that he would receive a 22 year sentence with the right to seek prison term reductions. The judgment indicated a 22 year minimum sentence with a life maximum. The state parole board ignored the terms of the plea agreement and enforced a life sentence. The defendant then sought post-conviction relief in the state courts which was denied initially and on appeal.

In a federal habeas corpus petition, the defendant claimed ineffective assistance of counsel and denial of his rights under the 5th, 6th and 14th Amendments. Petitioner claimed that his plea was neither knowing nor voluntary because he had no idea that the state Board of Parole could effectively impose a life sentence.

Judge Ann Aiken held that the Oregon courts correctly determined that the defendant's petition was untimely under Oregon law. Defendant argued that the limitations period should not have begun until her learned of the Parole Board's decision. The court noted the absence of any authority for a notice rule under the statute and held that because the state court's decision properly denied relief on procedural grounds, petitioner's claims were procedurally defaulted and the action must be dismissed.
Johnson v. Palmateer, CV 99-333-AA (Opinion, Feb. 2000 - 9

pages).

Petitioner's Counsel:
Dennis Balske
Respondent's Counsel:
Douglas Park

Oregon Law

Judge Dennis J. Hubel granted a defense motion to dismiss claims challenging the constitutionality of O.R.S. 18.540, the statute which requires that 60% of a punitive damage award be paid to the Criminal Injury Compensation Account. As to two of the plaintiffs, the court held that their claims were barred by the Eleventh Amendment since they were seeking to recover against past judgments. As to one of the plaintiffs, the court held that her claim was unripe because her underlying state case was still pending before the Oregon Supreme Court. The court granted the parties leave to amend, with instructions, but cautioned that abstention might well be appropriate under the Pullman doctrine. Blume v. Myers, CV 99-1423-HU (Opinion, Feb. 17, 2000).

Plaintiffs' Counsel:
Mark McDougal
Defense Counsel:
Katherine Georges

Administrative Law

An owner of a construction firm who is of 50% Kazakh (or Kazak) ancestry brought an action under the APA claiming that the U.S. Department of Transportation unreasonably concluded that he is not a socially disadvantaged individual entitled to have his business certified as a disadvantaged business enterprise (DBE). Judge Brown granted the United States' motion for summary judgment on the basis that (1) the USDOT was not bound under the doctrine of issue preclusion by an earlier state agency decision finding plaintiff to be a member of a presumptively disadvantaged minority group; (2) plaintiff did not have a protected property interest in DBE certification by virtue of an earlier certification of plaintiff's company; and (3) the USDOT's decision denying plaintiff's construction firm DBE certification was neither arbitrary, capricious, an abuse of discretion, nor violative of the law. Judge Brown concluded that the USDOT reasonably considered the fact that the Kazakh community in Oregon consists of only plaintiff and his father; Kazakh physical features, culture and language are different from the Hans Chinese; and that plaintiff's membership in the Asian Chamber of Commerce and other groups is not convincing evidence that he holds himself out, or that he is identified as, an Asian-Pacific American. Kovtynovich, Inc. v. U.S.A., 99-816-BR (Opinion, Feb. 28, 2000).
Plaintiff's Counsel:
Thomas Larkin
Defense Counsel:
Tim Simmons

Honey, I Shrunk The Transcripts!

At the request of an attorney, we conducted an informal survey of the federal judges regarding their preferences for full-size or mini-transcripts submitted as exhibits.

Judges Hogan, Marsh, Brown, and Stewart prefer full-sized transcripts.

Judges Panner, Jones, King, Ashmanskas and Hubel prefer mini-transcripts.

Judge Haggerty prefers full-sized transcripts for trial exhibits and mini-transcripts for motion exhibits.

Judge Aiken has no preference, but urges the use of any practice that will save money for the clients.

All of the judges emphasized that either the full-text or the mini-versions must be highlighted.