

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1802
Summary Calendar

JOAN LOWRANCE
and
LINDA BARTON,

Plaintiffs-Appellees,

VERSUS

KING COUNTY, TEXAS, ET AL.,

Defendants,

KERRY HAVINS, et al.,

Defendants-Appellants.

Appeal from the United States District Court
for the Northern District of Texas
(7:93-CV-03-K)

(February 14, 1994)

Before GARWOOD, SMITH, and DeMOSS, Circuit Judges.

JERRY E. SMITH, Circuit Judge:*

Kerry Havins, Darwood Marshall, and Sam Fulton appeal the district court's denial of their motion to dismiss, based upon

* Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

legislative and qualified immunity, plaintiffs' 42 U.S.C. §§ 1983 and 1985 causes of action. Concluding that the plaintiffs have alleged facts sufficient to overcome the defenses of legislative and qualified immunity, we affirm.

I.

Plaintiff Joan Lowrance was employed by King County as Deputy County Clerk and Sheriff's Secretary/Dispatcher. She was terminated from her position as Deputy County Clerk and ultimately from the Secretary/Dispatcher position allegedly because of religious differences with the County Clerk¹ and disputes concerning the hiring of a county employee. After Lowrance filed a grievance over the proposed reduction of the Secretary/Dispatcher position to part-time without benefits, the County Commissioners Court eliminated the position altogether by removing it from the budget. This budget change would have taken effect on October 1, 1992.

Plaintiff Linda Barton was employed by King County as Deputy Treasurer. In September 1992, in its budget meetings, the Commissioners Court reduced the position of Deputy Treasurer to part-time without benefits. Barton filed a grievance with the Commissioners Court, which ratified its earlier decision. Barton was terminated from her position by the County Treasurer on September 18, 1992. Both plaintiffs also allege that the defendants, who are three of the five members of the commissioners

¹ The County Clerk allegedly played religious tapes in the clerk's office and stated that all Baptists were going to hell.

court, stigmatized Lowrance and Barton by publicizing false reports of illegal activities allegedly committed by them.

II.

Plaintiffs brought suit against King County and the three members of the Commissioners Court, Havins, Marshall, and Fulton, under §§ 1983 and 1985 alleging sexual discrimination in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment, conspiracy to interfere with civil rights, and various state law claims. Defendants moved for dismissal based upon legislative and qualified immunity and failure to state a claim under FED. R. CIV. P. 12(b)(6).

The district court denied the motion to dismiss, finding that (1) plaintiffs' causes of action for sexual discrimination, denial of due process, conspiracy to interfere with civil rights, and state law violations stated claims upon which relief could be granted; (2) factual issues remained as to whether the defendants were acting in their legislative rather than administrative capacity; and (3) plaintiffs alleged actions that were in contravention of clearly established law at that time. The district court did, however, dismiss plaintiffs' claim for interference with freedom of religion. Defendants bring this appeal from the district court's collateral order. See Mitchell v. Forsyth, 472 U.S. 511, 528 (1985).

III.

Our review is limited to judging the application of qualified and legislative immunity under the facts pled by the plaintiffs. Schaper v. City of Huntsville, 813 F.2d 709, 713 (5th Cir. 1987). Nevertheless, we first must determine whether the plaintiffs have stated a claim under which relief could be granted. Siegert v. Gilley, 500 U.S. 226, ___ (1991).

A.

Dismissal would have been inappropriate under rule 12(b)(6), as the complaint states causes of action for sexual discrimination, denial of due process, conspiracy to interfere with civil rights, and state law violations. The complaint alleges that the defendants eliminated plaintiffs' jobs because they were female, eliminated only positions held by female employees, and gave false, pretextual explanations for doing so. These allegations, if true, establish that the employment decision had a discriminatory purpose and effect. Furthermore, the complaint sufficiently alleges facts that support plaintiffs' other claims.

B.

Even where a cause of action is stated, legislative officials are absolutely immune from claims for both monetary and equitable relief when acting within the sphere of legitimate legislative authority. Tenney v. Brandhove, 341 U.S. 367, 376 (1951). This immunity is afforded to local, as well as state, legislative

officials. Minton v. St. Bernard Parish Sch. Bd., 803 F.2d 129 (5th Cir. 1986). Nevertheless, traditional legislative functions, such as adopting a budget, may become administrative, and therefore not protected by legislative immunity, if the action singles out specific individuals or exceeds the powers granted to the legislative body. Hughes v. Tarrant County, 948 F.2d 918, 921 (5th Cir. 1991). Moreover, the fact that some acts may qualify for absolute immunity does not immunize an official from other illegal acts in furtherance of a common scheme. Thomas v. Sams, 734 F.2d 185, 187 (5th Cir. 1984), cert. denied, 472 U.S. 1017 (1985).

We conclude that the plaintiffs have pled facts sufficient to overcome the defense of legislative immunity, in the circumstance of this small county having only fourteen non-elected employees. In the context of rule 12(b)(6), the facts alleged in the complaint are assumed to be correct. Doe v. Louisiana, 2 F.3d 1412, 1413 (5th Cir. 1993). A complaint may not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief. Id. at 1416 (citations omitted).

Plaintiffs allege that certain activities occurred outside the scope of the Commissioners Court meetings and outside the budgetary process. These facts, assumed to be correct, would strip away the defendants' claim of legislative immunity, and therefore dismissal was inappropriate. We express no opinion as to the ultimate merits of the case, however, and the district court is free to re-examine the issue of legislative and qualified immunity, in light of facts

developed hereafter. We hold only that dismissal at the rule 12(b)(6) stage would be error.

C.

Plaintiffs have also pled facts that would overcome a defense of qualified immunity. Plaintiffs allege that the defendants sexually discriminated against them and stigmatized them by discharging them without due process. These actions, if true, would be in contravention of clearly established law at that time; therefore, the facts as pled overcome the defense of qualified immunity. Again, we express no view as to the ultimate merits of this case.

IV.

In summary, the district court properly declined to dismiss this action for failure to state a claim. Its order, accordingly, is AFFIRMED, and this matter is REMANDED for further proceedings.