UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-2114
Summary Calendar

ROBERT R. "COACH" NELSON,

Plaintiff-Appellant,

VERSUS

SUE PAYNE, In her Official and
Individual Capacity, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-91-0694)

(February 21, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:[1]

Appellant, Robert R. Nelson, sued the Houston Independent School District and two of its employees under § 1983 complaining that their failure to hire him in 1990 violated his constitutional rights to free speech, due process, and equal protection. Defendant-Appellees moved for summary judgment which the district court granted. Nelson appeals. We affirm.

Nelson was employed as a teacher and coach by the Houston

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[1] Local Rule 47.5 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Independent School District until 1979 when he resigned. During that time, he claims to have intervened in the administration of corporal punishment to a student by a school official, and to have publicly spoken out against such activity. In 1988 he sought reemployment and was rehired, but was eligible only for six months due to intervening changes in the teacher certification laws of Texas. For continued employment, he was required to pass the Texas Examination for Current Administrators and Teachers. He failed and as a result resigned in 1989. He later passed the test and reapplied for employment in 1990. He was not interviewed or hired. He sued alleging that the failure to hire was in retaliation for his speaking out in connection with the corporal punishment incident years before.

Any First Amendment claims that Nelson may have had are barred by the two-year statute of limitations which is applicable. See Ali v. Higgs, 892 F.2d 438, 439 (5th Cir. 1990); Cervantes v. IMCO, Halliburton Services, 724 F.2d 511, 513 (5th Cir. 1984). Additionally, Appellant's speech is not protected. A public employee's speech is protected only if it addresses a matter of public concern. Connick v. Myers, 461 U.S. 138 (1983). Whether speech is a matter of public concern is determined by the content, forum, and context of a given statement. Connick, 461 U.S. at 147-48. Appellant raises no issue of fact on this question. His speech was private, relating to his personal role in the affair and his opinion concerning it. There is no summary judgment evidence that his speech was communicated to the public or involved a policy

or practice of the Houston Independent School District. The subject (corporal punishment) may well have been of public concern, but Nelson has not raised an issue that his speech on the subject was.

Appellant next argues that the failure to rehire him after he passed the certification test violated his right to procedural due process. To show the necessary property interest, he advances two arguments: First, that the Term Contract Nonrenewal Act gives teachers working under a term contract the necessary property interest. Accepting without deciding the accuracy of that allegation, it avails Nelson nothing because there is no issue of fact raised that there was such a contract in effect when he applied for but was not afforded reemployment.

Second, Nelson alleges that Houston Independent School District had a policy that teachers who resigned because they did not pass the certification test would be entitled to automatic reemployment when they did pass it. Assuming without deciding that such a policy, if in existence, would create a property right, Appellant has submitted no competent summary judgment evidence to raise an issue that there was such a policy. His affidavit does contain hearsay to that effect but hearsay is not competent summary judgment evidence. Martin v. John W. Stone Oil Distributor, Inc., 819 F.2d 547, 549 (5th Cir. 1987).

The equal protection claim raised by Appellant in the trial court is not asserted on appeal.

As a final matter, Appellant contends that Defendant Payne was

not entitled to qualified immunity. Since Appellant has failed to make out a case on the merits under § 1983 we need not consider this argument.

AFFIRMED.