

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2468
Summary Calendar

BRENT S. SHERROD,

Plaintiff-Appellant,

VERSUS

CITY OF WEST UNIVERSITY PLACE, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-92-1918)

(April 5, 1994)

Before KING, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:¹

Brent Sherrod challenges the district court's adverse judgment concerning his former municipal employment. We **AFFIRM**.

I.

In January 1991, Sherrod was employed as the City Engineer for West University Place, and was to supervise the Department of Engineering and Construction. In April 1991, after the election of a new Mayor and several new City Council members, the City Manager

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

began to create a plan to streamline the City's bureaucracy; the plan was finalized that June. Part of the plan involved eliminating the City Engineer position and consolidating the Department of Engineering and Construction with the Public Works Department. The City Council approved the first phase of this plan in July 1991.

According to the City Manager, Sherrod assisted in preparation of the plan, and concurred in the City Manager's recommendation that the City Engineer position be eliminated. Following approval of the plan, Sherrod applied for the Public Works Director position, but the City Manager did not recommend him to the City Council. Rather, he urged Sherrod to apply for the job of Building Official, which would have involved a pay decrease from the City Engineer salary. Sherrod, however, resisted, telling the City Manager that he had no interest in any position other than as Public Works Director. In August 1991, Sherrod resigned, informing the City Manager of his decision to accept employment elsewhere.

Sherrod filed a complaint in Texas state court in November 1991, claiming that the defendants (the City, the Mayor, and City Council members) violated his Texas state constitutional rights, committed several torts against him, and acted contrary to the Texas Open Meetings Act, and seeking monetary damages. His amended complaint added federal constitutional claims, and the case was removed to district court.

The defendants moved for judgment on the pleadings, see Fed. R. Civ. P. 12(c), or, in the alternative, for summary judgment.

See Fed. R. Civ. P. 56. The district court entered judgment on the pleadings on the Texas claims (including the Open Meetings claim), and summary judgment on the federal constitutional claims.

II.

Sherrod challenges the judgment on the pleadings on his Texas Open Meetings Act claim, and the summary judgment on his federal claims.

A.

Concerning the summary judgment, Sherrod asserts that: the elimination of his job was in political retaliation for his exercise of First Amendment free association and speech rights; he was deprived of a property interest without due process of law; and he was denied a liberty interest without due process of law.

For the reasons set forth in the district court's well-reasoned and thorough opinion, we reject these assignments of error. We briefly reiterate some of those reasons: Sherrod's speech claim fails because reprimanding a subordinate employee for poor job performance does not amount to speech on a subject of public concern sufficient to implicate the First Amendment (and, in any event, the individual defendants possess qualified immunity)²; his free association claim fails because the former mayor and former City Council member with whom Sherrod alleged an

² Sherrod contends that the Texas constitution, Article I, Section 8, affords him greater speech rights than the federal constitution. To the contrary, "Texas courts have not recognized a violation of Article I, Section 8, as an actionable constitutional tort." ***Gillum v. City of Kerrville***, 3 F.3d 117, 122 (5th Cir. 1993), *cert. denied*, 114 S. Ct. 881 (1994).

associational interest both acknowledged only a casual, social connection with Sherrod, and because any alleged association was not proven to be for a constitutionally protected purpose (and, again, the individual defendants would enjoy qualified immunity); the first of his two due process claims fails because he had no property interest in his continuing employment (and, again, the individual defendants would enjoy qualified immunity); and the second, because his liberty interest was not affected by a stigmatizing false charge (or, at a minimum, a press report regarding inefficiency in the Sherrod's department, even if defendants caused it to be made, would not violate clearly established rights).

In sum, our *de novo* review of the record confirms the summary judgment.

B.

Concerning the judgment on the pleadings, the district court held:

Sherrod also seeks damages under the Texas Open Meetings Act ... for defendants' alleged failure to give adequate notice of the purpose of the City council meeting, on July 15, 1991, at which Sherrod's position was abolished. The only remedies specifically mentioned by the Act are for mandamus or an injunction; compensatory damages are not included in the Act's remedial provisions. Tex. Rev. Civ. Stat. Ann. Art. 6252-17 § 3(b). Therefore, ... a violation of the Act does not give rise to a cause of action for damages. Cf. Hankins v. Dallas Independent School District, 698 F.Supp. 1323, 1332 (N.D.Tex. 1988). Accordingly, ... Sherrod's claim for damages ... must be dismissed.

Sherrod concedes that the court correctly analyzed the available remedies. On appeal, he contends for the first time that

he is entitled to injunctive relief and attorneys' fees for violation of the Act. In essence, he seeks to amend his complaint. No authority need be cited for the proposition that this court does not address claims for relief not presented to the district court.³

III.

For the foregoing reasons, the judgment is

AFFIRMED.

³ We reject appellees' request for attorneys' fees.