

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5075
Summary Calendar

LYNETTE BRINK,

Plaintiff-Appellant,

v.

MCKINNEY INDEPENDENT SCHOOL DISTRICT, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
(CA 4 92 CV 237)

(January 4, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.*

By EDITH H. JONES:

The district court granted summary judgment on Brink's claim against the school district and various employees who allegedly had violated her due process or first amendment rights in connection with an unemployment contract dispute. Unlike the usual posture of these cases, Brink does not complain that she was terminated by the school district; instead, it is the district's interference with her attempt to switch jobs from that district to

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

another that is the heart of this dispute. Agreeing with the district court that Brink did not adduce evidence sufficient to create a genuine issue of material fact on her constitutional claims, we affirm the summary judgment.

Brink's affidavit, the only evidence offered in response to appellees' summary judgment motion, alleges that although she signed a commitment letter to work in the MISD during the 1989-90 school year, she declined to sign the formal contract that was offered on August 3 and reached an oral agreement with Richardson Independent School District (RISD) shortly thereafter. Several employees of MISD verbally threatened to "black list" Brink and to enforce her MISD contract or to have her teaching certificate revoked if she did not sign it. MISD does not dispute Brink's statement that Carol Hunter, its personnel director, effectively discouraged the hiring of Brink by RISD when she told its representative that MISD expected to hold Brink to her employment contract or to file a complaint for abandonment of contract with the TEA, seeking enforcement of the contract or suspension of Brink's teaching certificate.

Brink also attested that from August, 1990 through the 1991-92 school years, when the Texas Education Agency administrative hearing process terminated in her favor, Brink was unable to get a teaching position in her specialty at a number of schools.

Brink also stated in her affidavit that the district retaliated against her for speaking out on a matter of public

concern, i.e., the district's treatment of special education and underprivileged children.

We essentially agree with the district court's analysis and disposition of this case. In addition, we observe that there are two significant flaws in Brink's due process claim. First, she was not denied a job with MISD--they wanted her to work there. Thus, her only alleged "deprivation" of a "property right" is based on an oral offer of employment from the RISD. Brink cites no authority supporting her contention that that was an enforceable contract. Moreover, we are unaware of any case law establishing that state officers' interference with a prospective contract between a plaintiff and a third party somehow invokes procedural due process protections. The second hurdle Brink faces is that she was given administrative due process before the TEA and she prevailed. To the extent she claims damage by having the lawsuit hang over her head for one and one-half years, this injury is attributable to the state administrative process rather than MISD. Brink has never alleged a malicious prosecution or abuse of process claim against MISD--if those are legally cognizable here--so we decline to consider such arguments. Contrary to Brink's unsupported assertion, we fail to see how Grounds v. Tolar ISD, 36 Tex. S. Ct. Jour. 1036, 1037, ____ S.W. 2d ____ (Tex. 1993), can possibly support the claim that she had an enforceable contract with RISD or any kind of property right that was breached by MISD.

Further, as the district court properly analyzed it, Brink has not stated a sufficient claim for stigmatization by MISD

in connection with her attempts to gain employment elsewhere. We also rely on the district court's opinion for its discussion of these issues and all other issues not mentioned herein.

AFFIRMED.