IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-20599
Summary Calendar

CAROLYN SUE JOHNSTON, ET AL.,

Plaintiffs,

CAROLYN SUE JOHNSTON,

Plaintiff-Appellant,

versus

HARRIS COUNTY APPRAISAL DISTRICT,
ET AL.,

Defendants,

HARRIS COUNTY APPRAISAL DISTRICT,
JAMES ROBINSON, GEORGE N. WYCHE and
GUY GRISCOM,

Defendants-Appellees.

Appeal from the United States District Court for the
Southern District of Texas
(CA-H-92-3159)

(June 2, 1995)

Before KING, JOLLY, and DeMOSS, Circuit Judges.

PER CURIAM:*

Johnston first contends that the district court erred by granting summary judgment on her state law claims. She argues that

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

she has an implied cause of action for damages pursuant to the free speech and due course of law provisions of the Texas Constitution. Alternatively, she contends that the district court should have remanded her state law claims to state court because of the unsettled state of Texas law. Johnston's contention must be rejected.

The Texas Constitution provides no implicit cause of action for damages. City of Beaumont v. Bouillion, 38 Tex. Sup. Ct. J. 282, 1995 Tex. LEXIS 13 at *14-*25 (Tex. 1995). It is true that in Idoux v. Lamar Univ. System, No. 93-5163 (5th Cir., Sep. 28, 1994)(unpublished), we reversed the dismissal of a plaintiff's Texas constitutional claims because of the unsettled state of Texas law. Id. at 13-15, but that was before Bouillion. Bouillion is dispositive of Johnston's state law claim on its merits.

With respect to Johnston's First Amendment claim—the only remaining constitutional claim she raises on appeal—we agree that she failed to carry her burden to defeat summary judgment in favor of the defendant Robinson—the only defendant whose conduct she challenges on appeal.

Johnston's evidence fails to show that, at the time of her discharge, Robinson knew that Johnston had ever exercised her First Amendment rights by speaking out to other persons concerning the matters relating to HSA, Lindsay, or POGO. Consequently, she failed to show that Robinson's discharge of her was motivated by her exercise of her First Amendment rights.

Finally, Johnston contends that the district court erred by imposing costs on her. The appellees contend that this court lacks jurisdiction to consider Johnston's contention because Johnston failed to file a notice of appeal following the imposition of costs. The appellees also contend that the imposition of costs was a proper exercise of the district court's discretion.

Johnston's notice of appeal from the grant of summary judgment was premature regarding the order awarding costs. The notice of appeal, however, was effective as to that order. See Carter v. General Motors, 983 F.2d 40, 42 (5th Cir. 1993)(judgment announced but court deferred disposition of motion for costs).

Generally, "costs other than attorneys' fees shall be allowed as of course to the prevailing party unless the court otherwise directs[.]" FED. R. CIV. P. 54(d)(1). "The district court has wide discretion in awarding costs, and [this court] will not disturb its decision absent a clear showing of abuse of discretion." Carter, 983 F.2d at 44.

Johnston contends that her claims were legitimate; that summary judgment does not automatically support imposition of costs; and that the appellees cannot demonstrate that her belief that she is being deprived of her constitutional rights is without foundation. Notwithstanding these arguments, she has nevertheless not made a clear showing of an abuse of discretion in awarding costs against her.

A F F I R M E D.