

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60502
Summary Calendar

JOSE NOE DIAZ,

Plaintiff-Appellant,

VERSUS

COUNTY OF HIDALGO, TEXAS, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(93-CV-113)

(February 16, 1995)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

JERRY E. SMITH, Circuit Judge:*

Jose Diaz was the Deputy Director of Hidalgo County's Department of Community Affairs ("DCA"). The Executive Director of DCA, Jesse Villarreal, terminated Diaz from that position without offering him any statement of reasons or opportunity to respond. Diaz filed suit against the county and Villarreal under 42 U.S.C.

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 Pursuant to that rule, the court has determined that this opinion should not be published.

§ 1983, alleging that the termination denied him a property interest in continued employment in violation of his due process rights. The district court granted defendants' motion for summary judgment.

We review a grant of summary judgment de novo. Farm Credit Bank v. Farish, 32 F.3d 184, 189 (5th Cir. 1994). The Due Process Clause protects workers from termination without notice and an opportunity to be heard where there is a property interest in continued employment. Such a property interest can be created by the employer's personnel manuals and policies. Bueno v. Donna, 714 F.2d 484, 492 (5th Cir. 1983). Here, the propriety of summary judgment rests on the district court's finding that Diaz was an "at will" employee, with no property interest in continued employment.

Under the Texas "at will" employment doctrine, a public employee has no property interest in continued employment absent a policy statement by a governing body. Garcia v. Reeves County, 32 F.3d 200, 203 (5th Cir. 1994). Diaz concedes that the Official Merit System Rules and Personnel Policies of the County of Hidalgo DCA, by their own terms, do not apply to him as Deputy Director. Instead, he argues that a bizarre oral exchange among the Hidalgo County Commissioners created such a policy.

The exchange took place when the Commissioners were discussing whether it would be appropriate to amend the Merit System Rules and Personnel Policies of the DCA to expand the class of exempt employees so that administrative assistants would be included. In the conversation, various commissioners expressed some of their

concerns about the proposed policy in legalistic terms. Even when taken as a whole and considered in light of the personnel policies at issue, the comments of the commissioners are not easily comprehended.

Concerns were raised in terms of the First, Second, and Thirteenth Amendments to the United States Constitution, as well as the Due Process Clause. By quoting some of this careless language out of context, Diaz hopes to undermine the express language of the personnel policies adopted by the commissioners.

We find nothing in the oral record presented by Diaz to indicate that the commissioners created a property interest in continued employment. As Diaz had no property interest in continued employment, he did not state a cognizable claim under the Due Process Clause, and the summary judgment was proper.

AFFIRMED.