

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-40233

RICHARD G. PAINTER, PH.D, ET AL.,

Plaintiffs,

RICHARD PAINTER, PH.D. and
MARTHA LOUISE AIKEN, PH.D.,

Plaintiffs-Appellants,

versus

GEORGE A. HURST, ET AL.,

Defendants,

GEORGE A. HURST, RONALD F. DODSON,
MARK ATKINSON, and THE UNIVERSITY OF TEXAS
HEALTH CENTER AT TYLER,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas, Tyler Division
(6:94CV653)

March 26, 1997

Before REAVLEY, KING, and BARKSDALE, Circuit Judges.

PER CURIAM:*

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

Drs. Richard Painter and Martha Louise Aiken appeal the district court's denial of their motions for judgment as a matter of law and for new trial, after a jury verdict denying their claim for retaliatory dismissal in violation of their First Amendment right to free speech.

Some witnesses testified that the appellants were poor performers who were discharged on account of their lack of productivity, while other witnesses testified that appellants were performing well in their positions. The jury found that the appellants had not lost their jobs because of retaliation for engaging in protected speech. Needless to say, we cannot upset a jury finding where, as here, there was sufficient evidence in the record such that a reasonable juror could have reached the verdict in question. *Texas Farm Bureau v. United States*, 53 F.3d 120, 123 (5th Cir. 1995).

In the light of the fact that the district court found for the appellants on whether a First Amendment interest was implicated, and therefore sent this fact issue to the jury, we need not reach whether the First Amendment was implicated. As noted, the jury reasonably found that it was not infringed upon.

And, for the above-stated reasons, the district court did not abuse its discretion in denying a new trial.

AFFIRMED