_____No.

In the Supreme Court of the United States

Johanna Beanblossom, Petitioner

Vs

Bay District Schools

On Petition for Writ of Certiorari to the Florida Supreme Court

Corrected Petition for Writ of Certiorari

Cecile M Scoon /s/
Cecile M. Scoon, Esq.
FL Bar #834556
Peters & Scoon
25 East 8th Street
Panama City, FL 32401
Telephone: (850) 769-7825
Fax: (850) 215-0963

OUTLINE to SUPPORT QUESTIONS PRESENTED

Petitiner was a long-time school teacher in the Bay District School System in Bay County Florida. On or about February-April 2013, Petitioner complained to her principal and other administartors that a student was being physically and mentally bullied by other students and no disciplainary action was taken. Shortly after these complaints were made, Petitioner was terminated a few weeks before the school year ended. As a result, Plaintiff filed a lawsuit under state law and subsequently applied for and was hired as a teacher in a different school but in the same school district. Shortly after Petitioner was hired the Human Resources person for the district fired Petitioner and stated in later testimony that if Petitioner ended her litigation then her chnaces of being employed would increase. Litigation proceded. Petitioner filed a Motion to Compel answers to discovery because there was about a year's delay in respondent's providing requested discovery. After discovery was completed, Respondent filed its motion for summary Judgment. Petioner responded and filed a motion to amend her complaint to add a First Amendment retaliation claim along with her response to the Motion for Summary Judgment. The motion to Amend was denied and Summary Judgment granted.

QUESTIONS PRESENTED

1. Absent unfair delay or futility, does fundamental due process require that a Plaintiff be allowed to amend a complaint at least once before a Court's ruling on Summary Judgment?

2. Should a Defendant who caused a lengthy delay in litigation be prevented from prevailing on opposing a first motion to amend?

3. Does a school teacher have an obligation to file a lawsuit pursuant to her job as a teacher that makes her first amendment retaliation claim for filing a lawsuit futile?

4. Is a First Amendment Claim of retaliation for an employee petitioning the courts such a fundmental due process issue that denial of Plaintiff's first motion to amend to add this claim was abuse of discretion?

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Beanblossom v. Bay Dist. Schools., 2019 Fla. LEXIS 1195

Supreme Court of Florida, July 10, 2019, Decided, CASE NO.: SC19-455

STATEMENT OF JURISDICTION

This court has jurisdiction pursunat to 28 U.S.C. § 1257(a). The Florida Supreme Court denied review of the Appellate Court order on 10 July 2019.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves issues of fundamental due process under the 14th Amendment to the US Constitution and because of the fundamental right of a citizen to be able to petition the courts without retaliation from the state in accordance with the First Amendment to the U.S. Constitution.

The First Amendment to the U.S. Constitution reads:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Section 1 of the Forteenth Amendment of the U.S. Constitution reads:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

1. The Petitioner began her teaching for Bay District Schools on or about 1985. App. R. 241. (1rst Aff Beanblossom Nov ’15)

2. There were several students in Ms Beanblossom’s classes that would bully the other students. App. R. 563 (2d Aff Beanblossom May ’16)

3. In April 2013, Ms. Beanblossom wrote to the Principal and sent a computer generated report about the bullying to the District office responsible for stopping and monitoring bullying. App. R. 563-564. (2d Aff Beanblossom May ’16)

4. Within about a month after submitting her last report about students being bullied and lack of administration help to stop the bullying, Ms Beanblossom was summarily called into her principal’s office and told to sign her resignation papers. App. R. App. R. 257 (Aff Sheffield).

5. Ms. Beanblossom was terminated the same day that she was told to resign her position. App. R 346 (Dep Michalik p 28 line 7 - p 29 line 19).

6. On the day she was terminated , Ms Beanblossom contacted the School District's Human Resources Office and applied for a substitute teacher position. App. R. 242 (1rst Aff Beanblossom para 10)

7. Ms. Beanblossom was ready to be hired to be a substitute teacher and that all paperwork was in place for her to start doing substitute teacher work immediately. App. R. 242 (1rst Aff Beanblossom para 10)

8. Ms. Beanblossom filed a lawsuit complaining that she was wrongfully terminated in retaliation in violation of FS 112.3187. App. R. 011-031.

9. Bay District School's Human Resources officer, Sharon Michalik, stated in depositions that Ms Beanblossom's chances for employment at the school board would improve if she dismissed her lawsuit. App. R. 355 (Dep Michlaik p 78 line 21-25).

10. Ms. Beanblossom has applied numerous times for School District employment for positions that she is qualified for that are difficult to fill because there is a critical shortage of teachers that are qualified to fill the positions. App. R. 243 (1rst Aff Beanblossom para 12-13)

11. Ms. Beanblossom has applied for over sixty jobs with Bay District Schools that she was qualified for but she did not receive the position. App. R. 243 (1rst Aff Beanblossom para 12-13)

12. The School District also filed a complaint with the Department of Education against Ms. Beanblossom alleging that she treated children differently based on race, but this determined to be unfounded. App. R. 243 (1rst Aff Beanblossom para 14)

13. Bay District Schools placed a copy of Ms Beanblossom's lawsuit in her personnel records which was inappropriate according to Ms Michalik App. R. 243 (1rst Aff Beanblossom para 13) App. R. 284 (Dep Michalik p 11 line11- p 14 line 19)

14. In October 2016, Plaintiff filed a response to the Motion for Summary Judgment and also sought leave to amend its negligent supervision complaint to a claim for 1983 violation under color of state law. App. R. 68- 690,

15. On November 7, 2016, Petitioner filed a separate Motion for Leave to Amend attaching the proposed complaint. App. R. 698-739

16. On January 5 2017, the court denied the motion to amend and granted the motion for summary judgment. App. R. 763

17. On January 20, 2017, Petitioner filed a Motion for Rehearing. App. R. 782- 792.

18. On February 7, 2017, The Court denied the motion for rehearing. App. R. 797.

19. Petitioner filed her Notice for of Appeal on March 8, 2017, App. R. 837-847.

20. The appellate Court entered an Order Affirming Trial Court Order dated 14 Jan 2019

21. Petitioner filed a Motion for Rehearing which was Denied.

22. Petitioner filed a Notice of Conflict Jurusdiction with the Florida Supreme Court dated 18 Febrauary 2019

23. The Florida Supreme Court entered an Order denying Jurisdiction 10 July 2019.

REASONS TO GRANT THE PETITION

QUESTION 1.

1. Absent unfair delay or futility, does fundamental due process require that a Plaintiff be allowed to amend a complaint at least once before a Court's ruling on Summary Judgment?

The Standard of Review of Order on denying a motion to amend is an abuse of discretion. In addition, as a general rule, refusal to allow an amendment will be considered an abuse of discretion. Gate Lands Co. v Old Ponte Vedra Beach Condominium, 715 So 2d 1132 (5 DCA 1998).

FRCP 1.1.190 (c) provides that amendments should bet liberally allowed. Case law has established that all doubts should be resolved in favor of the party moving for leave to amend. Furthermore, it is well settled that the appellate courts will find an abuse of discretion if in the denial of a motion for leave to amend absent these factors: 1. Prejudice to opposing party, the privilege to amend has been abused, or amendment would be futile. Dimick v Ray, 774 So. 2d 830, (4 DCA 2000).

In the case at bar there was only one proposed amended complaint proferred, thus there was no abuse of this pleading and thus Noble vs Martin Mem'l Hosp' Ass'n, Inc. 710 so 2d 567 (4 DCA 2016) (holding that numerous amendments should not be allowed), Brown v

Montgomery Ward & Co. 252 so 2d 817 (1DCA 1971) (holding that when a trial date is set and numerous leaves to amend granted, summary judgment may be warranted) that can be easily distinguished.

The amended complaint was not simply filed to frustrate summary judgment but because the Petitioner had a legitimate claim of retaliation pursuant to policy and practice of the Bay District Schools of not ever investigating the veracity of claims agent provisional teachers as the Human Resources Manger testified that she was unconcerned about such things as her job was only to follow the contract and it gave her the right to fire without just cause and she did so every time. She testified that it was customary to never investigate any claims made against a provisional teacher because the contract does not require it even though a principal could be retaliating or discriminating unlawfully. App. R. 4341-344 (Dep Michalik p 23 l. 10- p 29 l. 22.)

The record was also replete with Bay District Schools ignoring its own anti- bullying rules and regulations in that it allowed a principals known for screaming in the face of female teachers and calling them liars to remain employed. App. R. 499 (Dep. Montague p 16 line 3- p20 line8), App. R. 549-552)It also had a pattern and policy of failing to protect its students and teachers by throwing away disciplinary reports written by teachers and punishing teachers for speaking up and complaining in violation of the First Amendment rights to free speech. App. R. 243 (Aff Beanblossom para 13) App. R. 284 (Dep Michalik p 20 line 4-25)

The record of retaliation was clear with regards to Petitioner and to others who spoke up like another teacher, Ms Montague who was screamed at by the same principal Mr. Sheffield. App. R. 499 (Dep. Montague p 16 line 3- p20 line8), App. R. 549-552). In addition, with regards

to Petitioner, the Human Resources officer stated outright that Petitioner's chances of getting employment as a substitute teacher would improve via she dropped her legal case. App. R. 355 (dep Michalik p 78 line 21-25) Ms Michalik also stated that there was a copy of Petitioner's lawsuit in her personnel files where it did not belong. App. R. 243 1rst
Aff. Petitioner), App. Rec. 346 (Dep Michalik p 11 line 11- p 14 line 19)

Finally, Ms Mchalik stated that she is the decision maker who determines that an applicant will not be allowed to be a substitute teacher and Petitioner was told by the Human Resources clerk that Ms Michalik told the clerk that Petitioner could not be a substitute teacher although she was qualified too do so. App. R. 242 (1rst Off Beanblossom), App. R. 350 (Dep Michalik p 75 line 15-18).

Furthermore, the initial complaint contained almost all elements of a pattern and practice complaint against the state for deprivation of First Amendment rights under color of law. It stated that the School district had a pattern and practice of depriving teachers and students of their rights by refusal to provide a safe learning environment. App. R. 011-031 (Initial Complaint para 17-20 and 59).
In her initial complaint Petitioner stated that he practice of failing to provide a safe learning environment was well known and a common practice . App. R 011- 031.

The initial complaint also stated that many teachers and students shad endured the same treatment and that the failure to provide a safe learning environment was well known but administrators systemically threw away disciplinary reports or failed to taker corrective action

with the students and their parents. App. R. 011-031. Petitioner also stated that the failure to provide a safe learning environment was brought to the attention of Bay District Schools but no corrective action was taken.

Under these circumstances, the school board was well placed on notice of the alleged wrongs of its agents and the request to amend the complaint to more specifically name a closely related action cause of action should have been authorized. Dausman v Hillsborough Area Reg'l Transit, 898 So. 2d 213 (2 DCA 2005) (leave to amend should be freely given in general and even more so when the amendments is based upon the same conduct or transactions as the original complaint).

Under these circumstances, it was reversable error fand abuse of discretion for the court to grant summary judgment. Yun Enters., Ltd v Grazani , 840 So.2d 420)5 DCA 2003) (holding a party may with leave of court amend a pleading after hearing and ruling on a motion for summary judgment)

QUESTION 2

2. Should a Defendant who caused a lengthy delay in litigation be prevented from prevailing on opposing a first motion to amend?

Petitioner contends that this Honorable Court should consider that over 1 year of delay in the litigation was due to the Respondent's refusal to provide needed discovery and that Respondent only did so after Petitioner filed a Motion to Compel. (App R. 668-676) Under these circumstances, the Appellee should not be allowed to benefit from the delay that it engendered in the litigation. The Respondent's relief should not have been granted due to their unclean hands. Roberts v Roberts, 84 So. 2d 717 (Sup Ct Fl 1956).

In essence, the trial court rewarded Respondent for delaying the litigation and then allowed the Respondent to use the argument that several years had passed as a reason to deny the Petitioner's Motion for Leave to Amend. Furthermore Respondent and the court had been put on. notice about a month earlier that Petitioner intended on filing an Amended Complaint with certain causes of action. There was no surprise and no prejudice to respondent who created one third to one half of the delay. Under these circumstances, denial of the Motion to Amend was an abuse of discretion as motions to amend should be liberally granted. Dimick.

QUESTION 3

3. Does a school teacher have an obligation to file a lawsuit pursuant to her job as a teacher that makes her first amendment retaliation claim for filing a lawsuit futile?

The stated reasons that this Honorable Court found the First Amendment count to be futile were that the Petitioner could not complain about bullying and failure of the school to protect students and teachers as a citizen when she was employed as a teacher and had a duty to report these allegations pursuant to her work. This analysis fails to take into account that in paragraph 37 and 38 of the Proposed Amended Complaint, which were incorporated in the other counts, Petitioner stated that she was retaliated against unlawfully because she filed a lawsuit; and she was told that if she dismissed her lawsuit then her chances for employment with the school board would go up. (App R. 355, Deposition Michalik p 78 l 21-25)

It was certainly not Petitioner's duty as an employee or former employee of the School Board to file a lawsuit against the school board, and therefore Petitioner's First Amendment rights were intact and it was not futile for her to file a complaint based on violation of her First Amendment rights. Slay v Hess, 621 Fed. Appx. 573 (11th Cir. 2015). Therefore, Petitioner contends that count IV of the Proposed complaint was not futile and should have been allowed to be amended.

QUESTION 4

4. Is a First Amendment Claim of retaliation for an employee petitioning the courts such a fundmental due process issue that denial of Plaintiff's first motion to amend to add this claim was abuse of discretion?

Petitioner contends that the preservation of the right to petition the courts for redress against the retaliation of a stste actor is so fundamental and important that a Petitioner's first Motion to amend to add that count should have been granted. Edwards vs South Carolina , 372 US 229 (1963) (holding that students had a right to march and associate and petition for their grievances).

Given that the underlyng facts were exactly the same as a whistleblower count that was heavily investigated with discovery requests and depositions, there was no surprise or prejudice to the Respondent when Petitioner moved to amend her complaint. Dausman.

The First Amendment of the United States Constitution stands as a protection against overeaching state actors who wish to shut the mouths of the citizens. To allow the blatant and admitted retaliation to go unaddressed in this case is an offense to the first Amendment which

states:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.
> (emphasis added)

CONCLUSION

Wherefore, bsaed on the forgoing arguments, Petitioner contends that the Corrected Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

/s/ Cecile M Scoon
Cecile M. Scoon, Esq
Attorney for Petitioner
Johanna Beanblossom
Peters and Scoon Attnys
FLBar #834556
25 E, 8th St.
Panama City, Fl
32401
Tel:(850)769-7825
Fax: (850) 215-0963

CERTIFICATE OF SERVICE

Comes now, the attorney for the Petitioner and states that she has served the Corrected Petition for Certiorari to opposing counsel of record, Ross McCloy and Heather Hudson by US mail at P.O. Drawer 1579, Panama City, Florida 32402 and by email this 12 December 2019.

/s/Cecile M Scoon, Esq.
Cecile M. Scoon, Esq.