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Edwards v. Mills Respondent's Brief Dckt. 44057

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IN THE SUPREME COURT FOR THE STATE OF IDAHO

JOHN EDWARDS,)
)
 Plaintiff-Appellant,)
)
 vs.)
)
 JOSHUA MILLS,)
 Caldwell City Prosecutor,)
)
 Defendant-Respondent.)
)
 _____)

Supreme Court Docket No. 44057-2016
Canyon County No. CV-2015-8958

RESPONDENT'S BRIEF

APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT FOR CANYON COUNTY
HONORABLE CHRISTOPHER S. NYE PRESIDING

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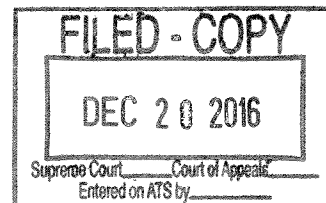


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I.

STATEMENT OF THE CASE

The Animal Control department of the City of Caldwell, Idaho (“City”), has had ongoing issues with John Edwards since 2011. Those issues include combative interactions with animal control officers and police officers at Rotary Ponds, as well as: feeding stray cats; littering the area with items such as plates, cardboard flats, blankets, and structures made of scrap wood, tin, and metal; yelling at other citizens using the parks; and driving in an unsafe manner which threatened the safety of other park visitors. In November of 2014, Edwards was observed interfering with animal control officers attempting to trap the cats in Rotary Ponds, and again driving in an unsafe manner. Edwards engaged in similar conduct at Memorial park.

Due to the long history of disruptive conduct and Edwards’s unwillingness to cooperate with the reasonable efforts of the City, it was necessary to serve a trespass notice on Edwards to protect the visitors and the animals at the city parks, and to maintain the cleanliness and safety of the public areas. Consequently, on June 29, 2015, the City of Caldwell Recreation Superintendent, Vinton Howell, sent a letter to Edwards, notifying him that pursuant to Idaho Code § 18-7008(A)(8), he was no longer allowed to visit Rotary Ponds or Memorial Park in Caldwell, Idaho. R., Vol. I, p. 11. The trespass notice was effective for one year, as authorized by Idaho Code § 18-7008(A)(8), which states that the following people are considered to willfully commit trespass:

Every person, except under landlord-tenant relationship, who, being first notified in writing, or verbally by the owner or authorized agent of the owner of real property, to immediately depart from the same and who refuses to so depart, or

who, without permission or invitation, returns and enters said property within a year, after being so notified.

Edwards was upset about the trespass notice, and questioned its validity. In response, Joshua Mills, the Caldwell City Prosecutor, wrote a letter to Edwards, dated August 31, 2015, explaining the history of misconduct and the need for a trespass notice. R., Vol. I, p. 80. In response to Mills's letter, Edwards served Mills with a Summons and Complaint, titled "Restraint Order on Notice of No Trespass of June 29th 2015." R., Vol. I, p. 4–13. Mills filed a Motion to Dismiss for Failure to State a Claim upon Which Relief May Be Granted. R., Vol. I, p. 16–21. Thereafter, Edwards filed various documents with the district court leading up to the hearing on the Motion to Dismiss. A status conference was held on January 21, 2016. The district court assigned February 18, 2016 as the date for a hearing on the Motion to Dismiss.

At the hearing on the Motion to Dismiss, the district court clarified for Edwards that an owner of a property has the right to tell someone else that they are not welcome on the property, and that Edwards needed to state some sort of claim against that action since he had failed to do so. Tr., Vol. I, p. 12, L. 14–22. The district court found that Mills, as the City's agent, proved to be the owner of the property and therefore had the authority under Idaho Code to prohibit an individual from entering that property. Tr., Vol. I, p. 14, L. 13–20. Edwards was unable to prove a constitutional violation, and in fact did not even state a clear constitutional claim. On February 24, 2016, the district court entered the Order of Dismissal, stating that the Complaint was dismissed based on the pleadings, evidence of record, and the oral arguments of the parties. R., Vol. I, p. 50. Judgment was entered on April 14, 2016, dismissing the Complaint with prejudice

and awarding costs and fees to Mills. R., Vol. I, p. 74. Edwards continued to file various documents with the district court, and then eventually filed this appeal.

II.

ADDITIONAL ISSUES PRESENTED ON APPEAL

1. Did the district court err in dismissing Edwards's claim after finding that Mills, as an agent of the City of Caldwell, lawfully gave Edwards notice that he was not to enter certain City property pursuant to Idaho Code Section 18-7008(A)(8), and therefore did not violate Edwards's constitutional rights?

III.

ATTORNEY FEES ON APPEAL

Mills seeks an award of attorney fees and costs for defending against this appeal pursuant to Idaho Appellate Rules 40 and 41, and Idaho Code Section 12-121. An award of attorney fees on appeal is appropriate where the appeal was brought, pursued or defended frivolously, unreasonably or without foundation. *East Shoshone Hosp. Dist. v. Nonini*, 109 Idaho 937, 712 P.2d 638 (1985). Such is the case, here, as Edwards has continued to file unnecessary motions and documents that have no clear argument or claim for relief. Additionally, Edwards's Appellant Brief failed to identify issues on appeal and includes new or revised claims that he did not argue in front of the district court. The arguments that are decipherable are without foundation, as the statute and actions at issue have recently and clearly been addressed by Idaho courts. Therefore, Mills is entitled to an award of attorney fees on appeal.

IV.

ARGUMENT

Edwards argues that his constitutional rights were violated when Mills sent a letter prohibiting Edwards from entering certain City property without permission for a period of one year. Where a party claims that his right to due process was violated, the appellate court must defer to the trial court's findings of fact, if supported by substantial evidence. *State v. Avelar*, 124 Idaho 317, 322, 859 P.2d 353, 358, (Ct. App. 1993). The appellate court may freely review the application of constitutional principles to those facts found. *Id.* The district court found that the facts showed Mills had proper authority to put Edwards on notice that he was not allowed on certain City property for one year, and that this action was constitutional under Idaho Code.

A. The district court was correct when it dismissed Edwards's claim because Edwards was prohibited from entering certain public property due to his nonexpressive conduct that is not protected by the Constitution.

In order to state a claim that either an action or a statute is unconstitutional, a plaintiff must state, with supportive facts, that the act or the statute deprived him of some fundamental right or constitutional privilege. The United States and Idaho Constitutions contain Due Process Clauses that forbid the government from depriving an individual of life, liberty, or property without due process of law. U.S. Const. amend. XIV; Idaho Const. art. I, § 13. This Court has held that in order to determine whether an individual's due process rights under the Fourteenth Amendment were violated, a court must use a two-step analysis that first considers whether the individual's threatened interest is a liberty or property interest under the Fourteenth Amendment. *Bradbury v. Idaho Judicial Council*, 136 Idaho 63, 72–73, 28 P.3d 1006, 1015–16 (2001). If the

court finds that there is a specific liberty or property interest, it will then determine what process is due. *Id.* This issue with respect to the trespass statute was addressed by the Idaho Court of Appeals in *Pentico v. State*, where the court considered a First Amendment interest when, pursuant to the trespass statute, government employees told Pentico he was no longer allowed to access the building where the Governor’s office was temporarily located. 159 Idaho 350, 354–56, 360 P.3d 359, 363–65 (Ct. App. 2015). The court held that Pentico did not show that Idaho Code infringed upon a citizen’s First Amendment rights because it was his “nonexpressive conduct – his entry into the third floor of the Borah Building after receiving notice that he was no longer authorized to be there – not his speech, for which he was punished as a trespasser.” *Id.* Because he was not asked to leave solely due to his attempt at exercising his First Amendment rights, excluding him from governmental property was warranted.

The Idaho Court of Appeals based its decision in *Pentico*, in part, on *Virginia v. Hicks*, in which case a defendant was given notice not to return to an area that he argued was a public forum. 539 U.S. 113, 123 S.Ct. 2191 (2003). Upon his return to the property, he was arrested and charged with trespass. The Supreme Court held, regarding the provision under which Hicks was arrested:

Even assuming the [streets of the area] are a public forum, the notice-barmment rule subjects to arrest those who reenter after trespassing and after being warned not to return—*regardless* of whether, upon their return they seek to engage in speech. [...] Here, as there, it is Hicks' nonexpressive *conduct*—his entry in violation of the notice-barmment rule—not his speech, for which he is punished as a trespasser.

Id. at 123, 123 S.Ct. at 2198–99, 156 L.Ed.2d at 160.

Similar to the trespassers in *Pentico* and *Hicks*, Edwards seems to emphasize the fact that the City parks were public areas. He notes that the properties are unfenced, public areas without “No Trespassing” signs. While his argument is incorrectly based on language from a statute that is not at play in this case, the fact that he classifies the property as open and public may have some applicability when analyzing a restriction of liberty with respect to public or governmental property. However, Edwards was not prohibited from the property because he was exercising his constitutional rights and the City did not approve of the expression. Edwards was littering, feeding stray cats, and threatening the safety of park visitors and animals. This conduct is not expressive conduct that is protected by the Constitution. Therefore, as held in *Pentico* and *Hicks*, the exclusion from public property is not a violation of Edwards’s constitutional rights and the district court’s dismissal of Edwards’s claim must be affirmed.

B. The district court was correct when it dismissed Edwards’s claim because Idaho Code Section 18-7008(A)(8) has been analyzed and found constitutional in its application to public property, and Mills acted according to the statute’s terms.

The Idaho Supreme Court held in *State v. Korsen* that Idaho Code § 18–7008(A)(8) applies to both public and private property, puts the public on notice that the acts outlined in the statute are criminal, and does not allow for unbridled discretion in police enforcement. 138 Idaho 706, 69 P.3d 126 (2003). Therefore, owners of property, or the agents thereof, may act according to its terms. Additionally, the statute does not require that the owner have any reason for asking trespassers to stay off their property. It merely requires that the owner or authorized agent notify an individual that he must leave and that “persons so notified and capable of leaving must then leave.” *State v. Missamore*, 119 Idaho 27, 31, 803 P.2d 528, 532 (1990).

Edwards argues that he did nothing to violate the trespass statute and that the notice given to him was unlawful. Edwards, however, was not even charged with trespass under the statute. After he received the letter containing notice that he was no longer welcome at certain City property, he brought his lawsuit against Mills. Therefore, the notice itself is the issue, and it is clear that Vinton Howell and Mills had the authority to give written notice under the statute, as they are both authorized agents of the City of Caldwell. Although they were not required to give a reason for asking Edwards to stay off the property, they did explain that Edwards had caused the City numerous problems. Once Edwards was notified, he was expected to stay away from the indicated City parks. Mills acted pursuant to the terms of the statute, and that is all that is required. Therefore, the district court's dismissal of Edwards's claim must be affirmed.


V.

CONCLUSION

Because Edwards was prohibited from entering certain public property due to nonexpressive conduct, and because Idaho Code § 18-7008(A)(8) has been analyzed and found constitutional in its application to public property, and Mills acted according to the statute's terms, this Court must affirm the decision of the district court and award attorney fees to Mills.

DATED this 16th day of December, 2016.

HAMILTON, MICHAELSON & HILTY, LLP


MAREN ERICSON
Attorneys for Defendant-Respondent

CERTIFICATE OF DELIVERY

I hereby certify that on the 16th day of December, 2016, I caused a true copy of the foregoing to be served by the method indicated below, and addressed to the following:

John Edwards
818 N. Illinois Ave. #7
Caldwell, ID 83605

- U.S. Postage, Prepaid
- Hand Delivered
- Facsimile
- Other

Maren Ericson
MAREN ERICSON