IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN LINSTROM,
Appellant,
vs.
DON HELLING, AN INDIVIDUAL,
Respondent.

No. 55631

FILED

MAY 10 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing an 42 U.S.C. § 1983 action. First Judicial District Court, Carson City; James Todd Russell, Judge.

In November 2009, appellant Brian Linstrom filed an amended complaint, alleging that respondent Don Helling, through his actions as Deputy Director of the Department of Corrections, violated Linstrom's First Amendment free speech rights and his Fourteenth Amendment right to equal protection, both guaranteed under the United States Constitution, in taking adverse employment actions against Linstrom. Respondent filed a motion to dismiss the complaint, which the district court granted over Linstrom's opposition. Linstrom has appealed.

On appeal, Linstrom argues that the dismissal was in error. More specifically, Lindstrom argues that adverse employment actions were taken against him because he chose to exercise his First Amendment rights by voicing concern within the Department of Corrections that there

was a lack of focus on inmate medications, informing a supervisor that a correctional officer was disrupting the inmates' sleep, and complaining to the director of the Department of Corrections that Helling was no longer allowing inmates to repair Linstrom's truck.[1] Helling disagrees.

As this court has previously noted, the United States Supreme Court has held that when a government employee is not speaking as a citizen on a matter of public concern, but rather is making statements in furtherance of his official employment duties, the employee will have no First Amendment cause of action against the employer for its reaction to the speech. John v. Douglas County School District, 125 Nev. ___, ___, ___, 219 P.3d 1276, 1280, 1285 (2009) (reviewing First Amendment claims dismissed after the district court granted a special motion to dismiss under Nevada's anti-Strategic Lawsuits Against Public Participation statute) (citing Garcetti v. Ceballos, 547 U.S. 410, 418 (2006)). Here, Helling directs this court to the Nevada Department of Corrections' Administrative Regulation 121, which requires, among other things, that "Department employees [must] . . . make timely verbal notifications to

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[1]Linstrom also summarily challenges the district court's dismissal of his Fourteenth Amendment cause of action based on the United States Supreme Court decision, Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432 (1985). As Linstrom has not developed this argument or supplied any authority on this point, we do not address the issue and therefore affirm the district court's dismissal of this cause of action. See Edwards v. Emperor's Garden Rest., 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that this court need not consider an issue not cogently argued).

their supervisors, using the appropriate chain of command, concerning incidents, activities or events of immediate interest [concerning] . . . [s]ignificant health, safety or risk management issues." Linstrom's internal statements regarding medication and sleep concerns highlighted on appeal, under NDCAR 121, were in the furtherance of his duties as a Department of Corrections employee, and thus do not receive First Amendment protection.[2] See John, 125 Nev. at ___, 219 P.3d at 1285.

Finally, it is well established that in order for First Amendment liability to attach, the public employee must speak on a matter of "public concern." Garcetti, 547 U.S. at 417 (citing Pickering v. Board of Education, 391 U.S. 563, 568 (1968); Connick v. Myers, 461 U.S. 138, 147 (1983)). Matters of public concern are distinguished from those of solely personal interest. Desrochers v. City of San Bernardino, 572 F.3d 703, 709 (9th Cir. 2009) (citing Connick, 461 U.S. at 147). In other words, "speech that deals with individual personnel disputes and grievances and that would be of no relevance to the public's evaluation of the performance of governmental agencies is generally not of public concern." Desrochers, 572 F.3d at 710 (internal quotations omitted). Helling's decision to no longer let inmates repair Linstrom's truck is an example of such an internal personnel dispute not touching on a matter of public concern. See

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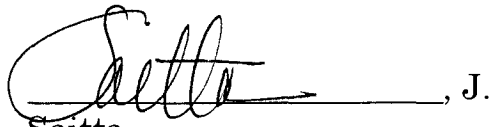
[2]To the extent that Linstrom argues that he went outside the direct chain of command in making his statements, this fact does not alter our analysis. See Garcetti, 547 U.S. at 424 (explaining that a court's review of an employee's job functions should be a practical one).

Connick, 461 U.S. at 154 (explaining that the First Amendment does not necessarily constitutionalize every public employee grievance).

Accordingly, for the reasons set forth above, we

ORDER the judgment of the district court AFFIRMED.



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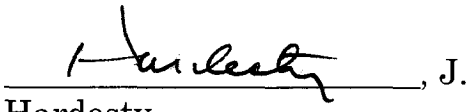

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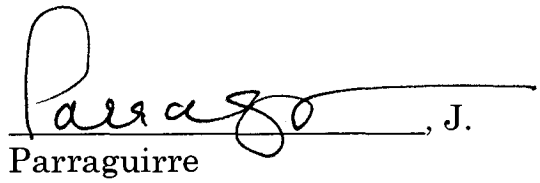

_____, J.
Parraguirre

cc: Hon. James Todd Russell, District Judge
William G. Cobb, Settlement Judge
Jeffrey A. Dickerson
Attorney General/Carson City
Carson City Clerk