

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD SULLIVAN,

Plaintiff-Appellant,

v

RIVER VALLEY SCHOOL BOARD, RIVER VALLEY
EDUCATION ASSOCIATION, CHARLES O.
WILLIAMS, Superintendent of River Valley
Schools, PHIL BENDER, President of River Valley
Education Association, JANE TEMPLE, GARY B.
SOMMERS, PAMELA BEHNKE, DENNIS ZEIGER,
RICHARD RIETH, VICKIE PAILING, LYNDIA
VACKAR and WESLEY LIND, jointly and severally in
their individual and official capacities,

Defendants-Appellees.

UNPUBLISHED

November 6, 1998

No. 181913

Berrien Circuit Court

LC No. 93-002066-NZ

ON REMAND

Before: Hood, P.J., and Doctoroff and Neff, JJ.

PER CURIAM.

This case is before us for the second time.¹ In the original opinion, the panel affirmed the trial court's dismissal of plaintiff Richard Sullivan's action against defendants River Valley Education Association and its president Phil Bender (RVEA), and River Valley School Board, along with its superintendent, Charles O. Williams, and board members Jane Temple, Gary Sommers, Pamela Behnke, Dennis Zeiger, Richard Rieth, Vicki Pailing, Lynda Vackar and Wesley Lind (RVSB). *Sullivan v River Valley School Bd*, unpublished opinion per curiam of the Court of Appeals, issued July 11, 1997 (Docket No. 181913). Plaintiff applied for leave to appeal and our Supreme Court, in lieu of granting leave, remanded to this Court "for reconsideration of the plaintiff's claim under 42 USC 1983, in light of the reasoning in *Chappel v Montgomery County Fire Protection Dist #1*, 131 F3d 564 (CA 6, 1997)."² *Sullivan v River Valley School Bd*, 569 Mich 862-863; ___ NW2d ___ (1998). On remand, we affirm the dismissal of plaintiff's allegations pursuant to §1983.

Plaintiff's complaint alleged that defendants punished and retaliated against plaintiff for the exercise of his First Amendment right to free speech. At the outset, we must determine whether the alleged speech at issue may be "fairly characterized as constituting speech on a matter of public concern." *Connick v Myers*, 461 US 138, 146; 103 S Ct 1684 75 L Ed 2d 708 (1983). Matters of public concern are those that may be "fairly characterize[d] . . . as relating to any matter of political, social, or other concern to the community." *Rahn v Drake Center, Inc.*, 31 F3d 407, 412 (CA 6, 1994). Whether speech addresses a matter of public concern is a question of law "determined by the content, form, and context of a given statement, as revealed by the whole record." *Connick*, 461 US at 147-148; 103 S Ct at 1690.

In *Chappel, supra*, the Sixth Circuit held that an individual's personal motives for speaking is not dispositive. Indeed, the distinction at issue is "between matters of public concern and matters of personal interest, not civic-minded motives and self-serving motives." *Id.* at 575. Indeed, "[t]he motive which underlies an employee's statements is a relevant, but not necessarily dispositive factor" when considering whether an employee's statements may be fairly characterized as relating to any matter of political, social, or other concern to the community." *Id.* at 576, quoting *Cliff v Bd of Sch Comm'rs of Indianapolis*, 42 F3d 403, 409 (7 CA, 1994).

After a careful review of plaintiff's allegations in the present case, and being mindful that it is the message, rather than the motive, that is of utmost importance, *Chappel, supra*, we conclude that the speech at issue was not on a matter of public concern. Though critical of RVEA and RVSB, plaintiff's speech was a "mere extension" of plaintiff's dispute over his unsuccessful bid for a coaching position, his subsequent withdrawal from the union, and his dispute regarding payment of representation fees. *Connick, supra* at 148. The speech at issue reflected nothing more than complaints regarding an essentially private employment dispute, and "an attempt to turn [plaintiff's] displeasure into a cause célèbre." Such speech is not subject to protection by the First Amendment. Consequently, plaintiff's §1983 action alleging a denial of his freedom of speech was properly dismissed.³

II

The Supreme Court's order on remand does not affect our earlier decision affirming the dismissal of the remaining counts in plaintiff's complaint. Accordingly, that holding stands as the law of the case.

Affirmed.

/s/ Harold Hood

/s/ Martin M. Doctoroff

/s/ Janet T. Neff

¹ Pursuant to our Court policy, Judge Doctoroff has been substituted for visiting Circuit Judge M.A. Chrzanowski, who sat as a member of the original panel in this matter by assignment.

² We note that *Chappel* was decided approximately four months after our original decision in this case.

³ We note that RVSB argues that plaintiff's §1983 action was properly dismissed because plaintiff suffered no adverse employment action as a result of his speech, and that RVEA argues that, as a

private, unincorporated association, it is not subject to this cause of action at all. In light of our determination that the alleged speech at issue was not of public concern, and thus not protected by the First Amendment, we need not reach these additional grounds for dismissal.