

In the:

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

JOSEPH LEE GIBSON

966 Towlston Road

McLean, Virginia 22102,

Plaintiff,

Case Number; 1:04CV00190

Judge:

Deck Type: Pro se General Civil

Date Stamp:

v.

BOY SCOUTS OF AMERICA,

JOHN DOE, No. 1-7,

NATIONAL CAPITAL AREA COUNCIL

BOY SCOUTS OF AMERICA,

and

RICHARD ROE, No. 1-7,

Defendants.

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF RULE 12(b)(6) MOTION

COME NOW, the Defendants Boy Scouts of America (herein after "Boy Scouts") and National Capital Area Council Boy Scouts of America (herein after "NCAC"), by counsel, and in support of their Motion for Judgment on the Pleadings Pursuant to Rule 12 (b) (6) of the Federal Rules of Civil Procedure,

state as follows:

I. Introduction

1. This Motion arises from the Complaint for Injunctive Relief and Damages filed by Plaintiff, Joseph Lee Gibson (herein after "Gibson") against the Boy Scouts and NCAC.

2. It is undisputed that Gibson was the Scoutmaster for Boy Scout Troop 869 in McLean, Virginia whose sponsor was and is Trinity United Methodist Church (herein after "Trinity").

3. It is undisputed that Gibson's adult-volunteer membership in the Boy Scouts ceased on February 7, 2003.

II. Facts

In his Complaint for Injunctive Relief and Damages, Gibson alleges that from 1996 until February 7, 2003 he was a registered adult-volunteer member of the Boy Scouts of America. He further alleges that, in October 1998, he was selected to serv in the position as Scoutmaster of Troop 869 by the Trinity United Methodist Church, sponsor of Troop 869.

Gibson alleges that, NCAC and Richard Roes one through seven conducted a "secret meeting" to which he was not privy. Following this "secret meeting", Gibson alleges that on February 7, 2003 he was notified by NCAC that his membership in the Boy Scouts of America had been revoked. Gibson also

alleges in his Complaint that he timely appealed the revocation to the Boy Scouts of America, at its national headquarters in Irving, Texas. After this appeal process, Gibson alleges that defendants Boy Scouts and NCAC along with John Does one through seven convened a “secret meeting or review board at a location unknown to Plaintiff”, and that this review board based their ratification of his revocation upon a file, the contents of which he has never seen.

Gibson alleges that the actions of Boy Scouts of America and NCAC, along with other defendants, have caused him substantial harm and he asserts four claims in this cause: Count I–Violation of Right of Fair Procedure, Count II–Violation of Due Process and Right to Association, Count III – Breach of Implied Contract and Count IV– Defamation.

III. Law and Argument

Count I–Violation of Right of Fair Procedure

The common law right to fair procedure does not apply to the exclusion or expulsion from membership in a private entity unless that entity affects public interest and the exclusion or expulsion has substantial adverse economic ramifications. Kim v. Southern Sierra Council Boy Scouts of America, 117 Cal. App. 4th 743(2004).

In the case before the Court, the Boy Scouts of America is a completely private entity which does not affect public interest. Boy Scouts of America and

Monmouth Council v. Dale, 530 U.S. 640 (2000) Gibson makes no claim of any economic ramifications, let alone substantial adverse economic ramifications from his termination as Scoutmaster of Troop 869. Therefore, Gibson's claim fails to state a claim for which relief can be granted.

Count II– Violation of Due Process and Right of Association

a. First Amendment

The law is clear that a claim for violation of the right to free association under the First Amendment can only be made against a governmental entity or an entity subject to substantial governmental involvement.

Under Boy Scouts of America v. Dale, 530 U.S. 640; 120 S.Ct. 2446 (2000), the Supreme Court held that the Boy Scouts of America was “a private, not-for-profit organization” and it was not subject to public accommodation laws of the State of New Jersey that would have intruded into the group's internal affairs because it was not a government entity and not subject to substantial governmental involvement. Since the Boy Scouts of America is a private organization and is not subject to substantial governmental involvement, Gibson's allegation that Boy Scouts and NCAC violated his First Amendment right to free association fails to state a claim upon which relief can be granted.

b. Fourteenth Amendment

Gibson alleges that the Boy Scouts and NCAC have violated his

Fourteenth Amendment right to due process when it terminated him as Scoutmaster of Troop 869. Again, the law is clear that a claim for a violation of a Fourteenth Amendment right to due process can only be brought against a government or quasi-government entity, one that acts under color of state or federal law. Rendell-Baker v. Kohn, 457 U.S. 830; 102 S.Ct. 2764 (1982). As stated in the First Amendment law and argument above, under the Court's ruling in Dale, Boy Scouts of America has been held to be a completely private entity, not subject to substantial governmental involvement. In Kohn, the petitioners made claims for violation of their Fourteenth Amendment rights to due process, but the Court found that the respondent, their employer, was a private entity and not acting under color of state law when it discharged the petitioner employees. The ruling in Kohn, was consistent with the law when it held that the Fourteenth Amendment "applies to acts of the states not to acts of private persons or entities." Id. at 837.

In the case before the Court, Gibson alleges a violation of his due process rights under the Fourteenth Amendment, against a private, non-governmental entity and therefore his pleading fails to state a claim for which relief can be granted.

Count III—Breach of Implied Contract

As a matter of law, an implied legal obligation cannot arise from the rendering of services which are gratuitous. Mullins v. Mingo Lime & Lumber Co.,

176 Va. 44; 10 S.E. 2d 492 (1940); Nedrich v. Jones, 245 Va. 465; 429 S.E. 2d 201 (1993). A volunteer renders his services without expectation of compensation. The position of Scoutmaster of Troop 869, the subject of this litigation, is and was a purely voluntary position.

As in this case, no promises were exchanged between Boy Scouts, NCAC and Gibson for compensation for his services. In Mullins and again in Nedrich, the Virginia courts found that individuals who provide services, voluntarily to another, without promise of payment cannot recover on a claim of breach of implied contract.

Gibson alleges an implied contract between Boys Scouts, NCAC and himself. Gibson, by his own admission was a volunteer to the "Scouting Movement" from 1996-February 7, 2003 (Complaint for Injunctive Relief and Damages at ¶11,p.5). Under Mullins and Nedrich, Gibson's allegations fail to state a claim for which relief can be granted.

Count IV—Defamation

Gibson makes allegations that Boy Scouts and NCAC made defamatory statements about him. Inasmuch as this is a diversity action, and that Gibson alleges defamatory statements were made and published in Virginia, the law of Virginia, as to defamation is argued and discussed.

"It is firmly established that pure expressions of opinion are protected by

both the First Amendment of the Federal Constitution and Article I, §12 of the Constitution of Virginia and, therefore, cannot form the basis of a defamation action.” Williams v. Garraghty, 249 Va. 224, 233; 455 S.E.2d 683(2002).

Gibson alleges that “NCAC by or through one or more of the officials, employees or agents named as Richard Roes” made statements to others that he (Gibson) was “unfit for Scouting membership and unfit to be Scoutmaster of Troop 869.” (Gibson’s Complaint for Injunctive Relief and Damages at ¶ 35 at p. 13) These alleged statements were opinions regarding qualifications for a position. When published to others in the form of conversations addressing Gibson’s qualifications, these statements were expressed as opinion.

In addition, it is a long standing requirement of Virginia law, that in issues of defamation “[g]ood pleading requires that the exact word spoken or written must be set out in the declaration *in haec verba*...it must purport to give the exact words.” Federal Land Bank v. Birchfield, 173 Va. 200,210; 3 S.E.2d 405,410(1939); Fuste v. Riverside Healthcare Ass’n., 265 Va. 127; 575 S.E. 2d 858(2003).

Therefore because Gibson alleges defamation for statements expressed as opinions and because Gibson fails to plead defamation with particularity under the settled case law of First Amendment claims and in Virginia, under the common law and pursuant to Garraghty, Birchfield and Fuste, Gibson fails to

state a claim for which relief can be granted.

CONCLUSION

As to all Counts pled by Gibson in his Complaint for Injunctive Relief and Damages, the Defendants Boy Scouts and NCAC have shown herein that as matters of law, Gibson has failed to state claims for which relief can be granted.

WHEREFORE, the Defendants, Boy Scouts and NCAC move this Honorable Court to dismiss this Complaint under Rule 12(b)(6) of the Rules of Federal Civil Procedure and such other relief as the Court may deem appropriate.

**BOY SCOUTS OF AMERICA
And
NATIONAL CAPITAL AREA COUNCIL
BOY SCOUTS OF AMERICA
By Counsel**

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CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RULE 12 (b)(6) MOTION TO DISMISS** was mailed, postage pre-paid on this 20th day of May, 2004 to:

Joseph Lee Gibson
Plaintiff pro se
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John D. McGavin