"Angry" Professor Loses Free Speech, Defamation Claims

Things were not going well in the Accounting department at the University of Maryland University College. Edward McReady, an associate professor, was challenging decisions made by new academic director, Rhea Reed. He criticized decisions affecting him directly (*e.g.*, a course assignment) and also curricular and staffing decisions having an impact on the department generally. In meetings with Reed and in e-mails to her and her supervisors, McReady was hostile and confrontational. He was notified in June 2007 that his contract would not be renewed at its expiration a year later. However, after continued difficulties with his superiors, he was terminated for cause in August 2007.

McReady filed suit in federal court challenging both the non-renewal and the termination of his contract. He claimed that these actions were taken in response to his exercise of protected free speech rights. The court rejected this claim on several grounds. First, the court reiterated the rule that the First Amendment protects employee speech *only* if it relates to matters of public concern. In this instance, McReady's complaints about Reed's managerial decisions were made by him in his capacity as an employee, not as a citizen addressing matters of broader political, social, or public concern. Moreover, the court held, even if the speech in question were protected, the law allows an employer some latitude in dealing with such speech because of the employer's recognized interest in maintaining discipline and orderly operation in the workplace. Because McReady's conduct here impaired the efficient administration of the accounting department and program, any claim he might have failed on this ground as well.

Another part of McReady's suit asserted that he had been defamed by Reed and other administrative officials. Defamation involves a false, harmful statement of fact. The court observed that many of the allegedly defamatory statements here were expressions of the speaker's subjective opinion - for example, that McReady was "angry" and "rabid with bitterness," that he had acted in a demanding, discourteous, and abusive way, and that he was "not a team player." As such, they would not support a defamation claim. Moreover, other statements that did relate to matters of fact were not shown to be false. For instance, McReady failed to show that Reed's claims that she *felt* threatened and harassed by him were not, indeed, true. Finally, the court held that Reed's communications with her supervisors were entitled to the benefit of a qualified privilege, which protects speech made in within the scope of an employment relationship. Here, "Dr. Reed and her supervisors communicated with one another regarding a subordinate's hostility and insubordination . . . [in pursuance of] a mutual interest in ensuring the effective functioning of the accounting department." Not surprisingly, the district court dismissed McReady's lawsuit. *McReady v. O'Malley*, No. RWT 08cv2347 (N.D.Ill. Mar. 30, 2011).

In a university context, a certain level of disagreement and debate concerning policies and decisions is to be tolerated and even viewed as healthy. As the *McReady* case demonstrates, however, the right to challenge and oppose is not unlimited and may be weighed against other, countervailing management interests. This is true even when the critical speech is cloaked in the mantle of academic freedom. Finally, this case is another example of the often insurmountable difficulties faced by employees who bring defamation claims against supervisors and co-workers.