

1998

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Barbara J. Fick

Notre Dame Law School, barbara.j.fick.1@nd.edu

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Recommended Citation

Barbara J. Fick, *Does a Conspiracy to Terminate At-Will Employment Constitute an Injury to Property? An Analysis of Haddle v. Garrison*, 1998-1999 Preview U.S. Sup. Ct. Cas. 85 (1998-1999).

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Does a Conspiracy to Terminate At-Will Employment Constitute an Injury to Property?

by Barbara J. Fick

PREVIEW of United States Supreme Court Cases, pages 85-87. © 1998 American Bar Association.

Barbara J. Fick is an associate professor of law at Notre Dame Law School, Notre Dame, IN (219) 631-5864.

In the years succeeding the close of the Civil War, Congress passed a series of legislative enactments aimed at ensuring the implementation of the 13th, 14th and 15th Amendments, and suppressing the disorder and violence plaguing the Southern United States during this period. Known collectively as the Reconstruction Era Civil Rights Acts, these statutes are currently codified at 42 U.S.C. §§1981-1988. This case involves a question of statutory construction regarding the language of 42 U.S.C. §1985.

42 U.S.C. §1985(2) and (3) provide that "if two or more persons . . . conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court or from testifying to any matter pending therein . . . or to injure such party or witness in his person or property on account of his having so attended or testified . . . the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or depri-

vation, against any one or more of the conspirators."

ISSUE

Does the termination of an at-will employee, pursuant to a conspiracy to retaliate against the employee for appearing in court and to deter him from testifying, constitute "injury to property" compensable under 42 U.S.C. §1985(2) and (3)?

FACTS

Michael Haddle was an at-will employee employed in the state of Georgia by Healthmaster, Inc. Jeannette Garrison, Dennis Kelly and G. Peter Molloy were corporate officers and directors of Healthmaster.

In March 1995, Healthmaster, Garrison and Kelly were indicted by a federal grand jury on Medicare fraud and other criminal charges.

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HADDLE V. GARRISON
DOCKET NO. 97-1472

ARGUMENT DATE:
NOVEMBER 10, 1998
FROM: THE ELEVENTH CIRCUIT

Case at a Glance

In this case, the Court is asked to determine whether the termination of an at-will employee can be compensable under 42 U.S.C. §1985, one of the Reconstruction Era Civil Rights Acts.





Haddle cooperated with federal authorities in the investigation and was subpoenaed to testify before a grand jury; his testimony, however, was not presented. Haddle was also a potential witness for the subsequent criminal trial.

After the indictments, Healthmaster's operations, along with Haddle's employment, were transferred to Healthmaster Home Health Care, Inc. ("HHHC"), a wholly owned subsidiary of Healthmaster. HHHC was placed in Chapter 11 bankruptcy, and G. Peter Molloy was appointed trustee. The bankruptcy court barred Garrison and Kelly from participating in the affairs of HHHC.

On June 21, 1995, Molloy terminated Haddle, allegedly as a result of an agreement with Garrison and Kelly, to retaliate against Haddle because he had cooperated with the federal investigation and to deter him from testifying in the pending criminal trial.

Haddle filed a lawsuit in federal district court against Garrison, Kelly, and Molloy, among others, alleging that his termination violated 42 U.S.C. §1985. The court, in an unpublished opinion, dismissed the case for failure to state a claim upon which relief could be granted. The court held that loss of at-will employment does not constitute "injury to property" within the meaning of §1985, and therefore is not a type of injury recognized as compensable under the statute.

The Eleventh Circuit Court of Appeals affirmed the district court's decision in an unpublished opinion.

CASE ANALYSIS

The Respondents (Garrison, Kelly, Molloy, et al.) assert that the district court's decision is consistent with both the Supreme Court's interpretation of similar language contained in the other, contemporaneously enacted statutes that constitute the Reconstruction Era Civil Rights Acts, as well as the legislative history of 42 U.S.C. §1985.

In *Johnson v. Railway Express Agency*, 421 U.S. 454 (1975), the Court determined that 42 U.S.C. §1981 prohibited race discrimination in private employment. The Court based its decision on the language in the statute granting to all persons the right "to make and enforce contracts," and not on the language guaranteeing full and equal benefit of the law "for the security of persons and property." Subsequently, in *Patterson v. McLean Credit Union*, 491 U.S. 164 (1989), the Court again emphasized that employment rights were protected by the "make and enforce contracts" language.

In *City of Memphis v. Greene*, 451 U.S. 100 (1981), the Supreme Court held that 42 U.S.C. §1982 protected a broad expanse of property interests. The lower courts, however, have consistently held that §1982 does not encompass termination of at-will employment because such employees do not have a property interest in their employment.

42 U.S.C. §1983 provides a remedy for, inter alia, deprivation of property without due process of law. The Court in *Board of Regents v. Roth*, 408 U.S. 564 (1972), held that property interests are not created by the Constitution but are defined by sources such as state law. To have a property interest, the Court held, a person must have "a legitimate

claim of entitlement to it." In *Bishop v. Wood*, 426 U.S. 341 (1976), the Court was presented with a claim under §1983 in which an at-will police officer alleged that his employment had been terminated without due process. The Court held that, as an at-will employee, the plaintiff held his job at the will and pleasure of the employer and therefore he had no property interest in his job.

Specifically with regard to §1985, the legislative history contains no reference to employment. Rather, Congress was concerned with injuries to persons or property such as murder, beatings, or home invasions. At the time of the passage of §1985, there were no limitations on an employer's right to terminate employment — employees were not deemed to have a property right in employment. Moreover, Respondents assert that at-will employees in Georgia do not have a property interest in their employment.

Lastly, Respondents argue that the interest protected by §1985(2) is the right to fully litigate one's own case in federal court. Since Haddle was not a party to any of the judicial proceedings in this case, his discharge did not in any way impede his ability to effectively present his own case in court.

Haddle, on the other hand, argues that the district court's interpretation misconstrued the phrase "injury to person or property" found in §1985. This language is intended to specify the broadest possible range of injuries. The purpose was to indicate that the plaintiff must suffer some economic damage that would be the basis for a common-law tort suit. The language was used to distinguish tort-based remedies



— “injuries to person or property”
— from contract-based remedies.

Injury to property is not limited to damage to tangible property but rather encompasses various types of monetary losses. For example, in *Reiter v. Sonotone Corp.*, 442 U.S. 330 (1979), the Supreme Court interpreted the phrase “injury to property,” as used in the Clayton Act, to include higher prices paid by consumers as a result of anti-competitive behavior. Likewise, termination of employment causes monetary losses such as lost wages and benefits.

The policy behind §1985(2) supports a finding that termination of employment constitutes an injury to property. When it enacted the Reconstruction Era Civil Rights Acts, Congress was concerned with threats to the administration of justice in the federal courts caused by intimidation and retaliation. While the methods of witness intimidation used today may be different than those used after the Civil War, the language of the statute was intentionally written broadly enough to encompass a wide variety of conduct. Economic coercion caused by discharging employees can be as effective a method of witness intimidation as threats of violence.

Haddle admits that his employment was at-will but contends that under Georgia law he had a protectible interest in his continued employment. In *Troy v. Interfinancial, Inc.*, 320 S.E.2d 872 (1984), the Georgia Court of Appeals held that an employee “has a property right in his contract of employment (. . . even if it is at the will of the employer) which may not be unlawfully interfered with by another.” Moreover, it is clear that an at-will employee cannot be discharged for reasons that violate federal law. In this case, it is alleged that third par-

ties (Garrison and Kelly) unlawfully interfered with Haddle’s employment by HHC, and the reason for the interference was to deter Haddle from testifying, in violation of §1985(2).

Lastly, Haddle argues that public policy supports protecting witnesses who lose their jobs as a result of testifying in federal court proceedings. Such protection is needed to ensure the integrity of judicial proceedings. Indeed, many states have created public policy exceptions to the employment-at-will doctrine to protect employees in such situations. Other states, however, have refused to recognize such an exception. In the absence of an interpretation of §1985(2) providing this protection, ensuring the integrity of federal court proceedings will depend upon the vagaries of state law.

SIGNIFICANCE

This case turns on a relatively narrow issue of statutory construction, which is unlikely to have exceedingly broad ramifications. Even if the Court finds that termination of employment-at-will constitutes an injury to property, this interpretation would not provide a general federal tort remedy for all such terminations. Rather, in order to be actionable under Section 1985(2), there must be not only the injury to property, but such injury must be as a result of a conspiracy for the purpose of deterring a party or witness from attending, or testifying in, federal court.

ATTORNEYS OF THE PARTIES

For Michael A. Haddle (Charles C. Stebbins III; (706) 722-7543).

For Jeannette G. Garrison (David E. Hudson; (706) 722-4481).

For G. Peter Molloy Jr. (J. Patrick Claiborne; (706) 722-8224).

AMICUS BRIEFS

In Support of Michael A. Haddle
United States (Seth Waxman,
Solicitor General; Department of
Justice; (202) 514-2217);

Lawyers’ Committee for Civil
Rights Under Law (George W. Jones
Jr.; (202) 736-8000);

Joint brief: National Employment
Lawyers Association and
Government Accountability Project
(Mark Allen Kleiman; (310)
393-1771);

National Whistleblower Center
(Stephen M. Kohn; (202)
342-6980).