

JUN 05 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DENNIS MURRAY,

Plaintiff - Appellant,

v.

WASHINGTON STATE DEPARTMENT
OF ECOLOGY; JAMES BELLATTY;
MEGAN WHITE; POLLY ZEHM;
BENJAMIN C. WELLER, as the Personal
Representative of the Estate of Nancy C.
Weller; ESTATE OF NANCY C.
WELLER,

Defendants - Appellees.

No. 08-35206

D.C. No. 06-CV-00142-RHW

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Robert H. Whaley, District Judge, Presiding

Argued and Submitted June 1, 2009
Seattle, Washington

Before: CANBY, THOMPSON and CALLAHAN, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

Dennis Murray appeals the district court’s grant of summary judgment in favor of the defendants, who were Murray’s superiors at the Washington State Department of Ecology (“Department”) during the relevant period. Reviewing the district court’s order de novo, *Posey v. Lake Pend Oreille Sch. Dist. No. 84*, 546 F.3d 1121, 1126 (9th Cir. 2008), we affirm.¹

Even assuming that Murray spoke as a private citizen on matters of public concern and that his speech was a motivating factor for the adverse employment actions taken against him, we conclude under the *Pickering* balancing test that the defendants had adequate justification for treating Murray differently from other members of the general public. *See Eng v. Cooley*, 552 F.3d 1062, 1070–71 (9th Cir. 2009). The Department’s interests in effecting the timely and efficient completion of the TMDL process and otherwise carrying out its mission in an effective manner outweighed Murray’s First Amendment interests. *See Waters v. Churchill*, 511 U.S. 661, 675 (1994) (plurality); *Dible v. City of Chandler*, 515 F.3d 918, 928 (9th Cir. 2008). For similar reasons we conclude that the “prior restraints” imposed on Murray were justified under the *Pickering* balancing test. *See Gibson v. Office of Att’y Gen.*, 561 F.3d 920, 926–27 (9th Cir. 2009) (applying

¹ Because the parties are familiar with the facts of this case, we repeat them here only as necessary to the disposition of this case.

the *Pickering* balancing test in evaluating prior restraint on a public employee's First Amendment activity); accord *Berry v. Dep't of Soc. Servs.*, 447 F.3d 642, 649–50 (9th Cir. 2006). Accordingly, we conclude that Defendants did not violate Murray's constitutional rights.

AFFIRMED.