

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

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| Mark Jamison, | : | |
| Plaintiff-Appellant, | : | |
| v. | : | No. 11AP-607 |
| Zach Scott, Franklin County Sheriff et al., | : | (C.P.C. No. 10CVH-12-18182) |
| Defendants-Appellees. | : | (REGULAR CALENDAR) |

D E C I S I O N

Rendered on February 2, 2012

Thomas L. Weber, for appellant.

Ron O'Brien, Prosecuting Attorney, and *Denise L. DePalma*,
for appellees.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶1} Plaintiff-appellant, Mark Jamison ("Jamison"), appeals the decision of the Franklin County Court of Common Pleas granting defendants-appellees' motion for summary judgment. For the following reasons, we affirm the trial court's decision.

{¶2} Jamison brings the following assignment of error:

The trial court erred in granting Appellees' Motion for Summary Judgment, thereby preventing Appellant from presenting his legal and equitable arguments at trial.

{¶3} Jamison began working as a Franklin County Deputy Sheriff in 1994 and was a member of the Fraternal Order of Police, Capital City Lodge No. 9 ("FOP"). Appellees, Zach Scott, Franklin County Sheriff and the Franklin County Commissioners ("the Sheriff's Office"), contend that Jamison was accused of inappropriate sexual behavior with a female inmate whom he was supervising at one of the jails. In August 2003, criminal charges were filed stemming from these accusations and Jamison was terminated in November 2003 as a result of the criminal indictment. In December 2003, Jamison was acquitted of all charges related to the alleged inappropriate conduct. Thereafter, the FOP filed a grievance of wrongful termination and an arbitration was conducted. Jamison returned to work in January 2005 with back pay.

{¶4} Jamison resigned his employment in January 2007. Jamison contends that his resignation was due to an accusation of inappropriate conduct in the summer of 2006 with a female visitor to the jail in which he worked. Jamison argues that his resignation was not a result of wrongdoing, but a fear of public humiliation as he experienced in his former trial. He also contends the resignation was not done knowingly or voluntarily. Jamison also argues that during the period when he returned to employment, he was subjected to disparaging, discriminatory, and demeaning conduct by supervisory personnel in the sheriff's department.

{¶5} Jamison filed a complaint in January 2009 and an amended complaint in June which he voluntarily dismissed in December 2009. Jamison refiled in December 2010 with the trial court dismissing his second through fifth causes of action. Jamison filed an amended complaint in April 2011 his cause of action being "Defendants, by their practices and their action taken against Plaintiff, have committed unfair labor practices

under Ohio law." (April 2011 Amended Complaint; R. 35). The Sheriff's Office filed a motion for summary judgment which the trial court granted on June 16, 2011. Jamison timely appealed.

{¶6} Jamison's assignment of error asserts that the trial court erred in granting the Sheriff's Office's motion for summary judgment. Civ.R. 56(C) states that summary judgment shall be rendered forthwith if:

* * * [T]he pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. * * *

{¶7} Accordingly, summary judgment is appropriate only where: (1) no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the non-moving party, reasonable minds can come to but one conclusion and that conclusion is adverse to the non-moving party. *Tokles & Son, Inc. v. Midwestern Indemn. Co.* (1992), 65 Ohio St.3d 621, 629, citing *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 65-66. Summary judgment is a procedural device to terminate litigation, so it must be awarded cautiously with any doubts resolved in favor of the non-moving party. *Murphy v. Reynoldsburg* (1992), 65 Ohio St.3d 356, 358-59.

{¶8} *De novo* review is well established as the standard of review for summary judgment. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 1996-Ohio-336. We stand in the shoes of the trial court and conduct an independent review of the record applying the same summary judgment standard. As such, we must affirm the trial court's

judgment if any of the grounds raised by the moving party, at the trial court, are found to support it, even if the trial court failed to consider those grounds. See *Dresher, Coventry Twp. v. Ecker* (1995), 101 Ohio App.3d 38, 41-42.

{¶9} Jamison's only claim is for unfair labor practices. His amended complaint does not bring forth a separate claim. The conduct alleged is that the Sheriff's Office treated him differently and discouragingly when he returned to work in 2005. Jamison does not allege that he was discriminated against based on race, gender, or some other protected class, merely that he was subject to unfair labor practices. Therefore, Jamison's claim is governed by R.C. Chapter 4117.

{¶10} The Sheriff's Office's motion for summary judgment claims that, under R.C. 4117.11, Jamison was required to file a claim with the State Employment Relations Board ("SERB"). The motion also claims that Jamison failed to exhaust his administrative remedies set forth in his collective bargaining agreement.

{¶11} The Ohio Supreme Court in *State ex rel. Fraternal Order of Police, Ohio Labor Council, Inc. v. Franklin Cty. Court of Common Pleas*, 76 Ohio St.3d 287, 289, 1996-Ohio-424, makes clear SERB's role in unfair labor practices claims:

* * * The State Employment Relations Board has exclusive jurisdiction to decide matters committed to it pursuant to R.C. Chapter 4117. *Franklin Cty. Law Enforcement Assn. v. Fraternal Order of Police, Capital City Lodge No. 9* (1991), 59 Ohio St.3d 167, 572 N.E.2d 87, paragraph one of the syllabus. Exclusive jurisdiction to resolve charges of unfair labor practices is vested in SERB in two general areas: (1) where one of the parties files charges with SERB alleging an unfair labor practice under R.C. 4117.11; or (2) where a complaint brought before the common pleas court alleges conduct that constitutes an unfair labor practice specifically enumerated in R.C. 4117.11. *E. Cleveland v. E. Cleveland Firefighters Local 500, I.A.F.F.* (1994), 70 Ohio St.3d 125,

127-128, 637 N.E.2d 878, 880. Therefore, if a party asserts claims that arise from or are dependent on the collective bargaining rights created by R.C. Chapter 4117, the remedies provided in that chapter are exclusive. *Franklin Cty. Law Enforcement Assn.*, at paragraph two of the syllabus.

{¶12} It is clear that Jamison brought a complaint before the trial court alleging conduct that constitutes an unfair labor practice which is governed by R.C. Chapter 4117. R.C. Chapter 4117 prevails over any and all other conflicting laws, resolutions, provisions, present or future, except as otherwise specified in R.C. Chapter 4117. It was meant to regulate in a comprehensive manner the labor relations between public employees and employers. *Franklin Cty. Law Enforcement Assn. v. Fraternal Order of Police, Capital City Lodge No. 9*, (1991), 59 Ohio St.3d 167, 171.

{¶13} Jamison has not filed a grievance with SERB. Examination of the Ohio Supreme Court cases clearly shows that SERB had exclusive jurisdiction. There is no genuine issue of material fact and the Sheriff's Office is entitled to judgment. Reasonable minds can come to only one conclusion that Jamison was required to file his complaint with SERB, which has exclusive jurisdiction to resolve charges of unfair labor practices. We therefore would grant appellees' motion for summary judgment.

{¶14} Jamison's assignment of error is overruled and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

KLATT and FRENCH, JJ., concur.
