

Court of Claims of Ohio

The Ohio Judicial Center
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JAMES KARA

Plaintiff

v.

OHIO DEPARTMENT OF TAXATION

Defendant

Case No. 2012-03794

Judge Patrick M. McGrath
Magistrate Holly True Shaver

JUDGMENT ENTRY

{¶1} On February 21, 2014, the magistrate issued a decision recommending judgment for defendant.

{¶2} Civ.R. 53(D)(3)(b)(i) states, in part: “A party may file written objections to a magistrate’s decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R. 53(D)(4)(e)(i).” On March 7, 2014, plaintiff filed his objections. Defendant filed a response on March 18, 2014.

{¶3} Plaintiff brought this action alleging wrongful termination in violation of public policy. Additionally, plaintiff sought a determination as to whether Paula Forrest¹ and Beth Lowe are entitled to civil immunity pursuant to R.C. 9.86 and 2743.02(F). The issues of liability and damages were bifurcated, and following a liability trial, the magistrate recommended judgment for defendant.

{¶4} According to the magistrate’s decision, plaintiff was employed by defendant as a Tax Auditor Agent I, stationed in the Cleveland office. Lowe, who was stationed in

¹According to the magistrate’s decision, Paula Finnin is now known as Paula Forrest and shall be referred to as “Forrest” throughout this decision.

the Akron office, was plaintiff's supervisor. Plaintiff alleges that during his employment, he witnessed Pat Mancuso, a supervisor in the Cleveland office, repeatedly harass Ron Myeress. Plaintiff testified that after a mid-probationary review, Lowe asked plaintiff to sign a statement in support of management. Plaintiff responded by saying that he would think about testifying on behalf of management. Lowe, however, testified that such a conversation never happened. Following a final probationary review, plaintiff received an unsatisfactory rating and was removed from his probationary employment.

{¶5} Regarding plaintiff's claim of wrongful termination in violation of public policy, the magistrate noted that plaintiff had met his burden of establishing a clear public policy and that plaintiff's discharge would jeopardize the policy. However, the magistrate determined that plaintiff "failed to prove that his removal was motivated by his alleged refusal to testify on behalf of management with regard to Myeress' grievance. Assuming arguendo that Lowe threatened him with termination for his failure to write a statement in support of management, the reasonable inference is that Lowe would be inclined to continue plaintiff's employment once he informed her that he would either make no statement at all, or, perhaps, testify on behalf of management." Magistrate's decision, pg. 10.

{¶6} Additionally, the magistrate found that plaintiff's argument that "Lowe was 'laying the groundwork' to fire him because of his reluctance to testify on behalf of management is not credible." *Id.* As a result, the magistrate concluded that plaintiff failed to prove that plaintiff's discharge was motivated by conduct related to the public policy. Furthermore, the magistrate determined that plaintiff's performance documented in both performance reviews shows that defendant had an overriding business justification to remove plaintiff from his probationary employment. Finally, the magistrate determined that Lowe and Forrest are entitled to immunity pursuant to R.C. 9.86 and 2743.02(F). Thus, the magistrate recommended judgment for defendant.

{¶7} In his only objection, plaintiff requests the court remand the case to the magistrate for a factual determination as to whether Lowe threatened plaintiff if he refused to cooperate with management concerning an investigation into a coworker's grievance. Such a factual finding is not necessary given the magistrate's determination that plaintiff failed to prove that the discharge was motivated by conduct related to the public policy and that there was no overriding business justification for the discharge. Moreover, the magistrate made such a determination while assuming that Lowe made a threat to plaintiff. See Magistrate's decision pg. 10.

{¶8} Additionally, plaintiff failed to support his objection with a transcript of the proceedings. Civ.R. 53(D)(3)(b)(iii) states that "[a]n objection to a factual finding, whether or not specifically designated as a finding of fact under Civ.R. 53(D)(3)(a)(ii), shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available." Inasmuch as the factual findings contained in the magistrate's decision support the magistrate's conclusions, plaintiff's objection to such findings are without merit.

{¶9} To the extent that plaintiff challenges the magistrate's conclusions of law, the court's review of the magistrate's decision reveals that the facts found by the magistrate are sufficient to sustain the magistrate's conclusions, and the magistrate's conclusions are consistent with law.

{¶10} Upon review of the record, the magistrate's decision and plaintiff's objections, the court finds that the magistrate has properly determined the factual issues and appropriately applied the law. Therefore, the objections are OVERRULED and the court adopts the magistrate's decision and recommendation as its own, including findings of fact and conclusions of law contained therein. In addition, the court determines that Beth Lowe and Paula Forrest are entitled to civil immunity pursuant to R.C. 9.86 and 2743.02(F) and that the courts of common pleas do not have jurisdiction over any civil actions that may be filed against them based upon the

allegations in this case. Judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

PATRICK M. MCGRATH
Judge

cc:

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