

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio ex rel. Melvin A. Woods

Court of Appeals No. L-06-1292

Petitioner

v.

Michael Navarre, Chief,
The City of Toledo Department of Police

DECISION AND JUDGMENT

Respondent

Decided: June 23, 2009

* * * * *

Richard A. Mitchell, for petitioner.

Adam Loukx, Acting Director of Law and Keith J. Winterhalter,
Senior Attorney, for respondent.

* * * * *

HANDWORK, J.

{¶ 1} This matter is before the court on a motion for summary judgment filed by respondent, Toledo Police Chief Michael Navarre, on March 10, 2009. In his motion, respondent asks this court to deny two motions to show cause and to enforce this court's June 5, 2007 decision and judgment entry which granted a request for a writ of

mandamus filed by petitioner, Melvin Woods, and ordered respondent, Toledo Police Chief Michael Navarre, to reinstate petitioner to his former position as a Toledo police patrolman, or a position and salary similar to it. We also ordered respondent to pay petitioner's attorney fees, and other costs and fees associated with bringing this mandamus action. *State, ex rel. Woods v. Navarre*, 6th Dist. No. L-06-1292, 2007-Ohio-2840.

{¶ 2} The following facts are relevant to our determination of respondent's motion:

{¶ 3} On November 16, 2007, petitioner filed his first show cause motion, in which he asked this court to order respondent to show cause as to why he should not be in contempt for failing to pay petitioner's medical bills incurred before his return to duty, along with his attorney fees and costs. Attached to petitioner's first motion was a copy of a letter to Toledo City Law Director, John Madigan, in which petitioner's attorney, Mark Jacobs, stated that petitioner and his wife incurred \$7,095.78 in medical expenses after June 13, 2007, the day petitioner was deemed to have returned to work. The claims in the letter were supported by copies of medical bills, prescription receipts, health insurance premium notices, and cancelled checks issued by petitioner to various entities for medical-related expenses.

{¶ 4} On December 3, 2007, respondent filed a reply in opposition, in which he stated that petitioner's outstanding medical-related bills were not yet reimbursed because petitioner failed to provide documentation necessary to determine what, if any, portion of

those expenses would have been covered by the Toledo Police Department's insurance plan at the time they were incurred. Attached to respondent's reply was the affidavit of Keith J. Winterhalter, senior attorney for the city of Toledo. In his affidavit, Winterhalter stated that, after receiving petitioner's initial demand for reimbursement, he requested information needed to process the request. Winterhalter further stated that, rather than provide the requested information, petitioner's counsel responded by filing the motion to show cause.

{¶ 5} In his second motion, filed on March 12, 2008, petitioner again asked this court to order respondent to show why he is not in contempt for failing to follow our mandate issued on June 5, 2007, for different reasons. In support of his second motion petitioner states that, since returning to work, he has been assigned to the police tow lot, which is neither analogous nor similar to his former position as a patrolman. In addition, petitioner claims that, since returning to work, he has been systematically harassed by respondent, acting through the Toledo Police Department, in retaliation for his actions; he has not been issued a uniform, firearm and TASER; and he was not given proper credit for training taken since this court ordered respondent to reinstate him. Attached to petitioner's second motion was a document listing the training requirements to be fulfilled before petitioner is reassigned as a patrolman; and copies of several search warrants for properties owned by petitioner, along with reports of the inventory seized at those location.

{¶ 6} Respondent filed a reply in opposition to the second motion on April 15, 2008, in which respondent stated that petitioner was assigned to the tow lot pending fulfillment of his re-training and eventual reinstatement as a Toledo Police patrolman. In support, respondent stated that he cannot be held in contempt because petitioner's re-training was complete and, to date, "[t]he only thing keeping [petitioner] from returning to active duty as a patrol officer is the receipt of his bullet proof vest, which has been ordered." Attached to the reply were copies of a letter written by Suzanne Tobin, Certification Officer of the Certification and Standard's Division of the Ohio Peace Officer Training Academy ("OPOTA"), on January 22, 2008, which set forth the training requirement and Deborah M. Furka, Assistance Executive Director for the Certification and Standards Division of OPOTA, which stated that petitioner had completed the required training as of April 2, 2008. Respondent did not address petitioner's harassment allegations in his response.

{¶ 7} On May 15, 2008, petitioner filed a response, in which petitioner states that the long delay between our decision and judgment entry on June 5, 2007, and the "re-determination" letter issued by OPOTA on April 2, 2008, is evidence that supports a contempt finding against respondent. Petitioner also reasserts his claim that an assignment to the tow lot is not a position that is "the same or similar" to that of patrolman. In addition, petitioner notes respondent's failure to "address, even in passing, petitioner's allegations of harassment and retaliation."

{¶ 8} On October 15, 2008, a mediation was held, which was attended by both parties. Following the mediation, the issues of attorney fees and medical expenses were resolved. Accordingly, the first motion to show cause has become moot.

{¶ 9} On March 10, 2009, respondent filed the motion for summary judgment herein, in which he asserted that petitioner was reinstated pursuant to our order, and assigned to the city tow lot until he was recertified by OPOTA to carry a firearm. After certification was completed, petitioner was returned to active duty as a Toledo Police Patrolman, and was issued a badge, vest, and firearm. Respondent also stated that, from the moment he was reinstated, petitioner received his former salary "with all previous rights, including civil service [credit]." Respondent further asserted that petitioner had produced no evidence to support his claims of harassment and/or retaliation, other than to make reference to two search warrants that were executed at petitioner's residence, and an alleged attempt "to get incriminatory evidence about petitioner from a crime suspect." Accordingly, respondent argued that petitioner's motion to show cause based on a violation of our June 5, 2007 decision was without merit and should be denied.

{¶ 10} On April 14, 2009, petitioner filed a motion for leave to supplement his show cause motion with portions of deposition transcripts taken in another case. Specifically, petitioner sought to introduce the testimony of Anthony Hines and Tomeka Smith, in which they stated that Toledo Police attempted to elicit incriminating evidence about petitioner in exchange for dropping criminal charges against Hines and Smith in another matter. This court granted petitioner's motion to supplement on May 8, 2009.

{¶ 11} On May 22, 2009, petitioner filed a response in opposition to summary judgment, in which he asserted that genuine issues of fact remain as to whether his assignment to the tow lot was a position that was "the same or similar" to that of Toledo Police Patrolman, and whether respondent engaged in a pattern of harassment and/or retaliation against petitioner after he returned to work pursuant to our June 5, 2008 order. In support, petitioner cited the following alleged failures on the part of the respondent:

{¶ 12} "Failure to issue [petitioner] a uniform until April 2008;

{¶ 13} "Failure to issue [petitioner] a service revolver until April 2008;

{¶ 14} "Failure to issue [petitioner] a TASER gun until April 2008;

{¶ 15} "Failure to give credit to [petitioner's] completion of two weeks OPOTA training;

{¶ 16} "Failure to credit [petitioner's] firearm's training qualification for 2008, despite participating in qualification sessions with other similarly situated officers;

{¶ 17} "Failure to issue [petitioner] a badge until approximately April 2008; and

{¶ 18} "Failure to issue [petitioner] a vest until approximately April 2008."

{¶ 19} We note initially that a mandamus is an original action that can be brought in the first instance in the court of appeals, which then functions as the trial court. R.C. 2731.02. Accordingly, in this case, summary judgment will be granted if there remains no genuine issue of material fact and, when construing the evidence most strongly in favor of petitioner, reasonable minds can only conclude that respondent is entitled to judgment as a matter of law. Civ.R. 56(C).

{¶ 20} It is undisputed that petitioner was returned to active duty as a Toledo police patrolman and was issued a badge, vest, and firearm in April 2008, after the second show cause motion was filed. It is further undisputed that petitioner received his full pay, benefits, and service credit during the time he was assigned to duty in the tow lot. Accordingly we find that, while petitioner's reinstatement to active duty was not immediate, sufficient evidence has been presented to demonstrate that respondent has substantially complied with the terms of our writ of mandamus. See *State ex rel. Curry v. Grand Valley Local Schools Bd. of Edn.* (1980), 61 Ohio St.2d 314, 315. ("It is rudimentary that contempt will be excused by either actual or substantial compliance with a mandamus order.")

{¶ 21} We further find that petitioner's claim of harassment, if viable, gives rise to an adequate remedy at law. See *Mowery v. City of Columbus*, 10th Dist. No. 05AP-266, 2006-Ohio-1153, ¶ 41. (Employment discrimination/harassment claims against an employer may be brought pursuant to R.C. 4112.02.) It is, therefore, not properly a part of this mandamus action. *State ex rel. Sherrils v. McMonagle*, 8th Dist. No. 92993, 2009-Ohio-2376, ¶ 5, citing *State ex rel. Tran v. McGrath*, 78 Ohio St.3d 45, 1997-Ohio-245. (Relief in mandamus is precluded if the relator has an adequate remedy at law.)

{¶ 22} On consideration of the foregoing, and after construing the evidence most strongly in favor of petitioner, we find that no genuine issues of fact remain. Accordingly, respondent is entitled to summary judgment as a matter of law. Petitioner's

two motions to show cause are not well-taken and are denied. Costs are assessed to petitioner.

{¶ 23} The clerk of court is hereby ordered to enter this judgment on its journal, and shall serve upon all parties not in default for failure to appear notice of this judgment and its date of entry upon the journal. Within three days of journalizing this judgment, the clerk shall serve the parties. Civ.R. 58(B) & 5(B).

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.
CONCUR.

JUDGE

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