

June 22, 2011

Witness: Barry Lollar

ORIGINAL

1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF ALABAMA
3 SOUTHERN DIVISION
4

5 BARBARA ANN WILSON,

6
7 Plaintiff,

8
9 VS. CIVIL ACTION

10 NO. 2:10-CV-02386-KOB
11

12 THE CITY OF BIRMINGHAM;
13 et al.,

14
15 Defendants.
16

17 DEPOSITION OF BARRY LOLLAR

18 JUNE 22ND, 2011
19

20 STIPULATIONS

21 IT IS STIPULATED AND AGREED,
22 by and between the parties, through
23 their respective counsel, that the

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1 deposition of BARRY LOLLAR may be
 2 taken before Mellie Phillips,
 3 Commissioner, State of Alabama at
 4 Large, at the offices of Adam Morel,
 5 517 Beacon Parkway West, Birmingham,
 6 Alabama, on the 22nd day of June,
 7 2011, commencing at or about 2:31 p.m.

8 IT IS FURTHER STIPULATED AND
 9 AGREED that the reading and signature
 10 to the deposition by the witness is
 11 waived, said deposition to have the
 12 same force and effect as if full
 13 compliance had been had with all laws
 14 and rules of court relating to taking
 15 of depositions.

16 IT IS FURTHER STIPULATED AND
 17 AGREED that it shall not be necessary
 18 for any objections to be made by
 19 counsel as to any questions, except as
 20 to form or leading questions, and that
 21 counsel for the parties may make
 22 objections and assign grounds at the
 23 time of the trial, or at the time said

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1 deposition is offered in evidence, or
2 prior thereto.

3 IT IS FURTHER STIPULATED AND
4 AGREED that notice of filing of the
5 deposition by the Commissioner is
6 waived.

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Mr. Adam Morel -----	7 - 24

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BEFORE: Mellie Phillips
Commissioner

APPEARING ON BEHALF OF THE PLAINTIFF:

MR. ADAM MOREL, ESQ.
Law Offices of Mr. Morel
517 Beacon Parkway West
Birmingham, Alabama 35209

APPEARING ON BEHALF OF THE DEFENDANT:

MR. FREDRIC FULLERTON, II, ESQ.
Department of Law
710 North 20th Street
City Hall/Room 600
Birmingham, Alabama 35203

ALSO PRESENT:

BARBARA WILSON

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1 I, Mellie Phillips,
2 Commissioner, State of Alabama at
3 Large, acting as commissioner, certify
4 that on this date, in accordance with
5 Rule 30 of the Alabama Rules of Civil
6 Procedure and the foregoing
7 stipulations of counsel, there came
8 before me at the offices of Adam
9 Morel, 517 Beacon Parkway West,
10 Birmingham, Alabama, on the 22nd day
11 of June, 2011, BARRY LOLLAR, witness
12 in the above cause for oral
13 examination, whereupon the following
14 proceedings were had:

15
16 BARRY LOLLAR,
17 having been first duly sworn, was
18 examined and testified as follows:

19 THE COURT REPORTER: Usual
20 stipulations?

21 MR. MOREL: Yes. That's
22 fine.

23 MR. FULLERTON: Yes. That's

1 fine.

2 EXAMINATION BY MR. MOREL:

3 Q. State your name for the
4 record, please.

5 A. My name is Barry Jay Lollar.

6 Q. Mr. Lollar, who is your
7 employer?

8 A. I am employed by the City of
9 Birmingham, Alabama.

10 Q. All right. Is it your
11 understanding, that you are here to
12 testify on behalf of the City with
13 respect to the Deposition Notice that
14 was issued in this case?

15 A. That is correct.

16 Q. All right. What's your
17 title?

18 A. I am Deputy Director of the
19 Personnel City of Birmingham.

20 Q. And tell me what those
21 duties include.

22 A. Okay. Well since April,
23 when I was appointed to this role.

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1 Q. That you're still learning
2 partly?

3 A. Absolutely. Well I have
4 responsibility in particular for Human
5 Resources Information Systems for our
6 Benefits Administration. And for
7 other administrative efforts as well.

8 Q. You need to quit your job
9 and go into radio. All right. You're
10 able to testify about the relationship
11 between the City of Birmingham and Ms.
12 Wilson's employment at the Library?

13 A. I can testify regarding
14 relationship between the City of
15 Birmingham and the Library.

16 Q. Okay. Well I'll ask the
17 questions, and you tell me if you can
18 answer them or not.

19 A. Certainly.

20 Q. It is true that while Ms.
21 Wilson was performing duties at the
22 Library, she was paid by the City of
23 Birmingham?

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1 A. That is correct.

2 Q. All right. And is it also
3 true that, the City of Birmingham was
4 the entity to which Ms. Wilson had to
5 make application for injury with pay
6 leave?

7 A. That is correct.

8 Q. And that the City is also
9 the entity which would determine
10 whether or not she would receive
11 injury with pay ultimately?

12 A. That is correct.

13 Q. Let me show you what I'm
14 going to mark -- I'm just going to do
15 a continuation.

16 MR. FULLERTON: That's fine.

17 Q. (BY MR. MOREL) We'll make it
18 Plaintiff's Exhibit 37. You should be
19 lucky that you weren't here for 1
20 through 36. And my question is: This
21 is a document that I'll show you in
22 just a moment that is an Interoffice
23 Communication from the Office of

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1 Personnel from the City. And it lists
2 a number of people who were approved
3 for disability. Do you see that?

4 (Whereupon, Plaintiff's
5 Exhibit Number 37 was
6 marked for identification.)

7 A. I do.

8 Q. And for each person that was
9 approved or disapproved, it list the
10 department or the City where they
11 worked?

12 A. Yes.

13 Q. Do you see where for Ms.
14 Wilson, it list the Library under that
15 heading?

16 A. Yes, I see that.

17 Q. All right. Is it true that
18 the Library is a Department of the
19 City?

20 A. We treat the Library as a
21 Department of the City.

22 Q. Okay.

23 A. Indeed.

1 Q. That's all I need to ask you
2 about that. The Library Director has
3 testified that just about all of the
4 funding, other than a few grants, all
5 the funding that is used to operate
6 the Library, comes from the City, do
7 you have knowledge of that?

8 A. That is my understanding as
9 well.

10 Q. Okay. Let me show you what
11 I'll mark as Plaintiff's Exhibit 38.
12 I'm going to ask you just to identify
13 it, if you can. And my real question
14 would be for you to describe, if
15 you're able to, what the Jefferson
16 County Personnel Board's involvement
17 would be in a situation such as that
18 that's recounted in that letter. I
19 think it deals with injury with pay
20 application.

21 (Whereupon, Plaintiff's
22 Exhibit Number 38 was
23 marked for identification.)

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1 A. This I really can't say with
2 any degree of certainty. I do know
3 that the Library employees are not
4 under the Jefferson County Personnel
5 Board.

6 Q. Right. Yeah.

7 A. So whether or not, you know,
8 they would offer any say as to
9 whether, you know, in the end a person
10 would be a library employee would, you
11 know, would fall under their sway. I
12 really don't know, I mean.

13 Q. And I have no agenda on the
14 question.

15 A. Okay.

16 Q. You know, we can agree
17 though that this is a letter dated may
18 17, 2011, from Gerald La blanc who
19 is -- who is Gerald Le Blanc?

20 A. Gerald Le Blanc is our
21 Occupational Health and Safety
22 Administrator.

23 Q. City employee?

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1 A. That is correct.

2 Q. All right. And this is a
3 letter from him to Lauren Oliver who
4 is the Head of the Jefferson County
5 Personnel Board?

6 A. That is correct.

7 Q. And it concerns Ms. Wilson's
8 injury with pay leave appeal; is that
9 right?

10 A. Um-hmm.

11 Q. We can at least agree to
12 that part?

13 A. Absolutely.

14 MR. MOREL: Let's go off the
15 record real quick.

16 (Whereupon, an off the
17 record discussion
18 occurred.)

19 Q. (BY MR. MOREL) Question is:
20 Is it your understanding that, that
21 Ms. Wilson applied for injury with pay
22 and was denied?

23 A. Yes.

1 Q. And that she had the right
2 to appeal that denial to Jefferson
3 County Personnel Board?

4 A. To the best of my
5 understanding, she did.

6 Q. All right. How is a
7 decision made when somebody like Ms.
8 Wilson applies for disability, how is
9 the decision made about whether to
10 grant it?

11 A. Well, again, I'm speaking
12 somewhat out of, you know, outside my
13 scope of knowledge.

14 Q. All right. Tell me what you
15 know and what you think you know.

16 A. Right. My understanding is
17 that, typically one would have our --
18 we have a -- what we call a Medical
19 Services Unit, it's at UAB. And we
20 would refer the employee and get some
21 opinion from our medical doctor there,
22 Dr. Lance.

23 And the decision would be

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1 made with whatever evidence that
2 Dr. Lance was able to determine I
3 guess in conjunction with the
4 employee's own doctor. But again I'm
5 speaking a little bit outside of my
6 scope of knowledge.

7 Q. Do you know whether -- and
8 your qualifications and your response
9 will be reflected obviously. So do
10 you know whether as a threshold matter
11 to get disability, you have to --
12 there has to be a determination made
13 that the disability arose out of
14 employment in some way?

15 A. Job related.

16 Q. Okay.

17 A. Yes. I do.

18 Q. Right. In other words, if I
19 work for -- whether I work for the
20 Library or the City either one, if I
21 come and say I want to apply for
22 disability and my disability is a
23 congenital birth defect that I've had

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1 all my life, you wouldn't get
2 disability in that situation because
3 it didn't arise out of the employment;
4 is that right?

5 A. It's unlikely that you'd get
6 it.

7 Q. Okay. I just want to make
8 sure I understand how the City does
9 that.

10 A. Yeah.

11 Q. And so your understanding
12 would be, that the City has determined
13 that whatever disability Ms. Wilson
14 has as a threshold matter at least,
15 arose out of her employment?

16 MR. FULLERTON: We can go
17 off the record later about that.

18 THE WITNESS: Well, if she
19 filed for injury with pay and it was
20 denied, my thinking with that, the
21 City would had determined that
22 whatever her disability was, was not
23 job related. I mean that would be the

1 reason for denial. I'm not sure I'm
2 answering the question that you asked
3 --

4 Q. (BY MR. MOREL) Well it might
5 be my confusion.

6 A. -- me. You want to
7 rephrase?

8 Q. Well it might be my
9 confusion.

10 A. Okay.

11 Q. What's the difference
12 between injury with pay and getting
13 disability through the City?

14 A. Sure. Well --

15 Q. It shows she was approved
16 for -- well can you tell from this
17 what she actually was approved for?

18 A. Okay. Yeah. Let me just
19 look. Okay. That's ordinary
20 disability. Okay. And ordinary
21 disability is, my understanding is,
22 disability that's outside of the job.
23 Okay.

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1 Q. All right.

2 A. Extraordinary disability,
3 EOD, is when it's job-related.

4 Q. Okay.

5 A. Now, that is my
6 understanding.

7 Q. Okay.

8 A. But, you know, I can, you
9 know, follow-up with that, you know,
10 if you need it?

11 Q. That's fine. Do you know
12 whether the City's doctor ever met
13 with or examined Ms. Wilson?

14 A. I do not know that whether
15 or not he did.

16 Q. And just for the record,
17 "injury with pay" would be the term
18 the party used by the City to cover
19 Worker's Compensation or not?

20 A. They're actually two
21 different animals.

22 Q. Okay.

23 A. Injury with pay is what the

1 City has been using for quite some
2 time, you know, but before I was born
3 at the City. And with injury with
4 pay, the employee is able to actually
5 be off work, if you will, with 100
6 percent of their salary.

7 Worker's Compensation, which
8 we are working toward implementing.
9 Hopefully, we'll be able to get
10 everything in place and do that this
11 fall. You know, that's State
12 mandated. The compensation is like 66
13 and two-thirds percent.

14 Q. Okay.

15 A. So you can see why the City
16 is interested in coming into
17 compliance so that we can move ahead.
18 And we should do that. I mean, that's
19 the right thing to do.

20 Q. That's a bunch of questions
21 for another day. I can't help, but my
22 curious nature. I could ask a half
23 hour of questions on that because I

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1 want to know more about that. Not
2 involved with this case.

3 A. Not this afternoon.

4 Q. Not today. I'll buy the
5 coffee. That's all the questions I
6 have. Thank you.

7 MR. FULLERTON: I don't have
8 any.

9 Q. (BY MR. MOREL) All right.
10 Let's go on the record for just a
11 minute. I'm sorry. Let me show you
12 what I'll mark as Plaintiff's Exhibit
13 39. This would be the Employee
14 Handbook -- Personnel Handbook for
15 City of Birmingham employees that
16 would have been applicable to Ms.
17 Wilson; is that correct?

18 (Whereupon, Plaintiff's
19 Exhibit Number 39 was
20 marked for identification.)

21 A. I would assume so.

22 Q. All right. Is that your
23 understanding?

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1 A. That is my understanding.

2 Q. All right. And Plaintiff's
3 Exhibit 40 would be also applicable to
4 Ms. Wilson. But it would be just
5 additional policy --

6 (Whereupon, Plaintiff's
7 Exhibit Number 40 was
8 marked for identification.)

9 A. That's correct.

10 Q. -- from the City?

11 A. Yes.

12 Q. And Plaintiff's Exhibit 41
13 are the City of Birmingham's Safety
14 Rules that also would have applied to
15 Ms. Wilson?

16 (Whereupon, Plaintiff's
17 Exhibit Number 41 was
18 marked for identification.)

19 A. That is my understanding.
20 Correct.

21 Q. And then Plaintiff's Exhibit
22 42 is the New Employee Orientation
23 Handbook presented by the City of

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1 Birmingham Office of Personnel that
2 would have applied to Ms. Wilson?

3 (Whereupon, Plaintiff's
4 Exhibit Number 42 was
5 marked for identification.)

6 A. Let me delve into that, if I
7 may?

8 Q. Okay. You're not sure on
9 that?

10 A. I'm not sure on that. And
11 the reason is, that since I've been at
12 the City of Birmingham, the Library
13 employees undergo their own new
14 employee orientation. So whether or
15 not they are given that, I'm not sure.

16 Q. Okay. Plaintiff's Exhibit
17 42, which is that New Employee
18 Orientation Handbook. But we know,
19 we're saying we don't know whether she
20 got it or not. Whether Ms. Wilson
21 would have got it. But it does list
22 the officials of the City of
23 Birmingham. And under Department

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1 Heads, it list Irene Blalock for the
2 Library; is that right?

3 A. Yes. It does.

4 Q. Okay. And then the last
5 exhibit we'll mark will be Plaintiff's
6 Exhibit 43. This is Ms. Wilson's
7 personnel file; is that correct?

8 (Whereupon, Plaintiff's
9 Exhibit Number 43 was
10 marked for identification.)

11 A. That is file, the copy that
12 we have internally. Now we have a --
13 you know, we have a copy that we get.
14 There's certain things that we do for
15 the Library in particularly such as
16 payroll and so forth. So those are
17 payroll actions, when, you know, merit
18 increases or general increases are
19 given so on and so forth.

20 Q. It's a personnel file that
21 the City keeps on Ms. Wilson?

22 A. That is correct.

23 Q. That may not be -- she may

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1 have other personnel documents at the
2 Library?

3 A. That is correct.

4 Q. All right. That's all the
5 questions that I have.

6 A. Okay.

7 MR. FULLERTON: That's all.
8 I don't have any.

9 MR. MOREL: All right.

10 Thanks for letting me get back on the
11 record.

12 THE WITNESS: Sure. You are
13 welcome.

14 FURTHER THE DEPONENT SAITH NOT.
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