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IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

ANN LANGFORD,	)	CIVIL NO. CV14-00070
	)	COURTROOM 5A
	)	U.S. FEDERAL COURTHOUSE
PLAINTIFF,	)	MOBILE, ALABAMA
	)	JUNE 07, 2016
VS.	)	
	)	
HALE COUNTY ALABAMA COMMISSION;	)	
HALE COUNTY PROBATE JUDGE,	)	
	)	
DEFENDANTS.	)	

JURY TRIAL - DAY 02

EXCERPTED TRANSCRIPT

BEFORE THE HONORABLE KRISTI K. DUBOSE  
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

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1 Proceedings reported by machine stenography.

2 Transcript produced by computer.

3 [June 07, 2016, in open court.]

4 [The following is an excerpted transcript.]

5 [Out of the presence and hearing of the jury.]

6 THE COURT: All right. I have wrestled with this a  
7 long time last night. Let me tell you what I've done and why  
8 I've done it.

9 All right. The whole issue of who is liable is just  
10 something I've struggled with, but I think I've come up with  
11 the right conclusion. First of all, I'm going to let the race  
12 go to the jury because -- for two reasons. I'm not trying this  
13 case again. If I'm wrong -- and it might be something that we  
14 might consider after the verdict, but we are going to let it go  
15 to the jury.

16 And, two, your cases were somewhat persuasive that  
17 made me doubt myself that I'm going to let it go to the jury  
18 for right now.

19 What I've done as -- let me see if I can get this  
20 straight. I wrote myself notes here. Let's start with the  
21 race claim. All right. The County Commission stays in under  
22 Title 7 no matter what. They don't have to do a thing, but  
23 because they are the employer, they are responsible for what  
24 Judge Crawford does. So they stay in under Title 7. Under  
25 1983, they have to do something.

1 I went back and looked at the evidence, and the only  
2 evidence we have is that County Commissioner Rogers says "We  
3 didn't do anything." There is a letter in one of your exhibits  
4 where the former attorney, Mr. Holmes, seems to indicate that  
5 they voted, but that's not part of the evidence. I was getting  
6 it confused with what the evidence was on summary judgment.

7 So there's no evidence that the County Commission did  
8 anything, unless I missed something. I went over everything  
9 last night, and I couldn't find anything.

10 MR. INGRUM: No. What we have kind of contended is  
11 that the County Commission did something by not doing anything,  
12 a pocket veto. David Rogers objected that she should not be  
13 terminated but -- because she was a commission employee.  
14 Nobody did anything.

15 THE COURT: Right. So on the race issue, we have  
16 Judge Crawford individually, and we have him in his official  
17 capacity, which is redundant with the Hale County. It's all  
18 the same.

19 MR. INGRUM: Right.

20 THE COURT: I mean, so if -- I want the defendant to  
21 jump in if I'm wrong. When I say "it's all the same," it would  
22 be the -- if there's a verdict against Judge Crawford for his  
23 actions on race, it would be against him in his official  
24 capacity, him in his individual capacity, and against the  
25 County Commission under Title 7.

1 [Further proceedings reported but not transcribed herein.]

2 THE COURT: Have y'all gone over the verdict form?

3 MR. McNEILL: I have not seen them yet, Judge.

4 THE COURT: I'll let Karen know to bring out the  
5 final verdict form and the jury instructions, final jury  
6 instructions, out. And we'll reconvene about ten until  
7 11:00 and give you some time to take a break, get ready for  
8 your closing arguments. And ten to 11:00 we'll reconvene and  
9 you can tell me, other than the objections just stated, if  
10 there's anything else. If there's not, we'll bring the jury up  
11 and get started with your closing arguments.

12 How long do you need?

13 MR. INGRUM: Your Honor, I believe -- and I've been  
14 trying to work it down -- but I think I can do 10 minutes and  
15 then they'll have their 20 minutes and 10 minutes.

16 THE COURT: Okay. That's great. That works for me.

17 All right. Anything else? Am I forgetting anything?  
18 Is there anything we need to talk about --

19 MS. KIDD: Your Honor, do we need --

20 THE COURT: Oh, your motions.

21 MS. KIDD: We renew our motions for judgment as a  
22 matter of law on behalf of the Commission, on 1983,  
23 Judge Arthur Crawford in his official and individual  
24 capacities -- for all defendants in all counts.

25 THE COURT: And for all claims?

1 MS. KIDD: And for all claims, yes, ma'am.

2 THE COURT: And, as I explained this morning, unless  
3 you've got some other thoughts on the County Commission, it's  
4 my intent to grant summary judgment on the County Commission on  
5 the 1983 claims because no act has been shown by the County  
6 Commission in particular.

7 Do you have argument against that?

8 MR. INGRUM: And it's my understanding Arthur  
9 Crawford in his official capacity will remain in.

10 THE COURT: Right.

11 MR. INGRUM: Okay.

12 THE COURT: So I grant the summary judgment on the  
13 1983 claims as to the race and the First Amendment as to the  
14 County Commission.

15 The Title 7 claim motion for summary judgment against  
16 the County Commission is denied.

17 The motion for summary judgment as to Arthur Crawford  
18 in his individual and official capacity as to both claims are  
19 denied. It's denied.

20 Something that hasn't been discussed but nobody has  
21 brought up is the issue of the punitive damages against Arthur  
22 Crawford. I haven't heard anything to support punitive  
23 damages, which is why I haven't put it in the jury charges.

24 Do you disagree?

25 MR. INGRUM: Of course, we would love punitive

1 damages to be in there.

2 [Further proceedings reported but not transcribed herein.]

3 THE COURT: Now, to determine the amount of Ann  
4 Langford's net lost wages and benefits, you should consider the  
5 evidence of the actual wages she lost and the monetary value of  
6 any benefits she lost. Although both this type of damages and  
7 damage for any other items of monetary damages are sought and  
8 can be recovered by Ann Langford in each claim, the total  
9 amount of damages can only be recovered once.

10 To determine whether and how much Ann Langford should  
11 recover for emotional pain and mental anguish, you may consider  
12 both the mental and physical aspects of injury, tangible and  
13 intangible.

14 Ann Langford does not have to introduce evidence of a  
15 monetary value for intangible things like mental anguish. You  
16 will determine what amount fairly compensates her for her  
17 claims. There's no exact standard to apply, but the award  
18 should be fair in light of the evidence.

19 Now, you must at least award a nominal damage of \$1  
20 against Judge Crawford and Hale County Commission for their  
21 violation of Ann Langford's due process rights.

22 Now, in order for Ann Langford to recover more than  
23 this \$1 nominal damage for the deprivation of due process, she  
24 must show by a preponderance of the evidence that she suffered  
25 some actual compensable injury caused solely by the failure to

1 give her procedural due process.

2 Now, if you find that the emotional distress or any  
3 other damages would have been incurred by Ann Langford even if  
4 proper procedures had been used in discharging her, then she is  
5 not entitled to such damages.

6 Now, you are instructed that any person who claims  
7 damages as a result of an alleged wrongful act on the part of  
8 another has a duty under the law to mitigate those damages.  
9 For purposes of this case, the duty to mitigate damages  
10 requires Ann Langford to be reasonably diligent in seeking  
11 substantially equivalent employment to the position of Chief  
12 Probate Clerk.

13 To prove that Ann Langford failed to mitigate  
14 damages, the defendants must prove by a preponderance of the  
15 evidence that, one, work comparable to the position of Chief  
16 Clerk was available; and, two, Ann Langford did not make  
17 reasonably diligent efforts to obtain it.

18 If, however, the defendant showed that Ann Langford  
19 did not make reasonable efforts to obtain work, then the  
20 defendants do not have to prove that comparable work was  
21 available.

22 If you find that defendants have proved by a  
23 preponderance of the evidence that Ann Langford failed to  
24 mitigate damages, then you should reduce the amount of Ann  
25 Langford's compensatory damages by the amount that could have

1 been reasonably realized if Ann Langford had taken advantage of  
2 an opportunity for substantially equivalent employment.

3 [Further proceedings reported but not transcribed herein.]

4 [Out of the presence of the jury.]

5 THE COURT: Okay. Then after that, we'll just be  
6 back here at 1:00 o'clock. Just be close by. Give Melanie  
7 your cell phone if you plan to be anywhere else other than  
8 here.

9 And you'll take them downstairs and have them back up  
10 around 1:00 then.

11 COURT SECURITY OFFICER: Yes, ma'am.

12 MR. INGRUM: Judge, this is just me asking. Do they  
13 have a calculator or -- I mean, it is a little complicated,  
14 this case.

15 THE COURT: Yes. Ms. Aycox usually puts one --  
16 Ms. Barnes usually puts one in the room for them.

17 MR. INGRUM: All right. Thank you, Your Honor.

18 THE COURT: All right. Thank you.

19 MR. McNEILL: Thank you, Judge.

20 MS. KIDD: Thank you.

21 [The court is in recess while the jury deliberates.]

22 [Chambers conference.]

23 THE COURT: Okay. So Melanie went in to do  
24 something.

25 THE CLERK: Well, they thought they had a question,

1 and then I knocked on the door.

2 THE COURT: So she went in. And "we need to ask you  
3 a question." She's like, "I can't answer questions." And they  
4 said just preliminary stuff, and they said this is what it is.

5 The question is basically they were confused if they  
6 find compensatory damages like how it all gets added up or what  
7 they should do.

8 So this was my attempt to explain it a little better  
9 and get your approval before I read it to them or have Melanie  
10 take it in to them. Let's go paragraph by paragraph.

11 MS. KIDD: Okay.

12 THE COURT: To clarify the cumulative damages issue.  
13 "Because the plaintiff is requesting the same damages for each  
14 claim, i.e. loss of wages, benefits, and emotional distress  
15 based on her termination, she can only recover one time for  
16 these compensatory damages."

17 Everybody agree with that? Make sure because that's  
18 the basis for everything else.

19 "Therefore, if you find that she's proven her race  
20 claim and that she has proven compensatory damages, then you  
21 should put that amount in the blank under the Race  
22 Discrimination section."

23 MS. KIDD: Yes.

24 THE COURT: If you find -- blah, blah, blah. "If you  
25 find she's proven compensatory damages on her due process

1 claim, then you should put that amount in the Due Process  
2 section."

3 Let's stop there. Of course, the reason I'm doing  
4 that because if one of her claims go out, we want to know. So  
5 I don't think I need to explain that to the jury.

6 All right. Now, "As to the due process claim, you  
7 may find that she's not due any compensatory damages, only  
8 nominal damages of \$1, or,

9 "That she's due compensatory damages based on her  
10 termination if you find she would not have been terminated if  
11 her due process had not been violated." That's just explaining  
12 to her that it's all -- to them that it's all the same.

13 Now, the amount of compensatory damages, if proven,  
14 should be the same for the Race, First Amendment, and Due  
15 Process claim because the same evidence was presented as the  
16 basis for damages for each of these claims.

17 MR. McNEILL: But not necessarily for the due  
18 process.

19 THE COURT: Well, hold on. His theory -- I listened  
20 carefully. He didn't put on any evidence about, you know,  
21 emotional distress or anything else other than from when she  
22 was fired. That's what she talked about. "When I was fired,  
23 all these bad things happened to me. They ran articles.  
24 People talked about me. You know, I had headaches," or  
25 whatever she said. But it all had to do with her based on her

1 termination.

2 That's why I'm saying every bit of evidence he put on  
3 had to do with her due process rights and if he had listened to  
4 her and heard her side, she wouldn't have been fired and all  
5 this stuff wouldn't have happened to her. Am I wrong?

6 MR. INGRUM: That's correct.

7 THE COURT: Okay. So it's the same. It's the same,  
8 one, two, or three. Because that's why I said they have to  
9 find if you -- No. 2, that she's due compensatory damages based  
10 on her termination. So if you find that she would have been  
11 terminated -- had not been terminated, her due process rights  
12 had not been violated.

13 MR. McNEILL: Okay. Okay. Yes, ma'am.

14 THE COURT: You see what I'm saying?

15 MR. McNEILL: Yes, ma'am.

16 THE COURT: I've limited what they can get because  
17 that's the only evidence that was presented, what happened to  
18 her after she was terminated.

19 MR. McNEILL: Yes, ma'am. I understand now.

20 MS. KIDD: Yeah, yeah.

21 THE COURT: There was nothing that she had a mental  
22 breakdown after it all happened.

23 MR. INGRUM: But wasn't it all at the same time?  
24 What else could possibly have happened?

25 THE COURT: That's my point. What else could she

1 have done the second that he -- there's nothing else that could  
2 happen.

3 MR. INGRUM: The foreseeable consequence of it.

4 THE COURT: Now, had she not been fired and, you  
5 know, or she got her job back or whatever and then she could  
6 have talked about mental damages, you know, because like I had  
7 to go a week before I got the -- or whatever. That's not what  
8 happened. Our facts don't fit that. All right. So then I  
9 tried to explain to them because they are like, well, what  
10 happens if we -- so I did this.

11 MR. INGRUM: Your Honor, I'm still having trouble  
12 getting my head around No. 2.

13 THE COURT: Okay. Yes. It's not very well-worded.  
14 No. 1 is clear enough that she's not due any compensatory or  
15 nominal damage or, two, that she's due compensatory damages  
16 based on her termination if you find that she would not have  
17 been terminated.

18 MS. KIDD: So in other words -- if she had gotten the  
19 notice in the hearing would she not have been fired. Well,  
20 then, that's the damages. It's the causation factor. I see  
21 what you are --

22 MR. INGRUM: Right. And that's getting to me. Of  
23 course, I'm reading it also. If I don't know anything about --  
24 I don't know that that's going to make sense to them. I don't  
25 know a better way to say it, though.

1 MR. McNEILL: I don't either.

2 THE COURT: Well, let's try, as to the due process  
3 claim, you may find, one, that she's due compensatory damages  
4 based on her termination. Well, actually, I could just take  
5 the rest of it out that she's due compensatory damages based on  
6 her termination. Based on her termination. They have no other  
7 choice. Either they've got to find it based on her termination  
8 or --

9 MS. KIDD: My concern is that they -- my concern  
10 would be the idea of if they find -- in other words, that if  
11 they were to find that -- sorry. I'm trying to think because  
12 I'm really trying to think of a better way to say this right.  
13 Based on her termination, like, what if they find that she --  
14 well --

15 THE COURT: I think what we do is take out that last  
16 part and put "based on her termination only," period.

17 MR. INGRUM: Right.

18 THE COURT: So you've got two choices: Nominal or  
19 damages based on her termination.

20 MR. INGRUM: I think the double negative in the  
21 second part of the sentence is throwing them.

22 MR. McNEILL: It does make it read better. It's  
23 saying the same thing. I'm going to defer to you, Jaime.

24 THE COURT: I'm sorry. I need to get an answer back  
25 to them.

1 MR. INGRUM: Yes.

2 THE COURT: Do you want go on my computer? It's on  
3 my computer.

4 MR. McNEILL: Yes, yes. I think "only" is fine.

5 THE COURT: Turn to the back page. "When the Court  
6 issues final judgment, it will note the amount awarded on each  
7 claim but actually award only one sum for compensatory damages.  
8 Then I give them two examples to illustrate. You know, if you  
9 find \$50, \$50, and then \$1 as nominal. Then I'm going to award  
10 \$51. If you'll find 200, 200, 200, I'm going to award 200. I  
11 tried to go low and high so that, you know.

12 MR. INGRUM: So there's no difference.

13 THE COURT: But to try to give them two examples  
14 because they seem to be concerned about how all this works.  
15 And so --

16 MR. INGRUM: And I guess if I'm a juror, my next  
17 question would be what if race discrimination is 100, First  
18 Amendment is 200, due process is 300.

19 THE COURT: I'd say refer back to the paragraph where  
20 I say they have to be the same.

21 MR. INGRUM: Right.

22 THE COURT: It has to be the same because it's the  
23 same.

24 MR. INGRUM: It's the same --

25 THE COURT: The same evidence. It would be an

1 inconsistent verdict on their part.

2 MR. INGRUM: Correct.

3 THE COURT: If they found race was \$50, and this was  
4 200.

5 MR. INGRUM: Right.

6 THE COURT: Because it's the same evidence. Either  
7 they believe it or they don't.

8 MR. INGRUM: Okay.

9 MS. KIDD: Okay.

10 THE COURT: Don't be hesitant to tell me I'm wrong.  
11 I'm going to make this change real quick. Be right back.

12 [Brief Recess.]

13 THE COURT: If you want to read it to them, but tell  
14 them you can't answer any questions and then hand it to them  
15 and leave.

16 THE CLERK: Gotcha.

17 THE COURT: Is that okay with everybody?

18 MR. McNEILL: Yes.

19 MR. INGRUM: Yes.

20 [Court is in recess while the jury deliberates.]

21 [Chambers conference.]

22 THE COURT: Actually, when I read this, I thought,  
23 oh, my God, why did I leave this in here? The second element,  
24 if you find that Ann Langford had a political affiliation. So  
25 as I read it, that should have come out with another candidate.

1 I should have said, you know, that's a proven fact.

2 MR. INGRUM: Yeah. Check.

3 THE COURT: And, as soon as I read that, I thought,  
4 oh, that should have come out. Then I go on to say that Ann  
5 Langford had a political affiliation.

6 MS. KIDD: Yes.

7 THE COURT: So you read what I'm going to send back.  
8 Is that good with everybody? The answer would be -- for the  
9 record, the jury has asked for the definition of "affiliation."

10 The answer the Court proposes to give is that, "In  
11 this case the parties have agreed that Ann Langford had a  
12 political affiliation with Leland Avery, candidate for probate  
13 judge. Therefore, you should accept this as a proven fact.  
14 See instructions, page 6."

15 [End of excerpt.]

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1 STATE OF ALABAMA)  
2 :  
3 COUNTY OF MOBILE)

4 ANN LANGFORD  
5 vs.  
6 HALE COUNTY ALABAMA COMMISSION;  
7 HALE COUNTY PROBATE JUDGE.  
8 CASE NO. CV14-00070

9 I, Melanie Wilkins, do hereby certify that the above  
10 and foregoing transcript of proceedings in the matter  
11 aforementioned was taken by me in machine shorthand, and the  
12 questions and answers thereto were reduced to writing under my  
13 personal supervision using computer-aided transcription, and  
14 that the foregoing represents a true and correct transcript of  
15 the proceedings upon said hearing.

16 I further certify that I am neither counsel nor  
17 related to the parties to the action, nor am I in anywise  
18 interested in the result of said cause.

19 Pages 1 to 17, inclusive.

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