

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002456-MR

DAVID J. BILLINGS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ANN O'MALLEY SHAKE, JUDGE
ACTION NO. 97-CI-004140

JEFFERSON COUNTY, KENTUCKY;
CITY OF LOUISVILLE;
RONALD A. RICUCCI;
EDWARD BLASER; AND
MICHAEL DOSSETT

APPELLEES

AND: CROSS-APPEAL NO. 1999-CA-002661-MR

JEFFERSON COUNTY, KENTUCKY AND
RONALD A. RICUCCI

CROSS-APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ANN O'MALLEY SHAKE, JUDGE
ACTION NO. 97-CI-004140

DAVID J. BILLINGS

CROSS-APPELLEE

OPINION
AFFIRMING

** ** * * * ** **

BEFORE: HUDDLESTON, McANULTY, AND MILLER, JUDGES.

MILLER, JUDGE: David J. Billings brings Appeal No. 1999-CA-002456-MR and Ronald A. Ricucci and Jefferson County, Kentucky, bring Cross-Appeal No. 1999-CA-002661-MR from an October 5, 1999, opinion and order of the Jefferson Circuit Court. We affirm on appeal and on cross-appeal.

Billings, a long-time employee of the Jefferson County Police Department, under the command of appellee/cross-appellant, Chief Ronald A. Ricucci, was under assignment as a detective in the Metro Narcotics Unit.¹ In early 1997, it was decided that Billings would be removed from the unit and reassigned to the Jefferson County Uniform Unit. This was thought by some to be a position of less prestige, but carrying the same base pay rate. Before the transfer took effect, Billings elected to retire from the Jefferson County Police Department.

On July 24, 1997, Billings brought an action against appellees under what is commonly referred to as the "Whistle Blower Act." Kentucky Revised Statutes (KRS) 61.101 et seq. He alleged that his reassignment was in retaliation for disclosing illegal activities and/or abuse of authority that was occurring in the Metro Narcotics Unit.

Appellees, City of Louisville, Edward Blaser and Michael Dossett, tendered a motion for summary judgment alleging they were not proper parties. On February 15, 1999, the circuit court agreed with the City of Louisville, Blaser, and Dossett and dismissed the claims against them with prejudice.

¹The Metro Narcotics Unit is a joint law enforcement operation of the City of Louisville and Jefferson County.

In his complaint, Billings prayed *inter alia* for compensatory and punitive damages. The circuit court dismissed the claims for compensatory and punitive damages as he failed to timely respond to interrogatories pertaining to the claims for damages.

The case came on for a trial before a jury against Chief Ricucci and Jefferson County. The jury found that Billings did, in good faith, report a violation of the law, suspected mismanagement, and/or abuse of authority, and that such was a contributing factor to his transfer out of the Metro Narcotics Unit. Thereupon, the circuit court entered judgment against Chief Ricucci and Jefferson County granting Billings the equitable remedy of reinstatement to his prior job at the Metro Narcotics Unit and granting attorney fees in the amount of \$53,450.00, reimbursement of costs in the amount of \$1,356.50, and taxable costs in the amount of \$2,801.45. This appeal and cross-appeal follow.

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On direct appeal, Billings makes two assertions: (1) the circuit court erred in dismissing his claim against Edward Blaser, Michael Dossett, and the City of Louisville, and (2) the circuit court abused its discretion in refusing to permit him to pursue claims for compensatory and punitive damages.

Addressing the question of dismissal against Blaser, Dossett, and the City of Louisville, we perceive no merit in Billings' claim. It is abundantly clear that Billings was employed by Jefferson County and not by the City of Louisville.

As such, we do not believe Blaser, Dossett, or the City of Louisville could be sued under KRS 61.102. We thus affirm the circuit court's dismissal of the above parties.

Turning to the question of damages, we are of the opinion the circuit court was correct in denying Billings' claims for damages. A violation of Kentucky Rules of Civil Procedure (CR) 8.01(2), which requires specification as to the amount of unliquidated damages claimed, authorizes a denial of such damages. See Fratzke v. Murphy, Ky., 12 S.W.3d 269 (1999); Burns v. Level, Ky., 957 S.W.2d 218 (1997). Billings' failure to itemize damages until just before trial justified the circuit court's action. The record contains an order directing that all answers to outstanding interrogatories be made within seven days. That order was entered June 11, 1998. According to the record, Billings' response to the interrogatory requesting itemization of damages was due June 18, 1998. The information was not furnished until the afternoon of March 15, 1999, the eve of trial. Fratzke and Burns required dismissal.

Nevertheless, casting aside failure of Billings to comply with CR 8.01(2), we are not altogether convinced a case could have been made for submission upon the claims of compensatory and punitive damages. We do not perceive this as a discharge case. It was Billings, of his own volition, who terminated his employment, not his employer, Jefferson County. The recrimination against Billings caused no direct loss of income, but was a mere reassignment at the same base level of pay.

Doubtless, the legislature had in mind that many acts of recrimination may not result in pecuniary damages, when it provided for an alternate equitable remedy. In any event, we are of the opinion that the remedies afforded Billings, under the circumstances of this case, were adequate and reasonable absent an award for compensatory or punitive damages. It seems to us the remedies afforded Billings by the circuit court are sufficient vindication for the wrong done to him under the Whistle Blower Act.

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On cross-appeal, Ronald A. Ricucci and Jefferson County argue that (1) absent a finding by the jury that Billings was constructively discharged, and in light of his voluntary retirement, the circuit court had no authority to order reinstatement as a remedy, and (2) as Billings did not succeed in his claim for monetary damages and is not entitled to reinstatement, an award of attorney's fees is inappropriate. In Woodward v. Commonwealth, Ky., 984 S.W.2d 477 (1998), our Supreme Court had occasion to interpret KRS 61.101(1), labeling same a "criminal" statute. In the course of the opinion, the Court stated:

The crime of reprisal against a public employee is codified in KRS 61.102. The statute provides:

No employer shall subject to reprisal, or directly or indirectly use, or threaten to use, any official authority or influence, in any manner whatsoever, which tends to discourage, restrain, depress, dissuade, deter, prevent,

interfere with, coerce, or discriminate against any employee who in good faith reports, discloses, divulges, or otherwise brings to the attention

. . .

an actual or suspected violation of any law, statute, executive order, administrative regulation, . . . or any facts or information relative to actual or suspected . . . abuse of authority.

Four elements must necessarily be met in order for this crime to have occurred. First, from the context of this chapter, the employer must be an officer of the state or one of its political subdivisions. Second, the employee must be a state employee or an employee of a political subdivision. Third, the employee must make a good faith report of a suspected violation of state or local statute or administrative regulation to an appropriate body or authority. Fourth, the defendant must be shown to act to punish the employee for making this report or to act in such a manner so as to discourage the making of this report. (Emphasis added.)

Id. at 480-481.

It is clear from the foregoing that discharge, actual or constructive, is not a prerequisite to an action under the statute. It is only necessary that a whistle blower suffer some form of punishment or other adverse treatment. While we do not view Billings' departure as constituting an actual discharge, it was a predictable consequence of his adverse treatment. We assign no merit to Ricucci and Jefferson County's argument that job restoration was not an available remedy.

Jefferson County and Ricucci also argue that reinstatement and attorney fees are inappropriate in absence of a monetary award. We think the Whistle Blower Act was clearly

written so as to provide alternate legal and equitable remedies. We simply do not believe that a monetary award is a necessary prerequisite to equitable relief.

Upon the whole, we are of the opinion there was sufficient evidence to support the findings of the jury and the relief afforded by the circuit court. The testimony of Billings alone supports such.

For the foregoing reasons, the appeal and cross-appeal are affirmed.

ALL CONCUR.

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