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Motivation not relevant in Whistleblowers' Protection Act claim

FACTS:

Bruce Whitman was the police chief for the city of Burton from 2002 to 2007. Charles Smiley, the mayor of Burton, declined to reappoint Whitman in November 2007. Whitman brought an action against the city and the mayor under the Whistleblowers' Protection Act (WPA), claiming that the mayor's refusal to reappoint him was prompted by Whitman's repeated complaints that the refusal to pay Whitman's previously accumulated unused sick and personal leave time would violate a Burton ordinance.

Burton Ordinance 68C allows for unelected administrative officers, including Whitman, to be compensated for unused sick, personal, and vacation time on an annual basis. Because of significant budget restraints, the mayor and city department heads entered into an agreement acknowledged in a memorandum dated March 18, 2003 to forgo payments called for under Ordinance 68C. Two days later, Whitman began a series of objections to various city officials, claiming that the refusal to pay the accumulated sick leave, etc. was a violation of Ordinance 68C and that he would pursue the matter "as far as it needs to go." In January 2004, upon advice from the city attorney that refusal to pay would be a violation of Ord. 68C, the city paid Whitman his accumulated sick leave. In June 2004, the mayor stated that he was considering removing Whitman citing Whitman's actions in pursuing compensation for the accumulated sick leave, etc. After his re-election in 2007, the mayor declined to reappoint Whitman and stated publicly that his relationship with Whitman "got off on the wrong foot" because of the Ordinance 68C issue.

The Whistleblowers' Protection Act protects an employee against an employer's retaliatory employment actions, including discharge, when the employee "reports or is about to report, verbally or in writing, a violation or a suspected violation of a law" of the state, political subdivision, or United States to a public body. The city and the mayor claimed, in defense to Whitman's claim, that a previous Michigan Supreme Court decision requires that the employee must have, as his or her primary motivation for engaging in that conduct, a desire to inform the public on matters of public concern, rather than personal vindictiveness.

QUESTION:

Does the Michigan Whistleblowers' Protection Act require that an employee's primary motivation for engaging in protected conduct be a desire to inform the public of matters of public concern?

Answer according to the Trial Court and Jury:

No. The jury found that Whitman had engaged in protected conduct and that his protected conduct made a difference in the mayor's decision not to reappoint him as police chief. The jury awarded him \$232,500.

Answer according to the Court of Appeals:

Yes. The court of appeals reversed, holding that Whitman's claim was not actionable under the WPA since Whitman intended to advance his own financial interests and had not pursued the issue to inform the public on a matter of public concern. The court of appeals did not address the issue of whether there was a causal connection between Whitman's conduct and the mayor's decision not to rehire.

Answer according to the Michigan Supreme Court:

No. The plaintiff's motivation in an action under the WPA is not relevant to the issue whether a plaintiff has engaged in protected activity and proof of primary motivation is not prerequisite to bringing a claim. The Supreme Court remanded the case to the court of appeals, however, on the issue of whether there was a causal connection between the protected conduct and the failure to rehire, i.e., was the failure to rehire because of Whitman's protected activity under the criteria established in *Debano-Griffin v Lake Co*, 493 Mich 167 (2013).

Whitman v City of Burton, No. 143475, Michigan Supreme Court (May 1, 2013).

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