

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DENISE JOHNSON,)
)
Plaintiff,)
) Case No.
vs.)
)
CITY OF LEADINGTON, a municipal)
Corporation)
Serve: Debra Matthews, Mayor Protemp) **DEMAND FOR JURY TRIAL**
115 Dalton Street)
Leadington, MO 63601)
)
GARY McKinney, Alderman)
Serve: 3764 Elvis Presley Blvd.)
Leadington, MO 63601)
)
CASSIE SCHRUM, Alderman)
Serve: 3764 Elvis Presley Blvd.)
Leadington, MO 63601)
)
CASIE BRADDY, in her)
Official capacity as a former Alderman,)
Serve: 5144 Flat River Road)
Farmington, MO 63640)
)
DUSTIN WINICK, in his official)
Capacity as the former mayor)
Serve: 19 E. Woodlawn Dr.)
Park Hills, MO 63601)
)
MARK J. BISHOP, City Attorney)
Serve: 344 Maple Street)
Courthouse Square)
Hillsboro, MO 63050)
)
DEBRA MATTHEWS, Mayor Protemp)
Serve: 115 Dalton Street)
Leadington, MO 63601)
)
Defendants.)

COMPLAINT

PARTIES AND JURISDICTION

1. Plaintiff Denise Johnson (hereinafter “Johnson”) is an individual who lives in Leadington, Missouri in the Eastern Division of the Eastern District of Missouri. She was employed by the City of Leadington as the City Clerk until she was illegally terminated on or about October 10, 2018.

2. Defendant City of Leadington (hereinafter “City”) is a fourth-class city in the State of Missouri. The City of Leadington is located in St. Francois County, Missouri in the Eastern Division of the Eastern District of Missouri. By reason of §79.010 RSMo., the City can sue and be sued in its own name as a separate Defendant entity.

3. Defendant Gary McKinney (hereinafter “McKinney”) was a member of the Board of Aldermen during all relevant timeframes and is sued in his official capacity.

4. Defendant Dustin Winick (hereinafter “Winick”) was at all times relevant herein the mayor of the City of Leadington. He resigned as mayor on or about July 15, 2019. He is sued in his Official capacity only because on or about October 10, 2018, he served as Mayor when the termination of Plaintiff Johnson, the City Clerk of Leadington took place.

5. Defendant Cassie Schrum (hereinafter “Schrum”) was at all times relevant herein a member of the Board of Aldermen (hereinafter “Board”) of the City and she is sued in her official capacity.

6. Defendant Casie Braddy (hereinafter “Braddy”) who is no longer a City Official was a member of the Board of Aldermen during all relevant timeframes and is sued in her official capacity.

7. Defendant Mark Bishop (hereinafter “Bishop”) was the attorney of the Board of Aldermen and the Defendant City of Leadington during all relevant time frames and continues as present in his current position and is sued in his official capacity

8. This action is brought pursuant to 42 U.S.C. §1983 and the First Amendment to the United States Constitution, made applicable to the states by the 14th Amendment. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1331.

9. Plaintiff requests a jury trial pursuant to Federal Rule of Civil Procedure 38(b).

10. Venue is proper in the Eastern Division of the Eastern District of Missouri pursuant to 28 U.S.C. §1391(b) because Defendants reside therein and all of the events complained of herein occurred within the Eastern Division of the Eastern District of Missouri.

FACTS COMMON TO ALL COUNTS

11. In May 2018, Johnson was hired as a City Clerk for the City.

12. Johnson served without incident or problem until July 31, 2018, when the events hereinafter described took place and culminated in her wrongful discharge on or about October 9, 2018 when the Board excluded Johnson from attendance, went into a closed session and among other stated business not involving Plaintiff Johnson, terminated her employment by a vote of only two (2) Alderpersons, (McKinney and Shrum) without the consent of a majority of the Board of Alderman, as provided by law.

13. Earlier, on or about, July 31, 2018, the Board, without a properly noticed meeting, went into closed session and conducted official business of the Defendant City. Later, on or about September 11, 2018, Alderperson Schrum requested Plaintiff to change the minutes of the meeting of the July 31 closed session to manufacture events that did not occur at the July 31, 2018 meeting.

14. The July 31, 2018, meeting was then changed, after the fact, to an open session on the advice of counsel, Mark Bishop. The changes in the Minutes were requested by Alderperson Schrum were made only after Plaintiff Johnson secured advice from the Missouri Finance Officers Association, the Missouri Municipal League and the specific prior advice of City Attorney Mark Bishop. Johnson made the changes requested, but only by italics and cross-outs pursuant to the guidelines of the Missouri Finance Officers Association, the Missouri Municipal League and on the specific prior advice of City Attorney, Mark Bishop. These “new” minutes were presented to the Board at the request of Defendant Schrum at the October public meeting of the Board due to continuous changes in the Minutes as requested by Defendant Schrum.

15. The minutes of the July 31 meeting were again changed by the Board after October 9, 2018 meeting but only after the termination of Plaintiff Johnson. During the term of her employment, Denise Johnson, only performed her job duties by correct and lawful means.

16. During this timeframe as discussed above, on or about, August 21, 2018, a concerned citizen, Kevin Degrant, filed a public complaint at a City Council meeting against Alderman Gary McKinney stating that Degrant had been libeled and slandered and physically threatened by Defendant McKinney over problems caused by Mr. McKinney’s faulty construction and improper supervision of apartment units within the Leadington City limits.

18. Plaintiff Johnson was informally instructed by City Attorney Mark Bishop to attach print outs of the alleged events of the Degrant charges against McKinney and place them in the packets of each Aldermen for the record.

19. Also, during this timeframe, in the unnoticed closed session of July 31, Plaintiff reported that the City Court Clerk Tracey Fisher was not being paid for her total hours worked in violation of the Missouri normal work week maximums, but the City Attorney, Defendant Mark

Bishop , when he learned of the amount due to be in the many thousands of dollars, informed Plaintiff to be silent as to these clear legal violations and further stated that sunshine law requests would not be honored should there be public inquiry.

20. While the July 31 minutes continued to be altered and manufactured from what took place and what did not take place in this and other respects by Defendant Schrum in concert and conspiracy with Defendants McKinney and Bishop, the Minutes were finally again presented to the Council for the October 9 meeting with several changes from what did or did not take place at the meetings. For example, Plaintiff's immediate supervisor and retiring City Clerk, Debbie Eggers, recommended to the Board that Plaintiff Johnson receive a pay raise and presented her excellent performance evaluations to the Board. No mention of this favorable job performance for Mrs. Johnson appeared in the Minutes of the meeting where the public report took place. Many City records in regard to this and other instances, including but not limited to service letter requests by Johnson (seeking a statement of her job title, duties, term of employment and reasons for her termination pursuant to 290.140 RSMO) are reported to have disappeared from City files.

21. The next day, October 10, 2018, Plaintiff Johnson reported to work and before the lunch period she learned of the termination from her employment by only the two votes of the co-habituating roommates Alderpersons, McKinney and Schrum and without providing a reason or cause.

COUNT I
42 U.S.C. SECTION 1983 VIOLATION OF JOHNSON'S
FIRST AMENDMENT RIGHT TO FREE SPEECH

For Count I of Plaintiff's cause of action against all Defendants, she states as follows:

22. Plaintiff incorporates by reference as if fully set forth herein all preceding paragraphs of her Complaint.

23. Johnson was terminated by the Defendants based upon the exercise of her First Amendment right as a private citizen to speak about an issue/matter of public concern regarding the improper payment of the City Court Clerk.

24. Johnson's speech, and more specifically, her private expression to members of the Board of Alderman that the City Court Clerk was not being paid correctly for earnings was a motivating factor and/or played a part in the Defendants' decision to fire her.

25. Johnson's speech constituted speech regarding a matter of public concern, the improper expenditure of public funds.

26. Johnson's constitutionally protected interest in free speech regarding a matter of public concern outweighs any interest Defendants might have in preventing such speech.

27. Johnson's protected speech made at a reasonable time and in a reasonable manner did not render the operations of the City inefficient, and her speech did not disrupt City operations in any way.

28. Johnson's termination was an adverse employment action authorized, approved, and/or ratified by the Defendants acting under color of state law as part of a broader conspiracy to protect McKinney, Schrum and the City by retaliating against her for her protected speech in regard to a citizen's Complaint and threats by Alderman McKinney, her seeking the advice of the City Attorney for the correct legal action, for Minute entries relating to public business and for her continuing to accurately report that which took place in open and closed sessions of the Council as provided and mandated by law.

29. Johnson's termination by Defendants under color of state law violates her rights secured by the Constitution of the United States, specifically the First Amendment made applicable to the states by the Fourteenth Amendment.

30. Upon information and belief, the City has a custom, practice or usage of punishing employees for the exercise of their First Amendment rights as evidenced by the termination by the resignation of several City officials, including but not limited to the Mayor, chief of police, prosecuting attorney and all City staff workers with the exception of four (4) police officers and several City Clerks before and after the termination of Denise Johnson.

31. Additionally, but without waiver of the foregoing, the termination decision at issue herein was illegally made and/or incorrectly ratified by those with final policymaking authority.

32. As a direct and proximate result of Johnson's termination by the Defendants for exercising her First Amendment right to free speech, taken under color of law, Johnson has sustained and will continue to sustain lost wages and other benefits of employment.

33. As a direct and proximate result of Johnson's termination by the Defendants, taken under color of law, because of her exercise of her First Amendment right to free speech, she has suffered and will continue to suffer emotional pain and suffering, mental anguish, inconvenience, humiliation, embarrassment, loss of enjoyment of life, stress and loss of personal and professional reputation she has been the victim of libel and slander.

34. The conduct of the individual Defendants as set forth herein was wanton, willful, and showed a reckless indifference to Johnson's constitutional and protected rights as set forth above, justifying an award of punitive damages against them in their individual and official capacities.

WHEREFORE, Plaintiff Johnson prays this Court to enter judgment in her favor and against all Defendants and thereafter:

A. Order Defendants to make Plaintiff whole for any and all losses or damages she has suffered including lost wages and other benefits of employment;

B. Award damages to Plaintiff for her emotional pain and suffering, mental anguish, inconvenience, humiliation, embarrassment, loss of enjoyment of life, stress and loss of reputation;

C. Award Plaintiff punitive damages against the Defendants named herein in their individual and official capacities in such sum as this court believes will serve to punish them and to deter them and others from like conduct;

D. Award Plaintiff the costs of this action, together with her reasonable attorneys' fees; and

E. Grant such other and additional relief as may appear to the Court to be equitable and just under the circumstances.

COUNT II
CONSPIRACY TO VIOLATE JOHNSON'S CONSTITUTIONAL
RIGHTS COGNIZABLE UNDER 42 U.S.C. §1983

For Count II of Plaintiff's cause of action against Defendants McKinney and Schrum in their individual capacities, she states as follows:

35. Plaintiff incorporates by reference as if fully set forth herein all preceding paragraphs of her Complaint.

36. These Defendants, acting under color of state law, conspired together and amongst themselves and as a result reached a mutual understanding to protect McKinney and Schrum from public scrutiny by firing Johnson because of her constitutionally protected speech

as set forth above, and/or to undertake a course of conduct to protect each other from the consequences of their continuing wrongful acts and/or constitutional deprivations as City officials and in furtherance of this conspiracy violated Johnson's constitutional right to free speech. In furtherance of this conspiracy, the Defendants committed the following overt acts:

a. Defendants fired Johnson after she exercised her right to free speech as set forth above;

b. To prevent citizens and City Officials from speaking about matters of public concern as private citizens, Defendants McKinney, Schrum and Bishop ordered Johnson not to report violations of state and federal law as to the improper payment of the City work force;

c. Johnson never received any discipline as an employee of the City, but was terminated in retaliation for her exercise in the proper function of her job duties and free speech rights for reasons of pretext which were issued to justify her illegal termination; and

d. Defendants engaged in the conduct as set forth herein to protect themselves from the consequences of their own misconduct as part of a broader pattern and practice of retaliating against City employees who exercise their First Amendment rights as private citizens.

37. Defendants shared the general conspiratorial objective which was to fire Johnson because of her First Amendment speech set forth herein. Defendants either engaged in the unconstitutional conduct set forth above, or such conduct is so pervasive in the City as to constitute a custom, practice, or usage and/or is engaged in by City officials with final policy-making authority. The City's officials have and continue to engage in such conduct so as to

effectively insulate themselves from civil sanction, and therefore, these Defendants feel free to engage in the misconduct described above without any fear of sanction.

38. Defendants furthered the conspiracy by participating in it from its inception or by participating in the cover-up thereof and/or ignoring the course of conduct set forth herein so as to insulate themselves and others from liability for the outrageous and unlawful acts of the Defendants as described herein, showing a tacit understanding to carry out the prohibited conduct.

39.. As a direct and proximate result of the conspiracy amongst these Defendants and in furtherance thereof, Johnson was fired and thereby deprived of her constitutionally protected right to free speech secured by the First and Fourteenth Amendments of the United States Constitution, a claim cognizable under 42 U.S.C. §1983.

40. As a direct and proximate result of the conspiracy amongst these Defendants and in furtherance thereof, Johnson was discharged from her employment with the City, resulting in her sustaining and continuing to sustain lost wages and other benefits of employment.

41. As a direct and proximate result of the conspiracy amongst these Defendants, Johnson has suffered and will continue to suffer emotional pain and suffering, mental anguish, inconvenience, humiliation, embarrassment, loss of enjoyment of life, stress and loss of personal and professional reputation.

42. The conduct of these Defendants as set forth herein was wanton, willful and showed a reckless indifference to Johnson's constitutional rights as set forth above, justifying an award of punitive damages against them in their individual capacities.

WHEREFORE, Plaintiff Johnson prays this Court to enter judgment in her favor and against Defendants McKinney, Schrum, Winick and City Attorney Bishop and the Defendant City of Leadington and the other Defendants and based upon the submitted premises:

A. Order Defendants to make Plaintiff whole for any and all losses or damages she has suffered including lost wages and other benefits of employment;

B. Award damages to Plaintiff for her emotional pain and suffering, mental anguish, inconvenience, humiliation, embarrassment, loss of enjoyment of life, stress and loss of reputation;

C. Award Plaintiff punitive damages against the Defendants named herein in their individual capacities in such sum as this court believes will serve to punish them and to deter them and others from like conduct;

D. Award Plaintiff the costs of this action, together with her reasonable attorneys' fees; and

E. Grant such other and additional relief as may appear to the Court to be equitable and just under the circumstances.

COUNT III
VIOLATION OF MISSOURI PUBLIC POLICY

For Count III of Plaintiff's cause of action against Defendant in their official capacities, she states as follows:

43. Plaintiff incorporates by reference as if fully set forth herein all preceding paragraphs of her Complaint.

44. Missouri Courts have declared it to be against public policy to discharge an employee for engaging in constitutionally protected activity and performing duties in strict accordance with the laws of Missouri.

WHEREFORE, Plaintiff Johnson prays this Court to enter judgment in her favor and against Defendants McKinney, Schrum, Winick and City Attorney Bishop and the Defendant City of Leadington and the other Defendants and based upon the submitted premises:

A. Order Defendants to make Plaintiff whole for any and all losses or damages she has suffered including lost wages and other benefits of employment;

B. Award damages to Plaintiff for her emotional pain and suffering, mental anguish, inconvenience, humiliation, embarrassment, loss of enjoyment of life, stress and loss of reputation;

C. Award Plaintiff punitive damages against the Defendants named herein in their individual capacities in such sum as this court believes will serve to punish them and to deter them and others from like conduct;

D. Award Plaintiff the costs of this action, together with her reasonable attorneys' fees; and

E. Grant such other and additional relief as may appear to the Court to be equitable and just under the circumstances.

COUNT IV
VIOLATION OF MISSOURI WHISTLE BLOWER STATUTE

For Count IV of Plaintiff's cause of action against Defendants in their individual and official capacities, Plaintiff states as follows:

45. Plaintiff incorporates by reference as if fully set forth herein all preceding paragraphs of her Complaint.

46. Plaintiff brings this Count under Chapter 285.575 (2017) RSMO, TITLE XVIII known as the "Whistleblower's Protection Act."

47. Johnson, as a protected person, was discharged from her employment by a prohibited act of the Defendants only after she brought and called attention of Defendants proper authorities that the Defendant City was not paying an employee for the correct amount of pay for hours worked on behalf of the Defendant City in violation of the Fair Labor Standards Act, 29 U.S.C. Section 203 and insisted upon a correct and accurate transcription of the Minutes pertaining to official city business.

48. The motivating factor of Plaintiff's termination played a role in the adverse termination decision taken against her in the form of retaliation for engaging in her lawful employment practices.

WHEREFORE, Plaintiff Johnson prays this Court to enter judgment in her favor and against Defendants McKinney, Schrum, Winick and City Attorney Bishop and the Defendant City of Leadington and the other Defendants and based upon the submitted premises:

A. Order Defendants to make Plaintiff whole for any and all losses or damages she has suffered including lost wages and other benefits of employment;

B. Award damages to Plaintiff for her emotional pain and suffering, mental anguish, inconvenience, humiliation, embarrassment, loss of enjoyment of life, stress and loss of reputation;

C. Award Plaintiff punitive damages against the Defendants named herein in their individual capacities in such sum as this court believes will serve to punish them and to deter them and others from like conduct;

D. Award Plaintiff the costs of this action, together with her reasonable attorneys' fees; and

E. Grant such other and additional relief as may appear to the Court to be equitable and just under the circumstances.

Respectfully submitted,

GOFFSTEIN LAW, LLC.

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