STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: August 14, 2014)

DAVID N. THATCHER, SR.	:	
	:	
v.	:	**C.A. No. PC 06-3480**
	:	
	:	
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, and W. Michael Sullivan, in his capacity as director	:	

DECISION

MCGUIRL, J. Before this Court is the Department of Environmental Management's (DEM or Defendant) motion for summary judgment. Defendant seeks summary judgment on Counts I and II of David N. Thatcher, Sr.'s (Plaintiff) Whistleblower and Law Enforcement Officers' Bill of Rights claims. Jurisdiction is pursuant to Super. R. Civ. P. 56. For the reasons set forth below, this Court denies the motion for summary judgment on Count I. This Court grants the motion for summary judgment on Count II.

I

Facts and Travel[1]

Plaintiff worked as a criminal investigator at the Office of Criminal Investigation (OCI) at DEM from 1991 until his retirement in 2011. (Def.'s Ex. B, Thatcher Dep., 14:24-15:13, 19:15-21.) On May 1, 2006, Plaintiff informed Chief Schatz, chief of OCI, of possible ethics violations stemming from a personal relationship Chief Schatz had had with Darlene Bunning-Chapdelaine (Ms. Chapdelaine). (Def.'s Ex. F, Pl.'s Answers to Interrogs. #8.) Ms. Chapdelaine

[1] The facts herein are the same as those provided in PC-07-2239, which was consolidated with this case for discovery purposes only.

worked as a consultant for Patriot Companies and coordinated its efforts to apply to DEM for a permit to operate a new facility that would recycle construction and demolition debris. (Def.'s Ex. B, Thatcher Dep., 48:1-10.) Ms. Chapdelaine also helped the Patriot Companies resolve administrative enforcement actions for violations of environmental regulations issued by DEM. Id. In addition to this alleged relationship, Plaintiff was also concerned about perceived relationships between the principals of the Patriot Companies and Matthew Patterson (Deputy Chief Patterson), the deputy chief of OCI, given the rumors that he intended to begin working for the Patriot Companies. (Pl.'s Ex. W, Thatcher Aff.)

On May 2, 2006, Chief Schatz requested that Plaintiff prepare a memorandum detailing his allegations. According to the memorandum written by Plaintiff, Principal Environmental Scientist James Ashton (Mr. Ashton), from DEM's Office of Compliance and Inspection Solid Waste Section, informed Plaintiff on April 26, 2006, of a telephone call he had received from Deputy Chief Patterson. (Pl.'s Ex. A, Mem. from Pl. to Chief Schatz, at 1.) Allegedly, Deputy Chief Patterson had inquired into why DEM had conducted an inspection at a Patriot Companies facility in Johnston. Plaintiff stated in the memorandum that "Mr. Ashton gave [Plaintiff] the impression that this telephone call from retired Deputy Chief Patterson was inappropriate" because of rumors that Deputy Chief Patterson would soon be employed by Patriot Disposal. Id. at 2. Soon after the alleged phone call, Deputy Chief Patterson began working for the Patriot Hauling Company on June 12, 2006. The memorandum stated that "there was a shared sense of uneasiness that existed within this office regarding the 'perceived' relationship that may exist between the principals of the Patriot companies and retired Deputy Chief Patterson." Id. at 3.

This memorandum also expressed concerns about an alleged relationship between Ms. Chapdelaine and Chief Schatz. Id. at 4. The memorandum mentioned "allegations of regularity

of contact that existed between [Chief Schatz and Ms. Chapdelaine], i.e, telephone calls, exchange of emails, visits to the OCI . . . speculation of afternoon trips to meet with Ms. [Chapdelaine], appearance of an article (2005) in a major waste industry magazine that gave the appearance of your support of the Patriot companies . . . ." Id.

On May 5, 2006, Chief Schatz wrote a memorandum to DEM Director Michael Sullivan (Director Sullivan) explaining his concern regarding Plaintiff's continuing to work as a criminal investigator. (Pl.'s Ex. S, Mem. from Chief Schatz to Director Sullivan.) Chief Schatz stated that, to his knowledge, Deputy Chief Patterson had always acted with "utmost professionalism" and that no evidence had been found to support Plaintiff's allegations. According to this memorandum, the sources that Plaintiff relied on in his memorandum denied knowledge of unethical or suspicious behavior. Chief Schatz also wrote: "I do not pretend to be a psychiatrist, but based on my experience and his behavior in the last few days, I have a responsibility to advise you that I believe that [Plaintiff] is making very poor decisions and using poor judgment in the performances of his duties." Id. As a result, Chief Schatz recommended that Plaintiff be temporarily removed from his position.

Following this recommendation, DEM notified Plaintiff that he would be required to undergo a mandatory "fitness for return to duty" evaluation in order to return to work. (Pl.'s Ex. I, Letter from DEM Human Resources to Pl., May 19, 2006.) On June 29, 2006, Plaintiff filed a Complaint against DEM and W. Michael Sullivan, in his capacity as director, alleging violations of the Rhode Island Whistleblower Act (Count I) and the Law Enforcement Officers' Bill of Rights (Count II). Subsequently, on August 1, 2006, Plaintiff was evaluated by a doctor who found him fit for duty, and Plaintiff returned to work on August 21, 2006. (Pl.'s Ex. K, Letters

from Life Watch Employee Assistance Program to DEM and Psychological Fitness For Duty Evaluation.)

On May 1, 2007, Plaintiff filed another complaint, PC-07-2239, against DEM, Chief Schatz, Deputy Chief Patterson, and Sheriff Patricia Patterson, alleging slander. Specifically, Plaintiff claimed that Chief Schatz disseminated information that Plaintiff was mentally imbalanced, and that Deputy Chief Patterson and his wife, Sheriff Patricia Patterson, made false accusations that Plaintiff allegedly threatened them in revenge for his coming forward with his concerns about Chief Schatz and Deputy Chief Patterson's possibly unethical activities on the job.

In January of 2010, the instant case was consolidated with PC-07-2239 for discovery purposes only. DEM then filed this motion for summary judgment on Counts I and II on September 12, 2013.

II

Standard of Review

Summary judgment must be granted when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. Super. R. Civ. P. 56. This Court is mindful, however, that "'[s]ummary judgment is a drastic remedy, and a motion for summary judgment should be dealt with cautiously.'" Pichardo v. Stevens, 55 A.3d 762, 765-66 (R.I. 2012) (quoting Estate of Giuliano v. Giuliano, 949 A.2d 386, 390 (R.I. 2008)); DePasquale v. Venus Pizza, Inc., 727 A.2d 683, 685 (R.I. 1999). "'[T]he nonmoving party bears the burden of proving by competent evidence the existence of a disputed issue of material fact and cannot rest upon mere allegations or denials in the pleadings, mere conclusions or mere legal opinions.'" Mruk v. Mortg. Elec. Registration Sys., Inc., 82 A.3d 527, 532 (R.I. 2013) (quoting Daniels v.

Fluette, 64 A.3d 302, 304 (R.I. 2013)). The hearing justice "'must review the pleadings, affidavits, admissions, answers to interrogatories, and other appropriate evidence from a perspective most favorable to the party opposing the motion.'" Estate of Giuliano, 949 A.2d at 391 (quoting Steinberg v. State, 427 A.2d 338, 340 (R.I. 1981)). The hearing justice may not weigh the evidence or pass upon credibility issues. Liberty Mut. Ins. Co. v. Kaya, 947 A.2d 869, 872 (R.I. 2008); Doe v. Gelineau, 732 A.2d 43, 47-48 (R.I. 1999).

III

Analysis

A

Rhode Island Whistleblower Act

Defendant asks this Court to grant summary judgment on Count I, Plaintiff's whistleblower claim. Defendant argues that neither Chief Schatz nor Deputy Chief Patterson violated any state or federal laws and that reports of the appearance of impropriety are not whistleblowing within the meaning of the Rhode Island Whistleblower Act. Moreover, according to Defendant, Plaintiff did not report that Chief Schatz or Deputy Chief Patterson violated any state or federal law. Defendant also contends that the Rhode Island State Police did not find any indication of illegality in Plaintiff's allegations and that Plaintiff did not have knowledge or a reasonable belief that any state or federal law had been or was about to be violated. In response, Plaintiff maintains that he submitted reports explaining his concerns that Deputy Chief Patterson was violating G.L. 1956 § 36-14-5. Plaintiff also states that he alleged that Chief Schatz and Deputy Chief Patterson violated their departmental policy. [2]

[2] Plaintiff argues that he also knew or reasonably believed that Chief Schatz and Deputy Chief Patterson violated DEM's departmental policy. In his brief, he quotes section 5-A-Personal Conduct, which allegedly states that:

The Rhode Island Whistleblower Act states:

> "An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment:
>
> . . . .
>
> "(4) Because the employee reports verbally or in writing to the employer or to the employee's supervisor a violation, which the employee knows or reasonably believes has occurred or is about to occur, of a law or regulation or rule promulgated under the laws of this state, a political subdivision of this state, or the United States, unless the employee knows or has reason to know that the report is false . . . ." G.L. 1956 § 28-50-3.

Considering the evidence in the light most favorable to the non-moving party, this Court finds that there is a question of fact as to whether Plaintiff knew or reasonably believed that Chief Schatz and Deputy Chief Patterson were about to violate a law or rule of the state. See id.; Estate of Giuliano, 949 A.2d at 391. Plaintiff alleges that he believed that Deputy Chief Patterson would violate § 36-14-5, Rhode Island's Code of Ethics for public officers and employees. (Def.'s Ex. F, Pl.'s Answers to Interrogs. #12; Def.'s Ex. G, Pl.'s Response to Request for Admissions No. 1.) Specifically, he wrote a memorandum to Chief Schatz explaining his concerns about Deputy Chief Patterson's alleged relationships with the principals of Patriot Companies, which was being investigated by DEM. See Zinno v. Patenaude, 770 A.2d

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> "[i]nvestigators when on or off duty, shall conduct themselves in a manner that will reflect most favorably on them, the Department of Environmental Management and Office of Criminal Investigations. Conduct unbecoming of an officer shall include that which brings the Department into disrepute or reflects discredit upon the investigator, or impair the operation or efficiency of the department."

Plaintiff, however, has not provided evidence of those rules and regulations.

849, 851 (R.I. 2001) ("For conduct to fall within the purview of the [Whistleblower Act], a plaintiff must report or threaten to report, misconduct to a public body . . ."). He believed that Deputy Chief Patterson was making an inquiry into a permit application for Patriot Companies while he was still working for DEM. (Pl.'s Ex. T, Interoffice Mem. from Chief Schatz, May 12, 2006.) Furthermore, in his affidavit, Plaintiff stated that he believed that Deputy Chief Patterson met with a principal at DEM in October or November of 2005 and that the principal commented that he would have liked Deputy Chief Patterson to work for the Patriot Companies. (Pl.'s Ex. W, Thatcher Aff., ¶ 1c.)

Plaintiff also submitted a memorandum by Jo-Anne Scorpio, an office manager at DEM, to Chief Schatz: "Approximately one week before [Deputy Chief Patterson's] last working day at OCI, [Deputy Chief Patterson] briefly told me that he was going to work for Patriot beginning in June 2006." (Pl.'s Ex. D, Interoffice Mem., May 3, 2006.) The memorandum further states: "I had also found out that same week that [Deputy Chief Patterson] had also informed [Plaintiff] and [Mr.] Ashton about his employment at Patriot." Id. Deputy Chief Patterson actually admitted in his deposition that he told employees at DEM that he was going to work for the Patriot Companies. (Pl.'s Ex. X, Patterson Dep., 19:7-16.)

In addition, Plaintiff stated that he believed Chief Schatz was violating the Code of Ethics by engaging in a personal relationship with Ms. Chapdelaine, a contractor working for the Patriot Companies and that there was a "shared sense of uneasiness" in the office as a result. (Def.'s Ex. F, Pl.'s Answers to Interrogs. #5.) In support of these allegations, Plaintiff submitted evidence of emails between Chief Schatz and Ms. Chapdelaine. (Pl.'s Ex. F.) He also submitted a deposition transcript of Deputy Chief Patterson, who stated that he spoke with Larry Mouradjian, DEM's Associate Director, about an alleged relationship between Chief Schatz and Ms.

Chapdelaine and that Joseph Vinagro, the owner of the Patriot Companies, told Deputy Chief Patterson that he felt Chief Schatz and Ms. Chapdelaine were having inappropriate sexual relations. (Pl.'s Ex. X, Patterson Dep., 27:15-19, 28:10-14.)

Defendant's argument that neither Chief Schatz nor Deputy Chief Patterson violated any state or federal laws is irrelevant because the issue is what Plaintiff reasonably believed. See § 28-50-3 ("An employer shall not discharge, threaten, or otherwise discriminate against an employee . . . [b]ecause the employee reports . . . a violation, which the employee knows or reasonably believes has occurred or is about to occur . . . ."). Defendant argues that if Plaintiff "reported conduct which was not actually illegal he is not a whistleblower, even if he mistakenly believed that he was reporting illegal conduct."

Rhode Island, however, has never held that the reported conduct must be an actual violation of the law. A well-established rule of statutory construction is that if the statute is unambiguous, courts will apply the plain meaning of a statute without engaging in a more elaborate analysis. See generally Chambers v. Ormiston, 935 A.2d 956, 960 (R.I. 2007) (citing State v. DiCicco, 707 A.2d 251, 253 (R.I. 1998)); Singer & Singer, Statutes and Statutory Construction § 46.1 (7th ed. 2009). "'[T]he Legislature is presumed to have intended each word or provision of a statute to express a significant meaning, and the [C]ourt will give effect to every word, clause, or sentence, whenever possible.'" Swain v. Estate of Tyre ex rel. Reilly, 57 A.3d 283, 288 (R.I. 2012) (quoting State v. Clark, 974 A.2d 558, 571 (R.I. 2009)). Moreover, courts generally "presume that 'or' is used in a statute disjunctively unless there is a clear legislative intent to the contrary." Singer & Singer, supra, at § 21:14. The Rhode Island Supreme Court has stated that "the conjunctive 'and' should not be considered as the equivalent of the disjunctive 'or.'" Members of Jamestown Sch. Comm. v. Schmidt, 122 R.I. 185, 191, 405

A.2d 16, 20 (1979) (citing Earle v. Zoning Bd. of Review, 96 R.I. 321, 324, 191 A.2d 161, 163 (1963)).

Here, Rhode Island's whistleblower statute plainly states that the reported violation must stem from the employee's actual knowledge or reasonable belief of a violation of the law. Sec. 28-50-3. An employee's reasonable belief that a violation occurred or is about to occur, regardless of whether the violation actually violates a law, is sufficient to be protected by the whistleblower statute. See generally Day v. Staples, Inc., 555 F.3d 42, 54 (1st Cir. 2009) (stating that the Sarbanes-Oxley whistleblower provisions protect conduct made in "subjective good faith"); see also Higgins v. New Balance Athletic Shoe, Inc., 194 F.3d 252, 261-62 (1st Cir. 1999) (explaining that under Maine's whistleblower act, the reported activity does not need to actually be illegal, but rather, "an employee's reasonable belief that it crosses the line suffices, as long as the complainant communicates that belief to his employer in good faith"). A contrary interpretation would render the phrase "or reasonable belief" meaningless. See Swain, 57 A.3d at 288.

For these reasons, this Court concludes that there exists a question of fact as to whether Plaintiff knew or reasonably believed that Defendant was about to violate a law or rule of the state. See Mruk, 82 A.3d at 532. Accordingly, this Court denies Defendant's motion for summary judgment on Count I.

B

Law Enforcement Officers' Bill of Rights

Defendant also argues that Count II, the Rhode Island Law Enforcement Officers' Bill of Rights (Bill of Rights) claim, is moot because Plaintiff obtained all the requested relief in July and August of 2006 when he was found fit for duty, returned to work, and restored his leave

credits. Therefore, according to Defendant, Plaintiff no longer has a continuing stake in the controversy because it was resolved in 2006. Alternatively, Defendant claims that there was no "interrogation" within the meaning of the Bill of Rights and DEM took no punitive action or initiated disciplinary proceedings against Plaintiff. Thus, Defendant maintains that the Bill of Rights does not apply in this case.

As a general rule, "'a case is moot if the original complaint raised a justiciable controversy, but events occurring after the filing have deprived the litigant of a continuing stake in the controversy.'" In re Tavares, 885 A.2d 139, 147 (R.I. 2005) (quoting Associated Builders & Contractors of R.I., Inc. v. City of Providence, 754 A.2d 89, 90 (R.I. 2000)). Courts will not consider moot, abstract, academic or hypothetical questions. In re Briggs, 62 A.3d 1090, 1097 (R.I. 2013); In re Stephanie B., 826 A.2d 985, 989 (R.I. 2003). An exception to this doctrine is cases that are "'of extreme public importance, which [are] capable of repetition but which [evade] review.'" City of Cranston v. R.I. Laborers' Dist. Council, Local 1033, 960 A.2d 529, 533 (R.I. 2008) (quoting Arnold v. Lebel, 941 A.2d 813, 819 (R.I. 2007)).

Here, Plaintiff concedes that he does not have a continuing claim under the Bill of Rights statute. (Pl.'s Mem. in Support of Summ. J. at 10.) Therefore, this Court grants Defendant's motion for summary judgment on Count II. See In re Briggs, 62 A.3d at 1097.

IV

Conclusion

This Court denies Defendant's motion for summary judgment on Count I because there exists a genuine issue of material fact about whether Plaintiff knew or reasonably believed that Chief Schatz and Deputy Chief Patterson were about to violate a law. This Court grants

Defendant's motion for summary judgment on Count II because both parties agree that the issue is moot. The parties shall present an appropriate judgment for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**David N. Thatcher, Sr. v. Department of Environmental Management**
CASE NO:	**PC 06-3480**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**August 14, 2014**
JUSTICE/MAGISTRATE:	**McGuirl, J.**
ATTORNEYS:	
For Plaintiff:	**Sonja L. Deyoe, Esq.** **Stephen M. Rappoport, Esq.**
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