

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

NO. 48668-7-II

PAUL WILKINSON

Appellant/Plaintiff,

v.

TRACY RADCLIFF, MELISSA POLANSKY,

Respondents /Defendants.

Appellant Paul Wilkinson's Opening Brief

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Assignments of Error

No. 1 The trial court erred dismissing case NO.: 15-2-09573-6 on January 29, 2016.

Issues Pertaining to Assignments of Error

No. 1 Did Judge Jack Nevin follow the Rule of Law when deciding to dismiss Paul Wilkinson's case or did he substitute his own judgment?
Assignment of Error 1

No. 2 Can Res Judicata be invoked when a judgement is based on falsehood? Assignment of Error 1

No. 3 Should Judge Nevin make a judgement which overrides the decision of a prior judge? Assignment of Error 1

No. 4 Did the defendants control of the material facts in this case?
Assignment of Error 1

No. 5 Should economy override justice in our court system? Assignment of Error 1

Statement of the Case

Plaintiff Paul Wilkinson filed two complaints in September 2012 based on his termination from Auburn Regional Medical Center in October 2010 and June 2012 (CP 38-41). These complaints were later combine into one complaint in December 2012 by the King County Superior Court. A partial summary judgement was made by Judge Schapira in July 2013 that the plaintiff could only continue on his complaint concerning the subject matter of his second termination if he met certain standards. In August 2013, Judge Schapira makes a final judgement concerning Paul Wilkinson's termination in October 2010. Paul Wilkinson appeals in September 2013. Appellate Court Division I affirms Judge Schapira's ruling (CP 38-41, 901). In June 2015, Paul Wilkinson, files in Pierce Superior Court under WLAD, Title VII, and Section 301 for retaliation for filing complaints with the WHRC and the NLRB concerning his second termination in 2012. This matter is removed from Superior Court and transferred to Federal District Court by the defendants (CP 895). Paul Wilkinson then drops all his federal claims and the case is transferred back to Pierce County Superior Court in October 2015 and the claims continue strictly under WLAD (CP 890). Defendants file for and then are granted by Judge Nevin a dismissal based upon the rules of law in January 2016 (CP 46-48).

ARGUMENT

During this case I have made many mistakes. Some of which might still have been made by an experienced lawyer. Bryan O'Connor for Jackson Lewis has been involved in this case from the start. You would think that with his 20 years of experience he would have pointed out to Judge Schapira that the plaintiff, Paul Wilkinson, did not have the right to sue based on Title VII of the Civil Rights Act or Section 301 of the National Labor Relations Act for his claim of discrimination based on the subject matter of his termination on June 24, 2012. But even after the initial complaint in September 2012, summary judgment in August 2013, an appeal to that summary judgment in October 2013, a second complaint in June 2015, and a removal of that complaint from Federal to State court in September 2015, he failed to mention it to the courts. Yet Judge Nevin has the expectation that a neophyte with no training in the law, no education in the law, and little experience with the court system, would mention this fact during his appeal in October 2013. Where is the latitude required by the law for Pro-Se attorneys? It is completely absent. Pro-Se attorneys are to be given latitude because they are untrained and inexperienced in the law. It is required by the law. *Haines v. Kerner*, 404 U.S. 520 (1971), *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1959), *Picking*

v. Pennsylvania R. Co., 151 Fed 2nd 240, Puket v. Cox, 456 2nd 233, Sherar v. Cullen, 481 F. 2 d 946 (1973) “There can be no sanction or penalty imposed upon one because of his exercise of Constitutional Rights.” But as Edmund Burke once said, “It is the function of a judge not to make but to declare the law, according to the golden mete-wand of the law and not by the crooked cord of discretion.” Unfortunately, it seems more and more that judges are attempting to make law rather the declare it. They do this by their liberal use of “discretion”. I must point out that it is Mr. Wilkinson, Pro Se who has brought this glaring error before the court. This error was not pointed out by either attorney Brian O’Connor or the other five attorneys who have worked on this case at Jackson and Lewis, LLC. This error was not pointed out by Superior Court Judges Schapira or Hill. This error was not even mentioned by Appellate Court judges Trickey, Dreyer, or Appelwick. This error is brought to the courts by a pro se attorney.

Mr. Wilkinson filed case #12-2-31215-0 on September 26, 2012 with the express purpose getting punitive damages under Title VII of the Civil Rights Act. Washington State Laws Against Discrimination do not allow for punitive damages. His description of why he is suing is very general: “for retaliation and discrimination.” Mr. O’Connor or Judge Schapira should have asked for a greater clarification on the matter, but

neither did. No one during two summary judgment hearings, one appeal or months of evidence collection mention the fact that Mr. Wilkinson had no right to sue under Title VII of the Civil Rights Act or Section 301 of the National Labor Relations Act because he had not made a complaint to either the EEOC or the NLRB concerning his second termination.

Administrative law is clear on this point. Without a complaint to either of these federal authorities Mr. Wilkinson had no right to sue and so Judge Schapira had no jurisdiction to make a judgment. By supporting the concept that Judge Schapira had the ability and authority to rule on an imaginary case, Judge Nevin is reinforcing the mistakes of the court rather than correcting them.

Mr. Wilkinson filed this case on June 24, 2015. He did so still trying to sue for discrimination and retaliation under Section 301 and Title VII. It is clear that he did not realize as late as June 2015 that he still had no right to sue under this authority for his second termination. Bryan O'Connor had the case moved from Pierce Superior Court to Federal District Court. In September of 2015 an agreement was reached between Mr. Wilkinson and Mr. O'Connor that Mr. Wilkinson would drop all his federal claims and simply proceed on his WLAD claims. Why? Mr. Wilkinson realized after reviewing all of his paperwork that he failed to file a complaint with the appropriate federal agencies in order to pursue a

claim in federal court concerning the matter of his second termination.

Brian O'Connor, an attorney with nearly 20 years of experience in administrative law, supposedly failed to realize this from the outset of Mr. Wilkinson's filing in September of 2012. This is simply not a reasonable conclusion. The first step any administrative attorney would take is to review the paperwork necessary for the plaintiff to file a claim against his clients. Especially a claim from a neophyte pro se attorney. Proving that the plaintiff has no valid claim immediately would reduce time and costs. The only explanation is that Mr. O'Connor was well aware that the plaintiff had no claim from the outset, but chose to go forward in an effort to remove both claims at the same time. Therefore saving his clients time and money by not having to try another case on the subject matter of the second termination. Something that in the normal course of discrimination cases would have resulted in a second adverse action later. Mr. O'Connor had to have known this fact and withheld it. Any decision or possible decision made by Judge Schapira was then not based on the facts or the merits of the case because Mr. O'Connor withheld those facts. *Kulchar v. Kulchar*, 1 Cal.3d 467. We also have to look at the fact that Mr. O'Connor in 2012 chose to go forward with the Plaintiff's cases in Superior Court but in 2015 chose to litigate the plaintiff's case in Federal District Court. Knowing that the plaintiff had filed no complaint with

either the EEOC or the NLRB concerning his second termination would result in a short litigation in federal court where as the plaintiff still had a claim under WLAD for his second termination because of earlier rulings by Judge Schapira. This means longer and more costly litigation for Mr. O'Connor's clients if the case is tried in Superior Court.

Mr. Wilkinson would have sued for the first termination and then the second termination in normal circumstance. This would have happened if the judiciary of King County had not decided to sacrifice justice for economy and combined the cases. Res judicata should not be used as an impediment to justice. There is no double jeopardy here. Mr. Wilkinson missed his deadline to appeal the decision of the King County judiciary because they failed to inform him of their decision as required by law. An appeal at this point would have been necessary to sunder the cases. After this time passed, Mr. Wilkinson had little legal recourse. The cases would have to be tried together even though one was truly imaginary at this point. On July 12, 2013, Judge Schapira stated that the plaintiff could challenge his June 2012 termination "only to the extent that he can causally link this decision to claims for gender discrimination, harassment or retaliation under the Washington Law Against Discrimination and Title VII." *Id.* At 3:10-17. Mr. Wilkinson was not suing under WLAD for the second termination and Title VII did not apply since Mr. Wilkinson did

not file a complaint on the second termination with the EEOC. Therefore Judge Schapira at this point had already decided that Mr. Wilkinson was barred from suing for gender discrimination, harassment or retaliation based on his second termination. Mr. Wilkinson's constant complaints that they should be linked falls on deaf ears since he could not reach the reasonable standard set by Judge Schapira. Judge Schapira does not even concern herself with the second termination beyond this point. The idea presented by Judge Nevin that Mr. Wilkinson should have brought this up during his appeal in August 2013 is not based on reason or logic. Judge Schapira had already determined the standards that the plaintiff had to adhere to in July 2013 for her to even consider the subject matter of the second termination in August 2013. Mr. Wilkinson did not meet these standards according to Judge Schapira by her determination that Mr. Wilkinson was neither harassed, discriminated, or retaliated against when he was terminated in October 2010. Mr. Wilkinson, on appeal, then has the burden of proving that Judge Schapira was mistaken in this regard, not that she was accurate. An appeal would be made to challenge the judgment, not to affirm it.

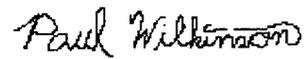
CONCLUSION

The Appellant submits that there were errors of law made by the trial court. After reviewing the foregoing and the evidence it is my hope

and wish that the Court of Appeals reverse the dismissal based on the rules of law granted the defendants on January 29, 2016 and order that the case go forward to trial.

Dated on June 6, 2016

Respectfully submitted,

A handwritten signature in black ink that reads "Paul Wilkinson". The signature is written in a cursive style with a horizontal line underlining the name.

Paul Wilkinson, Pro Se
Appellant /Plaintiff

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on this day, I sent a copy to the following:

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