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**STATE OF MINNESOTA
IN COURT OF APPEALS
C9-00-969**

Jeffrey VanGrinsven,
Appellant,

vs.

City of Canby,
Respondent.

**Filed November 21, 2000
Affirmed**

Mulally, Judge^{*}

Yellow Medicine County District Court
File No. C699184

David W. Schneider, Steven C. Wang, Schneider Law Firm, 706 South First Street, Box 776,
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55103-2044 (for respondent)

Considered and decided by Willis, Presiding Judge, Shumaker, Judge, and Mulally, Judge.

UNPUBLISHED OPINION

MULALLY, Judge

Appellant seeks reversal of the summary judgment on his whistleblower claim, contending there are genuine issues of material fact as to causation and pretext. We affirm.

FACTS

In November 1996, the city hired appellant as a police officer under a 12-month probationary period. During most of his tenure with the city, the police department had only two officers:

appellant and Chief of Police Todd Horner. The city received complaints about appellant's on-duty conduct. Although it considered extending his probationary period for six months, Chief Horner defended appellant and the city allowed him to pass probation. The city continued to receive complaints.

Meanwhile, after Horner's July 1997 one-car accident near his home, Horner filed a claim and collected insurance proceeds. Appellant suspected that the claim was fraudulent and, in July 1998, reported his suspicions to the city attorney, the county attorney, the city administrator, and the attorney general's office. Appellant contends that after these reports, his previously good relationship with the chief deteriorated rapidly and was replaced by hostilities.

In November 1998, the city hired Paula Curry, a police investigator with the City of Marshall, to conduct an independent investigation of the citizen complaints that had been filed against appellant. She reviewed numerous documents and conducted some 45 interviews, including a five-hour interview with appellant, and submitted a 15-page report to the city in January 1999. While some of the complaints were not sustained, she concluded that numerous allegations were, including complaints of insubordination, excessive use of force, and false arrest.

The city council reviewed the report and allowed appellant to respond. On February 23, 1999, the city terminated appellant's employment, citing his unsatisfactory work performance and gross insubordination. Appellant sued the city, alleging he had been improperly discharged for reporting Chief Horner's insurance fraud. The district court granted summary judgment in favor of the city and this appeal was taken.

DECISION

When reviewing a summary judgment, an appellate court will address whether there are any genuine issues of material fact and whether the district court erred as a matter of law. *Hedglin v. City of Willmar*, 582 N.W.2d 897, 901 (Minn. 1998). Summary judgment is appropriate when the nonmoving party fails to present sufficient evidence to create a genuine fact issue as an essential element in the trial of the case. *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995).

Appellant contends he was fired in violation of the whistleblower statute. Under this law, an employer may not discharge an employee on the grounds that

the employee * * *, in good faith, reports a violation or suspected violation of any federal or state law or rule adopted pursuant to law to an employer or to any governmental body or law enforcement official.

Minn. Stat. § 181.932, subd. 1(a) (1998). The employee first has the burden of establishing a prima facie case by showing protected conduct by the employee, an adverse action by the employer, and a causal connection. *Hubbard v. United Press Int'l, Inc.*, 330 N.W.2d 428, 444 (Minn. 1983); *Rothmeier v. Investment Advisors, Inc.*, 556 N.W.2d 590, 592-93 (Minn. App. 1996) (applying standard to whistleblower case), *review denied* (Minn. Feb. 26, 1997). The employer then must show a legitimate, nondiscriminatory reason for the discharge. *Hubbard*, 330 N.W.2d at 445. The burden then shifts back to the employee, who may still prevail by showing the employer's alleged reasons were pretextual or by otherwise carrying the burden of persuasion. *Id.*

The district court first determined that appellant failed to establish a prima facie case because evidence as to a causal connection between his report of the chief's fraudulent insurance claim and his termination was lacking. It was undisputed that the city met the second element because it offered a legitimate reason for terminating appellant. Finally, the district court determined that even if facts as to the causal connection were in dispute, appellant failed to present specific facts showing there was a genuine issue of material fact as to whether the city used Curry's investigative report as a pretext to fire him. It is on this final element that we focus.

Appellant contends he has presented a genuine issue of material fact as to whether "an illegitimate reason 'more likely than not' motivated the discharge decision." *McGrath v. TCF Bank Sav.*, 509 N.W.2d 365, 366 (Minn. 1993) (addressing jury instructions) (citations omitted). He argues that the report was unfair and that the city discharged him based on Chief Horner's personal vendetta against him.

We first address whether any facts are in dispute that would show that Curry's investigative report was unfair. Appellant contends that the city council investigated the citizens' complaints which formed the basis for his termination only after he reported that Chief Horner engaged in insurance fraud. But the undisputed facts show that the city considered the complaints earlier, when it had to decide whether appellant's probationary period should be extended. Appellant also asserts that the choice of Curry as the investigator was unfair because a local county deputy, who had also filed a complaint against appellant, chose her. But even accepting appellant's version of events, the facts show that while the deputy called Curry initially, she referred him to her supervisors, who then determined whether or not she would be assigned to the investigation.

Finally, appellant charges that the city council did not provide any oversight as to the investigation. But Curry stated in her deposition that she spoke periodically with the city administrator; further, appellant has not shown why this raises genuine issues of material fact as to fairness. In short, we agree that the material facts do not create a genuine issue as to the fairness of the report.

Appellant next contends that the city council, with full knowledge of the problems between Chief Horner and himself, terminated him on the basis of the “unfair” investigator’s report. He contends that the district court’s analysis implicitly required that he produce a “smoking gun” to avoid summary judgment on the issue of pretext. As discussed above, appellant has not cited any evidence that would call into doubt the fairness of the investigation. We agree with the district court’s assessment of this argument:

Plaintiff has not presented [evidence] beyond mere speculation that the City used the Curry report as a pretext to fire him on the basis of the report of Chief Horner’s fraudulent claim. No genuine issues of fact exist that refute Defendant’s contention that they fired him for his insubordination and poor work performance as established in the Curry report.

We agree with the district court that appellant did not meet his burden of producing any evidence that the stated reasons for his termination were pretextual, and the city is entitled to prevail as a matter of law.

Affirmed.

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.