

Summary of SC95214, *Tanisha Ross-Paige v. Saint Louis Metropolitan Police Department, Steven A. Gori, Michael A. Deeba Sr., Saint Louis Board of Police Commissioners, Richard H. Gray, Bettye Battle-Turner, Thomas J. Irwin and Francis G. Slay*

Appeal from the St. Louis circuit court, Judge Timothy J. Wilson

Argued and submitted April 13, 2016; opinion issued June 28, 2016

Attorneys: The police defendants were represented by P. Benjamin Cox of the attorney general's office in Kansas City, (573) 751-3321. Ross-Paige was represented by Edward D. Robertson Jr., Mary D. Winter and Anthony L. DeWitt of Bartimus, Frickleton, Robertson & Goza in Jefferson City, (573) 659-4454; Jeremy D. Hollingshead and Jonathan M. Eccher of Hollingshead, Paulus & Fletcher in St. Louis, (314) 480-5474; and Ryan M. Paulus of Hollingshead, Paulus & Fletcher in Kansas City, (816) 581-4040.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A police department, a sergeant, a lieutenant, the board of police commissioners and individual board members (collectively, the defendants) appeal a trial court judgment entered on the jury's finding that the defendants retaliated against a female officer who alleged sexual discrimination and ordering them to pay compensatory and punitive damages to the female officer. In a unanimous decision written by Judge George W. Draper III, the Supreme Court of Missouri reverses the judgment and remands (sends back) the case to the trial court. The trial court committed instructional error when it submitted to the jury a verdict director that was not supported by the evidence and that could have misled or confused the jury. Because there is no way to determine under which theory the jury found the defendants liable, prejudice resulted.

Facts: Tanisha Ross-Paige worked as a police officer for the St. Louis metropolitan police department, first in one of its districts and later in its canine unit. She alleged that one of her immediate supervisors in both units made inappropriate sexual comments toward Ross-Paige and asked her out on dates and that she suffered retaliation from him and commanders when she complained about his conduct. In June 2011, the day after she was disciplined by her supervisor and a commander following a particular incident, she filed a complaint form with the police department's human resources department, claiming she was subject to sexual discrimination and retaliation. In mid-June 2011, Ross-Paige went on approved medical leave and returned in late September 2011. While she was on leave, an outside investigator found her allegations against her immediate supervisor were without merit but recommended that the human resources department refer one of the allegations to internal affairs for further action, that the supervisor receive counseling about how to communicate professionally and legally with employees, and that Ross-Paige continue to report to someone other than this particular supervisor. In January 2012, Ross-Paige was injured when another officer's canine attacked her during a training exercise. One of her injuries required surgery and ongoing treatment. In October 2012, the police department informed her that she had reached maximum medical improvement, that she had sustained permanent injuries that would preclude her from resuming her duties as a police officer, and that she would have 15 days to file for a "disability pension." A subsequent letter informed her to contact the St. Louis police retirement system regarding her disability pension

and the police department's human resources department regarding long-term disability. Ross-Paige subsequently applied for both. She also filed claims with the human rights commission, which issued her right-to-sue letters. She then filed suit against the police department, her supervisor and her unit commander, as well as against the board of police commissioners and its individual members (collectively, defendants). Following a March 2014 trial, the jury found in the defendants' favor on Ross-Paige's discrimination claim but in Ross-Paige's favor on her retaliation claim. The jury awarded her \$300,000 in compensatory damages and \$7.2 million in punitive damages. Following motions by the parties, the trial court subsequently increased the compensatory damages award to \$510,190 and reduced the punitive damages award to not quite \$2.551 million. The defendants filed timely post-trial motions for judgment notwithstanding the verdict and for a new trial, raising challenges to the verdict-directing jury instruction and other issues. The trial court overruled the motions in their entirety. The defendants appeal.

REVERSED AND REMANDED.

Court en banc holds: The trial court committed instructional error.

(1) The defendants preserved their claim for appellate review. They made several specific objections during the jury instruction conference to the verdict director, including to the phrase "unjustly refused or delayed" Ross-Paige's disability claim. They argued there was no evidence they have any control or authority over disability claims. In their motion for a new trial, the defendants argued that, by including this allegation, the instruction allowed the jury to return a verdict against the defendants based on acts of a non-party. They outlined unrefuted trial testimony that the police board and police retirement system were separate and distinct entities and that the board had no role in determining Ross-Paige's eligibility for a disability pension. They have preserved their arguments throughout the litigation and can raise them on appeal.

(2) The verdict director is not supported by the evidence. Because it is written in the disjunctive (a list of options separated by the disjunctive "or" rather than the conjunctive "and"), each alternative must be supported by substantial evidence. In reviewing the instruction, this Court must consider the evidence in the light most favorable to Ross-Paige. A careful review of the record demonstrates Ross-Paige presented evidence only about disability pension benefits, not long-term disability. She attended a hearing regarding eligibility for disability benefits in May 2013 but, as of the trial in March 2014, she had not yet received a decision. The defendants presented evidence that Ross-Paige had received long-term disability payments from the department throughout 2013 and explained the "disability" she referred to during her testimony was a disability pension, payable for the remainder of her life through the police retirement system. She did not object to evidence showing she received more than \$20,000 in long-term disability payments from the board, so there can be no dispute that when she testified she had not received "a single cent of disability," she was referring to her disability pension. There was no testimony presented that the board or anyone acting on its behalf delayed initiating Ross-Paige's disability pension claim. Further, as a matter of law, the board had no legal authority to refuse Ross-Paige's claim. The police retirement system – a statutorily separate entity and not a party to this litigation – had exclusive authority to make this determination, and there was no evidence the jury could have found the board and retirement system were one and the same or work together to determine the status of applicants. Submission of the erroneous verdict director

resulted in prejudice. The jury found the defendants liable only under this instruction. While it is clear the jury found in Ross-Paige's favor on at least one of the disjunctive theories submitted in the instruction, there is no way to discern which theory the jury chose, and so this Court cannot rule out the possibility that the jury improperly returned its verdict on a theory that was not supported by substantial evidence and that misdirected or confused the jury. The judgment is reversed, and the case is remanded.