

COMMONWEALTH COURT OF PENNSYLVANIA

Tara Kent, Ph.D. v. Cheyney University of Pennsylvania and Pennsylvania State System of Higher Education

No. 349 M.D. 2019 (Pa. Commw. Ct. Dec. 15 2022) (mem.) · No. No. 349 M.D. 2019 · Decided December 15,
2022

SUMMARY

The Commonwealth Court of Pennsylvania considered Respondents' application for summary relief in Tara Kent's Whistleblower Law action arising from her termination by Cheyney University. The court denied summary relief as to Cheyney because material factual disputes remained regarding the alleged wrongdoing, causation, and the legitimacy of the stated termination reasons. It granted summary relief to PASSHE and dismissed PASSHE as a party because Cheyney's president had authority over Kent's employment and the record did not establish PASSHE's control over the termination decision.

CASE DETAILS

COURT	Commonwealth Court of Pennsylvania
WRITING FOR THE COURT	Christine Fizzano Cannon; Anne E. Covey; Bonnie Brigance Leadbetter, Senior Judge
JURISDICTION	Pennsylvania
DECIDED	December 15, 2022
DOCKET	No. 349 M.D. 2019
DISPOSITION	other
PROCEDURAL POSTURE	Dr. Kent filed a petition for review in the Commonwealth Court asserting a Pennsylvania Whistleblower Law claim. After discovery, Cheyney University and PASSHE sought summary relief under Pennsylvania Rule of Appellate Procedure 1532(b).
STANDARD OF REVIEW	Summary relief is appropriate only when the undisputed facts clearly establish the applicant's right to relief. The court considers the record as it would on summary judgment, views the evidence in the light most favorable to the nonmoving party, and may enter judgment only when no genuine issue of material fact exists and the right to judgment is clear as a matter of law.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

whistleblower

retaliation

summary judgment

administrative law

appellate procedure

PRACTICE AREAS

employment law

administrative law

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether Cheyney was entitled to summary relief on Dr. Kent's claim that her termination violated the Pennsylvania Whistleblower Law.
2. Whether PASSHE could be liable under the Pennsylvania Whistleblower Law when Cheyney, rather than PASSHE, employed Dr. Kent and made the termination decision.
3. Whether the record contained genuine factual disputes concerning the alleged wrongdoing, causation, and Cheyney's asserted legitimate reason for terminating Dr. Kent.

HOLDINGS

1. Cheyney was not entitled to summary relief because genuine factual disputes remained concerning whether Dr. Kent reported protected wrongdoing or waste, whether Cheyney directed her not to disclose her concerns, whether a threat of retaliation could be inferred, and whether the stated reason for her termination was legitimate.
2. PASSHE was entitled to summary relief and was dismissed because it was not Dr. Kent's employer, lacked statutory authority to terminate her, and was not shown to have controlled the termination decision or to be vicariously liable for Cheyney's conduct.
3. A Whistleblower Law claimant must establish a causal connection between the report of wrongdoing and the adverse employment action through concrete facts or surrounding circumstances; merely showing that termination occurred after a report is insufficient.

KEY QUOTATIONS

"In ruling on applications for summary relief, [this Court] must view the evidence of record in the light most favorable to the non-moving party and enter judgment only if there is no genuine issue as to any material facts and the right to judgment is clear as a matter of law." (5)

"The causal connection that the Whistleblower Law requires must be demonstrated by concrete facts or surrounding circumstances that the report of wrongdoing or waste led to the [petitioner's] dismissal, such as that there was specific direction or information received not to file the report or that there would be adverse consequences because the report was filed." (6)

FACTUAL BACKGROUND

Dr. Kent worked for Cheyney University beginning in 2002 and served as its Provost from 2017 until her termination in September 2018. She alleged that she reported to Cheyney and PASSHE officials that restricted scholarship funds were being improperly allocated to students who did not meet program eligibility standards,

causing substantial public funds to be improperly used. After raising these concerns, including concerns about a no-bid contract and procurement requirements, she was terminated by Cheyney President Aaron Walton without a prior warning or unsatisfactory performance review. PASSHE representatives were involved in communications concerning the termination, and one representative was present when Walton delivered the termination letter.

PROCEDURAL HISTORY

Dr. Kent, a former Cheyney Provost, alleged that she was terminated in retaliation for reporting alleged misuse of restricted scholarship funds and other fiscal wrongdoing. Respondents moved for summary relief after discovery. The court denied relief as to Cheyney because material factual disputes remained, granted relief as to PASSHE, and dismissed PASSHE as a party.

DISPOSITION

other

REMAND INSTRUCTIONS

No express remand was ordered. The action continues against Cheyney, while PASSHE is dismissed as a party.

CASES CITED

- Summit Sch., Inc. v. Dep't of Educ., 108 A.3d 192, 195-96 (Pa. Cmwlth. 2015)
- Bell Atl.-Pa., Inc. v. Tpk. Comm'n, 703 A.2d 589, 590 (Pa. Cmwlth. 1997), aff'd, 713 A.2d 96 (Pa. 1998)
- Dep't of Transp. v. UTP Corp., 847 A.2d 801, 806 (Pa. Cmwlth. 2004)
- Borough of Nanty-Glo v. Am. Sur. Co. of N.Y., 163 A. 523 (Pa. 1932)
- Eleven Eleven Pa., LLC v. State Bd. of Cosmetology, 169 A.3d 141, 145 (Pa. Cmwlth. 2017)
- Golashevsky v. Dep't of Env't Prot., 720 A.2d 757, 759 (Pa. 1998)
- Evans v. Thomas Jefferson Univ., 81 A.3d 1062, 1070 (Pa. Cmwlth. 2013)
- O'Rourke v. Dep't of Corr., 778 A.2d 1194, 1200, 1204 (Pa. 2001)
- Vance v. Cheyney University of Pennsylvania, No. 210 M.D. 2017, slip op. at 8-9 (Pa. Cmwlth. July 8, 2021)
- Sabater v. Pa. Ins. Dep't, No. 637 M.D. 2014, slip op. at 7 (Pa. Cmwlth. Jan. 3, 2019)