

SUPREME COURT OF INDIANA

Gary Community School Corporation v. Tom Powell

Gary Community School Corp. v. Powell, 906 N.E.2d 823 (Ind. 2009) · No. 45S03-0809-CV-482 · Decided May 19, 2009

SUMMARY

The Indiana Supreme Court held that an employee holding multiple positions with the same employer may satisfy the Family and Medical Leave Act’s 1,250-hour eligibility requirement by aggregating service in all positions. The court also upheld the finding that Gary Community School Corporation retaliated against Tom Powell for opposing an alleged FMLA violation. It affirmed the damages awards in part but held that front pay must be discounted to present value using Indiana’s eight-percent statutory rate.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Indiana                                                                                                                                                                                                                                                                                                                                                                                         |
| WRITING FOR THE COURT | Justice Boehm; Chief Justice Shepard; Justice Dickson; Justice Sullivan; Justice Rucker                                                                                                                                                                                                                                                                                                                          |
| JURISDICTION          | Indiana                                                                                                                                                                                                                                                                                                                                                                                                          |
| DECIDED               | May 19, 2009                                                                                                                                                                                                                                                                                                                                                                                                     |
| DOCKET                | 45S03-0809-CV-482                                                                                                                                                                                                                                                                                                                                                                                                |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                                                                                                                            |
| PROCEDURAL POSTURE    | On petition to transfer from the Indiana Court of Appeals, which had reversed the trial court's judgment holding that Gary Community School Corporation violated the FMLA. The Indiana Supreme Court reviewed FMLA eligibility, retaliation, damages, present-value discounting, and attorney-fee issues.                                                                                                        |
| STANDARD OF REVIEW    | Questions of statutory interpretation are reviewed de novo. Sufficiency of the evidence supporting a jury verdict is reviewed by considering the probative evidence and reasonable inferences without reweighing evidence or judging witness credibility. Front-pay and attorney-fee awards are reviewed for abuse of discretion; the propriety of front pay is reviewed under an equitable-discretion standard. |
| PRECEDENTIAL VALUE    | Published precedential opinion of the Supreme Court of Indiana                                                                                                                                                                                                                                                                                                                                                   |
| PARTIES               | Gary Community School Corporation v. Tom Powell                                                                                                                                                                                                                                                                                                                                                                  |

## TOPICS

family and medical leave act

retaliation

statutory interpretation

remedies

appellate procedure

## PRACTICE AREAS

Employment law

Family and Medical Leave Act

Employment retaliation

Employment remedies

## QUESTIONS PRESENTED

1. Whether an employee holding multiple positions with the same employer satisfies the FMLA's 1,250-hour eligibility requirement by aggregating hours worked in all positions.
2. Whether sufficient evidence supported the jury's finding that Gary Community School Corporation retaliated against Powell for taking FMLA leave and opposing an alleged FMLA violation.
3. Whether Powell waived an objection to the verdict form by failing to object at trial.
4. Whether the trial court properly awarded front pay in addition to back pay, prejudgment interest, and liquidated damages.
5. Whether the front-pay award had to be discounted to present value.
6. Whether the trial court abused its discretion in awarding attorney fees without findings of fact and conclusions of law, reducing the requested fees, or admitting a late-filed opposing affidavit.

## HOLDINGS

1. An employee filling multiple positions with the same employer is eligible for FMLA leave as to all positions if the employee completed at least 1,250 total hours of service for that employer during the preceding twelve months, even if the employee worked fewer than 1,250 hours in any single position.
2. Sufficient evidence supported the jury's finding that Gary Community School Corporation retaliated against Powell for protected FMLA activity, including opposing the alleged failure to reinstate him by complaining to a newspaper.
3. The challenge to the verdict form was waived because Gary Community School Corporation failed to object to the form at trial.
4. Front pay may be awarded as equitable relief in addition to back pay, prejudgment interest, and liquidated damages, but a front-pay award for future lost wages must be discounted to present value.
5. The trial court did not commit reversible error by failing to make findings and conclusions concerning attorney fees, reducing the requested fee award, or admitting an opposing affidavit submitted on the morning of the fee hearing after permitting Powell to respond.

## KEY QUOTATIONS

*"We hold that an employee filling multiple positions with the same employer is eligible for leave under the federal Family and Medical Leave Act if that employee's total service is sufficient to qualify, even if service in either position alone does not qualify."* (827)

*"We hold that a "front pay" award for future lost wages should be discounted to its present value."* (827)

*“In short, the definitions are entity specific, not job specific, and the service requirements for an eligible employee are in terms of overall service, not service in any specific position.” (829)*

*“Without discounting, Powell would receive a windfall in the form of the use of the money years before it would have been earned.” (834)*

## FACTUAL BACKGROUND

Tom Powell was employed by Gary Community School Corporation as a math teacher and also held coaching positions, including head football coach and assistant basketball coach. After developing a blood clot and taking several weeks of medical leave in 2001, he returned to his teaching positions but was removed as head football coach and later was not retained as assistant basketball coach. Powell complained to school officials and spoke with a newspaper reporter, after which he was rejected for later head-football-coach openings. The jury found that the school corporation retaliated against him and awarded damages.

## PROCEDURAL HISTORY

Powell sued Gary Community School Corporation under the FMLA for failing to reinstate him as head football coach after medical leave and for retaliating against him by refusing to rehire him as a coach. The trial court granted Powell summary judgment on FMLA eligibility, a jury awarded damages on the reinstatement and retaliation claims, and the trial court entered a reduced damages award plus prejudgment interest and attorney fees. The Court of Appeals reversed on the ground that Powell was not FMLA-eligible. The Supreme Court granted transfer, affirmed the judgment in all respects except that it ordered the front-pay award discounted to present value.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

Remand to the trial court to discount the front-pay award to present value using the Indiana statutory rate of eight percent. The judgment is otherwise affirmed.

## CASES CITED

- Gary Cmty. Sch. Corp. v. Powell, 881 N.E.2d 57, 58 (Ind. Ct. App. 2008)
- Erie Ins. Co. v. Hickman, 622 N.E.2d 515, 521 (Ind. 1993)
- McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-04 (1973)
- Phillips v. Mathews, 547 F.3d 905, 912 (8th Cir. 2008)
- Daugherty v. Sajar Plastics, Inc., 544 F.3d 696, 707 (6th Cir. 2008)
- Martin v. Brevard County Public Schools, 543 F.3d 1261, 1268 (11th Cir. 2008)
- Yashenko v. Harrah's NC Casino Co., LLC, 446 F.3d 541, 551 (4th Cir. 2006)
- Sista v. CDC Ixis North America, Inc., 445 F.3d 161, 175 (2d Cir. 2006)

- Hite v. Vermeer Manufacturing Co., 446 F.3d 858, 861, 865 (8th Cir. 2006)
- Downey v. Strain, 510 F.3d 534, 544 (5th Cir. 2007)
- Whittington v. Nordam Group, Inc., 429 F.3d 986, 1000-01 (10th Cir. 2005)
- Nichols v. Ashland Hospital Corp., 251 F.3d 496, 504 (4th Cir. 2001)
- McBurney v. Stew Hansen's Dodge City, Inc., 398 F.3d 998, 1002 (8th Cir. 2005)
- Arban v. West Publishing Corp., 345 F.3d 390, 406 (6th Cir. 2003)
- Price v. Marshall Erdman & Associates, Inc., 966 F.2d 320, 326 (7th Cir. 1992)
- Smith v. Diffie Ford-Lincoln-Mercury, Inc., 298 F.3d 955, 960, 966 (10th Cir. 2002)
- Fisher v. State, 810 N.E.2d 674, 677 (Ind. 2004)
- Missouri ex rel. St. Louis v. Taylor, 266 U.S. 200, 209 (1924)
- Thompson v. Medical Licensing Board, 180 Ind. App. 333, 348, 398 N.E.2d 679, 680 (1979)