

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PATRICIA T. VIA, :
f.k.a. Patricia T. Toomey, :
 :
Plaintiff, :
 :
v. : Civil Action No. 97-4-JJF
 :
STAN TAYLOR, ROBERT WATSON, :
ALAN MACHTINGER, and RICK :
KEARNEY, :
 :
Defendants. :

David A. Boswell, Esquire of SCHMITTINGER & RODRIGUEZ, P.A.,
Rehoboth Beach, Delaware.
Attorney for Plaintiff.

Michael F. Foster, Esquire, Deputy Attorney General of the
DEPARTMENT OF JUSTICE OF THE STATE OF DELAWARE, Dover, Delaware.
Attorney for Defendants.

MEMORANDUM OPINION

June 16, 2004

Wilmington, Delaware

Farnan, District Judge.

Pending before the Court is a Motion For Prospective Equitable Relief, Injunctive Relief And Attorneys' Fees (D.I. 135) filed by Plaintiff, Patricia T. Via. For the reasons discussed, Plaintiff's Motion will be granted.

BACKGROUND

The factual background relevant to this action has been set forth fully in the Court's previously issued decision related to the bench trial in this case. Via v. Taylor, 224 F. Supp. 2d 753 (D. Del. 2002). By its Memorandum Opinion, the Court concluded that Article 16 of the Code of Conduct is unconstitutional, and that the application of Article 16 to Plaintiff resulting in her termination violated her constitutional rights to freedom of association and privacy. The Court further concluded that Defendants were entitled to the defense of qualified immunity.

Plaintiff appealed that portion of the Court's decision granting Defendants qualified immunity, and Defendant's filed a cross-appeal contending that Article 16 is not unconstitutional. The Third Circuit dismissed the appeal for lack of appellate jurisdiction finding that Plaintiff's requests for prospective equitable relief and attorneys' fees had not been decided by the Court, and therefore, the Court's decision was not a final order subject to appeal.

Upon receipt of the Third Circuit's Judgment Order, the

Court requested the parties to confer with respect to the remaining claims for relief and file either a motion for relief or a stipulation resolving the claims. (D.I. 131). The parties could not reach a resolution with respect to the pending claims, and therefore, Plaintiff filed the instant Motion requesting reinstatement, an injunction precluding Defendants from continuing to issue Article 16 of the Code of Conduct to new hires, and attorneys' fees.

I. Plaintiff's Motion For Reinstatement

By her motion, Plaintiff requests the Court to reinstate her employment with the Department of Correction, without loss of any of the seniority, rank, years of service status, rate of pay, or any other status or benefits that she would have obtained but for her unlawful termination by Defendants. Plaintiff contends that reinstatement is necessary to avoid irreparably harming Plaintiff and to make her whole as a result of Defendants' unconstitutional actions. Plaintiff contends that, since her termination, she has been unable to obtain comparable employment, salary or benefits and now earns less than half of what she would earn if she were reinstated to the Department of Correction. With respect to benefits in particular, Plaintiff contends that, because she is nearly 60 years old, Plaintiff will have no meaningful retirement pension without reinstatement and restoration of her pension which was lost as a result of her termination. Plaintiff also

contends that she will have no opportunity for post-retirement health insurance through another employer. Plaintiff acknowledges that there may be factual questions regarding the precise rank and rate of pay she would have achieved but for her unlawful termination, but contends that these issues can be resolved by agreement of the parties or through a trial of limited scope once the legal question of entitlement to reinstatement is determined.

In response, Defendants contend that Plaintiff is not entitled to the equitable remedy of reinstatement. Defendants contend that Plaintiff was discharged for insubordination related to a private matter, and not for the assertion of her constitutional rights. Because her dismissal was a result of insubordination, Defendants contend that it would set a dangerous precedent to permit Plaintiff to be reinstated. Further, Defendants contend that reinstatement is not appropriate in this case, because Plaintiff has been removed from her job for nine years, during which time her position has been filled and seniority rights have accrued for other employees which would be seriously disturbed by Plaintiff's reinstatement.

Reinstatement is an available remedy for illegal, adverse employment actions, including actions that violate 42 U.S.C. § 1983. 5 Larson, Employment Discrimination § 91.02 at 91-96 (2003) (recognizing in context of Title VII that reinstatement is

available when employee has been removed from his former position through discharge, demotion or transfer); Feldman v. Philadelphia Housing Authority, 43 F.3d 823 (3d Cir. 1994) (holding that reinstatement is available for discharges violating § 1983). Reinstatement is also considered the "preferred remedy" to compensate the aggrieved party for the loss of future earnings. Max v. Sinclair International, 766 F.2d 788, 796 (3d Cir. 1985), cert. denied, 474 U.S. 1057 (1986). However, reinstatement may not be feasible in all cases, particularly in those cases in which a position is no longer available at the time of judgment or the relationship between the parties has been so damaged by animosity that reinstatement is impracticable. Id.

Although a list of factors has not been specifically identified by courts considering the question of reinstatement, it appears from the relevant case law¹ that courts should consider, among other things: (1) whether there is "irreparable animosity between the parties," Blum v. Witco Chem. Corp., 829 F.2d 367, 374 (3d Cir. 1987); (2) the effect of reinstatement on innocent third parties which may be disrupted by the replacement, Kraemer v. Franklin and Marshall College, 941 F. Supp. 479, 483

¹ The relevant case law includes cases involving violations of Title VII. Squires v. Bonser, 54 F.3d 168, 172 (3d Cir. 1995) (recognizing that Section 1983 and Title VII are based on similar policy consideration of deterring illegal conduct and making aggrieved party whole and concluding that "framework of analysis governing reinstatement in Title VII actions also governs in § 1983 actions implicating First Amendment concerns").

(E.D. Pa. 1996); (3) the availability of a replacement position, Starceski v. Westinghouse Elec. Corp., 54 F.3d 1089, 1103 (3d Cir. 1995); (4) the need to make the aggrieved party whole, Squires v. Bonser, 54 F.3d 168, 172 (3d Cir. 1995); and (5) the need to deter employers from engaging in unconstitutional conduct. Id. Because reinstatement is an equitable remedy, the decision to order reinstatement must be made on a case-by-case basis in light of these factors and the particular circumstances in the case. In determining whether reinstatement is appropriate, the district court has broad discretion, and the Third Circuit reviews reinstatement determinations for an abuse of discretion. Feldman, 43 F.3d at 831.

Weighing the facts and circumstances in this case, the Court concludes that Plaintiff is entitled to reinstatement with the Department of Correction. Plaintiff was terminated because she violated the Code of Conduct by refusing to terminate her personal relationship with Mr. Via. Plaintiff's relationship with Mr. Via was found to be constitutionally protected, and the Court has concluded that her termination violated her rights of privacy and free association. Plaintiff's "insubordination" was the direct result of her assertion of constitutionally protected activity, and therefore, the Court is not persuaded that Plaintiff should be denied reinstatement for refusing to submit to Defendants' unlawful Code of Conduct regulation.

Defendants also contend that Plaintiff should not be reinstated because her position has been filled and the incumbent has accrued seniority rights that would be disturbed. However, Defendants have not presented any evidence concerning the incumbent. Plaintiff contends that it is her understanding that several persons have filled her former position over the past nine years, and that the person now filling her position is not a nine year incumbent. Courts are particularly reluctant to order reinstatement when it will have the effect of "bumping" an innocent, incumbent employee. See Walsdorf v. Board of Commissioners of East Jefferson Levee District, 857 F.2d 1047 (5th Cir. 1988); Kraemer v. Franklin and Marshall College, 941 F. Supp. 479, 483 (E.D. Pa. 1996) (collecting cases and noting that "circuit courts agree that reinstatement is not an appropriate remedy if it requires bumping or displacing an innocent employee in favor of the plaintiff who would have held the job but for the illegal discrimination"). However, in the Court's view, Defendants have not sufficiently demonstrated what the adverse effect of Plaintiff's reinstatement would be on the incumbent or on the Delaware Department of Correction.

As to the remaining factors relevant to reinstatement, the Court finds they weigh heavily in favor of Plaintiff. Defendants have not offered any evidence of irreparable animosity between Plaintiff and those she worked with, and Plaintiff has no legal

remedy for monetary damages. Thus, reinstatement is particularly important in the circumstances of this case to make Plaintiff whole.

In a footnote, Defendants suggest that reinstatement is not appropriate in this case, because Defendants were not sued in their official capacities, but only in their personal capacities. Where, as here, a plaintiff's complaint is unclear, a majority of courts, including the Third Circuit, require the court to look to the substance of the plaintiff's claims, the relief sought and the course of the proceedings to determine the capacity in which the defendants were sued. Hindes v. FDIC, 137 F.3d 148, 157 (3d Cir. 1998); Gregory v. Chehi, 843 F.2d 111, 119-120 (3d Cir. 1988); see also Biggs v. Meadows, 66 F.3d 56, 59-60 (4th Cir. 1995); Parker v. Graves, 479 F.2d 335, 336 (5th Cir. 1973). In arguing that Plaintiff sued Defendants only in their individual capacities, Defendants direct the Court to a single paragraph of the Complaint in which Plaintiff refers to Defendants as "persons" who have deprived Plaintiff of constitutional rights under color of state law, custom, regulation or usage under 42 U.S.C. 1983." (D.I. 12 at ¶ 6) (emphasis added). However, the Court notes that Plaintiff asserted a claim for equitable relief numerous times in her Complaint, and the language of the paragraph cited by Defendants tracks the language of 42 U.S.C. § 1983, which refers to those who can be sued in an action at law

or in equity as "persons." Thus, the Court concludes that the reference to "persons" is insufficient to limit Plaintiffs' claims to Defendants' individual capacities. Resolving any doubts in favor of Plaintiff, as the Third Circuit has done in similar circumstances, the Court concludes that Plaintiff's lawsuit was directed at Defendants in their individual and official capacities.

The Court's conclusion in this regard is consistent with Defendants' approach to this action. In a pretrial stipulation, Defendants expressly acknowledged that:

This action was brought by Plaintiff Patricia Via (f.k.a. Patricia T. Toomey) against her former employers, Defendants, individually and in their official capacities as agents of the Department of Correction of the State of Delaware (Department), pursuant to 42 U.S.C. § 1983.

(D.I. 98, Pretrial Stip. ¶ 1) (emphasis added). Thus, the Court concludes that Defendants waived any claim that they were not sued in their official capacities.

In sum, the Court concludes that reinstatement is an appropriate remedy in this case. Defendants have not sufficiently demonstrated that any special circumstances militate against reinstatement, and Plaintiff has demonstrated the absence of an available monetary remedy. In these circumstances, the Court is persuaded that reinstatement is necessary to provide Plaintiff with full and complete relief, and therefore, the Court will issue an order of reinstatement once the parties have agreed

upon, or the Court has decided after a hearing, the appropriate rank, rate of pay and benefits for such reinstatement.

II. Plaintiff's Request For Injunctive Relief

By her Motion, Plaintiff also requests injunctive relief. Specifically, Plaintiff requests an injunction prohibiting Defendants from (1) retaliating or discriminating against Plaintiff because of this action or her relationship with Mr. Via; and (2) promulgating or enforcing Article 16 of the Code of Conduct against her or other employees. In support of her request, Plaintiff contends that it is her understanding and belief that Defendants have done nothing to change Article 16 of the Code of Conduct and continue to disseminate and enforce it.

In response, Defendants contend that Plaintiff is not entitled to injunctive relief, because she is no longer employed by the Department of Correction. Defendants also contend that they "are aware of the Court's ruling regarding the application of Article 16 - under the same facts and circumstances as shown at trial, [and] [t]hey understand they may not apply it as applied to plaintiff." (D.I. 139 at 17).

The standard for permanent injunctive relief requires the moving party to show: (1) actual success on the merits; (2) irreparable harm to the moving party in the absence of relief; (3) the absence of a possibility of harm to the non-movant; and (4) that the public interest favors granting such relief. In the

circumstances of this case, the Court concludes that Plaintiff has satisfied the standard for injunctive relief. Plaintiff has succeeded in her claim of a Section 1983 violation, and the Court has concluded that Plaintiff is entitled to reinstatement. Plaintiff will also be irreparably harmed if Article 16 is continued to be promulgated and enforced by Defendants, because Plaintiff will be in perpetual violation of Article 16 as a result of her relationship with Mr. Via. In addition, Defendants have not alleged, let alone demonstrated, that injunctive relief will cause them any harm. And, in the Court's view, the public interest favors the granting of injunctive relief to effectuate the Court's decision. Accordingly, the Court will grant Plaintiff's request for injunctive relief and enjoin Defendants from enforcing Article 16 as it existed at the time of trial against Plaintiff. The Court will also require Defendants to post a copy of this Order and a complete copy of the Court's previous Memorandum Opinion and Order within 10 days of the date of this decision on bulletin boards visible to Department of Correction employees at each work site operated by the Department of Corrections.

III. Plaintiff's Motion For Attorneys' Fees And Costs

Plaintiff also requests the Court to conclude that she is a "prevailing party" entitled to attorneys' fees under 42 U.S.C. § 1988. Defendants contend that Plaintiff is not a prevailing

party, because Defendants are entitled to qualified immunity. Defendants also contend that Plaintiff has gained no legal benefit as a result of her lawsuit, and that the Court's judgment resulted in no action by Defendants. Thus, Defendants maintain that Plaintiff is not entitled to attorneys' fees.

In pertinent part, 42 U.S.C. § 1988 provides:

In any action or proceeding to enforce a provision of . . . [section] 1983 . . . of this title, . . . the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

42 U.S.C. § 1988(b). Thus, in order for a plaintiff to recover attorney's fees under this section (1) he or she must be a "prevailing party," and (2) the attorneys' fees must be reasonable. Farrar v. Hobby, 506 U.S. 103, 111-114 (1992).

The amount of attorneys' fees sought has not been brought before the Court, and the parties appear to request the Court to rule only on the question of whether Plaintiff is a prevailing party for purposes of Section 1988. A party is a "prevailing" party for purposes of a Section 1988 fee award if the party succeeds "on any significant issue in litigation which achieves some of the benefit [the party] sought in bringing suit." Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). "[T]o be considered a prevailing party within the meaning of § 1988, the plaintiff must be able to point to a resolution of the dispute which changes the legal relationship between itself and the

defendant." Texas State Teachers Ass'n v. Garland Indep. Sch. Dist., 489 U.S. 782, 792 (1989).

Defendants suggest that Plaintiff cannot be a prevailing party, because Defendants have qualified immunity. In support of their position, Defendants direct the Court to the Supreme Court's decision in Hewitt v. Helms, 482 U.S. 755 (1987) and Kentucky v. Garland, 473 U.S. 159 (1985). In the Court's view, these cases are distinguishable from the circumstances in this case. In Hewitt, the Supreme Court concluded that the plaintiff was not entitled to attorneys' fees, because he obtained no damage award, and "no injunction or declaratory judgment was entered in his favor." Id. at 760. As the Supreme Court recognized, the most the plaintiff in Hewitt received was "an interlocutory ruling that his complaint should not have been dismissed for failure to state a constitutional claim." Id. In the words of the Supreme Court, "[t]hat is not the stuff of which legal victories are made." Id.

In Garland, the case settled, but the plaintiffs agreed not to seek attorneys' fees against the individual defendants. Rather, the plaintiffs sought attorneys' fees from the Commonwealth of Kentucky. However, the Commonwealth of Kentucky had been dismissed from the case before trial pursuant to the Eleventh Amendment. Concluding that attorneys' fees were not appropriately awarded to the plaintiffs, the Supreme Court stated

that “[t]here is no cause of action against a defendant for fees absent that defendant’s liability for relief on the merits.” Id. at 170. Thus, because the plaintiff had no claim against the Commonwealth of Kentucky on the merits, the plaintiff could not collect attorneys’ fees from the Commonwealth of Kentucky.

Unlike Hewitt and Garland, in this case, Plaintiff has received direct benefits from her lawsuit in the form of reinstatement, a judgment that Article 16 of the Code of Conduct is unconstitutional and injunctive relief. In the Court’s view, these forms of relief are sufficient to confer prevailing party status on Plaintiff, and therefore, the Court concludes that Plaintiff is a prevailing party. See e.g. Baumgartner v. Harrisburg Housing Authority, 21 F.3d 541 (3d Cir. 1994) (“Obviously, a plaintiff who has received injunctive relief or who recovered a judgment of damages has prevailed, at least in part.”); The Circle School v. Phillips, 270 F. Supp. 2d 616, 632 (E.D. Pa. 2003). The Court expresses no view as to what amount of attorneys’ fees is reasonable until such time as Plaintiff moves with respect to the amount of attorneys’ fees sought, and the parties fully brief any additional issues related to the reasonableness of attorneys’ fees.

CONCLUSION

For the reasons discussed, Plaintiff’s Motion For Prospective Equitable Relief, Injunctive Relief and Attorneys’

Fees will be granted.

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PATRICIA T. VIA, :
f.k.a. Patricia T. Toomey, :
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Plaintiff, :
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v. : Civil Action No. 97-4-JJF
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STAN TAYLOR, ROBERT WATSON, :
ALAN MACHTINGER, and RICK :
KEARNEY, :
 :
Defendants. :

O R D E R

At Wilmington, this 16th day of June 2004, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

1. Plaintiff's Motion For Prospective Equitable Relief, Injunctive Relief And Attorneys' Fees (D.I. 135) is GRANTED.
2. Defendants are hereby enjoined from enforcing Article 16 against Plaintiff and are ordered to post a complete copy of this Memorandum Opinion and Order and a complete copy of the Court's Memorandum Opinion dated September 11, 2002, within 10 days of the date of this Order, on bulletin boards visible to Department employees, at each work site operated by the Department of Correction.
3. Plaintiff is entitled to reinstatement, at a rank, rate of pay and benefits to be agreed upon by the parties or by the Court after a hearing.
 - a. In this regard, the parties shall confer during

the next 30 days and attempt to agree on the appropriate rank, pay grade and rate of pay at which Plaintiff shall be reinstated, and attempt to agree on the appropriate form of order to ensure that Plaintiff enjoys all benefits, and the appropriate status regarding seniority, retirement, and other benefits, that she would have enjoyed had she not been terminated.

b. The parties shall voluntarily exchange such information as relates to Plaintiff's reinstatement or benefits or rank, and the parties shall keep such information confidential, and shall not use such information for any purpose except as is reasonable to advance this litigation.

c. If the parties cannot agree on a resolution of this issue, they shall submit the disputed issues to the Court within 40 days of the date of this Order.

4. Defendants are hereby enjoined from taking any adverse or retaliatory action against Plaintiff because of her assertion of constitutional rights or because of her protected association with offender Richard Via.

5. Plaintiff is a prevailing party for purposes of 42 U.S.C. § 1988. Plaintiff's counsel shall be prepared to file an affidavit of attorneys' fees and costs after the merits of the case are resolved, and his labors have otherwise ceased.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE