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EMPLOYMENT LAW

Discriminatory Animus Doesn't Immunize Employee From Termination

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Special to the Legal

Although a supervisor's discriminatory animus creates a multitude of issues for an employer, it does not, in and of itself, create liability where the supervisor is not the termination decision-maker. In *Wray v. School District of Philadelphia*, No. 14-5886, 2016 U.S. Dist. LEXIS 13319 (E.D. Pa. Feb. 4, 2016), the U.S. District Court for the Eastern District of Pennsylvania reaffirmed that a supervisor's discriminatory animus does not immunize an employee from termination.

SUPERVISOR BIAS

Odell Wray, an African-American man, worked as custodial assistant for the School District of Philadelphia. Wray was assigned to Motivation High School, where Yvonne Jones, an African-American woman, served as the principal. Jones, according to Wray, disapproved of Wray's interracial relationships, "bullied" Wray for dating one of the Caucasian teachers and advised Wray that "jungle fever" was not allowed at the school. Jones



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also told others at the school that Wray was walking around with a "target on his back," according to the opinion. On Nov. 16, 2011, after falsely accusing Wray of leaving work during his work shift, Jones admitted her mistake and told Wray that he could avoid these confrontations in the future if he "stuck to his own kind."

AFTER-HOURS TRYST

Unbeknownst to the school district, on Nov. 28, 2011, around 7 p.m., Wray entered the school with a female companion, Cassandra Hendricks. The

pair exited the school 25 minutes later. Upon their exit, Wray and Hendricks were stopped for questioning by two Philadelphia police officers who had recognized Hendricks as a local prostitute. Hendricks admitted to the police officers that she and Wray had

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sex inside the school. According to Hendricks, this was not the first time the pair had done so. Wray, however, maintained that he had returned to the school to retrieve his debit card and had allowed Hendricks to use the restroom.

SCHOOL DISTRICT INITIATES AN INVESTIGATION

Following their questioning of Wray and Hendricks, the police officers

returned to the school to inform Jones about Wray's actions. Jones then told Tom Wilson, one of Wray's supervisors, about the incident and requested that Wray be transferred. Jones also contacted Johnnie Lampkins, a school police officer, who located surveillance footing showing Wray and Hendricks inside the building. Lampkins sent a report to the Office of School Safety and a formal investigation was initiated.

In connection with the school district's investigation, Wilson recommended that Matt Melady, the facilities coordinator, convene a hearing to discuss Wray's termination. In response, Melady drafted a memorandum to Tracie Gardner, a disciplinary hearing officer, detailing Wray's disciplinary history and recommending an immediate hearing and to request Wray's termination.

WRAY'S TERMINATION

The school district held two hearings to discuss the charges against Wray and recommended that the School Reform Commission (SRC) terminate Wray's employment. Wray appealed his termination and the school district held a hearing on the appeal. Following his unsuccessful appeal, Wray brought suit alleging race discrimination pursuant to Title VII.

CAT'S PAW THEORY OF LIABILITY

In support of his claim, Wray advanced a cat's paw theory of liability. In *Dolan v. Penn Millers Insurance*, 625 Fed. Appx. 91 (3d Cir. Pa. 2015), the U.S. Court of Appeals for the Third Circuit explained that the cat's paw theory of liability can be invoked when an employee with discriminatory intent

convinces a superior to take an adverse action against another employee. The crux of Wray's argument was that Jones' decision to report his actions was born of her discriminatory animus and that Jones induced the school district to fire him because of her bias. In evaluating the school district's motion for summary judgment, the court explained the challenges of establishing proximate cause under a cat's paw theory. Relying on the Third Circuit's decision in *Jones v. Southeastern Pennsylvania Transportation Authority*, 796 F.3d 323 (3d. 2015), the court noted that proximate cause will not exist when the employer does not rely on a supervisor's biased report in taking the ultimate adverse action.

For the purposes of deciding the motion, the court assumed that Jones' decision to report Wray was born of discriminatory animus and intended to cause Wray's termination. Nevertheless, the court rejected the plaintiff's argument, reasoning that the school district had furnished undisputed evidence that the decision to terminate Wray was based on the results of an investigation that was sufficiently independent from Jones.

In coming to this conclusion, the court noted that the school district commissioned an independent investigation and had conducted three hearings with three different hearing officers. Also important to the court's decision was the SRC's consideration of the police report, the investigator's independent report and the surveillance footage showing Wray and Hendricks in the school building. The court also highlighted Wray's admission that he permitted an unauthorized guest to

enter the school. Given the school district's actions subsequent to learning of Wray's behavior, the court found no merit to Wray's contention that his termination relied on facts provided by Jones.

Although Jones' decision to share the information about Wray's actions may have been the but-for cause of Wray's termination, the SRC's decision to terminate Wray's employment was based on several pieces of independent evidence.

Wray demonstrates that a supervisor's bias may not, under certain circumstances, mean that an adverse action suffered by an employee involving that supervisor is discriminatory. *Wray* also serves as a reminder of the importance of a thorough investigation where there is an allegation of employee misconduct. Although there are a multitude of cases finding that a flawed investigation is not, in itself, evidence of pretext, a careful investigation is always beneficial. •