

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL DIVISION

DONNA WARD and GLENN
JOHNSON
Plaintiffs

v.

CASE NO: 14-CA-3368

LEE COUNTY,
Defendant

_____ /

**ORDER
ON PLAINTIFFS' MOTION FOR TEMPORARY REINSTATEMENT**

THIS CAUSE having come before this Court for hearing on September 24 and October 26, 2015 on the Plaintiffs' Motion for Temporary Reinstatement and the Court having reserved ruling and being advised of the premises, it is ORDERED and ADJUDGED as follows:

1. This Case came before this Court on the Plaintiff's Motion for Temporary Reinstatement (hereafter referred to as the "Motion to Reinstate"), filed on 12/8/14. While this Motion was filed in connection with the original Complaint that the Plaintiffs filed on 11/24/14 which was subsequently partially dismissed by the Court with leave for the Plaintiff to amend, the Plaintiffs did file an Amended Complaint on 8/21/15 that requested reinstatement and therefore this Court considers the Motion to Reinstate to be viable. No objections were raised to proceeding on this Motion as filed on 12/8/14.
2. This Court takes judicial notice of criminal Case number 14-MM-745 including the following filings therein: the Information filed on 5/13/14 and the Notice of Nolle Prosequi filed on 6/13/14. This is the criminal case against Robin Speronis for one count of first degree misdemeanor Cruelty to Animals concerning one of Ms. Speronis' dogs that had been taken into custody by Lee County's Animal Control Office (also referred to herein as "ACO") in the Spring of 2014. This criminal case is the subject of a majority of the Plaintiffs' disclosures.
3. The Case at Bar previously came before the Court on Defendant's Motion to Dismiss alleging that the disclosures at issue are not of the nature that are protected by Florida's Whistle-Blower Statute and that they were not sent to the correct recipients as required by the Statute. The Court granted the Motion in part based on Plaintiffs failure to properly allege that the disclosures at issue addressed violations or

suspected violations of law. The Court denied the Motion to Dismiss based on the Defendant's allegations that the writings were not "signed" because most were sent via email, and that the Lee County Board of Commissioners does not qualify as the type of recipient required by the Statute. (See Court's Order filed on 8/14/15)

4. This Case came before the Court for hearing on the Motion to Reinstate spanning two days: September 24 and October 26, 2015. At the conclusion of the hearing, the Court reserved ruling and allowed the Parties' attorneys to submit additional memoranda within the week. Both Counsel submitted additional Memorandum filed in the court file on 10/30/15.
5. This Motion to Reinstate presents the Court with a very narrow set of issues to consider as set forth below.
 - A. The Court must determine (1) whether the employee-Plaintiffs have complained of being discharged in retaliation for a disclosure protected by Florida's *Whistle-Blower* statute; and (2) whether the disclosures were made in bad faith or for a wrongful purpose, or occurred after an employer initiation of a personnel action.¹
 - B. Two criteria must be met in order for the *Whistle-Blower* Statute to apply: (1) the employee must have disclosed a certain type of information and (2) it must have been disclosed to recipients designated by the act.² The subject matter of the information disclosed must be: '...any violation or suspected violation of any state, federal or local law, rule or regulation committed by an employee...that creates and presents a substantial and specific danger to the public's health, safety or welfare...;' and/or '...any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds or gross neglect of duty committed by an employee...'.³
 - C. Case law indicates that a court's determinations in temporary reinstatement proceedings including the nature of the disclosures at issue and whether the disclosures were made to the appropriate recipients is similar to that used in considering motions to dismiss. The First District Court of Appeals implies in *Department of Transportation v. Florida Commission on Human Relations*⁴ that a temporary reinstatement decision could be made only on the pleadings without a hearing if one is not requested by the parties.⁵ Whistle-Blower case law including case law addressing reinstatement proceedings provides that the Statute is to be construed liberally so as not to frustrate its purpose⁶ and that the ultimate issue

¹ Fla.Stat.§112.3187(9)(f)(2014)

² Fla.Stat.§112.3187(6)(2014)

³ Fla.Stat.§112.3187(5)(2014)

⁴ 842 So.2d 253 (Fla. 1st DCA 2003)

⁵ Id. at 256

⁶ *Hutchison v. Prudential Insurance Company of America, Inc.*, 645 So.2d 1047, 1049 (Fla. 3d DCA 1994); *Competelli v. City of Belleair Bluffs*, 113 So.3d 92, 93 (Fla. 2d DCA 2013); *Lindamood v. Office of the State Attorney, Ninth Judicial Circuit of Florida*, 731 So.2d 829, 833 (Fla. 5th DCA 1999)

of the nature of the protected disclosures are mixed questions of law and fact to be determined by a jury.⁷ Consequently, this Court concludes that at this stage of the proceedings in this Case, that it does not have the authority to delve too deeply into the circumstances alleged in the disclosures at issue or the nexus between said disclosures and the Plaintiffs' termination.

6. There are not many cases directly addressing the circumstances of temporary reinstatement in cases filed in circuit court, but what does exist supports reinstatement of the Plaintiffs in this Case. In *Lindamood v. Office of the State Attorney*, the Fifth District Court of Appeals reversed the trial court's denial of temporary reinstatement and remanded the case for the plaintiff-employee to be temporarily reinstated. Ms. Lindamood's employment with the State Attorney's Office had been terminated shortly after she had complained via emails regarding certain office policies including disproportionate distribution of work and salary disparities based on gender and age. She sent emails to the EEOC, the Florida Commission on Human Relations, the Office of Public Counsel and Governor Chiles. The Fifth District Court ruled that the Whistle-Blower statute mandates reinstatement if the statutory requirements of Section 112.3187 are met. "*The statutory language of §112.3187 is not ambiguous and the plain meaning of the statute must prevail.*"⁸ In *Lindamood*, the District Court found:

*...all of the statutory requirements of §112.3187, which trigger its operation and require Lindamood's reinstatement have been met. Lindamood was an employee of a state agency covered under this section. Prior to her termination, she made disclosures of the type protected by the statute, to the Office of the Public Counsel... . She was subsequently terminated... . Lindamood's disclosures were not in bad faith or for a wrongful purpose, and ...they were made prior to her termination.*⁹

It is noteworthy that the Appellate Court does not appear to have analyzed whether the circumstances alleged by Ms. Lindamood in her disclosures actually existed or occurred, but rather only if the subject matter, recipients and timing qualified under the Whistle-Blower Statute.

7. It is undisputed that the Plaintiffs were employees of a local governmental entity covered by the Whistle-Blower Statute.

⁷ *Guess v. City of Maramar*, 889 So.2d 840, 845 (Fla. 4th DCA 2005); *Rosa v. Department of Children & Families*, 915 So.3d 210, 212 (Fla. 1st DCA 2005)

⁸ *Lindamood* 731 So.2d at 833

⁹ *Id.* at 832

8. This Court finds that for the purposes of the reinstatement proceedings, the subject matter of the disclosures at issue are the type that are protected by Florida's *Whistle-Blower Statute*.

A. The disclosures that the Plaintiffs allege to be protected by Whistle-Blower Statute are as follows:

FROM GLENN JOHNSON¹⁰

EXHIBIT No. ¹¹	DATE	FORM	TO	ALLEGATIONS
P.Ex. 6	4/25/14 11:32 AM	email	County Manager Roger Desjarlais	<u>Complaint about CB¹²</u> -CB made decision not to pursue Speronis-case without sufficient information -GJ ordered to return both dogs while SAO ¹³ still had criminal case pending and after GJ directed to hold large dog as evidence -CB berated GJ and accused him of wrong-doing because he didn't return dog-evidence per directions of SAO -CB had failed to address ACO operations issues including pay grades & staff increases
P.Ex.7	4/29/14	memo	County Manager Roger Desjarlais	Same as above
P.Ex.10	6/27/14 17:27	email	County Commissioners	<u>Complaint about CB & RD¹⁴</u> -Complaints about CB same as above plus: -she hadn't thoroughly reviewed Field Operations Report & addressed needs of ACO ¹⁵ -put ACO under media ban that limited ACO's ability to safeguard community -Complaints vs. RD: -had not read Field Operations Report re: ACO needs -doesn't consider ACO services valuable

¹⁰ Glen Johnson referred to in above table as "GJ"

¹¹ Exhibits admitted in Reinstatement-hearing

¹² Assistant County Manager Christine Brady referred to in above table as "CB"

¹³ State Attorney's Office referred to as "SAO"

¹⁴ County Manager Roger Desjarlais is referred to in the above Table as "RD"

¹⁵ Animal Control Office is referred to in the above Table as "ACO"

FROM DONNA WARD¹⁶

EXHIBIT No. ¹⁷	DATE	FORM	TO	ALLEGATIONS
P.Ex. 18	4/25/14 11:21 AM	email	County Manager Roger Desjarlais	-Complaints vs. CB & requests ACO be assigned a different Assistant County Manager as supervisor -CB made decision not to pursue Speronis-case without sufficient information -GJ ordered to return both dogs while SAO ¹⁸ still had criminal case pending and after GJ directed to hold large dog as evidence -CB subjected GJ & DW to "aggressive" and "hostile" questioning because GJ didn't return dog-evidence per directions of SAO
P.Ex. 19	5/2/14	Memo	County Manager Roger Desjarlais	"Official Complaint vs. CB" -CB met w/ County attorneys and made decisions re: animals being held by ACO without input or information from ACO -CB has been "hostile" towards DW & her staff specifically in connection with their holding dog-evidence
P.Ex. 21 ¹⁹	5/13/14	Memo	Glen Salyer, Assist. County Manager ²⁰	-Alleges violations of Lee County Employee Policies & Procedures by CB including: - "use of lies, dishonesty, and/or misrepresentation in the workplace" -CB "obstructing justice" by her allegations vs. GJ re: Speronis Case
P.Ex. 22	6/14/14 9:37 AM	email	County Manager Roger Desjarlais	<u>Complaint about CB</u> -CB acting in hostile and unprofessional manner towards DW's staff -media ban imposed by CB detrimental to ACO's ability to protect animals
P.Ex. 23	6/18/14 14:50	email	County Commissioners	-Alleges "hostile work environment/retaliation" perpetrated by CB & RD -media ban inhibiting ACO's ability to care for Lee County's animals

¹⁶ Donna Ward referred to in above Table as "DW"

¹⁷ Exhibits admitted in Reinstatement-hearing

¹⁸ State Attorney's Office referred to as "SAO"

¹⁹ This Inter-Office memo of 5/13/14 to Glen Salyer was not attached to the Complaint or Amended Complaint, but was admitted as evidence in the reinstatement proceedings.

²⁰ Testimony of County Manager Desjarlais that he assigned Assistant County Manager Salyer to investigate complaints of Donna Ward and/or Glenn Johnson versus Assistant County Manager Brady

				<ul style="list-style-type: none"> -CB accused DW & ACO of not handling Speronis-Case correctly, but ACO actually did -CB ignored DW's choice of interim ACO director -CB has created such a hostile work environment that caused DW health problems -CB treated DW differently when DW on FMLA leave than other employees: completely terminated DW's access to office -CB not addressing ACO staff needs
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B. The disclosure-subject matter can be construed to allege violations or suspected violations of federal, state or local law, rules or regulations committed by Lee County employee Christine Brady, which could create and present a substantial and specific danger to the public's health, safety or welfare.

(1) The disclosures alleging that Assistant County Manager Brady berated and/or was hostile and aggressive towards Glenn Johnson and Donna Ward regarding Mr. Johnson's communicating with the State Attorney's Office regarding an on-going Speronis-case that was about to be filed and retaining the large Speronis-dog per instructions from Assistant State Attorney Justham could possibly be construed as obstructing justice or tampering with a witness or evidence regarding that case. The disclosures also alleged violations of Lee County's Employee Policies and Procedures.²¹

(2) Such actions could be found to endanger public health, safety or welfare, including that a well-functioning ACO is necessary to the protection of the public's animals and protecting the public's animals protects the public's health, safety or welfare. That the ACO exists reflects its importance to the public's health, safety and welfare.

C. The disclosures regarding Assistant County Manager Brady's actions individually and/or together regarding the ACO, the Speronis Case and towards Glenn Johnson and Donna Ward regarding the Speronis Case could be construed to allege acts or suspected acts of gross mismanagement, malfeasance, misfeasance or gross neglect of duty by Lee County employee Assistant County Manager Christine Brady. These disclosures state or imply that Ms. Brady allegedly:

(1) Made decisions about the welfare of animals without complete information;

²¹ Plaintiff's Exhibit 21

- (2) Made decisions that involved an on-going criminal case in the State Attorney's Office without complete information, including that there was an on-going case;
 - (3) Berated a potential witness in a criminal case, Glenn Johnson, for acting within the scope of his job in communicating with the State Attorney's Office regarding the dogs in ACO's custody that he knew were the subject of possible criminal case;
 - (4) Imposing a media ban on the ACO's office which allegedly inhibited their ability to communicate with the public regarding the safety of Lee County's animals; and
 - (5) Failing to adequately staff the ACO's office so that there would be enough investigators to ensure the safety of Lee County's animal population and therefore its human population.
- D. The recipients of the disclosures at issue do qualify under the *Whistle-Blower* statute as the type required by the Statute, as previously ruled by the Court.
9. The disclosures at issue were not made in bad faith or for a wrongful purpose, nor did they occur after an employer initiation of a personnel action.
- A. There doesn't appear to be any evidence or even any allegations that the Plaintiffs made the disclosures in bad faith.
 - B. Both Plaintiffs had been employed by Lee County ACO for several years. Donna Ward had been director of ACO since March 13, 2008 and Glenn Johnson was ACO's operations manager. No evidence was presented that there were any personnel actions pending or that had ever been initiated involving the Plaintiffs prior to or even after their disclosures. Donna Ward's annual performance evaluation that was completed in March of 2014 reflects that she was found to "meet expectations."²²
10. The Plaintiffs' employment with Lee County was terminated on or about 7/8/14 via letters of that date.²³ This was within two weeks of Plaintiffs' sending emails to the Lee County Commissioners and approximately two months from the Plaintiffs' initial disclosures. Further consideration of nexus between Plaintiffs' disclosures and termination should be done by a jury.
11. Defendant's defense to Plaintiffs' Motion to Reinstate does not convince the Court to do other than grant the Plaintiffs' Motion. In its Case Management Order of 7/24/15, the Court allowed the Defendant to present defenses to the Plaintiffs' temporary reinstatement pursuant to Section 112.3187(10), that the Plaintiffs were terminated


²² Plaintiff Ex. 14

²³ Plaintiff Ex. 12 & 24

for reasons other than their protected disclosures. However, the Defendants failed to respond to discovery requests in detail regarding these defenses and as such, the Court allowed Defendant to propound only the defense set forth in the interrogatories to which it responded. Despite the Court's prior ruling, it has some doubts as to whether allowing any such defenses is contemplated by the Statute in temporary reinstatement proceedings based on the shallow scrutiny that seems to be allowed in these proceedings pursuant to case law. However, even if allowed, the defense submitted by Defendant does not affect the Court's decision.

12. Plaintiffs' Motion for Temporary Reinstatement filed on 12/08/14 which relief is also requested in Plaintiffs' 8/21/15-Amended Complaint is hereby GRANTED. The Court's findings of fact should not be construed to extend beyond this Motion.

DONE and ORDERED this 16 day of November, 2015.


Honorable Elizabeth V. Krier
Circuit Court Judge, 20th Circuit

Conformed copies to:

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11/17/15
EMAILED