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3rd Circ. Upholds Pa. County's Win In FMLA Suit

By **Abby Wargo**

Law360 (July 11, 2023, 2:22 PM EDT) -- The Third Circuit sided with a Pennsylvania county and two of its employees who were sued by the county's former chief information officer over his firing, agreeing with a lower court that he was fired for dishonest conduct and not in retaliation for his medical leave.

In an unpublished **opinion** Monday, a three-judge panel affirmed Bucks County's summary judgment win in a suit brought by Donald Jacobs under the Family and Medical Leave Act and Pennsylvania Whistleblower Law, finding that no reasonable juror could find a connection between Jacobs' taking medical leave and his termination.

"The county also offered consistent explanations for Jacobs' termination. In fact, the county has repeatedly provided the same reasons for terminating Jacobs," U.S. Circuit Judge Patty Shwartz wrote in the opinion, noting the county fired Jacobs for perceived dishonesty and insubordination.

Jacobs had invoked his FMLA rights in January 2020 and was placed on administrative leave a month later, but the judges said the timing was "not unusually suggestive" of FMLA interference.

Nor could they find any evidence of ongoing antagonism or retaliation Jacobs faced; in reality, the judges said, Jacobs had requested and received FMLA leave several times during his tenure with the county and was only denied FMLA leave in 2020 because he didn't have proper documentation.

Jacobs had also alleged his termination jeopardized his reputation in violation of the 14th Amendment's liberty clause, but the Third Circuit said the county had not publicly disclosed the reasons for his firing.

"There is no evidence that the reasons for Jacobs' termination were disseminated to the general public," Judge Shwartz said. "Insofar as the purportedly stigmatizing reasons for termination have been disclosed through this litigation, or at his unemployment proceeding, neither constitutes a public disclosure upon which Jacobs can seek relief."

Jacobs had sued the county, its chief operating officer and its solicitor in August 2020 after he was terminated that March because of his ongoing, privately contracted work with a state employee without permission from the county.

On Jan. 16, 2020, Jacobs was interviewed by the Pennsylvania State Ethics Commission for working with the state employee, who had allegedly used his state employment for private financial gain, and around the same time the county opened its own investigation into Jacobs' conduct.

After an interview in February with county officials, Jacobs was placed on administrative leave pending further investigation, and in March he was formally fired, with the county providing several reasons for his termination.

Concurrently, court records say that in January, Jacobs had applied for FMLA leave to receive cancer treatments; the county granted the request subject to the requirement that Jacobs' doctor submit required documentation. When the claims processor did not receive that information, the county denied Jacobs' request in February, which he said was retaliatory.

Representatives of the parties did not immediately respond to requests for comment Tuesday.

U.S. Circuit Judges Patty Shwartz, Tamika R. Montgomery-Reeves and Jane R. Roth sat on the panel for the Third Circuit.

Jacobs is represented by Wayne A. Ely of Wayne Ely Law.

Bucks County is represented by Jeffrey M. Kolansky, Jeffrey M. Scott and Eric I. Yun of Archer & Greiner.

The case is Donald Jacobs v. County of Bucks et al., case number 22-2327, in the U.S. Court of Appeals for the Third Circuit.

--Editing by Amy Rowe.

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