

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CURTIS LARRICK,

Plaintiff,

v.

THE SHERIFF OF BEAVER COUNTY,
PENNSYLVANIA, BEAVER COUNTY,
PENNSYLVANIA and ANTHONY GUY,
Sheriff of Beaver County in his individual
capacity,

Defendants.

Civil Action No. 2:16-cv-282-CRE

MAGISTRATE JUDGE CYNTHIA REED EDDY

Electronically Filed

JURY TRIAL DEMANDED

DEFENDANTS' REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

This matter stems from the termination of a difficult, untrustworthy employee after years of under-performance and high-maintenance behavior, although it is being framed as a case of political discrimination. Plaintiff was terminated as a deputy sheriff following the election of new Sheriff, Tony Guy. Sheriff Guy replaced the former Sheriff who had plagued the office with problems stemming from his own criminal behavior when running the office. Due to the negativity surrounding the Sheriff's Office, Sheriff Guy ran a campaign focused on the need for change in the office.

Plaintiff mischaracterizes the evidence and provides a plethora of immaterial facts in an attempt create a question of fact. However, the undisputed evidence on the key issues provides that Plaintiff was properly terminated after his involvement in conflict with nearly everyone in the office, constant personal problems which he brought into the office requiring counsel from the Chief Deputy on a daily basis and earning a reputation of lying and stretching the truth. As such, Summary Judgment is appropriate.

It is noteworthy that Plaintiff in his responsive Brief does not generally take issue with the legal analysis set forth in Defendants' Brief in Support of Motion for Summary Judgment. At best, Plaintiff tries to create, through an anything-but-Concise Statement of Facts and a Brief in Opposition filled superfluous information as a means to persuade this Honorable Court that fact questions remain. Importantly, these facts primarily related to Plaintiff's employment before Sheriff Guy was elected are not material to the issues in this political discrimination case. Defendants' Reply Brief, therefore, includes analysis of Plaintiff's arguments, out of an abundance of caution, even though they are factually focused. The strong legal position of Defendants in their Brief in Support of Motion for Summary Judgment remains and will not be restated here.

A. Sheriff Guy's basis for terminating Plaintiff has remained consistent.

Sheriff Guy has always maintained that Plaintiff was terminated because of problems relating to his character, including struggles with telling the truth and for his high-maintenance personality. Upon taking office, Sheriff Guy terminated a number of employees, not just Plaintiff, and issued a form letter to all advising of their termination. The letter generally provides that these employees were terminated pursuant to Sheriff Guy's Section 1620 rights. Plaintiff attempts to argue that the letter citing the Sheriff's statutory authority to terminate an employee demonstrates a separate basis for Plaintiff's termination. However, Section 1620 does not serve as the reason for Plaintiff's termination but, rather, provides the authority and mechanism for the Sheriff to terminate employees. The letter does not cite the specific reason each employee was terminated, as it was issued to all of the terminated employees on Sheriff Guy's first day in office. Although the letter does not provide the specific reason that Plaintiff

was terminated, nor is it required to do so, the letter does not support Plaintiff's proposition that Sheriff Guy has changed his basis for terminating Plaintiff.

Further, Plaintiff cites to a Human Resources personnel form that states that Plaintiff was terminated as a result of a department restructuring. Again, a department restructuring was merely noted as the mechanism bringing about the termination, not the reason for terminating Plaintiff. The form does not provide the basis for which Plaintiff, or any other employee, was terminated and does not support Plaintiff's position that Sheriff Guy changed his basis for terminating Plaintiff. Neither the termination letter nor the Human Resources form provided the appropriate method for setting forth Plaintiff's long history of professional issues with the Sheriff's Office.

Instead, Sheriff Guy's basis for terminating Plaintiff remained consistent throughout, beginning during this campaign through the present. Sheriff Guy terminated Plaintiff due to his character issues that stemmed from Plaintiff's problems with the truth and high-maintenance demeanor, as terminating such an employee was important for rebuilding the admittedly broken office.

Sheriff Guy ran as the Republican candidate for office after watching the turmoil of the office under for the former Sheriff stemming from Sheriff David's alleged criminal behavior in connection with his job duties, which resulted in a criminal trial. Sheriff Guy believed that "there were a lot of problems in the Sheriff's Office. . . , a lack of professionalism, lack of organization." Defs.' Reply to CSMF at ¶ 30. The turmoil and lack of public trust in the Sheriff's Office was well documented by the media. The lack of public trust in the Sheriff's Office under Sheriff David is evidenced by the fact that the Democratic incumbent Sheriff David lost the

primary election to Wayne Kress. Wayne Kress ran a similar campaign to Sheriff Guy on the platform that the Sheriff's Office needed to be revamped. Defs.' CSMF at ¶ 39 (undisputed); *see also* Pl.'s App'x, Ex. 1 (Pl. Depo. at 50). Indeed, during the general election between Kress and Sheriff Guy, there was agreement from both sides that personnel changes would be made – people needed to be fired and order needed to be restored. In essence, the office personnel needed restructuring.

Upon winning the election and before he took office, Sheriff Guy evaluated every member of the Sheriff's Office to ensure that he was employing deputies with “strong character, good character, and positive character. . . ,” including “honesty, trustworthiness, [and] reliability,” in light of the fact that previous “decisions were made to hire people not based on qualifications or character, but for reasons more associated with who someone was associated with, who they were friends with.” Defs.' CSMF at ¶¶ 41-42. After interviewing all of the staff, Sheriff Guy found that it was universally believed that Plaintiff lacked honesty and was not trusted by most of the office. It was also determined by Sheriff Guy, from speaking to the other employees and corroborated by the evidence of record, that Plaintiff was a high-maintenance employee who had conflicts with nearly all of his co-workers and took up a great deal of management's time. Defs.' Reply CSMF at ¶¶ 47-52, 57-61. Sheriff Guy made good on his initial campaign promise, and the non-partisan position of his opponent, to bring change upon the Sheriff's Office and its personnel. Plaintiff, with untruthful character and high-maintenance personality, was terminated to eliminate the drama and lack of leadership that had admittedly bogged down the Office under the previous administration.

Indeed, during the litigation, Sheriff Guy's reasoning remained consistent with his initial campaign platform. Plaintiff attempts to quibble with the response provided in Sheriff Guy's interrogatories setting forth his basis for terminating Plaintiff to the extent that the response does not specifically mention all of the issues relating to Plaintiff that Sheriff Guy later testified about during deposition questioning. Sheriff Guy's interrogatory answer provided that Plaintiff was terminated because "through interviews, it was determined that Plaintiff had a reputation for lying and other qualities Sheriff Guy found to be inappropriate." Pl.'s CSFM at ¶ 197. When Sheriff Guy testified, he detailed that "other qualities" included Plaintiff's lack of honesty, integrity, trustworthiness and inability to work as a member of a team, similar to his stance in the campaign. Defs.' Reply CSFM at ¶ 68. It is disingenuous for Plaintiff to suggest that these traits are inconsistent in Sheriff Guy's general interrogatory answer.

Plaintiff also attempts to argue that Sheriff Guy added additional reasons for Plaintiff's termination during his deposition as evidence that Sheriff Guy's basis for terminating Plaintiff "morphed" over time by citing to Plaintiff's interactions with females, Plaintiff's interaction with Sheriff Guy on election day and Plaintiff's high-maintenance attitude. However, such instances are merely examples of how Plaintiff did not fit into the vision for the Sheriff's Office on which Sheriff Guy centered his campaign. Defs.' CSFM at ¶ 30 (undisputed). Plaintiff's recitation of his interactions with females who complained of harassment is evidence that Plaintiff characterized events in an attempt to make himself look better or, in other words, evidence of Plaintiff exaggerating or lying. Defs.' App'x, Ex. A (Guy Depo. at 120). Similarly, Sheriff Guy's interaction with Plaintiff on election day provided the same of evidence of a propensity to lie – Sheriff Guy found Plaintiff's story about an elderly man confusing the two of them "fantastic",

and when Plaintiff was heard to be spreading false information about who Sheriff Guy would terminate should he be elected, Plaintiff told Sheriff Guy it did not matter that he learned the information was false, he would continue to say it anyway. Defs.' App'x, Ex. A (Guy Depo. at 47, 108). Finally, Plaintiff's high-maintenance attitude and conflict is not a separate reason for his termination but, rather, is evidence of the initial turmoil and drama that plagued the Sheriff's Office under Sheriff David, which Sheriff Guy pledged to remedy should he be elected. As such, Sheriff Guy has always maintained the same basis for terminating Plaintiff, and Plaintiff's argument to the contrary should be disregarded.

B. The evidence demonstrates that Plaintiff was terminated for non-political reasons.

1. Reputation for lying

Plaintiff attempts to demonstrate that his political affiliation was the basis for his termination by mischaracterizing testimony to argue that Plaintiff could not have been fired for lying. The undisputed evidence demonstrates that Plaintiff had issues with truthfulness.

Plaintiff proffers the State Troopers' position that Larrick told the truth when testifying against Sheriff David as evidence that Plaintiff could not have been fired for lying. Sheriff Guy conducted several interviews with those involved with the Sheriff's Office to address the personnel issues that plagued the office. While those interviews included meeting with two State Troopers who were involved in the criminal investigation and proceedings against Sheriff David, Sheriff Guy also met with the attorney at the Attorney General's Office handling Sheriff David's criminal matter, Chief Deputy Jay Alstadt and the other lower ranking Officers. No one person's opinion carried any different weight than the others. Defs.' App'x, Ex. A (Guy Depo. at

103-04). Indeed, Sheriff Guy was attempting to gather all of the information he could. See Def.'s Reply CSMF at ¶¶ 40, 43-44, 53.

While the State Troopers found Plaintiff to be truthful by testifying against Sheriff David, Sheriff Guy found that the Troopers only had limited interaction with Plaintiff. Defs.' App'x, Ex. A (Guy Depo. at 134). The Troopers' opinion was based only on their involvement with Plaintiff in the Sheriff David matter. *Id.* While he may have been truthful the incident involving Sheriff David (the boss who previously demoted Plaintiff, see Defs.' CSMF at ¶ 8), they did not interact with him on a professional, law enforcement basis; they had much less interaction with Plaintiff than Alstadt and his co-workers, who most everyone believed Larrick had issues with the truth.

Plaintiff also attempts to point to Alstadt to demonstrate that Plaintiff did not have a reputation of lying. As an initial matter, Plaintiff takes Alstadt's testimony out of context. When asked if he thought Plaintiff was a liar, Alstadt was wishy-washy in making a bald statement about someone who he considered a friend, but conceded that Plaintiff did over-exaggerate or over-state things and was not able to follow through – in essence, Plaintiff lied. Alstadt told Guy that Plaintiff had a reputation of essentially lying, in that Plaintiff misconstrued stories to minimize his involvement or wrong-doing. Pl.'s App'x, Ex. 3 (Alstadt Depo. at 29-30); Ex. 4 (Guy Depo. at 85). Alstadt also told Sheriff Guy that Plaintiff had a reputation of lying amongst the other deputies – they called him “Lying Larrick” and did not trust him. Pl.'s App'x, Ex. 3 (Alstadt Depo. at 29-31); Ex. 4 (Guy Depo. at 84-85).

Further, Plaintiff cites to Alstadt's testimony that other employees had lied to him as evidence that Plaintiff could not have been fired because he had a reputation for lying. These situations do not support Plaintiff's case. Tallon lied to Alstadt in connection with having a

female in a county vehicle. Plaintiff makes much ado about Tallon being a supporter of Sheriff Guy, but Sheriff Guy did not even know Tallon until after the election. And similar to Plaintiff, Tallon did not work under Sheriff Guy; he retired and stopped working before Sheriff Guy took office. Defs.' App'x, Ex. A (Guy Depo. at 57-58, 141). Sheriff Guy did not need to make a determination with respect to Tallon's employment. With respect to Hurst, also cited by Plaintiff, while he initially lied to Alstadt in connection with texting Plaintiff's wife, he soon admitted the behavior. Defs.' App'x, Ex B (Pl.'s Depo. at 64-65); Ex. C (Alstadt Depo. at 49). This one issue with Hurst is hardly similar to Plaintiff, who, interestingly, stated that the one time he told the truth, he got in trouble. Defs.' App'x, Ex. 4 (Guy Depo. at 119-20). Finally, Plaintiff argues that Ochs, Fratangeli and Clark also lied to Alstadt. But all of these employees were also terminated by Sheriff Guy.

Plaintiff attempts to discredit the Sheriff's basis for terminating Plaintiff based upon the notation that Plaintiff had a problem with the truth by arguing that Sheriff Guy could not give examples of instances in which Plaintiff had lied. Indeed and admitted by Plaintiff, Sheriff Guy provided examples. Guy testified that Plaintiff mischaracterized the incidents underlying the sexual harassment complaints made against him to make himself sound better. Pl.'s App'x, Ex. 4 (Guy Depo. at 85-86). Sheriff Guy indicated he was told Plaintiff lied about attending funerals to the extent that they had to send a deputy to ensure that he actually did attend. While he was actually at the one funeral in which they checked, there is no evidence that Plaintiff actually attended all previous funerals. Pl.'s App'x, Ex. 4 (Guy Depo. at pp. 85, 119); Defs.' App'x, Ex. O (Michael Depo. at p. 19). Sheriff Guy also provided the example that deputies told him that Larrick complained about getting in trouble for admitting he was not wearing a seatbelt and

that was the one and only time he actually told the truth. Defs.' App'x, Ex. A (Guy Depo. at 119-120). Sheriff Guy also stated that Plaintiff claimed to have a relationship with a news reporter, but the news reporter denied knowing Plaintiff. Defs.' App'x, Ex. A (Guy Depo. at 118-119). Plaintiff now denies such claim through an affidavit. However, such self-serving sham affidavits cannot be used to defeat summary judgment. *Blair v. Scott Specialty Gases*, 283 F.3d 595, 608 (3d Cir. 2002). Lastly, Sheriff Guy found his own interaction with Plaintiff at the election poll to demonstrate his problem with the truth to the extent that he told Sheriff Guy a "fantastic" story and admitted that he would repeat information regarding Sheriff Guy, even though Sheriff Guy told him it was not true. Defs.' App'x, Ex. A (Guy Depo. at 47, 108, 146-47).

Plaintiff argues that he told Sheriff Guy and Dean Michael during his interview that he did not lie. However, both Sheriff Guy and Michael provided that Plaintiff was unable to specifically rebut the allegations. Defs.' App'x, Ex. A (Guy Depo. at 133-34); Ex. O (Michael Depo. at 16). The opinion of others who worked with Plaintiff remained that Plaintiff had a reputation for lying and was not trustworthy. Defs.' Reply CSMF at ¶¶ 49-50, 57-61.

2. *Sexual Harassment*

Plaintiff attempts to argue that because Sheriff Guy admitted Plaintiff's inappropriate interactions with women played a role in his termination, which Plaintiff refutes, this shows Plaintiff was unlawfully terminated. The evidence does not support such an argument.

As an initial matter, Plaintiff's brief focuses solely on one sexual harassment complaint made against Plaintiff by Deputy Stevenson. However, the undisputed evidence provides that Plaintiff was involved in several incidents in which there were complaints that Plaintiff was acting inappropriately towards women. A judge complained about Plaintiff bothering his

female law clerk in a romantic manner, and Deputy Hunter complained that Plaintiff was inappropriately talking to his girlfriend. See Defs.' Reply CSMF at ¶¶ 22-23.

Of course, Plaintiff characterizes these interactions in a way to demonstrate his innocence. He claims he was being set up by Sheriff David, and Deputy Stevenson was pushed up make the complaint. Pl.'s CSMF at ¶¶ 213-14, 234, 239. He claims he was not attempting romantic communications with a judge's clerk, and they were just friends. Pl.'s CSMF at ¶¶ 257-60. He says he was talking to Deputy Hunter's girlfriend about medical issues they had in common. Pl.'s CSMF at ¶¶ 250-52. Such characterizations by Plaintiff supported the belief by Sheriff Guy that Plaintiff would construe incidents in a way to benefit him and raised questions about his truthfulness. Defs.' App'x, Ex. A (Guy Depo. at 119-20).

Sheriff Guy only knew about these incidents from interviews with other employees. These events occurred under former Sheriff David's administration. Indeed, Sheriff Guy attempted to obtain personnel files from Human Resources as part of his evaluation of the employees. However, he was not allowed access to the files at the time of the evaluations, as he was not yet a County employee. Defs.' App'x, Ex. A (Guy Depo. at 67).

To the extent Plaintiff attempts to argue that Sheriff Guy's notes do not reflect that employees mentioned inappropriate interactions with women as evidence that such incidents are an after the fact attempt to demonstrate termination was discriminatory, Sheriff Guy specifically made the decision not to make many notes during the interviews when employees were discussing other employees. Sheriff Guy intentionally did not take notes to ensure that employees would speak freely. Defs.' App'x, Ex. A (Guy Depo. at 95). Further demonstrating that Sheriff Guy's reliance on such interactions was not a pretextual basis is the fact that Sheriff

Guy believed such interactions were encompassed within the inappropriate behavior he was seeking to rid from the Office. Defs.' App'x, Ex. A (Guy Depo. at 135-36).

Plaintiff finally attempts to compare the allegation of sexual harassment made against Dean Michael to Plaintiff's inappropriate interaction with women. The allegation against Michael included one statement made to a clerk that maybe could have been taken as a sexual innuendo; however, the clerk did not lodge the complaint. Defs.' App'x, Ex. A (Guy Depo. at 139-40). Plaintiff had three instances of such behavior for which he was counseled repeatedly. Defs.' Reply CSMF at ¶¶ 21-23, 48. In one of Plaintiff's incidents, the victim, Deputy Stevenson, complained about Plaintiff's conduct and in another, a judge felt the need to intervene on behalf of his law clerk. Pl.'s App'x, Ex. 2 (Darbut Depo. at 24-28). Sheriff Guy himself and the Law Department investigated the Michael matter and determined it was unfounded. Defs.' App'x, Ex. A (Guy Depo. at 139-40). Plaintiff's incidents did not occur under circumstances in which Sheriff Guy could have been involved in determining the underlying facts as they occurred under Sheriff David and he did not have access to the personnel files. See Reply CSMF at ¶¶ 29; Defs.' App'x, Ex. A (Guy Depo. at 67).

3. *High-Maintenance*

Plaintiff argues that Hurst and Tallon were the cause of much of the disruption centered around Plaintiff and, yet, they were not terminated. Notwithstanding the fact that Tallon did not work for Sheriff Guy (Defs.'s App'x, Ex. A (Guy Depo. at 57-58, 141)) and the interaction between Hurst and Plaintiff lead to Plaintiff threatening physical violence (Defs.'s App'x, Ex. B (Pl. Depo. at 69-70)), the two instances in which Plaintiff cited are but the tip of the iceberg of Plaintiff's issues. Plaintiff had issues with other employees beyond Tallon and Hurst. Defs.'s

Reply CSMF at ¶¶ 19, 23, 48. Then-Chief Alstadt dealt with Plaintiff's personal problems or work conflicts on a daily basis. Defs.' CSMF at ¶ 48. Plaintiff's marriage problems and divorce were constantly issues that had to be dealt with at work – Plaintiff's ex-wife and Plaintiff were engaged in behavior which repeatedly led to police contact, her new husband complained to the Sheriff of harassment by Plaintiff and Plaintiff was engaged in a custody dispute which led to Plaintiff's firearm permit being revoked. Defs.'s Reply CSMF at ¶¶ 8-11, 15-20, 48. It is undisputed that Plaintiff was a high-maintenance employee for management to deal with in an Office already riddled with turmoil, which Sheriff Guy was attempting to remedy.

C. Guy supporters were not treated differently.

Plaintiff attempts to demonstrate that two Kress supporters were terminated for less significant reasons. It bears noting that Sheriff Guy did not know who most of the employees supported in the election, but due to the nature of position, and given the Beaver County electorate, he assumed that the employees mostly supported the Democratic candidate, Wayne Kress. Therefore, while Plaintiff terminated seven individuals and retained the majority of the staff who he believed supported Kress, it reasons that Plaintiff maintained most of those who he believed supported his opponent.

Plaintiff disingenuously argues that Deputy Kuhlber was unjustly terminated by downplaying Kuhlber's personal issues. Kuhlber attempted to hit her significant other with a vehicle. She was also found outside at night in the winter without shoes. Defs.' App'x, Ex. A (Guy Depo. at 89-91, 101). Her behavior was not appropriate for the office. Importantly, Guy had no knowledge that Kuhlber was a Kress supporter. Defs.' App'x, Ex. A (Guy Depo. at 41).

Plaintiff attempts to demonstrate that Deputy Clark was terminated for his support of Kress by citing to interview notes indicating such support. However, such notation recorded the words of Fratangeli, not of Sheriff Guy. Sheriff Guy found such statement by Fratangeli to be telling of Fratangeli's character in thinking politics were important and such was the behavior Guy wanted to rid from the office. Defs.' App'x, Ex. A (Guy Depo. 125-57). Instead, Clark was terminated due to being a bully and not a team player, with ties to Sheriff David. Defs.' App'x, Ex. A (Guy Depo. at 79- 80, 88-89 100); Ex. C (Alstadt Depo. at 74-75). Sheriff David's administration was plagued with turmoil and lack of leadership under Sheriff David, again, behavior that Sheriff Guy was attempting to avoid. As such, Clark's termination, notwithstanding his support of Kress, was proper.

D. Plaintiff would have been terminated notwithstanding his support of Kress.

Plaintiff argues, without any factual support, that he would not have been terminated without his support of Kress. The evidence provides otherwise. As an initial matter, Sheriff Guy did not mention Plaintiff's support of Kress as suggested by Plaintiff – by Plaintiff's own admission, Guy made no statement about the t-shirt Plaintiff was wearing on the day of the election. See Defs.' App'x, Ex. B (Pl.'s Depo. at 139-41).

Indeed, Plaintiff would have been terminated for his problems with the truth and high-maintenance attitude notwithstanding his support of Kress. This is evidenced by the fact that Alstadt, who did not have a dog in the political race, recommended terminating Plaintiff for these reasons. Though he called Guy before the election indicating that he would not mind seeing him win and to discuss the workings and problems of the office, Alstadt also called Kress offering him the same advice. See Defs.' App'x, Ex. C (Alstadt Depo. at 38, 43-35). Alstadt did

not care who would be Sheriff or who any employee was supporting and as such, he would have offered the same recommendation about Plaintiff regardless. Alstadt held the office together during the tumultuous time and had a strong understanding of the ongoing problems. Defs.' App'x, (Guy Depo. at 55-56, 60). With such in mind, he provided the recommendation that Plaintiff be terminated because he was not trusted by the other deputies, was referred to by others as "Lying Larrick" and was a burden on the Office due to his conflicts and absenteeism. Defs.' Reply CSMF at ¶¶ 47-50. No matter if Kress or Guy won the election, the Office needed to and would change (Defs.' CSMF at ¶ 39 (undisputed); *see also* Pl.'s App'x, Ex. 1 (Pl. Depo. at 50)); Alstadt believed that terminating Plaintiff would relieve some of the problems. Defs.' Reply CSMF at ¶ 47.

E. Conclusion

Plaintiff's effort through voluminous filings to suggest material questions of fact exist to preclude Summary Judgment is improper and belies that the key legal issues in the case can be decided as a matter of law in favor of Defendants.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been forwarded to all counsel of record by:

- U.S. First Class Mail, Postage Paid
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