

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

GREGORY PATMYTHES,

Plaintiff,

v.

THE CITY OF JANESVILLE,

Defendant.

ORDER

04-C-367-C

This case was closed in June 2005, after I ruled that defendant was entitled to summary judgment. Plaintiff appealed the judgment and, on May 26, 2006, the Court of Appeals for the Seventh Circuit vacated the judgment and remanded the case for further proceedings. In remanding the case to this court, the court of appeals advised the parties that “a factfinder is now required to determine whether, as [defendant] claims, its originally offered reason for [employee] discharges (poor performance) was just a lie to calm employees from the truth (unnecessary good performers would be cut) or whether the original reason (poor performance) was a lie to cover up a different truth (discrimination against Patmythes as a potentially costly cystic fibrosis sufferer). Therefore, a telephone status conference has been scheduled before the United States Magistrate Judge for August 10, 2006, at 9:00 a.m.,

at which time the magistrate judge will schedule the case for trial. Now, however, plaintiff has filed a “Motion to Sanction the City of Janesville for Perjury.” I construe the motion as a motion to strike the deposition testimony of two of defendant’s witnesses and will deny it.

According to plaintiff, Steve Sheiffer and Ann Wirth presented false and misleading statements in depositions submitted to this court. In plaintiff’s view, because this court relied on one or more of those statements in deciding the earlier filed motion for summary judgment in defendant’s favor, he is entitled to have this court “begin proceedings for perjury” against Sheiffer and Wirth and “summarily dismiss[]” all statements made by them.

Although plaintiff may have reason to believe that Sheiffer and Wirth lied in making certain statements during their depositions, he had an opportunity to cross-examine them when their depositions were being taken so as to expose the truth. In addition, he had an opportunity to put into dispute defendant’s proposed findings of fact that relied on the questionable testimony by supplying evidence of his own. Ultimately, the court of appeals found that plaintiff had adequately put into dispute defendant’s proposed facts concerning the reason for his dismissal. Now, the matter is to be tried to a jury, and the jury will be solely responsible for determining the credibility of the witnesses. Plaintiff’s subjective view that defendant’s witnesses are not being truthful is not a valid ground to prohibit them from testifying at trial.

As for plaintiff's request that this court begin proceedings to charge Sheiffer and Wirth with perjury, this court does not have the authority to prosecute parties who perjure themselves in court proceedings. That is a function solely of the United States Attorney for the district in which the criminal act occurred and prosecution of such acts is within the United States Attorney's discretion.

ORDER

IT IS ORDERED that plaintiff's "Motion to Sanction the City of Janesville for Perjury," construed as a motion to strike the deposition testimony of Steve Sheiffer and Ann Wirth, is DENIED.

Entered this 18th day of July, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge