

Ruling Protects Jobs Of Domestic Violence Victims
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Judge finds new exception to state's employment-at-will doctrine

By THOMAS B. SCHEFFEY

Following several months of high-profile domestic violence cases in the state, a Superior Court judge has handed a victory to battered spouses and partners.

In what could be a pioneering case, New London Superior Court Judge A. Susan Peck **said employers can't terminate** workers simply because they are victims of domestic violence. In doing so, she found a new public policy exception in the **state's employment-at-will doctrine**, which allows businesses and organizations to fire employees for any reason or for no reason at all.

Attorneys say terminations of domestic violence victims aren't unheard of. "There's still a lot of stigma attached for someone who's in that situation. I think [employers] just don't want to have it on their doorstep," said attorney Deborah L. McKenna, of the Stamford office of Outten & Golden in Stamford.

McKenna represents a Stonington librarian who was fired by the Stonington Free Library after she had been beaten by her husband, injured and missed some work.

In her suit for wrongful discharge, librarian Heather Gilles alleges she was brutally assaulted Feb. 7, 2007 by her husband, leaving "bruises, contusions, a cranial sprain and muscle soreness." She filed a complaint with Groton police, and was advised by her doctor to reduce her workload to 20 hours a week while recuperating.

According to Gilles' complaint, library board vice president Marc Ginsberg, in a March 15 meeting, advised her not to talk about her "situation" with any library patrons because it would "reflect poorly on the library," the lawsuit said.

In her complaint, Gilles alleged that the library "considered her to be an embarrassment due to the fact she had been abused by her husband."

She said she was told at the March 15 meeting that she could no longer serve as the library's assistant director, and on March 30, 2007 she was terminated. The library claimed she was dismissed due to a staff reorganization, but board minutes from April 16 mention both the reorganization "and personal circumstances of Heather Gilles" as reasons why she was no longer employed, according to the lawsuit.

Gilles denied she left voluntarily and sued, alleging wrongful termination in violation of public policy and breach of contract.

The library, represented by Robinson & Cole attorney Jean E. Tomasco, moved to strike Gilles' complaint on grounds that Gilles had "failed to articulate an important public policy adequate to support a claim for wrongful discharge."

In an extensive brief, Tomasco argued that Gilles didn't need a court-made exception to the employment at will doctrine because she had another remedy under Connecticut's statutes. The only statute Tomasco cited is one that gives an employee a right to sue if First Amendment rights to speak are wrongfully curtailed in the workplace.

In a memorandum supporting her motion to strike, Tomasco cited a string of cases in which a trial judge had found the plaintiff already had a remedy under a state statute. When a statute existed, there was no need to have a judge-made exception carved out of the employment at will doctrine, Tomasco argued.

But Judge Peck saw it differently. In her ruling last month, she stated: "The plaintiff has sufficiently stated a claim of wrongful discharge in violation of a clear public policy against domestic abuse" as reflected and established in numerous state laws.

Peck ruled that, unlike the plaintiffs in cases cited by the defendant, Gilles did not have any available statutory remedy for being fired as a victim of domestic violence. "As distinguished from the cases relied on by the defendants," Peck concluded, "there is no specific alternative statutory or other clear remedy for her claim."

Washington Precedent

This past summer saw a series of high-profile domestic violence cases in the state – including one involving a Hartford lawyer who was kidnapped by her ex-husband. Afterward, the focus was on the effectiveness of protective orders in keeping women and children safe. But the Superior Court ruling would go a step further and ensure a battered spouse or partner job stability during their personal crisis.

Hartford employment lawyer Peter Janus, of Siegel, O'Connor, O'Donnell & Beck, said that court-made exceptions to the employment-at-will rule only come along every five to 10 years. These can be significant landmarks for employment lawyers.

Janus is not connected with the case, but he is familiar with the briefs of both sides. Citing a key footnote in McKenna's brief, Janus noted that another state created a public policy exception for a domestic violence victim in a similar situation. That case, *Danny v. Laidlaw Transit Services Inc.*, was decided by the Washington State Supreme Court.

"If I were arguing this [Stonington] case," said Janus, "having a decision like that to cite to would be very helpful. The judge clearly wasn't just doing this out of the blue."

Janus said it was significant that Judge Peck found that the plaintiff had no statutory remedy available and specifically shot down the library's claim that Gilles could pursue a remedy under the employee free speech statute. That argument was not persuasive, Janus said: "It's a very limited remedy, and I don't think the plaintiff claimed to be exercising First Amendment rights. She was penalized for being a victim of domestic abuse."

Landmark exceptions to the employment at will doctrine, cited by both sides, include the 1980 case of *Sheets v. Teddy's Frosted Foods*. In that case, an employee who made whistleblower complaints to public health officials about unsanitary food conditions could not be fired for doing so, the Connecticut Supreme Court ruled.

A 2001 benchmark case held that a woman could not be fired simply for becoming pregnant. And in 1997, in *Faulkner v. United Technologies*, the state Supreme Court held that it was improper to fire a worker for refusing to go to a war zone, under the public policy requirement that an employer maintain a safe workplace.

New Wrinkle?

Connecticut Victim Advocate Michelle Cruz, when asked to comment on the case, said it is "too bad" that Gilles didn't utilize a statute that prevents victims who have sought a protective order or made a police report from being fired.

Under Connecticut General Statute 54-85b, if a qualifying individual applies within 90 days of being fired, the employer can be fined up to \$500 and found in criminal contempt. The civil action would allow a prevailing plaintiff to collect attorneys' fees as well as damages, the statute says.

Jean Tomasco, the library's lawyer, said "this is definitely an issue we can raise in our defense." Last week, she filed court briefs citing that statute as an affirmative defense and an appropriate remedy for someone in Gilles' position.

McKenna, the plaintiff's lawyer, said she had studied the 90-day remedy, but decided not to even bring it up in court papers. She said she viewed the law as too narrowly drawn to fit her client's situation.

"She's not just someone who filed a police report, she's a victim of domestic violence," and the judge's ruling reflects the broader scope, McKenna said. "The statute, 54-18b, is really infrequently used. I think there may be only one or two cases about it, and it has a very short time limitation.

"We think the Connecticut [domestic violence] policy is broader than that," she said. "We're arguing for the larger issue."•