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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-001644-MR

RONALD S. HUTCHINSON

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE GREGORY M. BARTLETT, JUDGE
ACTION NO. 15-CI-00453

CITY OF INDEPENDENCE,
KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, COMBS AND D. LAMBERT, JUDGES.

COMBS, JUDGE: Ronald S. Hutchinson appeals from a summary judgment of the Kenton Circuit Court entered on October 4, 2016. After our review, we affirm.

Hutchinson began working as a full-time patrolman with the City of Independence Police Department on July 5, 2004. On May 9, 2014, while he was off duty, Hutchinson entered Trigger's Gun Shop in Florence. He shoplifted a

firearm accessory valued at approximately \$100.00. Later that day, Hutchinson returned to the gun shop and represented to store personnel that he had purchased the merchandise some three weeks earlier. He indicated that he wanted to return the item for a refund. When the store's inventory records disproved Hutchinson's assertion about the alleged purchase, store personnel became suspicious and reported the incident to the Florence Police Department. The Florence Police Department immediately reported to the City of Independence Police Department that Hutchinson was the focus of its criminal investigation.

After viewing video surveillance footage concerning the criminal investigation, the Chief of the City of Independence Police Department, Shawn Butler, ordered Hutchinson to report to the police station ready for duty. When he arrived at the station, Hutchinson discovered that his access code to a secure entryway had been disabled. Uniformed officers met Hutchinson outside the station. Per protocol, they searched and disarmed him and then escorted him to Chief Butler's office. Chief Butler explained to Hutchinson that an investigation was underway regarding a shoplifting incident at Trigger's Gun Shop. He immediately advised Hutchinson against making any comment that could be used against him in a criminal proceeding. Hutchinson was suspended. According to Hutchinson, Chief Butler then handed him a prepared resignation letter and said, "Sign this if you want to protect your retirement." Hutchinson understood this statement to mean that if he were fired as a result of the criminal investigation, he would not qualify for the city's contributions to his pension plan. Hutchinson did

not ask for time to consult with an attorney. He signed the letter of resignation. Pursuant to the terms of the letter, his resignation was effective immediately. The City of Independence did not pursue or investigate the theft allegation, nor did it institute any disciplinary proceedings.

By letter dated June 3, 2014, Hutchinson attempted to rescind his resignation. However, the City of Independence refused to reconsider. It denied Hutchinson's request for a hearing pursuant to the provisions of KRS¹ 15.520 -- referred to in the vernacular as the Police Officer's Bill of Rights. *City of Munfordville v. Sheldon*, 977 S.W.2d 497 (Ky. 1998).

On June 4, 2014, Hutchinson was charged with one count of shoplifting and one count of theft by unlawful taking (both misdemeanors). These charges stemmed from the incidents at Trigger's Gun Shop on May 9. He was arraigned on July 3, 2014. On August 1, 2014, the case was resolved when Hutchinson agreed to participate in a diversion program, pay a fine, and make restitution to his victim.

On March 6, 2015, Hutchinson filed a civil action against the City of Independence. He alleged that his resignation had been tendered under duress and that the city had violated the provisions of KRS 15.520 by failing to provide him a due process hearing. He further alleged that the city's conduct was outrageous entitling him to an award of damages under the tort of outrage.

¹ Kentucky Revised Statutes.

On July 12, 2016, the City of Independence filed a motion for summary judgment. The circuit court was persuaded that the city was entitled to judgment as a matter of law because: (1) Hutchinson had waived his rights under the provisions of KRS 15.520 by voluntarily resigning in the face of impending criminal charges and (2) the allegations against the city did not establish the elements for a cause of action based on the tort of outrage. Summary judgment was entered on October 4, 2016. This appeal followed.

Summary judgment is proper where there exists no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. CR² 56; *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky.App. 1996).

On appeal, Hutchinson argues that the trial court erred by granting summary judgment because he believes that there are genuine issues of material fact: (1) the voluntariness of his resignation and (2) the city's non-compliance with the requirements of KRS 15.520. He also contends that he was unfairly deprived of the opportunity to complete discovery. We shall address each of these contentions.

First, Hutchinson argues that a genuine issue of fact concerning the voluntariness of his resignation remained outstanding at the time summary judgment was granted. Hutchinson claims that his resignation was unfairly coerced when he was called to Chief Butler's office. His position is that Chief Butler's intention to terminate him if he failed to tender his resignation constituted coercion. We are compelled to disagree.

² Kentucky Rules of Civil Procedure.

KRS 15.520(5)(b) expressly provides that “[s]uspension from duty with or without pay . . . shall not be deemed coercion.” Thus, Chief Butler’s mere insinuation that Hutchinson’s continued employment with the department might be in jeopardy cannot constitute coercion as a matter of law. Before his meeting with Hutchinson, Chief Butler had reviewed evidence collected by the Florence Police Department. It revealed that Hutchinson had been caught **red-handed** on surveillance cameras. Under these circumstances, we cannot agree that Hutchinson was coerced into submitting his resignation. The trial court did not err by concluding that Hutchinson resigned from the police department voluntarily after he was made aware of the strength of the criminal investigation launched against him.

Hutchinson next contends that the trial court erred by concluding that he had waived the protections afforded him under the provisions of KRS 15.520 by resigning from the police department. Hutchinson argues that he was entitled to forty-eight-hours’ notice of the interrogation undertaken by Chief Butler and written notice of the allegations of misconduct made against him before he was suspended. Again, we disagree.

Under the provisions of KRS 15.520(5)(b), any police officer who becomes a suspect in a criminal investigation may be suspended with or without pay. He is entitled to a written explanation for his suspension within twenty-four hours. In this case, Hutchinson resigned **before** twenty-four hours had elapsed. Under the circumstances, he was not entitled to a written explanation for the department’s

decision to suspend him. Furthermore, Hutchinson's own description of his meeting with Chief Butler confirms that he was not "interrogated." On the contrary, he was strongly advised not to comment on the incident at the gun shop or to respond to the pending investigation during the meeting. More importantly, Hutchinson's decision to resign before invoking any rights under KRS 15.520 constitutes a failure to exhaust his administrative remedies under the statute. *See Pearce v. Whitenack*, 440 S.W.3d 392 (Ky.App. 2014). The trial court correctly concluded that Hutchinson elected to forego these remedies when he decided not to follow through with the administrative process.

Finally, Hutchinson contends that he was not permitted to develop the record fully before summary judgment was entered against him. He argues that he needed to take the deposition of Chief Butler, Captain Lucas, and others to show that he had been denied a proper hearing and that he had not been given an opportunity to continue in his employment. Neither of these facts was disputed, however. Nor does either of them appear material under the circumstances.

To summarize, there were no genuine issues of material fact, and the trial court did not err by concluding that the City of Independence was entitled to judgment as a matter of law. None of the discovery envisioned by Hutchinson would change this outcome. Consequently, we affirm the summary judgment of the Kenton Circuit Court.

ALL CONCUR.

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