

**IN THE CIRCUIT COURT OF CRAIGHEAD COUNTY, ARKANSAS
FIRST DIVISION**

RACHEL ANDERSON

PLAINTIFF

V.

CASE NO. 16JCV-23-2110

**RICK ELLIOTT, Individually and
In his official capacity as Police Chief
Of the City of Jonesboro; and
HAROLD COPENHAVER, Individually
And in his official capacity as Mayor of
The City of Jonesboro**

DEFENDANTS

**DEFENDANTS' MOTION TO RECONSIDER
ORDER GRANTING PLAINTIFF'S MOTION
FOR A PRELIMINARY INJUNCTION**

COME Defendants, Rick Elliott, individually and in his official capacity as Police Chief of the City of Jonesboro, and Harold Copenhaver, individually and in his official capacity as Mayor of the City of Jonesboro, and for their Motion to Reconsider the Court's February 2, 2024 Order Granting Plaintiff's Motion for a Preliminary Injunction, state:

1. On December 8, 2023, Plaintiff filed a Verified Complaint asserting, among other claims, that her due process rights were violated after she requested and was denied a name-clearing hearing in connection with her termination from the Jonesboro Police Department. On

that same day, Plaintiff filed a Motion for a Preliminary Injunction to prevent irreparable harm based on her due process claim.

2. The Court held a hearing on Plaintiff's motion on January 24, 2024, and on February 2, 2024, the Court entered its Order Granting Plaintiff's Motion for a Preliminary Injunction.

3. In Defendants' Response to Motion for Preliminary Injunction, filed December 22, 2023, and at the January 24, 2024 hearing, Defendants pointed out that no right to a name-clearing hearing has ever been recognized under Arkansas law and that no right should be recognized now. For the legal basis of her due process claim, Plaintiff, in her Complaint, cited article 22 of the Arkansas Constitution, which does not exist. The Court's February 2 Order did not cite or explain the legal basis for Plaintiff's due process claim. Plaintiff should not be provided a remedy absent a legal basis. Defendants respectfully request that the Court reconsider its February 2 Order or, in the alternative, make findings under Arkansas law indicating the legal basis for granting Plaintiff injunctive relief in the form of a name-clearing hearing.

4. The Court's February 2 Order made no finding of stigma.

5. Under the first element of a federal due process claim for denial of a name-clearing hearing, a plaintiff must show "[s]he was stigmatized by the [defendant's] statements." *Correia v. Jones*, 943 F.3d 845, 848-49 (8th Cir. 2019). The Court's February 2 Order cited Plaintiff's testimony that "various news articles" have harmed "her reputation." The Court took note of "several articles written and published by various news and social media outlets." These "various news articles" do not satisfy the first element because they are not statements made by the Defendants. The Court's February 2 Order made no finding that the statements made by Chief Elliot—the termination letter issued on November 14, 2023, and the statement to the media on

November 21, 2023—were stigmatizing. Nor did the Court find that Defendant Copenhaver made any stigmatizing statements.

6. When looking solely at the statements made by Defendants, it is clear they do not rise to the level of stigma required under federal law. Not all negative charges are stigmatizing. “An employee’s liberty interests are implicated where the employer levels accusations at the employee that are so damaging as to make it difficult or impossible for the employee to escape the stigma of those charges.” *Winegar v. Des Moines Indep. Cmty. Sch. Dist.*, 20 F.3d 895, 899 (8th Cir. 1994). This stigma may be established where the employee is accused of actions involving “dishonesty, immorality, criminality, [and] racism” *Id.* “It is not enough that the employer’s stigmatizing conduct has some adverse effect on the employee’s job prospects; instead, the employee must show that the stigmatizing actions make it virtually impossible for the employee to find new employment in his chosen field.” *Bordelon v. Chi. Sch. Reform Bd. of Trs.*, 233 F.3d 524, 531 (7th Cir. 2000) (emphasis added); *Miley v. Housing Auth. of City of Bridgeport*, 926 F. Supp. 2d 420, 432-33 (D. Conn. 2013) (“Courts have routinely held that ‘merely conclusory allegations that Plaintiff was stigmatized, that her reputation was substantially damaged and that she lost professional standing are insufficient without factual support to allege a plausible stigma-plus claim.’”) (collecting cases). The Court’s February 2 Order did not make any finding as to which statements were stigmatizing or how such statements rose to the level of stigma required to implicate a constitutional liberty interest under federal law.

7. Federal law also requires a finding that the allegedly stigmatizing statements were false. *Codd v. Velger*, 429 U.S. 624, 628 (1977). At the hearing, Plaintiff was asked in detail about each statement made by Chief Elliott and agreed that the statements expressed Chief Elliott’s opinion. An opinion is not a factual assertion that can be proven true or false. There was no

evidence presented that the statements were false and no finding in the Court's February 2 Order that the statements were false.

8. Under the second element of Plaintiff's claim for a name-clearing hearing, she was required to show the allegedly stigmatizing statements were made public by Defendants. *Correia* 943 F.3d at 848-49 (8th Cir. 2019). However, Plaintiff testified that she, not Defendants, caused the statements in her termination letter to be publicized. Immediately after her termination, Plaintiff notified members of the media of the termination letter. She also shared the termination letter with a council member, who then emailed the contents to several members of the media. All of this was before the City released the termination letter in response to FOIA requests from the media. "Self-disclosure does not satisfy public disclosure in a claim for infringement of an occupational liberty interest." *Koval v. City of Chi.*, No. 16 CV 7341, 2017 U.S. Dist. LEXIS 58566, at *11 n.4 (N.D. Ill. Apr. 18, 2017) (citing *Olivieri v. Rodriguez*, 122 F.3d 406, 408-09 (7th Cir. 1997)).

9. The evidence presented at the January 24 hearing also demonstrated that Plaintiff failed to request a name-clearing hearing from her employer and failed to demonstrate that her employer denied her a name-clearing hearing. *Jarvis v. Hamilton Cty. Dep't of Educ.*, No. 1:17-cv-00172, 2019 U.S. Dist. LEXIS 49922, at *48-49 (E.D. Tenn. Mar. 26, 2019) ("A plaintiff's failure to specifically allege in his complaint that he requested a name-clearing hearing which his employer denied will result in dismissal of that claim."). Here, Plaintiff's employer was the Jonesboro Police Department. At the January 24 hearing, she presented for the first time an email requesting a name-clearing that she alleged she sent to an email address associated with city councilmembers and the mayor. Neither the city council nor the mayor have the authority to hire, fire, or reinstate employees of the Jonesboro Police Department. The only role the city council has

in deciding personnel issues would concern a department head. Here, Plaintiff was not a department head. Plaintiff failed to present any evidence she requested a name-clearing hearing from Chief Elliott or the Jonesboro Police Department, i.e., her employer. *See Grimaldi v. New Castle Cty.*, No. : N15C-12-096, 2018 Del. Super. LEXIS 298, at *7 (Super. Ct. July 13, 2018) (“Quite simply, if you want something from your employer, then you should ask your employer for it. Your employer might not, as the Eighth Circuit pointed out, know that you want something.”).

10. The Court’s February 2 Order found that Plaintiff suffered irreparable harm in two ways. First, “Plaintiff testified that her reputation has been harmed because of the various news articles from the newspaper reports, the television reports, and the social media (Facebook) entries.” Notably, this finding of harm is based on statements from news and social media and not on statements made by Defendants. In addition, as Defendants pointed out in their December 22 Response to Motion for Preliminary Injunction, this exact type of alleged harm has been held to be insufficient to support a preliminary injunction. Arkansas courts have repeatedly held that reputational harm is not the type of irreparable harm for which a preliminary injunction may issue. *See, e.g., Baptist Health v. Murphy*, 365 Ark. 115, 131, 226 S.W.3d 800, 813 (2006) (“[T]he alleged potential damage to professional reputations does not justify a finding of irreparable harm sufficient for the issuance of a preliminary injunction.”); *Kreutzer*, 271 Ark. at 244-45, 607 S.W.2d at 671 (stating that it “could not more forcefully disagree” with the notion that an injunction should issue due to “alleged harm to [the plaintiff’s] professional reputation”); *Wait v. Elmen*, 2017 Ark. App. 648, 2017 Ark. App. LEXIS 736, *6 (“[O]ur supreme court has held that reputational damage does not constitute irreparable harm sufficient to warrant the granting of a preliminary injunction.”).

11. Second, the Court's February 2 Order cited Plaintiff's job prospects: "[Plaintiff] testified that she has had interviews with different employers in different areas of work but with no success except one. She is waiting on the results of this litigation before she decides to accept that offer." Not only did the evidence at the hearing fail to show Plaintiff suffered harm to her job prospects (to the contrary, Plaintiff testified she received several job offers in the weeks after her termination), but the Arkansas Supreme Court has rejected this type of alleged harm as the type of harm that is irreparable. "These arguments are available anytime an employment contract is terminated. . . . No ground is lost by the denial of the interlocutory order which cannot be recouped in a court of law by a favorable judgment and an award of money damages." *Kreutzer v. Clark*, 271 Ark. 243, 244-45, 607 S.W.2d 670, 671 (1980).

12. A name-clearing hearing is not the type of relief that is suitable under Rule 65. This is because it is not preliminary. If a name-clearing hearing is conducted, and this Court later finds that Plaintiff is not successful on the merits of her claim, there is no adequate way to reverse the preliminary injunction. In essence, at the preliminary stages of this case, Plaintiff is seeking a remedy that is not established under Arkansas law and, once granted, cannot be reversed. The Court's February 2 Order is more akin to a final ruling that would be appropriate only after a full trial.

13. Defendants also request that the Court reconsider the parameters of the name-clearing hearing it granted in the February 2 Order. Under federal law, all that is required for a name-clearing hearing is the opportunity to be heard "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). The right to procedural due process does not require that Defendants accept Plaintiff's explanations or that they deem them sufficient. *Garrison v. Minn. Dep't of Revenue*, No. 16-cv-2866 (WMW/HB), 2017 U.S. Dist. LEXIS 125297,

at *34-35 (D. Minn. May 15, 2017). The requirement is only that the Plaintiff be heard. The Court’s February 2 Order required that Plaintiff be provided “the right to call and cross-examine witnesses” and that the Jonesboro City Council— which was not her employer, has no authority to make decisions regarding her employment, and is not a party to this case—be required to conduct the hearing. There is no requirement under Arkansas or federal law that Plaintiff be allowed to cross-examine witnesses. The Court’s February 2 Order also failed to specify the length of time required for such a hearing.

WHEREFORE, for the foregoing reasons, Defendants request that the Court reconsider its February 2 Order, deny Plaintiff’s Motion for Preliminary Injunction, make additional findings of fact and law, and grant all other relief to which Defendants are entitled.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I, Chris Stevens, hereby certify that on this 12th day of January, 2024, I filed a copy of the foregoing with the Court's electronic filing system, which shall send notice to all counsel of record.

/s/ Chris Stevens