

IN THE IOWA DISTRICT COURT FOR CRAWFORD COUNTY

RAY OHL,	Case No. LACV039337
Plaintiff,	
vs.	
CITY OF DENISON, IOWA and JOHN EMSWILER,	PETITION and JURY DEMAND
Defendants.	

COMES NOW the Plaintiff, Ray Ohl, and for his cause of action hereby states as follows:

INTRODUCTION

1. This is an action under the Iowa Common Law, the whistleblower protections guaranteed by the State of Iowa, and the First Amendment of the United States Constitution, challenging Defendants' unlawful conduct against Plaintiff.
2. Plaintiff Ray Ohl is a resident of Crawford County.
3. Defendant John Emswiler is believed to be a resident of Kossuth County.
4. Defendant City of Denison is a municipal corporation located in Crawford County.
5. The acts of which Plaintiff complains occurred in Crawford County.

BACKGROUND FACTS

6. Defendant City of Denison hired Plaintiff Ray Ohl as a Police Officer on September 4, 2013.
7. Rod Bradley served as the City's Chief of Police until his retirement in April 2015.
8. The City solicited applications and conducted interviews with potential replacements for Chief Rod Bradley in February and March 2015.

9. Assistant Chief John Emswiler applied for the position and was selected to replace Bradley.

10. Chief Emswiler served as the City's Police Chief from April 2015 until his resignation on June 23, 2016.

11. In September 2015, Chief Emswiler had an arrest warrant for a citizen of Denison.

12. Ray accompanied the Chief to the citizen's apartment, but no one answered the door.

13. The Chief wanted to enter the apartment, but did not have a search warrant nor any reason to believe the citizen was in the apartment.

14. In fact, the citizen was not located in his apartment.

15. Using his knife, Chief Emswiler pried a window open, reached in, and unlocked the door, while saying "It's not breaking and entering if you don't break anything."

16. Ray immediately knew there was no legal basis to enter the apartment, and notified Officers Nathan Christiansen, Brad Wendt, Mitchell Flaherty, and Jim Mink about the illegal search.

17. Officer Wendt reported the illegal search to the Ombudsman's office, who began an investigation but did not immediately reach out to Ray.

18. In approximately October 2015, K9 Officer Jeff Trailer approached Ray about taking over the K9 Unit, as he was leaving for another job.

19. On November 5, 2015, Ray spoke with Chief Emswiler about being the K9 handler, and the Chief told Ray he expected Ray to be the expert when it came to the K9 unit.

20. Ray told Chief Emswiler he wanted to help rid the city of drugs, and he asked the Chief to have faith in him and his dedication to the Department.

21. Ray consulted Lieutenant Corey Utech of the Crawford County Sheriff's Office for advice, as the Sheriff's Office had considerable experience and success working with K9s.

22. Lieutenant Utech advised Ray that in the counties he was familiar with, the K9s are handler-owned, meaning that the officer handling the dog actually owns the dog. Lieutenant Utech explained this showed the dedication and commitment from the Officer to both the administration and the other officers.

23. On November 24, Ray visited K9 Working Dogs International LLC in Longford, Kansas.

24. Ray asked Chief Emswiler if he would like to accompany him to Kansas, but the Chief declined.

25. Ray asked if he could take a squad car to Kansas, but Emswiler denied the request.

26. Ray drove his parents' personal vehicle on his personal time to Kansas to visit the dog vendor.

27. Ray was paired with a K9 named Piko that was fully trained in narcotic detection, tracking, and obedience.

28. Ray returned from Kansas and showed videos of Piko to Chief Emswiler, and advised the Chief that it would cost a total of \$13,855; \$10,660 to purchase Piko and \$3,195 for training and to enroll in the handler's course.

29. Ray promised to raise the \$10,660 himself to purchase Piko, if Chief Emswiler would agree to use the remaining money from a fund devoted to the K-9 Program to enroll Ray in the handler's course and fund the program past the initial purchase.

30. Chief Emswiler agreed to this arrangement.

31. Ray successfully raised the money in approximately one week through private donations from friends, family friends that owned a car dealership, and through Ray's father.

32. On December 7, 2015, Ray provided the funds to K9 Working Dogs and they gave Ray ownership of Piko.

33. On December 7, 2015, paperwork relating to the proof of purchase and ownership of Piko was sent to Ray, transferring ownership of Piko into Ray's name and reflected Ray's ownership of Piko.

34. In November 2015, law enforcement officers at the Crawford County Law Enforcement Center discovered a computer directory that was shared between all users at the Law Enforcement Center.

35. The directory contained more than 20 gigabytes of documents, photographs, edited photographs, pornographic images, and visual presentations of merged text and photographs.

36. The directory contained a photograph of another law enforcement officer's 16-year-old daughter, and two of her friends, wearing bikinis.

37. The photographs, edited photographs, and visual presentations included racist, sexist, and otherwise demeaning content.

38. Chief Emswiler exclusively created, updated, maintained, and controlled the content in the directory.

39. Chief Emswiler shared the contents of the directory with others for the purpose of harassing, humiliating, and embarrassing the subjects of the documents.

40. The City and former Police Chief Rod Bradley had informally reprimanded Emswiler for similar content at least two times prior to the discovery of the directory in November 2015.

41. Chief Emswiler believed, wrongly, that Ray had leaked the contents of the directory to the rest of the Department and was incensed.

42. On December 23, 2015, Ray met with Chief Emswiler and Sergeant Trejo.

43. Chief Emswiler's attitude toward Ray and his role in the K-9 Unit had completely shifted.

44. Chief Emswiler asked Ray about ownership of Piko. Ray stated he would own Piko because he was the handler, because he had secured the donations necessary to purchase Piko, and because Piko would live at Ray's house.

45. Chief Emswiler stated that Piko was his dog, as he was in charge of Piko's role in the Police Department and the person who handles him.

46. Chief Emswiler then told Ray he had some thinking to do, and that he would meet with Ray sometime the next week.

47. Ray called Sergeant Trejo the next day about the meeting.

48. Sergeant Trejo told Ray that he needed to "play the game" by making the K9 Unit idea appear to be Chief Emswiler's. Sergeant Trejo also assured Ray that Ray would be the K9 handler.

49. On December 28, Ray was told that Piko was ready to be picked up.

50. On December 29, Ray again drove his parents' personal vehicle on his personal time to retrieve Piko.

51. Also on December 29, The Ombudsman's office took Ray's testimony regarding the illegal search.

52. Around the same time, Emswiler found out that he was being investigated regarding the illegal search.

53. Emswiler knew Ray had been the one to report his illegal conduct to the other officers.

54. The Chief was aware of Ray's participation and cooperation with the Ombudsman's office, and began retaliating against Ray because of this cooperation.

55. When Ray returned to work with Piko, he was told that he would not be the K9 handler.

56. Ray knew the Chief had removed him as handler because of the Chief's belief that Ray had released the offensive files and because of Ray's cooperation with the Ombudsman's office.

57. However, when Ray asked the Chief, all the Chief would say was that Ray was "not a team player."

58. On December 31, 2015, the occupant of the apartment Chief Emswiler illegally searched contacted Ray to report the illegal search as a break-in.

59. Ray referred the occupant to the Crawford County Sheriff's Office, who referred it to the Crawford County Attorney, who then referred it to the Department of Criminal Investigation.

60. Chief Emswiler knew Ray had assisted the occupant in filing the report.

61. On January 2, Ray was suspended and told he was being investigated for "insubordination."

62. On January 6, 2016, Chief Emswiler gave his notice of intent that he believed Ray should be fired.

63. The Chief vaguely claimed Ray had engaged in "gross insubordination" and that an internal investigation had already been completed.

64. Ray was never interviewed regarding this alleged internal investigation.

65. When Ray asked Chief Emswiler how he had been insubordinate, the Chief told him Ray had failed to follow commands or orders.

66. Chief Emswiler then told Ray he had to surrender Piko to the Department.

67. Ray was concerned because he believed Piko was his personal property, and that he could be liable if anything happened to him, and asked Chief Emswiler if he could call his attorney.

68. Ray's attorney advised him not to turn over Piko due to a "right of first refusal" clause in the agreement with Piko's seller, meaning that before Ray could turn over possession of Piko, K9 Working Dogs International LLC had to approve.

69. Ray emailed K9 Working Dogs regarding the rights of first refusal, and he carbon-copied Chief Emswiler on the email. K9 Working Dogs did not give up their right of first refusal at that time, so Ray kept Piko.

70. Ray then exercised his First Amendment rights and communicated with the news media about the offensive content in the Chief's file and about the illegal search.

71. Ray's communications with the news media caused further retaliation by Emswiler.

72. On January 14, Chief Emswiler again demanded Piko be given over to the Department, along with all K9 equipment acquired by Ray for the K9 program.

73. On February 5, Ray turned possession of Piko over to the Department and returned all equipment related to the K9 program.

74. Defendants fired Ray on February 5, 2016, for alleged "insubordination."

75. Chief Emswiler claimed Ray had violated a directive by picking up Piko after the Chief had said the "program was on hold."

76. However, Chief Emswiler had merely said the "program" was on hold; this had nothing whatsoever to do with Ray picking up Piko—a dog Ray had already purchased on December 7 with funds he personally and privately raised.

77. On February 11, Mayor Dan Leinen text-messed Ray, again demanding that Ray return all "equipment as well as any other equipment obtained by you for the K-9 program."

78. Ray replied that he would drop off any such equipment at the Police Department. Leinen replied that was "ok."

79. Ray then removed part of the concrete pad he had installed at his home for Piko and the K9 program, and dropped it off on a wooden pallet in a parking space at the Police Department.

80. The City of Denison then attempted to bill Ray \$300 to remove the concrete that Ray had returned to the Department.

81. Ray refused to pay the \$300, as returning the concrete was what he was ordered to do in returning all equipment obtained for the K9 program.

82. Eventually, the Ombudsman's office turned over the investigation to the Department of Criminal Investigation.

83. DCI interviewed only the Chief regarding the search.

84. Ray was never contacted about the incident, even though he witnessed the entire event.

85. On June 23, 2016, John Emswiler resigned as Chief of Police.

86. In August 2016, the City of Denison assessed the \$300 fine to Ray's property taxes.

87. John Emswiler was an employee and/or agent of Defendant City of Denison, acting at all material times within the scope of his employment and agency.

88. Dan Leinen was an employee and/or agent of Defendant City of Denison, acting at all material times within the scope of his employment and agency.

**COUNT I
RETALIATION FOR WHISTLEBLOWING
VIOLATION OF IOWA CODE § 70A.29**

89. Plaintiff realleges paragraphs 1 through 88 as if fully set forth herein.

90. Ray reported what he believed to be an illegal search to public officials and to the Denison Police Department.

91. Defendants retaliated against and fired Ray for reporting a search he reasonably believed broke the law.

92. Such information evidenced a violation of law or rule, mismanagement, and an abuse of authority.

93. As result of Defendants' acts and omissions, Ray has in the past and will in the future suffer damages.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, in an amount which will fully and fairly compensate him for his injuries and damages, including lost wages and emotional distress, for appropriate equitable and injunctive relief, including but not limited to reinstatement, for attorney's fees, litigation expenses, interest, the costs of this action, and for such other relief as may be just in the circumstances.

COUNT II
RETALIATION IN VIOLATION OF THE FIRST AMENDMENT
VIOLATION OF 42 U.S.C. § 1983

94. Plaintiff realleges paragraphs 1 through 93 as if fully set forth herein.

95. Ray engaged in communications to the media regarding then-Chief Emswiler and an illegal search, as well as the information disclosed from then-Chief Emswiler's computer directory.

96. Ray's communications constituted free speech on matters of concern to the public which were protected by the First Amendment to the Constitution of the United States of America.

97. Defendants fired Ray because of his exercise of First Amendment rights.

98. Defendants acted under color of law.

99. Defendants' actions in retaliation for free speech deprived Ray of rights, privileges and immunities secured by the Constitution and violates 42 U.S.C. Section 1983.

100. The constitutional right to free speech was clearly established at the time of Defendants' actions.

101. Defendant John Emswiler either knew, or in the exercise of his duties should have known, about Ray's constitutional rights.

102. Mayor Dan Lienan either knew, or in the exercise of his duties should have known, about Ray's constitutional rights.

103. As result of Defendants' acts and omissions, Ray has in the past and will in the future suffer injuries and damages including but not limited to lost wages and benefits, emotional distress, lost enjoyment of life, and medical expenses.

WHEREFORE, Plaintiff requests judgment against Defendants, jointly and severally, in an amount which will fully and fairly compensate him for his injuries and damages, for appropriate equitable and injunctive relief, including but not limited to reinstatement, for attorney's fees, litigation expenses, interest, the costs of this action, and such other relief as would be just under the circumstances.

COUNT III ABUSE OF PROCESS

104. Plaintiff realleges paragraphs 1 through 103 as if fully set forth herein.

105. The assessment of property taxes is a legal process.

106. Defendants used the assessment of property taxes for a purpose for which it was not designed and/or an impermissible purpose by including the \$300 fine the City was attempting to get Ray to pay.

107. As a result of Defendants' acts, Ray has suffered damages.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, in an amount which will fully and fairly compensate him for his injuries and damages, for appropriate equitable and injunctive relief, for punitive damages, for attorney's fees, litigation expenses, interest, the costs of this action, and for such other relief as may be just in the circumstances.

JURY DEMAND

COMES NOW the Plaintiff and demands a trial by jury.

/s/ Brooke Timmer
FIEDLER & TIMMER, P.L.L.C.
Brooke Timmer AT 0008821
brooke@employmentlawiowa.com
David Albrecht AT 0012635
david@employmentlawiowa.com
8831 Windsor Parkway
Johnston, IA 50131
Telephone: (515) 254-1999
Fax: (515) 254-9923
ATTORNEYS FOR PLAINTIFF