

MISSISSIPPI SUPREME COURT
MISSISSIPPI COURT OF APPEALS

COPY

NO. 2007-CA-00357

FRANK LEE GADDY

APPELLANT

VERSUS

ITT INDUSTRIES, INC.

APPELLEE

FILED

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APPELLANT'S REPLY BRIEF

ORAL ARGUMENT REQUESTED

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REPLY ARGUMENT

THERE ARE GENUINE ISSUES OF MATERIAL FACT REGARDING APPELLANT FRANK LEE GADDY'S CLAIM FOR VIOLATION OF THE MISSISSIPPI PUBLIC POLICY, AND THEREFORE, THE TRIAL COURT ERRED IN GRANTING ITS MOTION FOR DIRECTED VERDICT.

This is a case about disputed facts. The parties do not disagree on the law, they strongly disagree, however, on what facts came out on the stand during the trial of this matter. A simple reading of Appellant Gaddy's original brief and the brief of Appellee ITT Industries, Inc., demonstrates this. Each party's statement of the facts is completely different from the other.

Completely ignoring the facts that supported Plaintiff-Appellant Gaddy, Defendant-Appellee ITT ignored the dictate that when ruling on a motion for a directed verdict, all evidence must be considered "in the light most favorable to the non-movant, giving that party the benefit of all favorable inferences that may be reasonably drawn from the evidence." *Forbes v. General Motors Corp.*, 935 So.2d 869, 872 (Miss. 2006). Instead, ITT picks out certain testimony and draws inferences that it believes favors them. Further, ITT cites to "evidence" that is not even in the record. Appellee's brief, p. 2, n. 2, and p. 8, n. 3.

The trial court failed to give Gaddy the benefit of all favorable inferences that could be reasonably drawn from the evidence. The evidence which Gaddy put

forward demonstrates that ITT's human resources director, Kathy Ray, continually tried to convince Gaddy that the allegedly injured employee was a malingerer who wanted to avoid a drug test. The evidence demonstrated that Ray overtly showed her displeasure to Gaddy about his refusal to agree with her that the employee had not been injured.

Gaddy had been with the company for twenty-seven and one-half years, being a supervisor for over twenty years, and supervised the night shift since 2000. T. pp. 47-48, 96. The proof demonstrated the Gaddy was an excellent supervisor who did a "great job" supervising his good, hard-working team on the night shift. This is from his own recent evaluations. T. pp. 50, 95.

It all fell apart when one of his employees, Mr. Walden, reported to Gaddy that he had injured his back on the job and was going home. T. pp. 8, 58-60.

Ms. Ray, the human resources manager for ITT, was immediately upset when Gaddy reported the injury. She accused Walden of faking it, being a malingerer, and of avoiding a drug test. T. pp. 59-61.¹

The company disputed Walden's claim of an on-the-job injury, and Ray ordered Gaddy to have no further communication with Walden anymore. T. p. 88. Ray clearly ordered Gaddy not to communicate with Walden, because she did not

¹ There was no evidence whatsoever that Walden had been using drugs. T. pp. 14, 54.

want Gaddy testifying in the workers' compensation case on Walden's behalf. Gaddy learned this when he became aware that the company was denying coverage on the workers' compensation claim, and that they were lying about Gaddy, claiming that Gaddy was saying that Walden had not been injured on the job. T. p. 69. Gaddy found out about this lie, and complained to Ray, but she never denied it. T. p. 70.

Ray kept putting pressure on Gaddy every chance she got, saying that Walden had not been hurt at work, that he was faking, and that he had intentionally avoided a drug test. T. p. 65. Even in her deposition, Ray was claiming that Gaddy told her that he did not know if Walden's time off was related to an injury. T. p. 143. Ray was also claiming that Walden had told her that the injury was not work-related. T. pp. 144-45.

Ray confronted Gaddy enough about it that he began to dread seeing her. T. pp. 149-50. Ray told the company's workers' compensation lawyer, Taylor Smith, that Walden was faking. T. p. 66.

It all came to a head when Gaddy, who had informed Walden that he would tell the truth, was deposed in the workers' compensation case. Ray and attorney Smith interviewed Gaddy on October 24, 2003. By this time, it had already reached the point that Gaddy complained to attorney Smith that he thought he might get fired over this. T. pp. 64-65. Smith reiterated Ray's position to Gaddy. When Gaddy refused

to go along and stuck to his guns, saying that Walden had been injured on the job, Smith almost immediately terminated the interview. T. pp. 66, 70.

Five days later on October 29, 2003, Gaddy's deposition was taken, and he testified that Walden had been hurt on the job. T. pp. 70, 73. Ray was present during Gaddy's deposition. During the whole time Gaddy testified, Ray sat there rolling her eyes, making faces and shaking her head in disbelief at Gaddy's testimony. She was clearly upset at the way Gaddy testified. T. pp. 73, 122.

The same day as his deposition, Gaddy went in to work his shift. Ray came to Gaddy's office. Gaddy said, "I said, 'Kathy, I hope what I said today don't cost me my job.' She said, 'Well, you have got your opinion of Johnny Walden, and I have got mine.' I said, 'Okay.' So it was left at that." T. p. 74.

After that conversation, and seeing the writing on the wall, Gaddy went to Mike Steele, the production manager, who was Gaddy's boss. Gaddy asked Steele if he was going to lose his job over this. Steele said that he did not think so, "but he couldn't say for sure that it wouldn't." T. pp. 74-75.

On November 10, 2003, less than two weeks after his deposition in the workers' compensation case, Ray and Steele called Gaddy into the office and told him that he was fired. T. pp. 76-77. During that conversation, Ray told Gaddy that he was fired because "I was at the wrong place at the wrong time." T. p. 77.

Later, after he had been fired, Gaddy called Steele because he felt like Steele would tell him the truth about what had happened. Gaddy told Steele that he felt like he had been fired because of what he testified to in his deposition in Johnny Walden's workers' compensation case. Steele, the production manager, agreed with Gaddy. T. pp. 85-89. Steele's statement, made by one of the people that fired Gaddy, constitutes an admission pursuant to Miss. R. Evid. 801(d)(2)(D).

This is the evidence that was before the Court that ITT ignored in its brief. Based upon this evidence, the trial court stated: "[t]here is not one scintilla of evidence that I am aware of that anyone encouraged him to, told him to, or suggested that he -- he commit perjury." T. p. 196.

The Court's finding is contrary to all of the evidence that Ray repeatedly battered Gaddy with her version that Walden was a drug-addled faker, making clear exactly how unhappy she was that Gaddy was sticking to his story that Walden had been injured on the job. Her attempts to affect Gaddy's version of events even continued through the workers' compensation deposition. ITT tried to say that Ray's and Gaddy's stories were actually the same, but Ray had already known that Gaddy was going to stick to his story and not commit perjury in the deposition. Ray also claimed that Gaddy told her that he did not know if Walden's time off was related to Walden's injury. Ray went so far as to claim that Walden himself had admitted that

the injury was not work-related.

The clear inference from all of this evidence is that Gaddy was fired because he told the truth in his workers' compensation deposition. Ray practically admitted it immediately after the deposition, when Gaddy expressed his hope that he would not be fired because of it, and all she replied was "Well, you have got your opinion of Johnny Walden, and I have got mine." Steele, in fact, confirmed that this was why he was fired.

Ray made clear what the company line was to be, and Gaddy did not go along with it. Gaddy testified truthfully, and would not commit perjury. Ray overtly expressed her anger with Gaddy's actions. Less than two weeks later, Ray and Steele fired Gaddy. The timing of Gaddy's termination is damning and is sufficient to show that his firing was based on unlawful motives. *Swanson v. General Services Admin.*, 110 F.3d 1180, 1188 (5th Cir. 1997); *Clark County School Dist. v. Breedeen*, 532 U.S. 268, 273-75 (2001); *Washburn v. Harvey*, 504 F.3d 505, 511 (5th Cir. 2007). In fact, the trial court had to make inferences favorable to ITT, the non-movant; nor does the court address the direct evidence of Steele's admissions and Kathy Ray's statement that Gaddy was "at the wrong place at the wrong time."

The comment to Miss. R. Civ. P. 50 states:

In ruling on the motion for a directed verdict, the court should proceed

along the same guidelines and standards that have governed prior peremptory instruction and directed verdict practice in Mississippi: the court should look solely to the testimony on behalf of the opposing party; if such testimony, along with all reasonable inferences which can be drawn therefrom, could support a verdict for that party, the case should not be taken from the jury.

Entrican v. Ming, 962 So.2d 28, 31-32 (Miss. 2007).

CONCLUSION

The trial court, in granting the directed verdict, did not follow those dictates. The trial court erred and, therefore, the Appellant prays that this Court will reverse the granting of the directed verdict and remand this case for a full trial.

Respectfully submitted,

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