

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 16

DANE COUNTY

SAUL A. ST. JOHN,

Plaintiff,

v.

Case No. 17-CV-0005

MADISON EQUAL OPPORTUNITIES
COMMISSION, OVERTURE CENTER
FOR THE ARTS, AND OVERTURE
CENTER FOUNDATION, INC.,

Defendants.

FILED

APR 29 2018

DANE COUNTY CIRCUIT COURT

DECISION AND ORDER

Plaintiff Saul A. St. John ("St. John") filed this certiorari petition for review of the Madison Equal Opportunities Commission's ("MEOC") decision to dismiss his complaint of discrimination by the Overture Center for the Arts ("Overture"). For the following reasons, the agency decision is AFFIRMED.

STATEMENT OF FACTS

The material facts of this case are undisputed. The Overture Center was one of several Madison venues engaged to host the "Madison+ Ruby" computer programming conference scheduled to begin on August 21, 2014. Not long before the conference was to take place, Overture's Chief of Security, Richard Bertrang, was alerted by conference attendees to a potential safety risk.

Ashley Dryden, who was slated to speak at the conference, and Jenifer Remsik, one of the conference organizers, met with Bertrang at the Overture Center on August 1. R. 166-168. Dryden and Remsik informed Bertrang that they were worried about the behavior of Saul St. John. Though neither had met St. John in person, he loomed large in their lives. For the purposes

of this decision, it is enough to say that Dryden and Remsik told Bertrang that St. John had harassed and threatened them online, and had turned his attentions to the conference. The record is replete with allegations. In a follow-up meeting on August 6, with Madison police officers present, the Overture clients again discussed their concerns. R. 18-20. They also showed Bertrang a Twitter post that seemed to indicate that St. John had physically followed them to their earlier meeting at Overture. R. 19.

Based largely on the information provided by Overture's clients, Mr. Bertrang became "concerned that St. John's behavior [could] escalate into violence" at the conference. R. 20. After discussing the matter with Madison police, he decided to issue St. John a permanent ban from Overture facilities, effective August 6, 2014. R. 16.

For his part, St. John protests that he did not stalk, harass, or threaten the conference organizers or speakers. He portrays himself as a social media gadfly, a critic of internet "bullying" by social justice activists. R. 14, 199-200. He believes that the conference organizers were biased against his political convictions, that their animus led them to exaggerate or mischaracterize his conduct, and that they intended to cause Overture's adverse action against him.

As a result of the ban, St. John filed a discrimination complaint, claiming that Overture's action was motivated by bias against St. John's political beliefs contrary to Madison General Ordinance Section 39.03. R. 1. The MEOC Hearing Examiner found that the stances that St. John took on social media comprise political beliefs, as protected by Madison ordinance. R. 454. Overture is a public place of accommodation or amusement covered by the Ordinance. R. 225. The Hearing Examiner nevertheless dismissed St. John's complaint. He found that St. John had failed to offer any evidence that could support a finding that Overture's legitimate,

nondiscriminatory explanation for its ban – that Overture believed St. John was a threat to the safety of its clients – was a pretext for discrimination.

In his petition for certiorari, St. John argues that the hearing examiner failed to follow the law because he did not apply the “cat’s paw” theory of discrimination liability. Applying the cat’s paw theory could open the door to a closer look at the motivations behind the conference organizers’ reports on St. John’s behavior.

STANDARD OF REVIEW

On certiorari review the court evaluates whether: (1) the agency kept within its jurisdiction; (2) the agency acted according to law; (3) the action was arbitrary, oppressive or unreasonable and represented its will and not its judgment; and (4) the evidence presented was such that the agency might reasonably make the decision it did. *State ex rel. Brookside Poultry Farms, Inc. v. Jefferson Cty. Bd. Of Adjustment*, 131 Wis. 2d 101, 119, 388 N.W.2d 593 (1986).

DISCUSSION

The only issue for the Court to decide here is whether the MEOC Hearing Examiner was required to apply the cat’s paw theory as a matter of law. The theory addresses situations in which a defendant organization’s discriminatory animus and adverse action are distributed among multiple agents rather than united in a single agent. *See Staub v. Proctor Hosp.*, 562 U.S. 411, 417-421, 131 S. Ct. 1186, 179 L. Ed. 2d 144 (2011). For example, in an employment discrimination case, the individual who made the adverse employment decision might not harbor discriminatory animus. But if a separate agent “committed an action based on discriminatory animus that was intended to cause, and did in fact cause, an adverse employment decision,” the employer may be liable for the decision. *Id.* at 421.

In the instant case, Plaintiff maintains that the Hearing Examiner should have applied the cat's paw approach to determine whether Mr. Bertrang acted as a conduit of the conference organizers' alleged biases when he made his decision. But the relationship between the conference organizers and Overture sets this case apart from cases in which the cat's paw theory has been applied. The conference organizers were Overture's clients, not its agents or employees. Plaintiff proposes that the cat's paw theory should be interpreted to create liability even where the party with animus is not an agent of the defendant institution.

The Court is unaware of any case in which a defendant institution has been held liable, under a cat's paw theory, for the effect of a third party's bias on an adverse decision made by the defendant's unbiased agent. Plaintiff highlights four cases, none of which ultimately supports his conclusion.

In *Bickerstaff v. Vassar College*, the Second Circuit contemplated the possibility that a student's racial bias could have tainted a college's decision not to promote a professor. *Bickerstaff v. Vassar Coll.*, 196 F.3d 435, 450 (2d Cir. 1999), as amended on denial of reh'g (Dec. 22, 1999). Plaintiff asserts that the student's relationship to the defendant college was analogous to the conference organizers' relationship to Overture in the instant case. But the student in *Bickerstaff* was a member of a committee that was an established element of the college's promotion process, and was thus delegated authority by the college to act on its behalf. *Id.* at 442, 451. To interpret *Bickerstaff* as expanding the cat's paw theory to apply to third party non-agents would be to stretch the case needlessly and unreasonably.

In *Doe v. Columbia University*, the Second Circuit considered whether a Columbia official with an officially-designated position as "Title IX investigator" had "significant influence, perhaps even determinative influence, over the University's decision." *Doe v.*

Columbia Univ., 831 F.3d 46, 58 (2d Cir. 2016). Again, the mover of the cat's paw was an agent of the defendant institution, and the holding therefore does not apply to the facts of Plaintiff's case.

In both *Christian v. Wal-Mart Stores* and *Holcomb v. Iona College*, the individuals who may have impermissibly affected the adverse decision at issue were employed by the respective defendant institutions. *Christian v. Wal-Mart Stores, Inc.*, 252 F.3d 862, 865 (6th Cir.), opinion supplemented on denial of reh'g, 266 F.3d 407 (6th Cir. 2001); *Holcomb v. Iona Coll.*, 521 F.3d 130, 132 (2d Cir. 2008). Neither case's holding would require the Hearing Examiner to inquire into the motivations of a defendant organization's clients.

To hold that the MEOC Hearing Examiner was required to apply the cat's paw approach in this case would be a sweeping expansion of the doctrine. Such a holding is unsupported by caselaw. The Hearing Examiner acted according to the law when he dismissed Plaintiff's complaint.


CONCLUSION

For the foregoing reasons, the decision of the Madison Equal Opportunities Commission is AFFIRMED.

IT IS SO ORDERED.

Dated this 29th day of April, 2018.

BY THE COURT:



Honorable Rhonda L. Lanford
Circuit Court Judge, Branch 16