

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Chad Turcotte,

Complainant,

vs.

Todd Dahl,

Respondent.

PROBABLE CAUSE
ORDER

The above-entitled matter came on for a probable cause hearing as provided by Minn. Stat. § 211B.34, before Administrative Law Judge Bruce H. Johnson, on September 23, 2010, and on September 28, 2010, to consider the complaint filed with the Office of Administrative Hearings on September 17, 2010, by Chad Turcotte. The parties participated by telephone conference call.

Complainant Chad Turcotte and his attorney Brian Farrell, Brian Farrell, P.A., appeared on both dates. Respondent Todd Dahl and his attorney Patrick M. Krueger, Borden, Steinbauer, Krueger & Knudson, P.A., appeared on September 28, 2010.

Based upon the record and all of the proceedings in this matter, including the Memorandum incorporated herein, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED:

1. That there is probable cause to believe that Respondent violated Minnesota Statute § 211B.07 by threatening force or loss to compel Complainant to vote for him in the general election.

2. That this matter is referred to the Chief Administrative Law Judge for assignment to a panel of three Administrative Law Judges for hearing pursuant to Minnesota Statute § 211B.35.

Dated: September 29, 2010

s/Bruce H. Johnson
BRUCE H. JOHNSON
Administrative Law Judge

MEMORANDUM

Complainant is a deputy sheriff in Crow Wing County, Minnesota. Respondent is the Crow Wing County Sheriff and Complainant's supervisor. Respondent is running for reelection in November. Deputy Klang, another deputy in the Crow Wing County Sheriff's Office, is challenging Respondent and running for sheriff.

On August 7, 2010, Complainant posted a photograph of his two children playing in front of a Klang campaign sign on his Facebook account. Respondent, who was Complainant's Facebook "friend," alleges that he and his family viewed the picture on his Facebook account.¹

The Complainant further alleges that on August 9, 2010, Respondent summoned him to his office and spoke to him for approximately 45 minutes about the picture. During the conversation Complainant alleges that Respondent told him that he had violated his trust by posting the picture, and that he might reconsider his decision to promote Complainant to an Investigator position, and further evaluate whether Complainant should be reassigned to a night shift or whether he should even work in the Sheriff's Office. Complainant alleges that Respondent repeatedly raised his voice and intimidated him during the conversation and told him that if he had not posted the picture on Facebook "this [conversation] would not be happening right now." With his Complaint Complainant provided a copy of the photograph he posted on Facebook and an audio recording of the conversation that occurred on August 9.

Respondent admits that the conversation occurred on August 9, 2010, and that he interpreted the picture as a personal attack against him and his family. He denies, however, that he threatened the Complainant with reprisal for voting for his opponent in the upcoming election.²

Complainant alleges that Respondent violated Minnesota Statute § 211B.07. Minn. Stat. § 211B.07 prohibits undue influence on voters and provides as follows:

A person may not directly or indirectly use or threaten force, coercion, violence, restraint, damage, harm, loss, including loss of employment or economic reprisal, undue influence, or temporal or spiritual injury against an individual to compel the individual to vote for or against a candidate or ballot question. Abduction, duress, or fraud may not be used to obstruct or prevent the free exercise of the right to vote of a voter at a primary or election, or compel a

¹ Test. of Respondent, September 28, 2010.

² Test. of Respondent, September 28, 2010.

voter to vote at a primary or election. Violation of this section is a gross misdemeanor.

The purpose of a probable cause determination is to determine whether, given the facts disclosed by the record, it is fair and reasonable to hear the matter on the merits.³ If the judge is satisfied that the facts appearing in the record, including reliable hearsay, would preclude the granting of a motion for a directed verdict, a motion to dismiss for lack of probable cause should be denied.⁴ A judge's function at a probable cause hearing does not extend to an assessment of the relative credibility of conflicting testimony. As applied to these proceedings, a probable cause hearing is not a preview or a mini-version of a hearing on the merits; its function is simply to determine whether the facts available establish a reasonable belief that the Respondents have committed a violation. At a hearing on the merits, a panel has the benefit of a more fully developed record and the ability to make credibility determinations in evaluating whether a violation has been proved, considering the record as a whole and the applicable evidentiary burdens and standards.

The Administrative Law Judge concludes that based on the record presented, the Complainants have demonstrated probable cause to believe that the Respondent violated Minn. Stat. § 211B.07. It is therefore reasonable to require the Respondent to go to hearing on the merits and to allow a panel of three Administrative Law Judges to determine whether the Respondents violated Minn. Stat. § 211B.07.

B. H. J.

³ *State v. Florence*, 239 N.W.2d 892, 902 (Minn. 1976).

⁴ *Id.* at 903. In civil cases, a motion for a directed verdict presents a question of law regarding the sufficiency of the evidence to raise a fact question. The judge must view all the evidence presented in the light most favorable to the adverse party and resolve all issues of credibility in the adverse party's favor. See, e.g., Minn. R. Civ. P. 50.01; *LeBeau v. Buchanan*, 236 N.W.2d 789, 791 (Minn. 1975); *Midland National Bank v. Perranoski*, 299 N.W.2d 404, 409 (Minn. 1980). The standard for a directed verdict in civil cases is not significantly different from the test for summary judgment. *Howie v. Thomas*, 514 N.W.2d 822 (Minn. App. 1994).