IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

GARTHFIELD GUNN PLAINTIFF

VS. CIVIL NO. 1:97CV55-JAD

J. STEWART MURPHY DEFENDANT

MEMORANDUM OPINION

Garthfield Gunn is a former County Director for the Mississippi Department of Human Services in Marshall County. He is suing his supervisor, the Deputy Director for Administration, alleging his decision to terminate Gunn was racially and sexually motivated. Gunn, a black male, was replaced by a white female.

Based on a complaint from employees of the Marshall County Department of Human Services, an audit and investigation was conducted of the Marshall County DHS office from March 4, 1996, through June 10, 1996, for violations of the State Personnel Board regulations. According to defendant Murphy, findings in that report formed the sole basis for his dismissal of the plaintiff. These included findings that

(1) During 1995 plaintiff failed to provide wage and employment information to the DHS office for three employees who received public assistance;

(2) Plaintiff established residence outside of Marshall County;

(3) Plaintiff falsified leave records for employees;

(4) Plaintiff used the DHS WATS line for personal use and permitted employees to do the same;

(5) Plaintiff failed to maintain an accurate sign in/out log for the office.

To defeat summary judgment,

> First, the plaintiff must establish a *prima facie* case of discrimination; second, if he is so successful, the defendant must articulate some legitimate, nondiscriminatory reason for the challenged employment action; and third, if the defendant is so successful, the inference of discrimination raised by the *prima facie* case disappears, and the plaintiff then must prove, by a preponderance of the evidence, both that the defendant's articulated reason is false and that the defendant intentionally discriminated.

Walton v. Bisco Industries, Inc., 119 F.3d 368, 370 (5th Cir. 1997).

In the mind of the court, plaintiff has enunciated a *prima facie* case of discrimination, and defendant has articulated legitimate, non-discriminatory reasons for plaintiff's termination. What is the evidence that these reasons are false and that Murphy intentionally discriminated against Gunn?

When specifically asked in his deposition what evidence he had that his termination was the result of racial discrimination Gunn gave seven reasons: (1) that prior to the investigation he heard a rumor that his job was in jeopardy; (2) the very fact that his office was being investigated showed a lack of respect for him; (3) the office was disrupted during the time of the investigation; (4) the investigators did not treat him with proper respect; (5) he "understood" (but had no first-hand knowledge) that another County Director was treated differently with regard to some of the same violations he was charged with; (6) the investigators did not give him prior knowledge that they were coming to his office; (7) at one point Gunn was escorted out of his office by the investigators.

When asked for evidence that his discharge was based on sex discrimination, he offered

that (1) he did not think a female supervisor whose sign in/out logs were in disarray (and whose name he could not recall) was reprimanded; and (2) the person named to replace him is a female. Plaintiff denies all of the team findings and contends that his termination was motivated solely on the Department's desire to "get" him.

The merits of the allegations against plaintiff are not considered here. Plaintiff Gunn has had his due process hearing before the State Personnel hearing board and that decision upholding his termination is on appeal. The defendant has asserted a legitimate non-discriminatory reason for Gunn's termination. What is critical at this stage of the lawsuit is plaintiff's evidence to rebut the employer's reason for termination. That evidence must be substantial. A jury cannot infer discriminatory intent. *Walton v. Bisco Industries, Inc.*, 119 F.3d 368, 370 (5th Cir. 1997).

Nothing offered by Gunn amounts to substantial evidence. Despite the fact that the discovery period in this case has expired, his "evidence" is only thoughts, feelings and innuendos. He has offered not one iota of substantial evidence to support a claim of discrimination based on race or sex. Even assuming that the findings of the investigators were false, plaintiff has come forth with no evidence to support his claim that the decision of defendant Murphy to terminate Gunn purportedly based on those findings was in fact false or intentionally discriminatory.

Accordingly, the motion of defendant for summary judgment is **granted**. A judgment based on this opinion will be entered separately.

THIS _____ day of May, 1998.

_____
UNITED STATES MAGISTRATE JUDGE