

Family Law Bulletin

\$2

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36 pages in 2 sections

from tea to 'Minecraft'

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uit Judges Kay M. Hanlon, Clare Elizabeth McWilliams and
ates up for retention in November. The event was held Monday at

Jury awards Muslim \$1.5M for bias claim

Ex-IDOT employee charges harassment, denied time to pray

BY PATRICIA MANSON
Law Bulletin staff writer

A federal jury Thursday returned a \$1.5 million verdict in favor of a Muslim man who was the target of discrimination and retaliation when he worked on the state's highways.

The jury found in favor of Demarco Nichols on most counts in his lawsuit against the Illinois Department of Transportation and the Central Management System.

Nichols had worked as a highway maintainer for IDOT for 10 years when he was fired in 2008.

Starting in 2006, Nichols alleges, he was denied the opportunity to pray on his own time during the workday in violation of his religious rights.

He filed grievances with IDOT complaining about the denial of his requests for a religious accommodation, but those grievances were rejected, Nichols contends.

He also contends he was denied training, assigned work that should have gone to more subordinate employees and singled out for unfair discipline because of his Mus-

The unfair discipline included being suspended and then fired for stating in correspondence with IDOT's employee assistance program that he would defend himself if a supervisor carried out threats to inflict physical violence on him for asking for a religious accommodation, Nichols maintains.

He says IDOT deemed that statement to be an implicit threat of violence.

But other employees who made direct threats or actually engaged in violence did not lose their jobs, Nichols alleges.

Late Thursday, the 11-member jury — the 12th juror was dismissed during the trial after contracting the flu — found in favor of Nichols on all but one retaliation count.

The damages are for Nichols' emotional suffering only. He did not suffer any physical harm.

Nichols' attorney, Joseph A. Longo of Longo and Associates Ltd. in Mount Prospect, said he will ask Durkin to award his client more than \$500,000 in back pay.

He also will ask Durkin to award the wages Nichols would have earned had he continued to work for IDOT until he retired at the age of 69, Longo said.

He said he is pleased with the jury's verdict.

"All Mr. Nichols wanted to do was pray," Longo said.

But Nichols' supervisors, he said,



TURN
INSIDE

Plaintiff's attorney says he will ask for lost pay after client dismissed

MUSLIM, FROM PAGE 1

were not aware of IDOT policies concerning employees' rights.

"Top-level management at IDOT admitted that IDOT did not train them on religious accommodation, religious discrimination, religious retaliation," Long said.

He said Nichols' firing had a devastating effect on him and his wife.

Nichols' wife, who has since died, was very ill when her husband was terminated and lost his medical insurance, Long said.

He said Nichols lost his house

after being fired and still owes medical bills.

Nichols now is working temporarily for the U.S. Postal Service, Longo said.

The lead attorney for IDOT was Illinois Assistant Attorney General John R. Hayes.

In an e-mail, IDOT spokesman Guy Tridgell noted that the actions that led to Nichols' suit "occurred during a prior administration."

"It is yet another example of the huge liability they left us to clean up," Tridgell wrote. "We are, of course, are disappointed that Illinois taxpayers continue to suffer

from past problems." He said the current administration will work to resolve those problems.

"Going forward, we will explore our options for this case, continue to correct any problems that caused it, and avoid creating monstrous liabilities during our service to the people of Illinois," he wrote.

Rod Blagojevich, who is now serving a 14-year prison term following his conviction on corruption charges, was governor when Nichols was fired in 2008.

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Joseph A. Longo

Teacher slapped, grabbed grade-school students by neck, panel says

TEACHER, FROM PAGE 1

In its decision to fire Booker, the board said it was not basing its decision on the statements of students who did not testify.

But Booker pointed to a 2001 1st District panel decision which found that in order to meet procedural due process, the board must collaborate with the hearing officer if it rejects the officer's credibility determinations from a hearing. This didn't happen, so Booker said his due process rights were violated.

Booker also asserted his right to due process was violated because the hearing officer relied, in part, on eyewitness statements from students who did not testify. Booker described them as "out-of-court inadmissible hearsay."

But the 1st District panel said Booker's reliance on *Hearne v.*

Chicago School Reform Board of Trustees of the Board of Education, 322 Ill. App. 3d 467, 484 (2001) was misplaced. In *Hearne*, the panel had rejected all of the findings of the hearing officer and reached their own conclusions, which was improper, the 1st District panel had found.

In Booker's case, the board accepted many of the hearing officer's findings, Pucinski wrote. The only thing it excluded were the eyewitness statements.

"[T]he record reflects that the hearing officer afforded petitioner a fair hearing consistent with due process where petitioner cross-examined the witnesses against him, presented evidence in his defense and received fair and impartial rulings on evidentiary disputes," Pucinski wrote.

Pucinski would note several times throughout the 31-page opin-

ion that both the hearing officer's findings and the board's decision were detailed and cited prior case law.

In their filing, the board's attorneys wrote that the panel clarified its decision in *Hearne*: "The order explains that the board was not required to collaborate with the hearing officer because the board stated in its opinion that it was not relying on students' hearsay statements."

Booker's attorneys — Elaine K. B. Siegel and Benjamin S. Bassett of Elaine K.B. Siegel & Associates P.C. — argued in their own filing against publishing the order. The points they outlined in their four-page filing almost contradict the board's own arguments for publication.

The panel on Sept. 9 granted the board's request to publish the prior Rule 23 order as an opinion. The justices noted that Booker's filing

was "untimely filed."

Justice Mary Anne Mason specially concurred with the panel's opinion, only taking issue with the eyewitness statements.

"[T]he board should have consulted with the hearing officer to determine whether, if the hearsay statements of other students were disregarded, his credibility determinations would have remained the same," Mason wrote. "And if the other evidence of petitioner's misconduct had been less conclusive, it is possible that this error would have required reversal because it would have impaired his right to cross-examine the witnesses against him."

The attorneys for both the board and Booker did not return requests for comment.

Justice James Fitzgerald Smith concurred with the opinion.

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CASE SUMM

Criminal law — sentenced

Where a defendant is on monitored release from a county corrections program and is arrested for another crime, Section 5-8-4(d)(6) of the Uniform Code of Corrections authorizing that the sentences be served consecutively, does not apply.

People v. Lashley

2016 IL App Writing for Justice David

Concurring Nathaniel R. Cynthia Y. C Released: J

The 1st District Appellate Court affirmed, but remanded for resentencing, a decision by Cook County Circuit Judge Maura Slattery Boyle.

Lashaun Lashley was on mandatory supervised release from Cook County impact incarceration when he was arrested again for possession of heroin. On Jan. 30, 2012, Chicago police officer John Lipka was conducting narcotics surveillance and noticed several transactions between Lashley and Darrien Forrest from passing cars.

As Lipka approached, he saw a woman give Lashley money. Seeing Lipka, Lashley began walking in the opposite direction.

The officers followed Lashley, observing some purple plastic bags being put into his mouth. The officers asked him to spit the bags out. He refused. At that point, the officers apprehended him with a struggle. In his mouth were 10 purple plastic bags containing heroin. In total, 83 bags of heroin were recovered from the site of the arrest, totaling an estimated 19.4 grams. In addition, police found 3.9 grams in another place on Lashley.

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On appeal, Lashley argued that the state that he posse grams of hero his new senten served consec one, but conc

Lashley argue only tested 6 recovered, and they weighed

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