

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION**

**SHELLY F. NALE, and
MELISSA J. BOWLES,**

Plaintiffs,

-vs-

**CITY OF GEORGETOWN,
KAY SANDERS, Mayor,
CARL JOHNSON, Alderman,
DARIN READNOUR, Alderman,
SAMUEL PAYNE, Alderman,
ADAM HART, Alderman,
DONALD WHEELER, Alderman,
TIMOTHY WATERMAN, Alderman, and
JANET MARTIN, Alderwoman,**

Defendants.

No.:14-cv-2078

**JURY TRIAL
DEMANDED**

COMPLAINT

NOW COME Shelly F. Nale and Melissa J. Bowles, Plaintiffs, by and through their attorney, Ronald S. Langacker of Langacker Law, Ltd., state as and for their Complaint against Defendants, City of Georgetown ("City"), Mayor Kay Sanders, City of Georgetown Aldermen Carl Johnson, Samuel Payne, Timothy Waterman, Donald Wheeler, Adam Hart, Darin Readnour, and Alderwoman Janet Martin, state as follows:

JURISDICTION

1. The jurisdiction of this Court is invoked pursuant to the terms of Title 28, United States Code, Sections 1331 and 1337, together with Title 42, United States Code, Sections 1983 and 1988. This is a civil action arising under the laws of the United States. Specifically, this is an action brought in furtherance of a certain

Act of Congress which guarantees to citizens of the United States protections against the acts of public officers which infringe upon their rights under the Constitution of the United States.

2. The venue of this Court to entertain the issues raised in this case is appropriate by virtue of Title 28, United States Code, Section 1391(b), since the Defendants engage in their official activities within the judicial district of this Court and the claims giving rise to the above captioned proceeding did occur within the judicial district of this Court.

PARTIES

3. Plaintiff, Shelly F. Nale, was a full-time public employee of the Defendant, the City of Georgetown, and currently resides within this judicial district in Vermilion County, Illinois.
4. Plaintiff, Melissa J. Bowles, was a full-time public employee of the Defendant, City of Georgetown, and currently resides within this judicial district in Vermilion County, Illinois.
5. Defendant, the City of Georgetown ("City") is a municipal corporation organized and existing under the laws of the State of Illinois.
6. The Defendant, Kay Sanders, is an adult resident of the State of Illinois, residing within Vermilion County, Illinois. At all times material to this action, Kay Sanders was a duly elected City Mayor of the City of Georgetown.
7. The Defendant, Carl Johnson, is an adult resident of the State of Illinois, residing within Vermilion County, Illinois. At all times material to this action, Carl Johnson was a duly elected City Alderman.

8. The Defendant, Don Wheeler, is an adult resident of the State of Illinois, residing within Vermilion County, Illinois. At all times material to this action, Don Wheeler was a duly elected City Alderman.
9. The Defendant, Darin Readnour, is an adult resident of the State of Illinois, residing within Vermilion County, Illinois. At all times material to this action, Darin Readnour was a duly elected City Alderman.
10. The Defendant, Samuel Payne, is an adult resident of the State of Illinois, residing within Vermilion County, Illinois. At all times material to this action, Samuel Payne was a duly elected City Alderman.
11. The Defendant, Adam Hart, is an adult resident of the State of Illinois, residing within Vermilion County, Illinois. At all times material to this action, Adam Hart was a duly elected City Alderman.
12. The Defendant, Tim Waterman, is an adult resident of the State of Illinois, residing within Vermilion County, Illinois. At all times material to this action, Tim Waterman was a duly elected City Alderman.
13. The Defendant, Janet Martin, is an adult resident of the State of Illinois, residing within Vermilion County, Illinois. At all times material to this action, Janet Martin was a duly elected City Alderwoman.

ALLEGATIONS COMMON TO ALL COUNTS

14. Plaintiff Shelly F. Nale was hired by the Defendant, the City of Georgetown, as an Office Assistant on February 22nd 2011, and was employed by the Defendant full-time until her termination.

15. Plaintiff Melissa J. Bowles was hired as a Utility Billing Clerk for the City of Georgetown from June of 2012, and was employed by the Defendant full-time until her termination.
16. That during their employment, both Plaintiffs Shelly F. Nale and Melissa J. Bowles excelled at their respective positions and met their employer's reasonable expectations.
17. That until April of 2013, Dennis Lucas ("Mayor Lucas") was the mayor of the City of Georgetown, and both Plaintiffs were originally hired during Dennis Lucas's tenure as mayor.
18. In early 2013, Defendant Kay Sanders ran for mayor of the City of Georgetown against the incumbent, Dennis Lucas. It was well known that both Plaintiff's Shelly F. Nale and Melissa J. Bowles previously supported the incumbent mayor, Dwight Lucas.
19. In April of 2013, Defendant, Kay Sanders ("Mayor") was elected mayor of the City of Georgetown, Illinois, replacing the incumbent, Dwight Lucas.
20. That on or about May of 2013, Defendant Kay Sander's daughter, La-Zann Quintana, moved from Texas to Illinois to reside with Defendant Sanders at her residence.
21. That pursuant to the Municipal Code of the City of Georgetown, city employees have to be residents of the City for three months prior to their becoming City employees.

22. That from April 2013 through August of 2013, both Plaintiffs worked with Mayor Kay Sanders at the City of Georgetown. During this time neither Plaintiff was reprimanded or disciplined for any reason by the Mayor.

23. That on August 30th, 2013, the Mayor, Kay Sanders, met each Plaintiff and told each of them cheerfully exclaimed "good news, you're fired." Both Plaintiffs Shelly F. Nale and Melissa J. Bowles were abruptly terminated from their employment on that date.

24. That when Plaintiff Shelly F. Nale inquired as to why she was being terminated, the Mayor provided the Plaintiff with a list of alleged violations committed during the course of her employment including;

- a. Violation of any federal or state law, county or municipal ordinance.
- b. Willful maltreatment of a person
- c. Making a false official report.
- d. Incapacity or inefficiency of duties.
- e. Unauthorized release of information concerning matters.
- f. Willful destruction or unauthorized use of City property.
- g. Violation of City rules and regulations.
- h. Failure to notify a superior that an employee is guilty of abusing a rule, regulation or order of the City, and
- i. Excessive tardiness.

See Exhibit A, attached hereto and incorporated herein by reference.

25. That when Plaintiff Melissa J. Bowles inquired as to why she was being terminated, the Mayor provided her with a list of alleged violations committed by the Plaintiff during the course of her employment including;

- a. Making a false official report.
- b. Neglect or disobedience of orders.
- c. Insubordination or disrespect to a supervisor.
- d. Unauthorized release of information concerning matters.
- e. Willful destruction or unauthorized use of City property.

See Exhibit B, attached hereto and incorporated herein by reference.

26. That one day earlier, on August 29th, 2013, the City of Georgetown's Personnel Committee, including Alderman Carl Johnson and Timothy Waterman, interviewed and recommended the City hire the Mayor's daughter, La-Zann Quintana, to fill the City's position of office assistant.

27. On September 3rd, 2013 the Georgetown City Council, including Carl Johnson, Darin Readnour, Samuel Payne, Don Wheeler, Janet Martin, Tim Waterman, and Adam Hart voted on accepting La-Zann Quintana to fill the vacant office assistant position. The Council voted three votes for and three votes against the new hire. With the Council deadlocked, the Mayor cast the tiebreaking vote, allowing her daughter to be hired by the City of Georgetown.

28. That following the termination, the Defendant's continued to make false and defamatory allegations concerning the termination of each Plaintiff.

29. That each Plaintiff was terminated without receiving a pre-termination hearing and without the opportunity to contest the malicious charges made against them.

30. That the above allegations rendered against each Plaintiff, were completely false and were made maliciously by the Defendant, Kay Sanders. That upon receipt of the employee's personnel files, the City acknowledged in their internal memorandum that some of these allegations which served as a basis for termination were rumors and unproven.

COUNT I
(Deprivation of Property Interest-Violation of Fourteenth Amendment of
The U.S. Constitution)

31. The Plaintiffs repeats each allegation contained in Paragraph's 1 through 30 as set above.
32. The Plaintiffs as public employees each have a property interest, protected by the United States Constitution, in their continued employment with the City of Georgetown.
33. The City, along with the other Defendants, whom the Plaintiffs joins in this action in their representative and individual capacities, while acting under color of state law, deprived each Plaintiff of their property interests, without cause and without due process of law.
34. That at no time prior to the termination of the Plaintiffs, Shelly F. Nale and Melissa J. Bowles, did the Defendant provide them with any notice of the allegations made against them, nor were they provided any hearing to consider the propriety of the allegations against them. Instead, the Plaintiff's termination was effected in a manner in which they were given no opportunity for a hearing.
35. The individual Defendants, acting in their personal capacities, willfully and maliciously or with reckless indifference, deprived Plaintiffs of their constitutionally protected property right in their continued employment with the city.
36. That as a direct and proximate result of the foregoing conduct the Plaintiffs, Shelly F. Nale and Melissa J. Bowles, each sustained the loss of certain economic benefits derived through their positions of employment with the City as well as their subsequent inability to secure employment. Additionally, each

Plaintiff has suffered emotional pain and anguish, damage to their reputations, embarrassment and humiliation, inconvenience and the loss of enjoyment of life.

COUNT II
**(Deprivation of Liberty Interest Interest-Violation of Fourteenth Amendment of
The U.S. Constitution)**

37. The Plaintiffs repeat each allegation contained in Paragraph's 1 through 30 as set above.

38. That as a result of their abrupt termination, numerous and repeated comments were made concerning the Plaintiffs following their termination, including but not limited to allegations of insubordination, violating federal and/or state law, theft of City property, making false reports, and so forth. Such comments were made during open City Council meetings and to the media.

39. That each of the Plaintiffs were stigmatized by the untrue statements made against them, as each were stigmatized in a manner that damaged their professional reputations and, by hurting their good names, reputations, honor and integrity.

40. That the City of Georgetown and the other Defendants, individually and upon the City's behalf made the charges public.

41. The Plaintiffs each suffered a tangible loss of other employment opportunities as a result of the public disclosure.

42. By their actions, the Defendants deprived Plaintiffs of their liberty interests without due process of law, in violation of the Fourteenth Amendment of the United States Constitution.

43. That as a direct and proximate result of the foregoing conduct the Plaintiffs, Shelly F. Nale and Melissa J. Bowles, each sustained the loss of certain economic benefits derived through their positions of employment with the City as well as their subsequent inability to secure employment. Additionally, each Plaintiff has suffered emotional pain and anguish, damage to their reputations, embarrassment and humiliation, inconvenience and the loss of enjoyment of life.

COUNT III
(Defamation Per-Se)

44. The Plaintiffs repeat each allegation contained in Paragraph's 1 through 30 as set above.

45. That the Defendants have each published statements which are defamatory per-se in that they inferred each Plaintiff has a) committed a criminal offence and b) have shown lack of integrity in the discharge of their employment.

46. That the Defendants knew these statements were false, at the time they were made.

47. That the above statements were published by the Defendants with the knowledge the statements were likely to damage the integrity of the Plaintiffs and each Plaintiff has suffered emotional pain and anguish, damage to their reputations, embarrassment and humiliation, inconvenience and the loss of enjoyment of life.

COUNT V
(COBRA Notification-Shelly Nale)

48. That Plaintiff, Shelly F. Nale, repeats each allegation contained in Paragraph's 1 through 30 as stated above.

49. That the Defendant, the City of Georgetown, operated and maintained an employee benefit plan under EIRSA providing medical benefits to their employees.
50. That Plaintiff, Shelly F. Nale, qualified for and was enrolled in the Defendant's group health plan.
51. That Plaintiff, Shelly F. Nale, was terminated from her employment on August 30th, 2013.
52. That following her termination, the Plaintiff, Shelly F. Nale was not provided notice and information regarding her entitlement to continuation of health insurance coverage in a timely fashion pursuant to the requirements of COBRA.
53. Pursuant to COBRA, the Defendant was required offer Plaintiff Shelly F. Nale continuation benefits after her termination, which is usually effectuated by issuing a COBRA Continuation Coverage Notice ("Notice"). However, Defendant did not provide Plaintiff Shelly F. Nale with Notice regarding COBRA continuation benefits, nor did it provide an opportunity for Plaintiff to procure continuation coverage within 45 days of Plaintiff's qualifying event on August 30th, 2013.
54. The actions of Defendant, its agents, and employees constituted a violation of the Consolidated Omnibus Reconciliation Act of 1985 [29 U.S.C. § 1161 *et seq.*], entitles Plaintiff to recover civil penalties under 29 U.S.C. § 1132(c)(1). In addition, Plaintiff is entitled to recover attorney's fees for the COBRA violations.
55. Defendant should be ordered to make Plaintiffs whole by ordering damages payable under 29 U.S.C. § 1132 including, but not limited to the daily fine

required by 29 U.S.C. § 1132(c)(1) and actual medical and other expenses incurred as a result of the COBRA violation;

56. Plaintiff is entitled to recover the sum of \$100 per day for the time the Defendant breached their notice and continuation of coverage obligations under COBRA commencing from Plaintiff's qualifying event on August 30th, 2013, through the present time. 29 U.S.C. § 1132 (c) (1).

57. The Court should also award Plaintiff the total amount of medical expenses incurred during the COBRA continuation of coverage period which amount is to be determined. 29 U.S.C. § 1132 (c) (1).

58. Plaintiff has incurred and will incur attorney's fees and expenses in the prosecution of this action for which they are entitled to an award under Section 1132 (g)(1) of ERISA. 29 U.S.C. § 1132 (g)(1).

WHEREFORE, Plaintiffs, Shelly F. Nale and Melissa J. Bowles, respectfully request that this Court enter the following relief:

- A. As to all Plaintiffs, enter a declaratory judgment determining that the actions complained of in this complaint are unlawful in violation of the provisions of 42 U.S.C. § 1983 and 1988 and issue a mandatory injunction against the Defendants to refrain from engaging in any action with respect to the Plaintiffs, which are prohibited under the terms of the foregoing laws;
- B. As to all Plaintiffs, issue a mandatory injunction directing the Defendants to reinstate the Plaintiffs to the position of employment with the City which

they held prior to the conduct complained of in this Complaint with all employment duties, responsibilities, salaries, benefits and rights attendant to that position;

- C. As to all Plaintiffs, award each Plaintiff damages sufficient to compensate them for any economic losses suffered as a result of conduct alleged in the Complaint.
- D. As to all Plaintiffs, assess against the Defendants the costs and expenses incurred by the Plaintiff's in maintaining the above captioned proceedings together with reasonable attorney's fees incurred by the Plaintiff's in prosecuting the above-captioned case.
- E. As to all Plaintiffs, award against the Defendant and in favor of the Plaintiffs such compensatory and exemplary damages as may be permitted by law;
- F. As to Count IV, award Plaintiff Shelly F. Nale an award of \$100 per day penalty for non-compliance with COBRA for failing to provide notice from the qualifying event on August 30th, 2013, through the present, pursuant to 29 U.S.C. § 1132 (c) (1);
- G. As to Count IV, award Plaintiff Shelly F. Nale an award of the medical expenses incurred by Plaintiff during the period of COBRA continuation coverage as appropriate additional relief under 29 U.S.C. § 1132 (c) (1);
- H. As to Count IV, award Plaintiff Shelly F. Nale an award of the attorney's fees and expenses incurred in prosecuting this action under 29 U.S.C. §

1132 (g)(1) and costs of suit to the extent they are not included in the attorney's fees and expense award; and

- I. For all further relief the court deems equitable and just.

PLAINTIFFS DEMANDS TRIAL BY JURY.

SHELLY F. NALE
MELISSA J. BOWLES
PLAINTIFFS

By: /s/Ronald S. Langacker
Ronald S. Langacker
Attorney for Plaintiffs

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Langacker Law, Ltd.
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Urbana, Illinois 61801
Telephone: (217) 954-1025
Facsimile: (217) 903-5255
E-Mail: langackerlaw@gmail.com

- 8.01 No one shall be authorized to work overtime unless said overtime is needed on an emergency basis. Any other overtime must be approved, in advance, by the supervisor in charge. If approved, the overtime work shall be mandatory.
- 8.02 Whenever an employee shall for whatever reason have worked beyond 40 hours in a given week, that person shall be paid at a rate of time and one half for every hour over 40 hours.
- 8.03 Departmental Supervisor and Chief of Police are supervisory positions, the primary duty of each of which is management of the respective departments. The carrying out such duties, the supervisors and Chief are subject to the ultimate authority of the Mayor and Council but are otherwise autonomous. They will be expected to schedule their work so as to come within the supervisory exceptions to the overtime pay requirements of the Fair Labor Standards Act of 1938, as amended.

Section 9 -- CONDITION OF EMPLOYMENT

- 9.01 The following actions are subject to discipline and/or discharge.
- ① Violation of any federal or state law, county or municipal ordinance.
 - ② Willful maltreatment of a person.
 - ③ Unlawful, careless or negligent use of a weapon.
 - ④ Making a false official report.
 5. Drinking any kind of intoxicating liquor or using non-physician prescribed drugs or narcotics while on duty.
 6. Neglect of duty.
 - ⑦ Incapacity or inefficiency in performance of duties.
 8. Neglect or disobedience or orders.
 9. Insubordination or disrespect to a superior.
 10. Receiving, soliciting or attempting to solicit any gratuity or anything of value for performance or failing to perform any service.
 11. Coercing employees for partisan political purposes.
 12. Failure to be properly attired or equipped.
 13. Absence from duty or leaving post without leave or permission.
 - ⑭ Unauthorized release of information concerning ~~police~~ matters.
 15. Soliciting business, clients or customers for any business or professional person while on duty.
 - ⑯ Willful destruction of unauthorized use of City property.
 17. Mistreatment of a junior employee.
 - ⑰ Violation of City rules and regulations.
 - ⑱ Failure to notify a superior that an employee is guilty of abusing a rule, regulation, or order of the City.

20. Excess tardiness.

- 9.02 It shall be a specific condition of the continuation of employment of all persons now subject hereto, and of the employment of all future full-time hires, that each such person shall acknowledge receipt of a copy of this document upon a form provided for that purpose by the City Clerk. Such acknowledgment shall be maintained on file with the City Clerk.
- 9.03 Within fifteen working days from passage of a resolution adopting this instrument, all persons then subject hereto shall be in accordance with Section 9.02.
- 9.04 All new full-time hires shall be in accordance with Section 9.02 before beginning employment with the city.
- 9.05 All employees, except police officers, shall punch-in and punch-out of work on the time-clock on pre-printed cards. If not properly punched, any corrections must be approved and signed by the supervisor before the employee can be paid for said time. If not so approved by the supervisor, the card will be considered incomplete and the employee will only be paid for the time actually clocked on to the card.

Section 10 -- GRIEVANCE PROCEDURE

- 10.01 An employee aggrieved by the action of his departmental executive or otherwise may, within five days thereafter, request, in writing, a meeting with his or her departmental executive, which such meeting shall be carried out within three working days of the notice.
- 10.02 If the matter is not thereupon resolved to such employee's satisfaction, the employee may within three days after meeting with the departmental executive request, in writing, a meeting with the personnel committee of the City Council, which such committee may, but is not bound to recommend formal action to the council as a whole.
- 10.03 Nothing contained herein is intended to abridge the right of free speech, assembly and petition - nor any other right under law - of any employee covered hereby.

Monday, 21 April, 2014 04:01:39 PM

Clerk, U.S. District Court, ILCD

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 6. Neglect of duty.
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 8. Neglect or disobedience or orders.
 9. Insubordination or disrespect to a superior.
 10. Receiving, soliciting or attempting to solicit any gratuity or anything of value for performance or failing to perform any service.
 11. Coercing employees for partisan political purposes.
 12. Failure to be properly attired or equipped.
 13. Absence from duty or leaving post without leave or permission.
 - ⑭ Unauthorized release of information concerning police matters.
 15. Soliciting business, clients or customers for any business or professional person while on duty.
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