Staub v. Proctor Hospital: Examining the "Cat's Paw"

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On November 2, 2010, the Supreme Court of the United Stated heard oral argument in *Staub v. Proctor Hospital* (No. 09-400), a case that raises the issue of whether an employer may be held liable for the unlawful intent of officials who caused or influenced the ultimate employment decision but did not make it.

Vincent Staub filed suit under the Uniformed Services Employment and Reemployment Rights Act ("USERRA") after he was terminated from his job as an X-ray technician. USERRA makes it unlawful for employers to take adverse actions against military veterans because of an animus towards their status as active or retired military personnel.

Staub alleged that two of his supervisors, Janice Mulally and Michael Korenchuk, were openly hostile towards him because of his military service. It was the hospital's Vice President for Human Relations, Linda Buck, however, who made the ultimate decision to fire Staub. She based her decision on a complaint from Korenchuk and Staub's employment record, which contained official write-ups.

A jury found that Staub's military status had been a "motivating factor" in his termination and awarded him damages in the amount of $57,740. The hospital appealed to the Seventh Circuit Court of Appeals, which overturned the lower court's decision in favor of Staub based on the cat's paw or "singular influence" theory.

The phrase "cat's paw" comes from a French fable, "The Monkey and the Cat," made famous by the 17th Century poet Jean de la Fontaine. In the fable, a cunning monkey persuades a naïve cat to snatch chestnuts from a fire. The cat burns her paw while the monkey eats the chestnuts. From this story, the term "cat's paw" has come to mean a "tool" or "one used by another to accomplish his purposes."

In the employment context, the cat's paw theory provides for employer liability in cases where the ultimate decision-maker did not have an unlawful intent in taking adverse action, but was strongly influenced by another with unlawful motivations. In other words, the biased employee or official uses the formal decision-maker as a dupe or cat's paw to accomplish a discriminatory employment action.

The Seventh Circuit held that only the final decision-maker's bias could make an employer liable, unless the final decision-maker was under the "singular influence" of another unlawfully-motivated employee or official. Buck did not base her decision solely on the supervisors' animus; she investigated other sources of information.

The Supreme Court granted certiorari to decide whether the motivations and biases of employees who influence an adverse employment action, but who do not make the final decision, may be considered when determining the employer's liability.

On November 2, 2010, Staub's attorney, Eric Schnapper, argued that the cat's paw theory is too restrictive and that traditional agency theory should instead control the Court's decision. Under Schnapper's reasoning, anyone acting with animus to influence an adverse action, including coworkers, could impose strict liability on the employer, even if the ultimate decision-maker was not biased and conducted an independent investigation. In contrast, the hospital's attorney, Roy Davis, argued that only the ultimate decision-maker could make the employer liable, unless the decision-maker was overwhelmingly influenced by someone else (*i.e.*, the decision-maker was used as a cat's paw).

The case specifically involves bias against those with military service obligations, but its outcome is likely to affect other federal workplace anti-discrimination laws such as Title VII of the Civil Rights Act (prohibiting discrimination on the basis of race, national origin, sex, genetic information or religion), the Family Medical Leave Act, the Age Discrimination in Employment Act, and the Americans with Disabilities Act.

Counsel for Staub stated that the Court "could write an opinion that only addressed … USERRA" and leave the other questions unanswered. The language in USERRA, however, closely parallels that of Title VII. Thus, even if the Court chooses to take the route suggested, federal workplace bias laws will no doubt be affected.

The case was heard by an eight-member Court. Justice Kagan, in her former role as Solicitor General, filed a brief in the case pursuant to the Court's invitation.

The Seventh Circuits' opinion can be found at 560 F.3d 647 (7th Cir. 2009).

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