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Victims Say Violence at Home Led to Job Loss

By Amy Gardner, Staff Writer

When Kathleen D’Innocenzo showed up for work at a paper-products company two years ago with a broken arm and finger marks on her face, she lost her job – then her home, and her horse, and more.

She was fired, she said, because she was a victim of domestic violence. And now, she is following very closely a case that came before the N.C. Supreme Court on Tuesday that could prevent that from happening in the future.

“I had no income, other than child support,” said D’Innocenzo, 39, whose former husband later was charged in the incident. She is now a home-health aide living in Wendell. “So you’re not just a victim when the assault happens.”

Twenty-nine domestic-violence groups from across the state and nation are following the case, too. All have signed on in support of the victim in the case: James Edwards Imes, a bus driver and dispatcher with the city of Asheville who was fired in 2001 after his wife, Sandra, shot him in the stomach.

Imes, who turned 59 this year, died over the summer of an unrelated illness. But his estate still pursues the case. The reason: Advocates are looking for precedent-setting workplace protections for victims of domestic violence.

“Economic security is one of the most important factors of whether a victim of domestic violence will be able to separate effectively from an abuser,” said Deborah Widiss, a staff attorney for Legal Momentum, a national women’s rights organization. “Certainly a court has not stated explicitly that firing someone for being a victim is against the law. This is a good place to establish the case law.”

Power to fire is issue

At the heart of the case is the “at-will” employment doctrine. That legal standard, followed by North Carolina and most other states, allows employers to fire anyone at will, unless state law explicitly forbids it – or unless doing so would violate the state’s public policy.

It is that latter exception that lawyers for Imes used Tuesday before the state Supreme Court.

His attorneys argued that although domestic violence victims are not an explicitly protected class, allowing them to be fired thwarts the state's efforts to end such violence.

They argued that North Carolina has a long history of protecting victims of domestic violence. One state measure allows unemployment benefits for victims who lose their jobs or must quit; another, passed this year, prohibits employers from discriminating against victims who need time to go to court to seek domestic-violence protective orders.

“What we're saying is: You've already made clear that you can't discriminate against people for going to court,” Widiss said. “It doesn't make sense if you can discriminate against them just for being a victim.”

Lawyers for Asheville and its transit contractor, CCL Management Inc., argued Tuesday that to diminish employers' rights to fire for any reason would make North Carolina a less hospitable place to do business, thwarting economic development. State law prohibits firing on the basis of a few categories, including race and sex. It should be left up to the legislature to expand that list with explicit laws, the lawyers said.

“Everyone has sympathy for victims of domestic violence,” said Fred Hamlet, a Greensboro lawyer representing the bus company. “However, we're a society ruled by law. And the best place to make that law is in the General Assembly, not the court.”

One point not raised in Tuesday's arguments is the concern among employers that employing victims of domestic violence could prompt their abusers to do violence at the workplace – and open employers to liability.

Beth Posner, a lawyer for Legal Aid of North Carolina who argued on behalf of Imes on Tuesday, said that allowing employers to fire someone over such concerns makes no sense because it discourages victims from telling their employers anything.

Instead of firing victims, she said, employers should take steps newly allowed by the General Assembly – for example, one measure that allows employers to seek protective orders barring abusers from the workplace.

Termination, in contrast, “really raises the specter of further violence,” Posner said. “Victims will be less likely to tell an employer and less likely to give an employer the opportunity to take safety precautions.”

A decision is not likely from the court for several months.

Staff writer Amy Gardner can be reached at 829-8902 or agardner@newsobserver.com.

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