

7th Circuit reinstates 'cat's paw' jury verdict

The so-called "cat's paw" theory of liability these days is gaining more prevalence in employment discrimination cases under Title VII of the Civil Rights Act of 1964 (Title VII), the Age Discrimination in Employment Act (ADEA) and like civil rights statutes. It addresses the situation where an unbiased manager takes an adverse employment action, for example, fires a subordinate, but is influenced in her decision by the illegal bias of a nondecision-making co-worker. The name "cat's paw" comes from a 17th century story in which an evil monkey prevails upon an unwitting feline to remove chestnuts from a fire. When the cat burns one of its paw, the monkey gets the chestnuts. In current employment law vernacular, the "cat's paw" is the unbiased supervisor who is duped into taking the adverse employment action based on someone else's biased motivation.

The U.S. Supreme Court has not yet determined the extent to which and under what circumstances an employer may be liable pursuant to a "cat's paw" theory. It did last year, however, grant certiorari in a "cat's paw" discrimination case originating from the 7th U.S. Circuit Court of Appeals, *Staub v. Proctor Hosp.*, 560 F.3d 647 (7th Cir. 2009), *cert. granted* 130 S.Ct. 2089 (2010). *Staub's* pendency did not prevent the 7th Circuit from recently using the "cat's paw" theory to reinstate a jury verdict for a white Chicago Park District (CPD) worker who claimed that a racist, black manager influenced her white supervisors into illegally firing her. *Schandelmeier-Bartels v. Chicago Park District*, Nos. 09-3286 and 09-3468 (Feb. 8, 2011).

The CPD hired Cathleen Schandelmeier-Bartels in April 2006 as a cultural coordinator for the South Shore Cultural Center. Her job was to supervise the cultural center's after-school program and summer camp. Schandelmeier-Bartels reported directly to center Director Andrea Adams, who reported to Alonzo Williams, who reported to Director of Lakefront Operations Megan McDonald. Mary Ann Rowland served as the human resources manager for the Lakefront region. Adams and Williams are black; Schandelmeier-Bartels, McDonald and Rowland are white.

The evidence suggested that Schandelmeier-Bartels was not a strong performer. While still a probationary employee, she received from Adams several disciplinary memorandums relating to her inability to appropriately complete administrative tasks.

A most critical event in the drama



Labor Daze

By Frank J. Saibert

Frank J. Saibert is chair of the labor and employment practice at Ungaretti & Harris LLP. He represents public and private sector employers nationwide in labor relations and employment matters. He is past president of the Chicago Chapter of the National Human Resources Association and a former Lyons Township committeeman. He can be reached at fjsaibert@uhlaw.com.

occurred on July 31, 2006. The CPD suspended from summer camp for repeated misbehavior a black child, identified as "J.J." When his aunt came to pick him up, Schandelmeier-Bartels claims that the aunt and J.J. were in another room and Schandelmeier-Bartels heard the sound of flesh being struck and a child screaming. She looked in the room and allegedly witnessed J.J.'s aunt kneeling over J.J. with a belt raised in her hand above her head, while J.J. cried. Schandelmeier-Bartels claims that J.J. had displayed a welt on his arm. Schandelmeier-Bartels instructed the aunt to stop and J.J. and his aunt then vacated the center premises.

Schandelmeier-Bartels immediately reported the incident to Adams. Adams allegedly replied that what Schandelmeier-Bartels had witnessed was a "cultural thing" because "this is the way we discipline children in our culture." Adams further asserted that she had the "unspoken permission" of the parents of the black junior counselors at the camp "to grab them and put them back into line."

Adams told Schandelmeier-Bartels that if she truly felt she had observed child abuse, she was obligated legally to report it to the Illinois Department of Children and Family Services (DCFS). Schandelmeier-Bartels that night called DCFS and was advised to call the local police so that they could conduct a "well-child check" on J.J. Schandelmeier-Bartels called the police the following morning.

Just before noon on Aug. 1, 2006, Adams summoned Schandelmeier-Bartels to her office. J.J.'s aunt was there. According to Schandelmeier-Bartels,

Adams "went ballistic," stating that the aunt's striking J.J. was a cultural difference that Schandelmeier-Bartels could not understand. Adams supposedly was "violently angry," made other comments of a racial or cultural nature and dismissed Schandelmeier-Bartels from her office with the comment, "I can't stand the sight of you, Cathleen."

Adams that day wrote to McDonald and Williams detailing Schandelmeier-Bartels' multiple work-related transgressions. In the memorandum, Adams recounted in some detail the "final straw" incident pertaining to J.J., but omitted any reference to her racial tirade that Schandelmeier-Bartels claimed to have witnessed that morning in Adams' office. Rowland then drafted Schandelmeier-Bartels' termination letter, which Williams and Adams delivered to Schandelmeier-Bartels at 6 p.m. on Aug. 1.

Schandelmeier-Bartels thereafter sued the CPD for reverse race discrimination under Title VII. A federal district court jury ruled in her favor and awarded her \$200,000 in compensatory damages for anguish, emotional suffering and the like.

The CPD requested that the trial court toss the jury verdict or, alternatively, order a new trial. The trial court ruled in the CPD's favor, finding that Adams' demonstrated racial bias did not inform the CPD's ultimate decision to fire Schandelmeier-Bartels. The trial court conditionally denied the CPD's motion for a new trial. Schandelmeier-Bartels appealed to the 7th Circuit.

The 7th Circuit reversed and reinstated the jury's verdict in Schandelmeier-Bartels' favor, applying the "cat's paw" theory. While acknowledging that over time it has applied different standards for imputing "cat's paw" liability to employers and admitting that the Supreme Court's anticipated *Staub* decision might lend some clarity to the issue, the 7th Circuit nevertheless ruled that the evidence in Schandelmeier-Bartels' trial allowed a reasonable jury to conclude that Adams' influence over the CPD's discharge decision was "singular." In other words, wrote the appellate court, "the jury could reasonably conclude that when the decision was made to fire Schandelmeier-Bartels, only Adams' biased voice mattered." Judgment for Schandelmeier-Bartels accordingly was permissible.

The 7th Circuit reached this conclusion by reviewing several factors, all of which employers and their lawyers should heed. First, it discussed McDon-