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IN THE CIRCUIT COURT  
OF THE 11TH JUDICIAL DISTRICT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA  
CIRCUIT CIVIL DIVISION  
CASE NUMBER: 2018-011899 CA 01 (08)

NEIL CUEVAS,  
Plaintiff,  
vs.  
CITY OF NORTH MIAMI,  
Defendant.

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PROCEEDINGS HAD AND TAKEN PLACE  
BEFORE  
THE HONORABLE MARTIN ZILBER  
MIAMI-DADE COUNTY COURTHOUSE  
73 WEST FLAGLER STREET, ROOM DCC 800  
MIAMI, FLORIDA 33130

JUNE 12, 2019

9:45 A.M. - 10:14 A.M.

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APPEARANCES OF COUNSEL:

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1 (Thereupon, the following proceedings were had)

2 THE COURT: Okay. Let's have everybody  
3 announce for the record please?

4 MR. KUEHNE: Good morning, Your Honor, for  
5 the plaintiff Neil Cuevas, Ben Kuehne and  
6 Michael Pizzi, counsel of record.

7 MR. KANTOR: Good morning, Your Honor,  
8 Michael Kantor from Weiss Serota, on behalf of  
9 the City of North Miami.

10 THE COURT: Okay. Great. So, like I said  
11 I've gone through all this, but let's take ten  
12 minutes aside or less if you need it to make an  
13 argument to me, and then we'll move forward. So  
14 since it's your motion, why don't you go first.

15 MR. PIZZI: Thank you, Your Honor, good  
16 morning.

17 MR. KUEHNE: Good morning, judge. Great to  
18 see you again, Your Honor.

19 THE COURT: Nice to see you as well.

20 MR. PIZZI: First time seeing outside the  
21 justice center. Right to go back there now.

22 THE COURT: At some point maybe I'll go  
23 back to criminal. We'll see how you all keep  
24 behaving over here. But anyway go ahead.

25 MR. PIZZI: I'll tell them you said hello.

1 Briefly, Your Honor, you know our position is  
2 there was a well pleaded complaint that clearly  
3 stated the cause of action under Florida  
4 Section 112.31887, Florida whistle blower  
5 statue, and we believe that your predecessor  
6 judge made an incorrect ruling, and we're going  
7 to just take a few minutes, and amplify what's  
8 in our pleadings, and explain why that's the  
9 case.

10 THE COURT: And also explain why, it's  
11 certainly within the rights, so I don't like to  
12 act as an appellate judge, why this wouldn't be  
13 an issue when a judge rules to go to the  
14 appellate, as opposed to having me reconsider  
15 one of my colleagues.

16 MR. PIZZI: Well, it's our position that a  
17 successor judge, at all times, has the right to  
18 make its own rulings, whether it's summary  
19 judgement, or a motion to dismiss. Every  
20 successor judge in the state of Florida has an  
21 absolute right, and Mr. Kuehne may amplify this  
22 when I conclude, but every successor judge has  
23 an absolute right to reconsider a ruling he  
24 made, or a ruling a prior judge made, and  
25 there's no -- there's no magic rule that says

1 we have to meet some special burden. If this  
2 Court -- the whole goal here is to seek the  
3 truth and achieve justice. If this Court -- if  
4 we convince this Court the prior judge made an  
5 incorrect ruling, and you disagree, this Court  
6 has every right to do the right thing. Nothing  
7 in Florida law prevents any judge from doing  
8 the right thing as they see fit.

9 THE COURT: Nothing precludes it, but you  
10 can imagine the issue if every time a new judge  
11 took over a division, everybody brought in a  
12 motion to reconsider 'cause they didn't like  
13 the prior ruling.

14 MR. PIZZI: We think in this case, Judge,  
15 we don't think the judges should willy-nilly  
16 over turn every ruling, but you know, new judge  
17 came in, would have to reconsider everything,  
18 but we think -- but the motion to reconsider, I  
19 believe was filed when the prior judge was  
20 still here, and we think in a case like this  
21 where the record is so overwhelmingly and  
22 abundantly clear, that there was an incorrect  
23 interpretation of an incorrect reading of the  
24 complaint, and an incorrect application of  
25 Florida law, in a case where the prior judge's

1 ruling was clearly incorrect on the record. Any  
2 judge should correct that and allow the case to  
3 go forward, especially in a case where the  
4 ruling was on a motion to dismiss, where you  
5 know, the prevailing law --

6 THE COURT: Pretty high standard on a  
7 motion to dismiss.

8 MR. PIZZI: It's a pretty high standard,  
9 So, you know, briefly, Judge, I know you read  
10 the pleadings. Under Florida statute -- here's  
11 why we think this is one of those cases. Under  
12 Florida statute 112.3187 --

13 THE COURT: I mean it kind of lays on who  
14 has the right to bring a whistle blower, right?

15 MR. PIZZI: It says -- here's what's  
16 required under 112.3187. I think I've done 25  
17 of these in the past four years, and I have  
18 three currently pending, and I've litigated  
19 them. So I'm very familiar with the statute.  
20 Under 112.3187, the only thing that's required  
21 is to show, number one that the person is an  
22 employee of an agency, you know, a state or  
23 county, city agency, municipality governed by  
24 the statute. So they've got to show that they  
25 were an employee, that they worked for an

1 agency under the statute with like a city or a  
2 county. They have to show that they either,  
3 one, disclosed in writing some evidence of  
4 malfeasance or misfeasance, or gross  
5 mismanagement. Or they've got to show that they  
6 participated in some investigation into one of  
7 those areas by an agency having the right to  
8 investigate that, and finally they have to show  
9 that there was some adverse action taken  
10 against them. They got fired, they got  
11 transferred, they got demoted, they were  
12 deprived of benefits in retaliation for blowing  
13 the whistle. So as long as you show that you  
14 were an employee working for an agency, and  
15 that you blew the whistle, reported  
16 malfeasance, misfeasance, gross mismanagement,  
17 or even that you just participated in an  
18 investigation into that area, and that you  
19 received an adverse action in retaliation,  
20 under Florida law, the causation is very  
21 liberally construed, almost as soon at the  
22 pleading stage in favor of the plaintiff,  
23 because this is a remedial statute. It's  
24 designed to encourage people to come forward.  
25 In the amended complaint, which the Court has

1 in front of it, judge this is not the typical  
2 whistle blower complaint that I've filed, and  
3 is filed -- that may have merely meets the  
4 elements. This is not just a whistle blower  
5 complaint. It just gives a bare bones  
6 statement of the elements, which is all that is  
7 needed --

8 THE COURT: That's all you would need  
9 though anyway.

10 MR. PIZZI: This complaint is  
11 approximately 30 pages, and approximately 100  
12 paragraphs. We submitted a 96 paragraph,  
13 27-page complaint going well beyond the  
14 pleading standards. And in that complaint, I'm  
15 going to point out the following. If the Court  
16 turns to paragraph -- paragraph one of the  
17 complaint on page one, the amended complaint,  
18 if the Court looks at the first amendment  
19 complaint, page one, paragraph one, it states  
20 as follows; this is a Florida whistle blower  
21 complaint arising from the City of North  
22 Miami's retaliatory demotion, and other adverse  
23 action against a former assistant police chief  
24 for reporting misconduct of senior officials in  
25 connection with horrific, and unjustified



1 police shootings. So the first paragraph in and  
2 of itself says, what is this? Well, an employee  
3 of the agency --

4 THE COURT: Just so you don't read a  
5 lot --

6 MR. PIZZI: What?

7 THE COURT: Three more minutes. Ten  
8 minutes each side. I mean I read everything.  
9 I'm just asking something new, so you can read  
10 if you want for the next three minutes.

11 MR. PIZZI: No, I'm not going to read  
12 it --

13 THE COURT: But if there's anything else  
14 you want to say, tell me.

15 MR. PIZZI: There's also a highlight,  
16 paragraph five says the same, that this is an  
17 action in -- under Florida Statute 3.187,  
18 because he reported malfeasance, and  
19 misconduct, and he was demoted, and they  
20 delayed his promotion. They denied him  
21 promotional benefit for about nine months. He  
22 was demoted from police chief down to Sargent,  
23 because he reported malfeasance, and misconduct  
24 on the part of the agency. So, and I would just  
25 highlight two more paragraphs briefly without

1 reading them, and that is in paragraph 23, it  
2 states that when Cuevas reviewed the  
3 disposition manual, he found, among other  
4 things, plainly acts of gross mismanagement,  
5 malfeasance, misconduct, and illegality on the  
6 part of the city. In paragraph 24, it states in  
7 his memo, and in verbal reports, he blew the  
8 whistle on pervasive misconduct, and refused to  
9 participate in adverse actions. So the  
10 complaint ad nauseam, in almost 100 paragraphs  
11 over approximately 30 pages, repeatedly pleads  
12 the following. Under statute 112.3187, he was an  
13 employee in an agency, he engaged in protected  
14 conduct by reporting verbally, and in writing,  
15 verbally and in writing malfeasance,  
16 misconduct, gross mismanagement, and  
17 participating in investigations, and as a  
18 result of that, he was demoted from assistant  
19 police chief, the number two job in the agency,  
20 all the way down to Sergeant, and also had  
21 other multiple other acts of retaliation, which  
22 are outline in the complaint, i.e. page 33 and  
23 40 in particular; page 33 states, in direct  
24 retaliation for his whistle blowing memorandum  
25 --

1 THE COURT: One more minute.

2 MR. PIZZI: Yeah, he was -- he was  
3 demoted. I think the problem here is, so if you  
4 look at this complaint, it is not possible for  
5 any plaintiff to plead a whistle blower case  
6 under Florida law. We were entitled -- all of  
7 the allegations which were stated over these 30  
8 pages, a hundred paragraphs, should have been  
9 assumed to be true, and we should have been  
10 given every reasonable (unintelligible) to the  
11 stage of the pleading. The Court stated among  
12 other things, that he was amending the  
13 complaint because he went outside the  
14 pleadings, and assumed that he didn't have the  
15 authority or the authorization to write this  
16 memo, which is not an element to the statue  
17 number one, and --

18 THE COURT: Okay. Thank you. If I have any  
19 more questions I'll let you know.

20 MR. PIZZI: It's outside the scope. So we  
21 ask you to deny the motion to dismiss.

22 THE COURT: Counsel, you ready?

23 MR. KANTOR: Yes, Your Honor.

24 THE COURT: Thank you. Ten minutes. Again,  
25 I've read everything guys. If you're going to

1 give me all of this, I'm going to read it, be  
2 able to cut off, but ten minutes if you explain  
3 something new.

4 MR. KANTOR: I will be much shorter than  
5 that, Your Honor.

6 THE COURT: Whatever you want, go ahead.  
7 Ten minutes.

8 MR. KANTOR: King Solomon famously  
9 observed that there's nothing new under the  
10 sun. Think you'd be happy to see that his  
11 observation remains correct. Plaintiffs have  
12 failed to raise any new information. Any new  
13 facts. Any new arguments that were not  
14 contained in the complaint --

15 THE COURT: Okay. But they're not claiming  
16 they're raising anything new. They're claiming  
17 that the decision was wrong.

18 MR. KANTOR: You're right, Judge. But all  
19 their citing in support of that are allegations  
20 in the complaint, which Judge Murphy reviewed.  
21 Judge Murphy granted the first motion to  
22 dismiss, and order them to attach the so called  
23 whistle blower memo as an exhibit to their  
24 complaint. The reason why he dismissed the  
25 amended complaint with prejudice is because

1 that exhibit to the complaint negated all of  
2 those beautiful allegations that Mr. Pizzi just  
3 recited, and as we know --

4 THE COURT: Even if that's true, how is  
5 that a motion to dismiss? If the complaint  
6 alleges it all correctly, if there's another  
7 memo that says something opposite, it's still  
8 alleged, maybe, maybe that's a summary  
9 judgement issue, but how is that a motion to  
10 dismiss issue?

11 MR. KANTOR: Because Florida law holds  
12 that the exhibit to a complaint supersedes the  
13 allegations of the complaint. In other words,  
14 if I allege --

15 THE COURT: And what exhibits are you  
16 referring to?

17 MR. KANTOR: The exhibits of the complaint  
18 was the quote/unquote -- whistle blower  
19 memorandum that the plaintiff was claiming  
20 protectionism. He said here's my memo, this is  
21 why I should have protection under the whistle  
22 blower statute. He attached that memo to the  
23 complaint. Judge Murphy reviewed the memo --

24 THE COURT: Where's that memo? Maybe it's  
25 something I read. Where's the memo? Someone

1 tell me where it is?

2 MR. KANTOR: It's attached to the amended  
3 complaint as an exhibit.

4 THE COURT: And what -- why --

5 MR. KANTOR: In this book I just  
6 provided --

7 THE COURT: Well, you can tell me in the  
8 book, or you just handed me amended complaint,  
9 so I'm assuming it's this, right? Towards the  
10 end somewhere?

11 MR. KANTOR: Page 20 -- Exhibit A, page  
12 29, Judge.

13 THE COURT: Exhibit A, page 29. Okay, keep  
14 going. I got it.

15 MR. KANTOR: Fourth paragraph.

16 THE COURT: I got it. Keep going.

17 MR. KANTOR: So, Judge Murphy already  
18 addressed all of the issues that have been  
19 raised here. Their argument simply amounts to  
20 an argument that Judge Murphy must not have  
21 heard them the first time around. That's not an  
22 appropriate basis for a motion for rehearing  
23 under rule 1.530. Contrary to Mr. Pizzi's  
24 assertion, there are standards for these  
25 things. As Your Honor observed, a successor

1 judge is not empowered in the same way that a  
2 district court of appeal is empowered. If we  
3 have a parties filing motions for rehearing  
4 every time a case changes which judicial  
5 section it's assigned to, then you know,  
6 judicial progress will grind to a halt  
7 immediately.

8 THE COURT: I completely agree, however,  
9 at the end of the day we are ultimately here to  
10 try to do what is right, not what is expedient,  
11 but go ahead.

12 MR. KANTOR: Absolutely, we are here to do  
13 what is right, and that's why there is a rule  
14 of civil procedure that allows for revisiting  
15 an issue, for rehearing an issue when new  
16 information is presented. As the third district  
17 court of appeal has held, the purpose of rule  
18 1.530 governs motions for rehearing such as  
19 this one, is quote, to give the trial court an  
20 opportunity to consider matters it overlooked,  
21 or failed to consider, unquote. Now, Mr. Pizzi  
22 has not raised anything new that Judge Murphy  
23 overlooked or failed to consider, either on the  
24 original motion to dismiss, or on the motion to  
25 dismiss the amended complaint. There's simply

1 nothing new here. The -- you know, allegation  
2 that the Court opposed some additional  
3 requirement, that authorization is not  
4 supported by the record, and moreover, even if  
5 the judge was wrong about that, even if Judge  
6 Murphy was wrong, and imposed some additional  
7 statutory requirement, which you know, is not  
8 supported by the record at all. Even if he did,  
9 the plaintiffs still don't address any of the  
10 other numerous basis for dismissing the  
11 complaint that Judge Murphy pointed to.  
12 Specifically, the order of dismissing the  
13 complaint, also observed that there was a lack  
14 of a causal connection alleged in the company.  
15 I mean the plaintiff simply couldn't do that.  
16 Moreover, Judge, he observed specifically on  
17 the record at the hearing that all of the  
18 hyperbolic allegations in the complaint itself  
19 could not make a square peg fit into a round  
20 hole, and that's exactly 10:14.33 that Judges  
21 Murphy used.

22 THE COURT: So what is whistle blow?

23 MR. KANTOR: A whistleblower act, Judge,  
24 is similar to Mr. Pizzi outlined, and I grant  
25 him, you know his knowledge of the statute is



1 correct.

2 THE COURT: Pretty sure statute's right.

3 MR. KANTOR: Right, it's a disclosure of a  
4 violation of law, rule, and regulation, or a  
5 misfeasance, malfeasance or gross neglect.

6 THE COURT: Okay. So what's the  
7 whistleblower statute there for?

8 MR. KANTOR: The whistleblower statute is  
9 there to protect employees who make such  
10 disclosures under enumerated circumstances,  
11 which I think Mr. Pizzi may have left off in  
12 the interest of expedience.

13 THE COURT: Okay. So what do you think  
14 those are? I mean it basically goes down to  
15 whether this employee was authorized. Did he  
16 work for the department that he was complaining  
17 or accusing? Did he have a ability to review  
18 something, and then bring it to his superiors,  
19 and show that there was wrongdoing, and then  
20 finally, was there a possible harm as a result  
21 of the action he brought? Is that not the  
22 definition of whistleblower?

23 MR. KANTOR: That's certainly a good  
24 summary of it, absolutely.

25 THE COURT: Okay, so let's go through this

1           again now. He was a assistant chief, right?

2           MR. KANTOR: He was an assistant --

3           THE COURT: He did the memo in regards to  
4 police business, or police misconduct, correct?

5           MR. KANTOR: That's not the standard for  
6 what's protective of the whistleblower statue.

7           THE COURT: I didn't ask you that. That's  
8 in his employ, and that's what he brought the  
9 memo on, correct?

10          MR. KANTOR: I mean he --

11          THE COURT: And did he not have adverse  
12 reaction as a result of it because he was  
13 demoted?

14          MR. KANTOR: No, absolutely not judge, and  
15 Judge Murphy specifically found that he did  
16 not.

17          THE COURT: So if you're an assistant  
18 chief, and then you go ahead and accuse your  
19 department of wrongdoing, and then you get  
20 demoted, I mean I'm not saying it's not a jury  
21 question, or it's not a fact question, or maybe  
22 it's a summary judgement, but on motion to  
23 dismiss, how's that not properly plead, and how  
24 is that not the intent of the whistle blower to  
25 protect, an employee that reports their

1 employer, and then has an adverse reaction from  
2 it.

3 MR. KANTOR: So that quote/unquote adverse  
4 reaction was more than nine months after the  
5 protective disclosure. The supreme court --

6 THE COURT: Well, If I'm a police chief or  
7 city manager, I'm not going to do it the day  
8 after and make it obvious either.

9 MR. KANTOR: The act that this employee  
10 was complaining about was firing another  
11 employee, which was done the day after that  
12 employee complained about other stuff, which  
13 Mr. Pizzi knows because he represents that  
14 other employee as well in a separate federal  
15 lawsuit which has been resolved.

16 THE COURT: I mean I don't know about the  
17 day after, but if I remember correctly I  
18 thought it had to do with the improper, or  
19 alleged improper investigation of a shooting  
20 with another officer?

21 MR. KANTOR: Judge, the Supreme Court of  
22 the United States tells me that a three-month  
23 separation between the protected activity, and  
24 an adverse action is not enough to establish a  
25 causal connection, but anything more than three

1 to four months does not establish a causal  
2 connection. Here we have a nine-month  
3 separation. They came back on the amended  
4 complaint, and tried to allege some intervening  
5 acts that took place within those nine-months,  
6 none of those were adverse actions.

7 THE COURT: Do we have any -- 'cause this  
8 I wouldn't have seen, if it's in there maybe I  
9 didn't see it. Do we have anything to show why  
10 he was demoted then?

11 MR. KANTOR: Judge, all I can say is that  
12 Judge Murphy specifically --

13 THE COURT: Do we have anything to show  
14 why he was demoted. Is there anything else that  
15 led to why he was demoted, if it wasn't related  
16 to this, a retaliatory?

17 MR. KANTOR: There are no other  
18 allegations in the complaint, which is what's  
19 relevant to a motion to dismiss establishing  
20 causation, which Judge Murphy specifically  
21 found the plaintiff could not establish, could  
22 not allege other than the motion to dismiss  
23 pleadings.

24 THE COURT: I don't know that that  
25 answered my question, but okay.

1 MR. KANTOR: There's no other allegations  
2 in the complaint that would establish causation  
3 at all that Judge Murphy specifically  
4 addressed --

5 THE COURT: I'm stating that the causation  
6 is there unless there could be some sort of  
7 proof, or other memo, or other item from the  
8 city or the police department that shows why he  
9 was demoted if it wasn't for this reason, for  
10 retaliatory reasons.

11 MR. KANTOR: Judge, all I can say is that  
12 if the plaintiff's obligation to plead his  
13 claim, the facts alleged in the complaint --

14 THE COURT: And I told you I think the  
15 causation is there.

16 MR. KANTOR: But Judge Murphy --

17 THE COURT: So unless I see, well, Judge  
18 Murphy made one ruling.

19 MR. KANTOR: Right, and my understanding  
20 is that it's the district court of appeals job  
21 to tell Judge Murphy he was wrong. If there's  
22 new information --

23 THE COURT: Well that's a different issue,  
24 so you're telling me I don't have the authority  
25 to hear this reconsideration?

1 MR. KANTOR: Yes, Your Honor.

2 THE COURT: Then it's not the district  
3 court of appeals job is it? It's both -- it  
4 could be either of our jobs.

5 MR. KANTOR: Well, if there's new  
6 information then it's certainly the trial  
7 courts prerogative to revisit that information  
8 on the interest of justice, but there's no new  
9 information.

10 THE COURT: So again, maybe I'm wrong, I  
11 don't think so, but I'm wrong every day, does  
12 it say somewhere that the only ability to  
13 reconsider and hear is if there's new  
14 information?

15 MR. KANTOR: Yes, judge.

16 THE COURT: Where?

17 MR. KANTOR: Rule 1.530, as well as many,  
18 many cases from the third district court of  
19 appeal. I've read earlier that from Balmoral  
20 Condo Association vs. Grimaldi, 107 So.3d 1149,  
21 that's a 2013 case from the third district  
22 court of appeal.

23 THE COURT: I know that -- I don't believe  
24 that's what it says, but let's look it up.  
25 What's the site? Oh, it's probably in here.

1 Wasn't it in here?

2 MR. KANTOR: Yes, I think it's in the  
3 order Judge.

4 THE COURT: Yeah, I remember, I remember  
5 somebody citing, okay.

6 MR. KANTOR: And I quoted directly from  
7 the case that the purpose of rule 1.530 is to  
8 give the trial court an opportunity to consider  
9 matters overlooked or failed to consider.

10 THE COURT: So let's read your own case.  
11 Broad grounds, number one, for rehearing under  
12 the rule of civil procedure governing motions  
13 to a new trial, rehearing amendment of final  
14 judgement include the contention that the final  
15 order conflicts with the governing law, and is  
16 otherwise simply wrong on the merits. So when  
17 you read that, again, I'd have to find all  
18 that, but when you read that it says nothing  
19 about anything new. It says nothing about  
20 something new. It clearly states to me, unless  
21 again I'm reading it wrong, and you can tell me  
22 why I am, that if you look at something, and it  
23 conflicts with the current governing law, or  
24 just wrong, 'cause it's clearly says otherwise  
25 simply wrong on the merits, then it's something

1 to reconsider. So that's pretty clear in the  
2 case you gave me, and rule 1.530.

3 MR. KANTOR: Sir, the judge, the Court  
4 certainly observed that that was the starting  
5 point for the analysis under 1.1530, but then I  
6 believe if I'm looking at the right paragraph  
7 you were looking it, the Court also goes on  
8 that the important quote, importance of  
9 finality in any justice system, cannot be  
10 understated. It has long been recognized that  
11 for several reasons, litigation must at some  
12 point come to an end, end quote, and then the  
13 Court goes on to make its observation that  
14 under rule 1.530, these are the only bases for  
15 a party to move for rehearing, so while the  
16 Court certainly observed that justice sometimes  
17 requires re-visiting (sic) issues, and I'm not  
18 saying to the contrary, but the judicial  
19 interest in finality --

20 THE COURT: Okay. So I asked you a lot of  
21 questions. I took a little bit more of your  
22 time, but give me two or three more minutes and  
23 then we'll move on, okay?

24 MR. KANTOR: Yes, Your Honor, I think that  
25 I've certainly received my message about what



1 the third DCA's holding is. It's the same  
2 holding as the fourth DCA on which this case  
3 law is faced with many other district courts of  
4 appeal, that the purpose of a motion for  
5 rehearing is address new information, the  
6 facts, and allegations in the complaint are  
7 nothing new. Judge Murphy specifically  
8 considered all of those, and while Mr. Pizzi  
9 feels that, and while the Court may feel that  
10 Judge Murphy got it wrong about those  
11 allegations, Judge Murphy already addressed  
12 those allegations, analyzed them, and the  
13 requirement and finality requires the Court to  
14 allow the third district court of appeals to  
15 address this issue. The plaintiff has already  
16 filed a notice of appeal. I'm sure Mr. Kuehne  
17 and Mr. Pizzi will have no difficulty in  
18 convincing the third district of the merits of  
19 their argument, if they are as correct as they  
20 believe they are. That's simply not what we're  
21 here for today.

22 THE COURT: Well then, perhaps you won't  
23 either if it goes the other way, right? Either  
24 way -- either way it goes to the same place  
25 probably, right?

1 MR. KANTOR: Correct, Your Honor.

2 THE COURT: Okay. And one minute each to  
3 summarize.

4 MR. PIZZI: Yeah, all we want you to do is  
5 -- all we want this Court to do is get it  
6 right, and do what the Court thinks is correct.  
7 The rules are pretty clear that if the Court  
8 looks at this matter, and believes the ruling  
9 was contrary to Florida law, the Court is  
10 mandated to do the right thing, and deny the  
11 motion to dismiss. You know, all of the  
12 arguments raised by opposing counsel would be  
13 great arguments in front of a jury at a trial,  
14 and maybe after a dozen depositions, and a motion at  
15 a summary judgment stage, but nothing's going  
16 to change the following, and Your Honor just  
17 got it right. Your Honor said it several times.  
18 An employee, an employee wrote a memo and  
19 verbally, an employee verbally and in a memo  
20 reported misconduct that included a rigged  
21 report, a rigged panel that included perjury,  
22 misinformation, criminal activity,  
23 misinformation, half-truths, inconsistency,  
24 perjury, all sorts of misconduct, and after he  
25 reported it, he got fired from being a deputy

1 chief and was demoted three levels down; so an  
2 employee reported misconduct, and viola, lost  
3 his job. We plead the elements five times over,  
4 and under Florida law we're entitled to every  
5 reasonable inference. The Court's required to  
6 accept what I just said as being true. As being  
7 the gospel truth at the motion to dismiss  
8 phase. There's no basis for dismissing the  
9 complaint at this phase, and instead of having  
10 a costly appeal, we think we should go forward,  
11 because not to go forward in my opinion would  
12 be to read the whistleblowers statute out of  
13 existence. We met the elements. We plead our  
14 cause, and we'd like to --

15 THE COURT: And what about to the three to  
16 nine-month causation issue?

17 MR. PIZZI: I'm sorry?

18 THE COURT: What about counsel point to  
19 the three and nine-month causation which  
20 apparently I don't know why, 'cause I can't get  
21 into Judge Murphy's mind, but apparently why he  
22 may not have found causation.

23 MR. PIZZI: Under Florida law, and cited  
24 in our pleadings, we allege, number one, we  
25 allege in our complaint, and the Court's

1 mandated to consider it as true, we say in our  
2 complaint five times, and the Court is required  
3 to consider it as true.

4 THE COURT: Did you find it necessary to  
5 put everything in five times? It's like it's --  
6 never mind, go ahead.

7 MR. PIZZI: But we allege that the only  
8 reason for the termination, there is no basis  
9 for the termination, other than the  
10 whistleblowing activity, but in addition, over  
11 a dozen paragraphs we report multiple acts of  
12 adverse action against him, denying a  
13 promotion, an internal affairs complaint.  
14 Denying him a merit pay increase, all leading  
15 up to the termination. So we show in our  
16 complaint in a dozen paragraphs how the day  
17 after he blew the whistle there was an internal  
18 affairs investigation against him. A month  
19 later he was denied a merit pay increase.

20 THE COURT: So you don't think it was a  
21 nothing happened, and nine-month later bang,  
22 you think it was a continuing, or you're  
23 arguing, I don't want to speak for you that's  
24 it a continuing, it was a continuing from two,  
25 three- weeks later retaliation act.

1 MR. PIZZI: But more importantly, yes, and  
2 we plead that over 30 pages on a complaint, and  
3 we're entitled to --

4 THE COURT: It's way more than a minute  
5 but thank you.

6 MR. KANTOR: May I answer that?

7 THE COURT: Yes.

8 MR. KANTOR: Judge Murphy addressed those  
9 issues. He specifically looked at those  
10 allegations of intervening conduct such as the  
11 internal affairs investigation, which was  
12 allegedly commenced right away afterwards,  
13 Judge Murphy found that that was not  
14 immaterially adverse action as required under  
15 the statute, and so that intervening act or  
16 continuing cause, or whatever allegation Mr.  
17 Pizzi wants to you know, cast that language in,  
18 does not amount to satisfying the element of  
19 the statute. The only thing that happened that  
20 satisfied -- according to the allegations in  
21 the plaintiff's complaint, the only allegation  
22 in there that satisfied the requirement from  
23 materially adverse action, didn't happen for  
24 more than nine months, which as a matter of  
25 law, appropriate for motions so dismissed, is

1 not adequate to establish causation. This isn't  
2 a summary judgement issue. This isn't an issue  
3 for a jury. This is an issue of law. It is  
4 appropriate for Judge Murphy to consider our  
5 motion to dismiss. He did consider it on the  
6 motion to dismiss. Plaintiff has not brought  
7 anything new changing that.

8 THE COURT: Okay. Anything else? Ten  
9 seconds please.

10 MR. PIZZI: I would say one word, ten  
11 seconds --

12 THE COURT: Yes.

13 MR. PIZZI: Under Florida law, the  
14 causation element is liberally construed,  
15 because it's a remedial statute. It's almost  
16 presumed. Thank you.

17 THE COURT: Okay. Anything else?

18 MR. KANTOR: No, Your Honor.

19 THE COURT: So a few things, all right? I  
20 mean, as I started off on everyone, to want to  
21 act as an appellate court for my colleagues,  
22 and or former colleagues. That being said, to  
23 me here looking at all these again, and I have  
24 to look at is as if it's new really more de  
25 novo in front of me, because that's what it is

1           once it comes back from a motion of rehearing,  
2           and I look at the issues. Motion to dismiss is  
3           a very, very high standard in premature stage  
4           to litigation. I agree litigation has to come  
5           to an end at some point, but not at a motion to  
6           dismiss, and when it's alleged, and all the  
7           facts are here. To me, this is, again, as I  
8           stated before I could be wrong, and we'll bring  
9           it up, but a classic example of a  
10          whistleblower. You have an employee. He went  
11          ahead and did an investigation. He reported  
12          malfeasance, or what he believed, even if it's  
13          not actual malfeasance, what he believed to be  
14          improper conduct and malfeasance, and then had  
15          a retaliatory action. Now, maybe the action  
16          took place nine-months later. Maybe it took  
17          place three- weeks later, those are not in this  
18          Court's opinion motion to dismiss issues.  
19          They're either factual for a jury, or perhaps  
20          if the law can come out on it later at summary  
21          judgement, but there's been enough alleged in  
22          the complaint to show that there wasn't a  
23          nine-month lag time. That there was causation  
24          right away, and that it was a multiple issue of  
25          causation. So at this time I am granting the

1 motion to reconsider. I am denying the previous  
2 motion to dismiss --

3 MR. KANTOR: Judge, may I request that we  
4 have a rehearing on the motion to dismiss --

5 THE COURT: No.

6 MR. KANTOR: Because there's a lot of  
7 argument in there.

8 THE COURT: No, no. I'm denying the motion  
9 to dismiss, and I'm going to allow the  
10 litigation to go forward. We can and will if  
11 necessary handle these issues, if they're  
12 appropriate at summary judgement, and if they  
13 come factual issues as proven out, then it will  
14 go to a jury. As you both stated, this may or  
15 may not be something that another Court looks  
16 at. If it does we'll address that at that time,  
17 but to me, clearly on the fact, this is what  
18 the whistle blower statute is there for, and  
19 I'm letting the case go forward.

20 MR. KANTOR: How much time to respond to  
21 the complaint?

22 THE COURT: How much time do you need?

23 MR. KANTOR: Judge, I don't know where in  
24 the complaint says this happened less than nine  
25 months --



1 THE COURT: How much time do you need? Are  
2 you arguing on what I just ruled on--

3 MR. KANTOR: Twenty days, Your Honor.

4 THE COURT: Twenty days. Okay.

5 MR. KUEHNE: Would the Court like us to  
6 prepare a written order, or send you a --

7 THE COURT: Whatever you prefer. I mean if  
8 you think you can write up all this, go ahead.  
9 If you think you need the, the interpreter,  
10 sorry, the court reporter, or time, then that's  
11 fine, too. Just make sure you do it with a  
12 cover letter, and show counsel. I mean  
13 ultimately at the end of the day it's my order  
14 obviously, but I still you know, would like to  
15 have both sides look at it, and confer on it.  
16 Okay?

17 MR. KUEHNE: No question. Judge, we'll  
18 confer with Mr. Kantor and team --

19 THE COURT: Probably better for this one.

20 MR. PIZZI: I'm headed back to the metro  
21 justice building, Judge Miranda, and --

22 THE COURT: Tell her I said hello. Tell my  
23 colleagues over there I said Hi.

24 MR. PIZZI: It's good to see you, Your  
25 Honor. Thank you.

1 THE COURT: Thank you. Nice to see  
2 everybody.

3 (Thereupon, the proceeding concluded)  
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C E R T I F I C A T E

(STATE OF FLORIDA)  
(COUNTY OF MIAMI-DADE)

I, NIDELIS GONZALEZ, Reporter, certify that I was authorized to and did report the foregoing proceedings and that the transcript is a true and correct transcription of my notes of the proceedings.



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NIDELIS GONZALEZ, Reporter  
Commission: GG 283870  
Expires: 01/11/2023

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