

ORIGINAL

IN THE SUPREME COURT OF OHIO

VALERIE DUBOSE, : Case No. 13-0119
Plaintiff-Appellant, : On Appeal from the Hamilton County
 : Court of Appeals, First Appellate District.
v. :
 : Court of Appeals Case No. C-1200188
CINCINNATI PUBLIC SCHOOLS, et al., :
 : Trial No. A-1107553
Defendants-Appellees. :

MEMORANDUM OF APPELLEES CINCINNATI PUBLIC SCHOOLS
AND MARY RONAN IN OPPOSITION TO JURISDICTION

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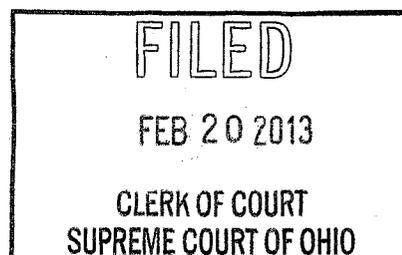


TABLE OF CONTENTS

	Page
I. THIS CASE IS NOT OF PUBLIC OR GREAT GENERAL INTEREST AND DOES NOT INVOLVE A CONSTITUTIONAL QUESTION.....	2
II. ARGUMENTS IN OPPOSITION TO APPELLANT'S PROPOSITIONS OF LAW	4
A. APPELLANT'S PROPOSITION OF LAW NO. 1.....	4
<i>Civil service regulations are mandatory subjected to disciplinary actions pursuant to Ohio School Law 8.30 and 8.31. Collective Bargaining RC 4117. Public Employee Agreement Handbook Article X pg. 14.</i>	
B. APPELLANT'S PROPOSITION OF LAW NO. 2.....	4
<i>Public Employers are bound by established Ohio School law policies 8.29. Termination of Employment 3.1_(b) Termination – Ohio Jud 3d – Employment of Ohio. CPS Work Place Harassment Policy 4116 (d) report form and 4362 4th and 5th paragraphs.</i>	
III. CONCLUSION.....	5

I. THIS CASE IS NOT OF PUBLIC OR GREAT GENERAL INTEREST AND DOES NOT INVOLVE A CONSTITUTIONAL QUESTION

Appellees Cincinnati Public Schools ("CPS") and Mary Ronan respectfully submit that the appeal filed by Appellant Valerie DuBose does not involve an issue of public or great general interest and does not involve a constitutional question.

Ms. DuBose was employed as a teacher's assistant at Woodward High School, a school in the CPS district. In May 2007, Ms. DuBose was involved in a physical altercation with another employee at Woodward. Ms. DuBose received no discipline. At the beginning of the 2007-08 school year, Woodward's principal transferred her to another classroom at Woodward. No changes were made to Ms. DuBose's salary or benefits as a result of the reassignment.

At the end of the 2007-08 school year, CPS eliminated several teacher assistant positions at Woodward. Based on her relative lack of seniority, CPS advised Ms. DuBose that she would be reassigned to another CPS school for the 2008-09 school year. In May and June 2008, CPS sent Ms. DuBose a list of available vacant assignments. Ms. DuBose refused to accept a different assignment and did not return to work at CPS. As Ms. DuBose stated in her deposition, "It was my choice not to apply. It was my protest, and I didn't apply [for any of the vacant positions]."

In her Complaint, Ms. DuBose asserted claims for race discrimination and retaliation in violation of Ohio Rev. Code Ch. 4112, et seq. The trial court granted summary judgment for CPS and Ms. Ronan on both Ms. DuBose's claims. The Court of Appeals affirmed, reasoning that Ms. DuBose failed to establish a prima facie case of discrimination or retaliation because she could not establish that she suffered an adverse employment action or engaged in protected activity.

In her Memorandum in Support of Jurisdiction, Ms. DuBose has not raised any new arguments that would cause this Court to set aside the judgment of the Court of Appeals. Ms. DuBose has failed to produce any evidence that her reassignment to a new classroom at Woodward was an adverse employment action. Nor can Ms. DuBose show that she engaged in protected activity while she was employed by CPS. Ms. DuBose did not file a charge with the Ohio Civil Rights Commission until September 2008, after she chose not to return to an assignment at CPS. Ms. DuBose failed to raise any genuine issue of material fact with respect to her discrimination or retaliation claims. The courts below correctly granted summary judgment to CPS and Ms. Ronan.

Here, Ms. DuBose raises new claims that were not included in her Complaint, were not before the trial court, and were not argued in the Court of Appeals. Among other arguments, Ms. DuBose asserts that CPS violated her civil service, collective bargaining, or due process rights. These arguments are not relevant to the claims in Ms. DuBose's Complaint and cannot be raised for the first time here.

This case does not involve any constitutional question. Ms. DuBose never asserted in the trial court or the Court of Appeals that CPS violated her constitutional rights.

Ms. DuBose's appeal does not involve any question of public or great general interest, does not involve a constitutional question, and should be dismissed by the Court.

II. ARGUMENTS IN OPPOSITION TO APPELLANT'S PROPOSITIONS OF LAW

A. APPELLANT'S PROPOSITION OF LAW NO. 1

Civil service regulations are mandatory subjected to disciplinary actions pursuant to Ohio School Law 8.30 and 8.31. Collective Bargaining RC 4117. Public Employee Agreement Handbook Article X pg. 14.

In her first proposition of law, Ms. DuBose argues that CPS violated civil service rules, the collective bargaining agreement, and CPS's Board Policies. Ms. DuBose did not assert these claims in the Complaint, and her arguments were not considered by the trial court or the Court of Appeals. "A party who fails to raise an argument in the court below waives the right to raise it [in the Supreme Court]." *State ex rel. Zolliner v. Indus. Comm.* (1993), 66 Ohio St.3d 276, 278, 611 N.E.2d 830, 832. The Court should deny Ms. DuBose's request to appeal Proposition of Law No. 1.

B. APPELLANT'S PROPOSITION OF LAW NO. 2.

Public Employers are bound by established Ohio School law policies 8.29. Termination of Employment 3.1_(b) Termination – Ohio Jud 3d – Employment of Ohio. CPS Work Place Harassment Policy 4116 (d) report form and 4362 4th and 5th paragraphs.

In her second proposition of law, Ms. DuBose argues that CPS is liable under a theory of vicarious liability. She also alleges that CPS failed to conduct an employment evaluation of her performance. Again, these claims were not raised in the courts below and are not relevant to her employment discrimination or retaliation claims.

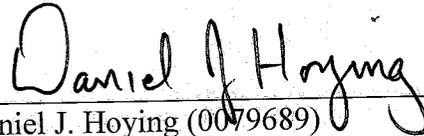
Ms. DuBose also alleges that CPS retaliated against her for filing a charge with the Ohio Civil Rights Commission ("OCRC"). Ms. DuBose did not file a charge with the EEOC claiming race discrimination until September 29, 2008, after she declined CPS's offer to be reassigned to another school. It goes without saying that Ms. DuBose's EEOC charge, filed after she chose not to return to CPS, was not the reason for CPS's decision to reassign her to a different classroom or

building during the previous school year. The Court of Appeals correctly held that Ms. DuBose did not engage in protected activity known to CPS and correctly affirmed summary judgment for CPS and Ms. Ronan.

III. CONCLUSION

Based on the foregoing, CPS and Ms. Ronan respectfully request this Court to dismiss Ms. DuBose's appeal.

Respectfully submitted,



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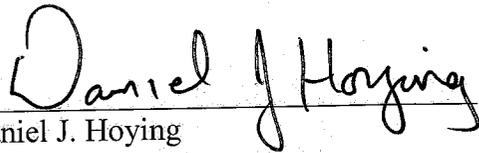
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Cincinnati Public Schools and
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was sent via regular U.S. mail on this 19th day of

February 2013 to the following:

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