

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

PAULA J. SNYDER, :
 :
 Plaintiff-Appellant, :
 : No. 108077
 v. :
 :
 ORANGE BOARD OF EDUCATION, :
 :
 Defendant-Appellee. :
 :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: September 19, 2019

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-17-882669

Appearances:

Caryn Groedel & Associates Co., L.P.A., and Caryn M. Groedel, *for appellant.*

Reminger Co., L.P.A., Holly M. Wilson, and Aaren R. Host, *for appellee.*

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Plaintiff-appellant, Paula J. Snyder (“Snyder”), brings the instant appeal challenging the trial court’s order granting defendant-appellee’s, Orange Board of Education (“O.B.E.”), motion for summary judgment. Snyder argues that

the trial court erred when it found that her gender discrimination claim failed. After a thorough review of the record and law, this court affirms.

I. Factual and Procedural History

{¶ 2} Snyder, a female, was hired by O.B.E. in August 2011 as its human resources director. Snyder served in this position for approximately six years pursuant to two, three-year contracts. Snyder's first contract was August 2011 to June 2014, and her second contract was August 2014 to June 2017. After the expiration of Snyder's second contract in June 2017, she was not renewed as O.B.E.'s human resources director. Snyder was 51 years of age as of June 2017. O.B.E. did not provide Snyder a formal reason for the nonrenewal. Snyder was replaced by a 59-year-old female, Judy Robinson. After not renewing her contract as human resources director, Snyder requested, and O.B.E. approved, a teaching position for Snyder.

{¶ 3} The job duties and responsibilities of the human resources director included holding and maintaining a valid Ohio State Department of Education license and certificates, possessing personnel administration skills substantiated by training and work experience, maintaining a record free of criminal violations that would prohibit public school employment, and meeting mandated health screening requirements. In addition, the human resources director must have core computer competencies deemed essential at the time of hire, display flexibility, reliability, self-discipline, and willingness to take on challenging tasks, embody high ethical standards and integrity, and exemplify visionary and resolute leadership skills in

developing and managing people. As human resources director, Snyder reported directly to the superintendent Edwin Holland¹ (“Holland”).

{¶ 4} In January 2017, Holland provided O.B.E. with a list of recommendations for administrative employee contracts that were up for renewal at the end of the school year in June. Holland issued recommendations of “renewal” or “nonrenewal.” Regarding Snyder’s contract, Holland issued a recommendation of “renewal.”

{¶ 5} On May 8, 2017, an executive session of the board was held. At this executive session, Holland was unable to attend, and Snyder served as a proxy for Holland in accordance with board policy. Snyder stated to the board members that O.B.E.’s failure to act promptly with respect to Holland’s administrative employee contract recommendations was causing concern amongst the employees up for renewal. Snyder attempted to persuade O.B.E. to renew her contract, and she prepared a statement and read it aloud to the board members. Following Snyder’s statement, the board members remained silent and did not comment on Snyder’s statement. Snyder also asked the board members specifically if there were concerns or questions regarding her contract renewal. The board members remained silent and did not comment on Snyder’s proposed question.

{¶ 6} Thereafter, on May 17, 2017, during a meeting in which Holland personally attended, board members suggested Holland separate Snyder’s contract

¹ Snyder also reported to Holland’s predecessor, Nancy Wingebach.

from the rest of the administrators' contracts that were up for renewal. These contracts were to be voted upon at the May 22, 2017 executive session.

{¶ 7} On the day of the May 22, 2017 executive session, Snyder's attorney wrote a letter to the O.B.E. board members that detailed Snyder's potential legal claims if O.B.E. voted to not renew Snyder's contract. The record is unclear if any of the board members received or read the letter prior to the May 22, 2017 executive session. At this executive session, the board members in a 3-2 vote, voted to not renew Snyder's employment contract, and on the same day, informed Snyder of its decision to not renew.

{¶ 8} On May 25, 2017, Snyder requested to be continued in a teaching position within Orange City Schools. On June 3, 2017, Snyder requested that O.B.E. provide a written statement describing the circumstances that led to her nonrenewal. On June 6, 2017, O.B.E. informed Snyder that it would not produce a written statement. On June 15, 2017, O.B.E. accepted Snyder's request with regard to the teaching position.

{¶ 9} On July 5, 2017, Snyder filed a complaint in Cuyahoga County Court of Common Pleas alleging claims of gender discrimination, age discrimination, and violations of public policy against O.B.E.

{¶ 10} With regard to Snyder's claim of gender discrimination, she asserted that O.B.E. did not nonrenew any male administrators' contracts. Snyder further asserted that the only administrators' contracts that O.B.E. did not renew were women. Snyder identified herself, Debra Lee Meese, and Marilyn Mauck as female

administrators whose contracts were not renewed. Snyder further alleged in her complaint that O.B.E. subjected her to disparate treatment in that it

[d]isapprov[ed] of her “direct approach” to performing her job responsibilities but [did] not disapprov[e] the approach of any male administrators who favor direct approach; holding her to the sexual stereotype that women should not be direct, forthright, or oppositional when performing their job duties; making inappropriate, unwanted, and offensive comments to her; failing to investigate her reports of harassment; and non-renewing her employment contract without cause and despite the absence of any performance-related deficiencies.

{¶ 11} With regard to Snyder’s claim of age discrimination, she alleged in her complaint that

in the past five (5) years, [O.B.E.] has demonstrated a pattern and practice of non-renewing, threatening to non-renew, and/or attempting to non-renew the contract of female employees 40 years of age or older, including Dr. Wingenbach, Jennifer Felker (former Director of Curriculum), Barb Davis (former Assistant Principal of Orange High School), Marilyn Mauck (former Principal of the Gund School), and Kelly Stevens when she was Assistant Principal of Moreland Hills Elementary School.

{¶ 12} On June 14, 2018, Snyder filed an amended complaint wherein she asserted an additional claim of retaliation against O.B.E. Snyder alleged that

after, and at least in part as a result of, [Snyder] reporting and objecting to the unwanted and unwelcome conduct and comments of [appellee] member Jeffrey Leikin, [appellee] retaliated against [her] by taking adverse actions against her, including segregating the decision on her contract renewal from all the other administrator contract renewal decisions, and not renewing her employment contract.

{¶ 13} On August 17, 2018, O.B.E. filed a motion for summary judgment. On August 31, 2018, Snyder filed her own motion for summary judgment.

{¶ 14} On December 11, 2018, the trial court issued an order granting O.B.E.'s motion for summary judgment and denying Snyder's motion for summary judgment. In its December 11, 2018 judgment entry, the trial court ruled

Snyder's claims for age discrimination and gender discrimination fail because Snyder failed to show any direct evidence of discrimination, was replaced by an older female, and failed to present any evidence showing that [O.B.E.] treated similarly-situated employees outside of the protected class better in the terms and conditions of employment. Snyder's claim for public policy violations fails because Snyder was not an at-will employee. Snyder's claim for retaliation fails because there is no evidence of a causal link between any claimed protected activity and the adverse employment action, nor any evidence that [O.B.E.] had retaliatory motives for voting to non-renew Snyder's contract. Snyder is not entitled to punitive damages because [O.B.E.] is a political subdivision.

{¶ 15} On January 7, 2019, Snyder filed the instant appeal and assigns a sole error for our review.

I. The trial court erred in granting summary judgment in favor of [O.B.E.] on Snyder's gender discrimination claim.

II. Law and Analysis

A. Standard of Review

{¶ 16} In her sole assignment of error, Snyder argues that the trial court erred in granting O.B.E.'s summary judgment on Snyder's gender discrimination claim.²

{¶ 17} We review an appeal from summary judgment under a de novo standard of review. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d

² As noted above, Snyder brought claims for age discrimination, gender discrimination, violations of public policy, and retaliation in her complaint in the trial court. However, on appeal, Snyder only presents arguments related to her *gender* discrimination claim. Our review will therefore be limited to Snyder's gender discrimination claim.

241 (1996); *Zemcik v. LaPine Truck Sales & Equip. Co.*, 124 Ohio App.3d 581, 585, 706 N.E.2d 860 (8th Dist.1997).

Pursuant to Civ.R. 56, summary judgment is appropriate when (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party, said party being entitled to have the evidence construed most strongly in his favor. *Horton v. Harwick Chem. Corp.*, 73 Ohio St.3d 679, 653 N.E.2d 1196 [(1995)], paragraph three of the syllabus. The party moving for summary judgment bears the burden of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *Dresher v. Burt*, 75 Ohio St.3d 280, 292-293, 662 N.E.2d 264 [(1996)].

Zivich v. Mentor Soccer Club, 82 Ohio St.3d 367, 369-370, 696 N.E.2d 201 (1998).

{¶ 18} “Once a moving party demonstrates no material issue of fact exists for trial and the party is entitled to judgment, the nonmoving party has a duty to come forth with argument and evidence demonstrating a material issue of fact does exist that would preclude judgment as a matter of law.” *UBS Fin. Servs. v. Lacava*, 8th Dist. Cuyahoga No. 106256, 2018-Ohio-3165, ¶ 18, citing *Dresher* at 292-293. Thereafter, “[s]ummary judgment is appropriate if the nonmoving party fails to meet this burden.” *Id.*

B. Prima Facie Case

{¶ 19} To set forth a prima facie case of gender discrimination, an employee must show that his or her case meets the following elements: that the employee (1) is a member of the statutorily protected class, (2) suffered an adverse employment action, (3) was qualified for the position, and (4) was replaced by a person not

belonging to the protected class. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973).

{¶ 20} Once a prima facie case of gender discrimination is established, the employer may overcome the presumption by presenting a legitimate, nondiscriminatory reason for the employee's discharge. *Kohmescher v. Kroger Co.*, 61 Ohio St.3d 501, 575 N.E.2d 439 (1991). "The employee must then present evidence that the employer's proffered reason was a mere pretext for unlawful discrimination." *Mendlovic v. Life Line Screening of Am., Ltd.*, 173 Ohio App.3d 46, 2007-Ohio-4674, 877 N.E.2d 377, ¶ 32 (8th Dist.), citing *Manofsky v. Goodyear Tire & Rubber Co.*, 69 Ohio App.3d 663, 668, 591 N.E.2d 752 (9th Dist.1990). The burden then shifts to the employee to prove that the employer's reason was false and that discrimination was the actual reason for the employee's discharge. *Id.*, citing *Wagner v. Allied Steel & Tractor Co.*, 105 Ohio App.3d 611, 617, 664 N.E.2d 987 (8th Dist.1995). In order to meet this burden, the employee must produce some evidence that the employer's proffered reasons were factually untrue. *Powers v. Pinkerton, Inc.*, 8th Dist. Cuyahoga No. 76333, 2001 Ohio App. LEXIS 138 (Jan. 18, 2001).

{¶ 21} In the instant case, it is undisputed that Snyder meets the first three elements of a gender discrimination claim — she is a female, was not renewed for her position as human resources director, and she was qualified for her position. However, she fails to meet the final element, since she was not "replaced" by a male. Snyder was replaced by Judy Robinson, a 59-year-old female. Snyder therefore has

not satisfied the fourth element of the *McDonnell Douglas* analysis by showing she was replaced with a nonprotected individual.

{¶ 22} However, Snyder contends that she has established her prima facie case of gender discrimination through evidence of disparate treatment. In disparate treatment cases, the fourth element of the prima facie case may be replaced with the requirement that the employee show he or she was treated differently from similarly situated individuals. *Simmons-Means v. Cuyahoga Cty. Dept. of Justice Affairs*, 8th Dist. Cuyahoga No. 87303, 2006-Ohio-4123, ¶ 12, citing *Mitchell v. Toledo Hosp.*, 964 F.2d 577, 582 (6th Cir.1992). Where an employer replaces the employee with an individual of the same protected class, he or she must demonstrate the existence of a similarly situated, nonprotected comparator, who was treated more favorably. *Janezic v. Eaton Corp.*, 8th Dist. Cuyahoga No. 99897, 2013-Ohio-5436, ¶ 21, citing *Barker v. Scovill, Inc.*, 6 Ohio St.3d 146, 451 N.E.2d 807 (1983).

{¶ 23} In *Blake v. Beachwood City Schools Bd. of Edn.*, 8th Dist. Cuyahoga No. 95295, 2011-Ohio-1099, this court previously noted that when

analyzing whether two individual[s] are similarly situated, the Sixth Circuit has noted that “if the non-protected employee to whom the plaintiff compares himself or herself must be identically situated to the plaintiff in every single aspect of their employment, a plaintiff whose job responsibilities are unique to his or her position will never successfully establish a prima facie case.” *Ercegovich v. Goodyear Tire & Rubber Co.* [, 154 F.3d 344, 353 (6th Cir.1998)].

Id. at ¶ 26. Thus, “[t]here must be ‘enough common factors between a plaintiff and a comparator — and few enough confounding ones — to allow for a meaningful comparison in order to divine whether discrimination was at play.’” *Birch v.*

Cuyahoga Cty. Probate Court, 173 Ohio App.3d 696, 2007-Ohio-6189, 880 N.E.2d 132, ¶ 34 (8th Dist.) (Slaby, J., concurring in part and dissenting in part), quoting *Barricks v. Eli Lilly & Co.*, 481 F.3d 556, 560 (7th Cir.2007). The comparator “‘must have dealt with the same supervisor, have been subject to the same standards and have engaged in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the employer’s treatment of them for it.’” *Valentine v. Westshore Primary Care Assoc.*, 8th Dist. Cuyahoga No. 89999, 2008-Ohio-4450, ¶ 89, quoting *Atkinson v. Akron Bd. of Edn.*, 9th Dist. Summit No. 22805, 2006-Ohio-1032, ¶ 28, citing *Mitchell* at 583.

{¶ 24} Snyder argues that O.B.E. treated similarly situated male administrators substantially better than her in the terms and conditions of their employment. To this end, Snyder argues that O.B.E. renewed all male administrators’ contracts and did not renew female administrators’ contracts. Further, Snyder argues that all male administrators were given the opportunity to resign if O.B.E. was not going to renew their contracts. Snyder states that this is evidenced by Holland’s deposition testimony wherein Holland stated “I can’t recall any administrators being non-renewed that were male,” and Weltman’s deposition testimony in which she stated that she could not remember voting *against* a superintendent’s recommendations for a male administrator.

{¶ 25} First, in our review of the record, we note that the human resources director position undeniably has job duties and responsibilities that are unique to that position. As such, Snyder must identify a similarly situated comparator. The

only similarly situated employee comparable to Snyder is Phil Dickinson, a business manager at O.B.E. Snyder argues that she and Dickinson are similarly situated because both are administrators.

{¶ 26} O.B.E. had expressed concerns regarding Dickinson's job performance and therefore O.B.E. had encouraged Dickinson to retire.³ O.B.E. could not find a replacement for the business manager position, and, as a result, Dickinson remained in the position through December. Dickinson's contract expired in June.

{¶ 27} In our review of the record, we find no evidence that supports Snyder's contention that she and Dickinson are similarly situated. First, the record is unclear as to who supervised Dickinson as business manager. On this point alone, Snyder has failed to identify a similarly situated comparator.

{¶ 28} Even assuming that both Dickinson and Snyder reported to the same supervisor, presumably Holland, we fail to see how Dickinson was treated more favorably than Snyder. In this regard, we fail to see how being encouraged to retire is more favorable than not being renewed. Indeed, an argument could be made that Dickinson was treated *less* favorably than Snyder. Dickinson's contract was up for renewal, and he was encouraged to retire. In fact, Dickinson's renewal never reached a board member vote. Whereas Snyder's renewal went to a vote unlike Dickinson's. Furthermore, Snyder was afforded an opportunity, pursuant to R.C.

³ The parties' briefs mention that Dickinson *resigned*. However, in Holland's deposition testimony, he stated that the board encouraged Dickinson to *retire*.

3319.02(D)(4), to address the board members regarding the renewal of her contract. The record does not reveal whether Dickinson had the same opportunity.

{¶ 29} Taking these facts into consideration, we find that Dickinson was not treated more favorably than Snyder. O.B.E. expressed concerns over both Dickinson's and Snyder's job performance. Regardless of the fact that Dickinson was permitted to remain in his position through December, both Dickinson and Snyder were effectually discharged from their positions. Had O.B.E. renewed Dickinson's contract after concerns regarding his job performance, Dickinson would have been treated *more* favorably than Snyder. Notwithstanding the fact that Dickinson retained his position through December, his contract was not renewed and he was effectively discharged. On this fact alone, Dickinson was not treated more favorably than Snyder.

{¶ 30} Snyder also argues that if O.B.E. did not want to renew a male administrator's contract, they gave him the opportunity to resign rather than vote to not renew his contract. This tactic saved the individual from the professional stigma of having not been renewed.

{¶ 31} In support of this argument, Snyder argues that she also compares to Jim Taylor. We do not agree. It appears that Taylor was a maintenance administrator and is referred to in the record as "head of grounds." No other evidence is provided in the record detailing the specifics of Taylor's position, in particular the supervisor he reported to. The only evidence in the record of Taylor's resignation is Snyder's deposition testimony. Even assuming that she and Taylor

reported to the same supervisor, nothing in the record further supports her self-serving statements that she and Taylor were similarly situated.

{¶ 32} In our review of the record, we find no evidence of a comparator who was treated more favorably than Snyder. As such, Snyder's disparate treatment claim fails as a matter of law. Moreover, as Snyder failed to establish a prima facie case of disparate treatment discrimination, the burden did not shift to O.B.E.

C. Burden Shifting

{¶ 33} Even if we were to determine that Snyder established a prima facie case of gender discrimination and therefore established a presumption of gender discrimination, we would still find that O.B.E. could overcome the presumption by coming forward with a legitimate, nondiscriminatory reason for Snyder's nonrenewal. In essence, the record reveals that O.B.E. simply had concerns about Snyder's job performance.

{¶ 34} In particular, O.B.E. noted that Snyder had mishandled an employee's, Nancy Sable, retirement and failed to communicate properly to O.B.E. and to Sable. Sable gave her retirement resignation to Snyder, and Sable then attempted to contact Snyder to rescind her resignation but apparently Snyder did not respond to Sable. O.B.E. accepted Sable's resignation. Sable then requested and was granted a meeting in an executive session with the board members. Prior to the meeting, Snyder failed to inform the board members that Sable had actually attempted to rescind her resignation. Pursuant to board policy, O.B.E. could not rescind Sable's resignation once it had been accepted. Board members were

dismayed with Snyder's lack of response to Sable, and that Snyder did not inform O.B.E. of Sable's desire and attempt to rescind her resignation.

{¶ 35} Furthermore, the board members had serious concerns regarding Snyder's failure to follow instructions. In the fall of 2016, Weltman had instructed Snyder to prepare a staffing audit for an upcoming board meeting to be held in February 2017. Holland informed Weltman and the board members that Snyder did not understand what the staffing audit instruction entailed. When Snyder did present the staffing audit to the board members, Snyder's presentation failed to articulate the question Weltman had asked Snyder to research and audit — per pupil costs and whether the district's per pupil cost decreased or increased.

{¶ 36} The board members also had concerns regarding Snyder's hiring practices. O.B.E. had received several complaints that Snyder had failed to post open positions in accordance with O.B.E. policy. Moreover, O.B.E. had concerns that Snyder was not hiring the best candidate for open positions but was simply hiring individuals she wanted to hire. Snyder also failed to conduct a background check on an individual. There were purportedly several incidents where Snyder did not promote a qualified internal candidate for a position and instead chose an outside candidate whom Snyder had previously worked with in her past employment.

{¶ 37} Further, O.B.E. had noted Snyder manipulated a job posting to exclude an internal candidate from applying for an assistant principal position. This matter ultimately resulted in an employment discrimination lawsuit. In this

instance, Snyder sought to hire a personal friend and manipulated the job posting in a way to prevent the internal candidate from applying for the assistant principal position. Board members stated that O.B.E. settled the lawsuit apparently because of Snyder's wrongdoing in the matter.

{¶ 38} O.B.E. also noted that Snyder would frequently take trips, at O.B.E.'s expense, to various education seminars with Holland. O.B.E. noted that these seminars were not necessary for Snyder's position as human resources director. O.B.E. had concerns over the sheer number of seminars Snyder had attended. Further, O.B.E. had suspicions that Snyder was not even attending the seminars. O.B.E. discussed these concerns with Snyder. After O.B.E. discussed these concerns with Snyder, Snyder sought to attend another seminar with Holland and another employee in Finland. Board members were stunned that Snyder continued to attempt to attend these seminars, especially an international seminar in Europe.

{¶ 39} Lastly, assuming that the burden then shifted to Snyder to prove pretext, we would find that Snyder is unable to do so. To establish pretext, we note that the employee has the burden of proving the employer's reason was false *and* that discrimination was the real reason for the discharge. *Mendlovic*, 173 Ohio App.3d 46, 2007-Ohio-4674, 877 N.E.2d 377, at ¶ 32. Indeed, "[t]o overcome summary judgment on the issue of pretext, the employee cannot simply deny the facts underlying the employer's decision, but instead must put forth 'evidence creating a material dispute as to the employer's honest belief in its proffered legitimate, nondiscriminatory reason.'" *Lehmier v. W. Res. Chem. Corp.*, 9th Dist.

Summit No. 28776, 2018-Ohio-3351, ¶ 22, quoting *Wigglesworth v. Mettler Toledo Internatl., Inc.*, 10th Dist. Franklin No. 09AP-411, 2010-Ohio-1019, ¶ 19.

{¶ 40} Snyder does not contest the reasons presented by O.B.E. for her nonrenewal, but merely asserts additional facts that she argues establishes pretext. In this way, Snyder's pretext argument fails.

III. Conclusion

{¶ 41} After reviewing the record, we conclude that Snyder has failed to establish the existence of genuine issues of material fact regarding her disparate treatment claim. Specifically, Snyder did not establish a genuine issue of material fact as to a similarly situated, nonprotected employee being treated more favorably. Even if we were to find that Snyder established a prima facie case, O.B.E. presented legitimate, nondiscriminatory reasons for Snyder's nonrenewal. Further, Snyder is unable to establish that O.B.E.'s reasons for her nonrenewal were a pretext for unlawful discrimination. Thus, the trial court did not err when it granted summary judgment in favor of O.B.E.

{¶ 42} Accordingly, Snyder's sole assignment of error is overruled.

{¶ 43} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27
of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR., JUDGE

MARY J. BOYLE, P.J., and
ANITA LASTER MAYS, J., CONCUR