

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

Chambers of
BENSON EVERETT LEGG
United States District Judge

101 West Lombard Street
Baltimore, Maryland 21201
410-962-0723

July 25, 2011

MEMORANDUM TO COUNSEL RE: Andrea Parris v. Board of Education of Baltimore County,
Civ. No. L-09-0704

Dear Counsel:

This discrimination case arises out of Andrea Parris's former employment with the Baltimore County Board of Education (the "Board"). The Court previously granted summary judgment to the Board on all but one of Parris's claims. See Docket No. 41. The sole remaining issue is whether the Board retaliated against Parris by reassigning her from the position of assistant principal at Sollers Point High School to classroom teacher at Parkville High School after she sent an email that raised concerns about discrimination in the school system.

Now pending is the Board's renewed Motion for Summary Judgment. Docket No. 47. The Court held a hearing on the Motion on July 15, 2011. For the reasons stated below, the Court hereby GRANTS the Motion and DIRECTS the Clerk to CLOSE the case.

I. Background

The facts are fully set forth in the Court's prior memorandum and the parties' briefs. The facts essential to the Board's motion are as follows.

In July 2007, Parris, who was then employed as an assistant principal at Sollers Point High School, emailed Dr. Ella White-Campbell, a local community activist, to express her frustration with the NAACP's refusal to investigate Parris's claims of discrimination in the

Baltimore County Public Schools (“BCPS”). Parris also copied the NAACP and Governor Martin O’Malley on her message. The pertinent parts of the email are as follows:

I am extremely angered and disgusted at the fact that I went to the NAACP, a supposedly independent civil rights organization, for assistance and they in essence sold out the victim to protect the employer and individuals in the school system for which [sic] they have a relationship. It makes you wonder why people go into places of employment and kill people. What causes them to snap! Its [sic] things like this! Employment harassment is damaging, sometimes irreparable, and devastating but the results to those who caused it can also [sic] at times be devastating. I hope I never snap.

...

[Superintendent Dr. Hairston] is no better than Judge Clarence Thomas to the black community. He doesn’t really give a damn about black employees. I know because I am one and I am suffering because of it. Advise Margaret Ann Howie that this situation is taking a turn for the worse.

D.’s Ex. 54 (first and second emphasis added, third emphasis original).

Campbell forwarded the message to Dr. Donald Peccia, BCPS’s Assistant Superintendent of Human Resources. After reading the message, Peccia contacted BCPS’s Legal Office and the Baltimore County Police Department. The Police Department investigated the message but concluded that Parris did not pose an imminent threat to school safety.

After receiving advice from the Legal Office and the Police Department, Peccia scheduled a meeting with Parris. The meeting, which took place on August 9, 2007, included Peccia, Parris, and Parris’s attorney.¹ Although the record is unclear on this point, the Court, construing the facts in Parris’s favor, assumes that Peccia had decided to reassign Parris to a teaching position prior to the meeting. Nevertheless, Peccia had the authority to reassign Parris so long as Dr. Hairston, the BCPS Superintendent, eventually ratified the decision.

¹ At the meeting, Parris was represented by Patricia Cresta-Savage, Esq. She is currently represented by Steven Kahn, Esq.

Peccia finalized his decision in an August 13th letter to Parris. The letter expresses Peccia's view that Parris's email "reflected extremely poor judgment, [and was] unprofessional, negative and damaging to the school system." D.'s Ex. H. Peccia concluded that Parris had "failed to act in a professional and respectful manner," and he ordered her to report to duty as a regular classroom teacher at Parkville High School. Id. The decision, he stated, would be effective on August 20, 2007. Parris resigned on August 17, 2007.

Parris's complaint advances a number of claims. In an opinion dated December 7, 2010, the Court granted summary judgment to the Board on all but one of them, the claim that the reassignment was in retaliation for Parris's complaints of racial discrimination. Because the record was incomplete, the Court reopened discovery to test whether the Board had followed the applicable procedures when reassigning Parris. Following the close of the second discovery period, the Board has filed a renewed Motion for Summary Judgment.

II. Standard of Review

The Court may grant summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); see also Felty v. Graves-Humphreys Co., 818 F.2d 1126, 1128 (4th Cir. 1987) (recognizing that trial judges have "an affirmative obligation" to prevent factually unsupported claims and defenses from proceeding to trial). In determining whether there is a genuine issue of material fact, the Court views the facts, and all reasonable inferences to be drawn from them, in the light most favorable to the non-moving party. Pulliam Inv. Co. v. Cameo Properties, 810 F.2d 1282, 1286 (4th Cir. 1987). Hearsay statements or conclusory statements with no evidentiary basis cannot

support or defeat a motion for summary judgment. See Greensboro Prof'l Fire Fighters Ass'n, Local 3157 v. City of Greensboro, 64 F.3d 962, 967 (4th Cir. 1995).

III. Analysis

At the outset, it must be noted that the Court does not sit as a “super-personnel department weighing the prudence of employment decisions” and reversing those with which it disagrees. DeJarnette v. Corning, Inc., 133 F.3d 293, 299 (4th Cir. 1998). The employer is entitled to exercise its own judgment and may make personnel decisions for any reason that is not prohibited by law. The test in this case is, therefore, not whether the Board was fair to Parris or overreacted, but whether it retaliated against her because of her complaints of racial discrimination.

Under the law, the legality of a personnel decision, in this case to reassign an employee, depends on the subjective intent of the decision maker. See Ballinger v. North Carolina Agri. Ext. Svc., 815 F.2d 1001, 1005 (4th Cir. 1987). In most cases, there is no direct evidence of state of mind. There is, of course, no scientific instrument capable of detecting what was on a person’s mind when that person made a decision. In the retaliation context, therefore, a plaintiff, in order to justify a trial, must produce evidence from which a reasonable jury could conclude, by a preponderance of the evidence, that the employer’s stated reason was a pretext masking the real retaliatory motive. See Henson v. Liggett Group, Inc., 61 F.3d 270, 273 (4th Cir. 1995). The Court must evaluate Parris’s evidence under this standard.

A. Improper Reliance on Email

In opposing the Board’s first motion for summary judgment, Parris conceded that her email provided a legitimate, non-discriminatory reason for the reassignment. P.’s Opp. at 20; see also Texas Dept. of Comm. Affairs v. Burdine, 450 U.S. 248, 255 (1981). She argued that the

Board, irritated by her repeated claims of discrimination, seized upon the email as a pretext for a retaliatory transfer. During the hearing on the Board's renewed motion, however, Parris's counsel retreated from his earlier concession, arguing both that the email fails to qualify as a legitimate non-discriminatory reason under the McDonnell Douglas burden-shifting framework and that the Board's stated reliance on the email was pretextual. See 411 U.S. 792, 803 (1973). For the sake of completeness, the Court will analyze the email from both perspectives.

1. Legitimate, Non-Discriminatory Reason

In order to qualify as a legitimate, non-discriminatory reason that shifts the burden of production and proof back to the plaintiff, the reason need only be "be legally sufficient to justify a judgment for the defendant." Burdine, 450 U.S. at 255. Notably, the defendant need not persuade the court that "the proffered reason was the actual motivation for [its] decision." Mereish v. Walker, 359 F.3d 330, 335 (4th Cir. 2004) (citing Burdine, 450 U.S. at 254). For example, a strategic business decision constitutes a legally sufficient justification for adverse action. See id.

Here, the Court has no hesitancy in concluding that the email Parris sent to Campbell provided the Board with a legitimate, nondiscriminatory reason to reassign her. On its face, the email is strident, emotionally freighted, and contains disturbing references to violence. A reasonable employer could choose to demote a school administrator for using such language.

2. Pretext

Under the pretext analysis, Parris must come forward with sufficient evidence from which a reasonable jury could conclude, by a preponderance of the evidence, that the employer's stated reason was a pretext masking the real retaliatory motive. See Henson v. Liggett Group, Inc., 61 F.3d 270, 273 (4th Cir. 1995). Parris's basic arguments on this point are that the police

concluded that she did not pose a threat of violence, and that her references to violence should be treated as a statement that working in a discriminatory atmosphere is stressful, rather than a warning that she might snap and become violent herself. She further argues that the Board realized this and purposefully misinterpreted her email as containing a threat justifying a transfer.

To test Parris's pretext contention, one must first identify the reasons given by the Board for the reassignment. These reasons are expressed in Peccia's letter of August 13th. He does not state that he considers her to pose a threat of violence.² D.'s Ex. H. He does, however, fault Parris for writing an email that reflects poor judgment and a failure to act in a professional and respectful manner. See id. Peccia noted specifically that, as "role models for students," school leaders must "address complaints through appropriate channels" rather than by "issuing angry threats." Id.

The next step is for the Court to determine whether Peccia's stated reasons are adequately supported by the contents of the email. First, the message contains an inappropriate reference to violence and Parris's hope that she would not "snap." Even if this language is hyperbolic, schools are understandably and justifiably highly sensitive to any possibility of violence. Second, the language of the email is strident and unprofessional. The message reads as a rant rather than a reasoned, measured assessment of Parris's allegations of discrimination and why the NAACP should further investigate them. Third, notwithstanding Parris's views of Dr. Hairston and Justice Clarence Thomas, her contentions are expressed in a lurid, ad hominem attack rather than a reasoned analysis. Boiled down to its essence, Parris's email is a call to action that advances no reasons to support her views.

² Peccia did note that Parris's allusions "caused members of the community to be concerned for their safety . . . as well as for the safety of the students in our schools." D.'s Ex. H.

Ultimately, Peccia's negative view of the email, and his decision to act on that view, is justified by its text. The language and tone are patently inappropriate for a school administrator. Serving in a leadership capacity at a school is a demanding job. Schools can be difficult environments, and administrators frequently encounter situations that are emotionally charged. Issues such as grades, student discipline, and teacher evaluations require administrators to use discretion and handle sensitive matters in a calm, professional manner. Further, as Peccia stated, school administrators must also serve as role models. As such, they must take care to express themselves in a way that students can emulate. Parris's email casts serious doubt on her ability to shoulder these responsibilities. Therefore, no reasonable jury could conclude that Peccia's stated reasons for the reassignment were pretextual.

B. Reassignment Procedures

Parris's second theory is that the reassignment did not occur through the regular personnel channels. Notably, a violation of an employer's internal procedures may provide evidence of pretext, but a violation is not in and of itself sufficient to prove pretext. See Blasic v. Chugach Support Servs., Inc., 673 F. Supp. 2d 389 (D. Md. 2009). Put another way, a technical violation of the Board's procedures will not suffice. To be meaningful evidence of pretext, the violation must be material and significant.

The procedures the Board was obligated to follow in reassigning Parris stem from two sources: (i) Article 6.3 of the collective bargaining agreement between the Board and the Council of Administrative and Supervisory Employees ("CASE"), and (ii) the Superintendent's rules. The Court will address each of these sources in turn.

Article 6.3 of the collective bargaining agreement provides that “[r]eassignment may be made by the Superintendent as the needs of the schools require. Reassignment will be made only after the Superintendent has conferred with the CASE member.”

Parris and the Board disagree over the Superintendent’s rule applicable to her situation. The Board contends that it was obligated to follow Rule 4117, which describes the procedure to be followed when reassigning administrative personnel. Parris contends that the Board was obligated to follow Rule 4117.2, which generally describes the procedure to be followed when dismissing administrative personnel.

Rule 4117 provides that “[a]dministrative and supervisory assignments and transfers are made by the Superintendent as the needs of the schools require. An employee may be reassigned from one administrative or supervisory position to any other position in the school system by action of the Superintendent.”³ Rule 4117.2 provides that administrators accused of “misconduct in office” shall be provided notice of the allegations; an “opportunity to meet with the superintendent or his designee to discuss the allegations,” and, if appropriate, “written notification from the superintendent of the recommendation for . . . dismissal.”

Parris contends that Rule 4117.2 applies because she was dismissed from an administrative position and reassigned to the position of classroom teacher. Ultimately, the Board’s analysis carries the day because Parris was assigned to another position within the school system but not dismissed. Regardless, the record establishes that the Board followed both rules.

Parris complains of two irregularities in her reassignment. Her first contention is that the Board did not provide her with adequate notice because Peccia had already made up his mind

³ The rule also contains additional provisions that must be followed when a reassignment is accompanied by a reduction in salary. Since the Board did not reduce Parris’s salary, these provisions are inapplicable to this case.

when he met with Parris. This argument fails because, under the rules discussed above, Parris was not entitled to a hearing or an impartial decisionmaker. Even under Rule 4117.2, the Board was required only to provide Parris with notice and an opportunity to respond. The Board met its obligation. In fact, as mentioned above, Parris was represented by counsel during her meeting with Peccia.

Parris's second alleged irregularity is that Dr. Hairston, the Superintendent, never formally approved her reassignment. Parris further claims that discrepancies between Hairston and Peccia's recollection of the reassignment create a triable issue of fact. This argument also fails.

Parris and the Board agree that a designee of the Superintendent is authorized to recommend and communicate a reassignment to a staff member. They also agree that the Superintendent must approve the recommendation for the reassignment to become final. Peccia testified that he made the decision to reassign Parris after reviewing the Campbell email, that he met with Parris on August 9 and memorialized his decision in the August 13th letter, that the reassignment would not become effective until August 20th, and that Parris resigned on August 17th. Peccia also testified that he was required to discuss the reassignment with Hairston and receive Hairston's approval before the reassignment could become final. Hairston testified that he could not remember meeting with Peccia and could not recall why Parris was reassigned.

Ultimately, Parris has not created a triable issue of fact on this point. The process the Board followed may have technically been deficient because Peccia appears to have represented to Parris that the reassignment had already been approved by Hairston. Nevertheless, Parris resigned before the reassignment became effective, and she has not provided any evidence which suggests that Hairston would not ultimately have approved the reassignment.

