

RENDERED: MARCH 11, 2011; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2009-CA-002042-MR

DARIN CRAIG SCHROEDER

APPELLANT

v. APPEAL FROM JESSAMINE CIRCUIT COURT  
HONORABLE C. HUNTER DAUGHERTY, JUDGE  
ACTION NO. 08-CI-00609

JESSAMINE COUNTY SCHOOLS;  
LU S. YOUNG, IN HER INDIVIDUAL  
CAPACITY AND OFFICIAL CAPACITY;  
AND JANET GRANADA, IN HER  
INDIVIDUAL CAPACITY AND OFFICIAL  
CAPACITY

APPELLEES

OPINION  
AFFIRMING

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BEFORE: ACREE, DIXON AND KELLER, JUDGES.

DIXON, JUDGE: Darin Craig Schroeder appeals an order of the Jessamine Circuit Court granting summary judgment in favor of Appellees as to Schroeder's claims arising out of the non-renewal of his teaching contract. Finding no error, we affirm.

In summer 2007, Schroeder was hired pursuant to a limited contract to teach math at East Jessamine High School (EJHS) for the 2007-08 school year. Appellee Janet Granada is the principal of EJHS, and Appellee Lu S. Young is the superintendent of Jessamine County Schools. Schroeder began the school year utilizing a teaching method wherein his students were self-taught and learned at their own pace. During the fall, Schroeder voiced concerns to Granada and other teachers regarding the math curriculum at EJHS, contending that it was not properly “aligned” with the Kentucky “Program of Studies” pursuant to 702 KAR 7:125 § 6(1)(a) and 704 KAR 3:303. Granada evaluated Schroeder’s class on several occasions during the fall and concluded that his teaching methodology was unsuccessful, with numerous students failing the class. At the conclusion of the fall semester, Granada decided not to renew Schroeder’s contract for 2008-09, and she asked the personnel department to post a job opening for a math instructor in the 2008-09 school year. During the spring semester, Schroeder adapted his methodology toward a more traditional teaching model; however, 65% of his students still received failing grades.

On March 19, 2008, Schroeder sent an e-mail to the Kentucky Department of Education and the Kentucky Attorney General contending irregularities existed in the alignment of the EJHS math curriculum and the state program of studies. Michael Miller, the director of the Department of Education’s Division of Curriculum Development responded to Schroeder’s e-mail, explaining that his office had investigated the allegations and was satisfied that the EJHS

curriculum was properly aligned. Approximately one week later, Granada advised Schroeder, along with another teacher, that their contracts would not be renewed for the 2008-09 school year.

In June 2008, Schroeder filed a complaint against Appellees alleging retaliation, defamation, negligent supervision, and outrage. In October 2009, the trial court granted the Appellees' motion for summary judgment. Schroeder now appeals the trial court's order, contending summary judgment was improper as to his claim of retaliation.

In considering a motion for summary judgment, a trial court must view the record in a light most favorable to the non-moving party, resolving all doubts in her favor. *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). The trial court may grant summary judgment only if it concludes no disputed issues of material fact exist for trial. *Id.* On appeal of a summary judgment, we must determine whether the trial court correctly found that the moving party was entitled to a judgment as a matter of law. *Id.* Because summary judgment involves questions of law, we need not defer to the trial court's conclusions; accordingly, we review the record *de novo*. *Blevins v. Moran*, 12 S.W.3d 698, 700-01 (Ky. App. 2000). Furthermore, "we, as an appellate court, may affirm the trial court for any reason sustainable by the record." *Kentucky Farm Bureau Mut. Ins. Co. v. Gray*, 814 S.W.2d 928, 930 (Ky. App. 1991).

Schroeder asserts that he presented a prima facie case of retaliation pursuant to Kentucky's Whistleblower Act, KRS 61.102, which "protects state employees

from reprisal for reporting actual or suspected agency violations of the law.”

*Davidson v. Dept. of Military Affairs*, 152 S.W.3d 247, 249 (Ky. App. 2004). In *Davidson*, a panel of this Court explained:

In order to demonstrate a violation of KRS 61.102, an employee must establish the following four elements: (1) the employer is an officer of the state; (2) the employee is employed by the state; (3) the employee made or attempted to make a good faith report or disclosure of a suspected violation of state or local law to an appropriate body or authority; and (4) the employer took action or threatened to take action to discourage the employee from making such a disclosure or to punish the employee for making such a disclosure.

*Id.* at 251 (internal citation omitted).

It is undisputed that Schroeder satisfied the first two elements of the statute. As to the third element, Schroeder asserts that he voiced his concerns regarding the curriculum alignment during the fall 2007 semester to colleagues at EJHS; subsequently, he notified the Department of Education and the Attorney General, disclosing the alleged violations. Appellees contend Schroeder’s claim fails because the disclosure was not protected by the Whistleblower Act, as it was publicly available information. We agree.

In *Davidson*, this Court concluded that the report of publicly known information was not afforded protection under the Whistleblower Act, relying on federal precedent in light of the similarity between Kentucky’s statute and its federal counterpart. *Id.* at 255. In deciding the issue, we quoted *Meuwissen v. Department of Interior*, 234 F.3d 9, 13 (Fed. Cir. 2000), which held that “[a] disclosure of information that is publicly known is not a disclosure’ within the

meaning of the federal Whistleblower Protection Act.” *Id.* This Court went on to note that the employee in *Davidson* “did not report anything . . . which was not already known, such as secretive agency procedures.” *Id.*

In the case at bar, Schroeder reported to the Department of Education that the EJHS math curriculum was not aligned with the correct version of the state program of studies; however, Schroeder acknowledged that the allegedly non-compliant EJHS curriculum documents were publicly available on the Jessamine Public Schools’ website. Based on these undisputed facts, Schroeder failed to establish a *prima facie* case for retaliation pursuant to KRS 61.102, since the information disclosed was publicly known and consequently, not protected by the statute. *Id.* We conclude the trial court properly granted summary judgment in favor of Appellees, and we decline to address the alternative arguments raised on appeal.

For the reasons stated herein, we affirm the judgment of the Jessamine Circuit Court.

ALL CONCUR.

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