[Cite as *Wu v. N.E. Ohio Med. Univ.*, 2019-Ohio-2530.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Jiashin Wu,	:	
Plaintiff-Appellant,	:	No. 18AP-656 (Ct. of Cl. No. 2017-00564JD)
v.	:	(REGULAR CALENDAR)
Northeast Ohio Medical University,	:	
Defendant-Appellee.	:	

D E C I S I O N

Rendered on June 25, 2019

On brief: *Fan Zhang, Ltd.*, and *Fan Zhang*, for appellant. **Argued:** *Fan Zhang*.

On brief: *Dave Yost*, Attorney General, and *Velda K. Hofacker*, for appellee. **Argued:** *Velda K. Hofacker*.

APPEAL from the Court of Claims of Ohio

LUPER SCHUSTER, J.

{¶ 1} Plaintiff-appellant, Jiashin Wu, Ph.D., appeals from a judgment of the Court of Claims of Ohio granting the motion for summary judgment filed by defendant-appellee, Northeast Ohio Medical University ("NEOMED"). For the following reasons, we affirm.

I. Facts and Procedural History

{¶ 2} In June 2017, Dr. Wu initiated this action against NEOMED alleging claims of breach of contract, discrimination, retaliation, and harassment. These claims arose from Dr. Wu's employment with NEOMED that began in January 2014 and ended in June 2017.

{¶ 3} In January 2014, Dr. Wu began to work as a consultant in NEOMED's College of Pharmacy in conjunction with the recruiting and hiring of his wife, Min You, Ph.D., as department chair, associated dean for research, in the College of Pharmacy's Department

of Pharmaceutical Sciences. Pursuant to the consulting agreement, NEOMED paid $7,500 per month to Dr. Wu to assist Dr. You in the transfer of her research laboratory and enterprise to NEOMED's campus. In September 2014, Dr. Wu became a non-tenure track associate professor in the Department of Pharmaceutical Sciences, with an annual base salary of $90,000. As a faculty member, Dr. Wu's direct supervisor would have been the department chair, but because Dr. Wu's wife held that position at the time he was hired, the vice dean of NEOMED's College of Pharmacy, Richard Kasmer, Pharm.D., J.D., was Dr. Wu's direct supervisor. In addition to being an associate professor, Dr. Wu was appointed as the director of both international collaboration and research services in the College of Pharmacy. In those administrative roles, Dr. Kasmer also served as Dr. Wu's direct supervisor. In February 2015, Steven Schmidt, Ph.D., replaced Dr. You as the department chair. As a faculty member and director of research services, Dr. Wu began to report to Dr. Schmidt, and for his duties as the director of international collaboration, Dr. Wu continued to report to Dr. Kasmer.

{¶ 4} In the fall of 2015, NEOMED's College of Pharmacy leadership decided to create a research focus area, the college's first, concerning neurodegenerative diseases, such as Alzheimer's, Parkinson's, and aging. As the department chair and associate dean of research, Dr. Schmidt was tasked with determining how to best align and allocate existing resources in connection with the creation of the new research focus area. Dr. Schmidt determined that almost all department faculty members were either tenure track, non-tenure track with grant funding, or had skills that aligned with the new research focus area. The exception was Dr. Wu, who was a non-tenure track professor, was funded by the college, and had an area of expertise (cardiology) that did not align with the research focus area. Dr. Schmidt also found that Dr. Wu's teaching and service efforts could be fulfilled by other faculty. Thus, Dr. Schmidt concluded that the college funds financing Dr. Wu's employment should be reallocated to support and implement the new research focus area. Consequently, Dr. Schmidt advised Dr. Kasmer that the dean of the college, Charles Taylor, Pharm.D., should issue to Dr. Wu a notice of non-reappointment pursuant to NEOMED's bylaws, effectively terminating Dr. Wu's employment.

{¶ 5} After receiving Dr. Schmidt's input, Dr. Kasmer recommended to Dr. Taylor that a notice of non-reappointment be issued to Dr. Wu. In Dr. Kasmer's memorandum to

Dr. Taylor on the subject, he agreed with Dr. Schmidt's assessment of the situation, noting that Dr. Wu's skills and expertise did not align with the strategic direction of the college. Dr. Kasmer also noted that Dr. Wu's efforts in support of international collaboration were no longer necessary because that initiative had been elevated from the college to university level, and that his role in research services became unnecessary upon Dr. Schmidt's hiring as the department chair and associate dean of research. Further, before Dr. Kasmer made the recommendation of non-reappointment, he approached multiple department chairs and senior faculty to see if there remained a need for Dr. Wu's services within the university. None responded that Dr. Wu's services were needed. Dr. Taylor accepted Dr. Kasmer's recommendation and issued a notice of non-reappointment to Dr. Wu on March 11, 2016, informing Dr. Wu his last day of service with the college would be June 30, 2017, in accordance with the university bylaws.

{¶ 6} On June 26, 2017, Dr. Wu initiated this action. In May 2018, NEOMED moved for summary judgment. On June 18, 2018, Dr. Wu filed a response to the motion for summary judgment. Eleven days later, and with leave of court, NEOMED filed a reply brief in support of its motion for summary judgment. In July 2018, Dr. Wu filed a motion to strike NEOMED's reply brief on the basis that it did not comply with L.C.C.R. 4(E)'s requirement that a reply brief not exceed seven pages in length.

{¶ 7} In August 2018, the trial court denied Dr. Wu's motion to strike NEOMED's reply brief and granted NEOMED's motion for summary judgment.

{¶ 8} Dr. Wu timely appeals.

II. Assignments of Error

{¶ 9} Dr. Wu assigns the following errors for our review:

> 1. The trial court erred in granting Appellee's motion for summary judgment on Appellant's breach of contract claim, because the applicability and effect of Appellee's Faculty Bylaws, as incorporated into the contract, remains a disputed issue.
>
> 2. The trial court erred in granting Appellee's motion for summary judgment on Appellant's race and national origin discrimination claim, because there are material issues of disputed fact on whether Appellant submitted sufficient

> evidence to show discriminatory motive, and whether Appellee's purported non-discriminatory reason is a pretext.
>
> 3. The trial court erred in granting Appellee's motion for summary judgment on Appellant's retaliation claim, because there are material issues of disputed fact on whether Appellee took retaliatory actions against Appellant after Appellee terminated Appellant's wife['s] administration position and Appellant's wife sued Appellee as well as Appellant's own 2016 lawsuit against Appellee.
>
> 4. The trial court erred in denying Appellant's Motion to Strike Appellee's Reply for failure to comply with page limitation under the local court rule.

III. Discussion

A. Dr. Wu's First, Second, and Third Assignments of Error – Summary Judgment

{¶ 10} In Dr. Wu's first, second, and third assignments of error, he generally asserts the trial court erred in granting NEOMED's motion for summary judgment.

{¶ 11} An appellate court reviews summary judgment under a de novo standard. *Coventry Twp. v. Ecker*, 101 Ohio App.3d 38, 41 (9th Dist.1995); *Koos v. Cent. Ohio Cellular, Inc.*, 94 Ohio App.3d 579, 588 (8th Dist.1994). Summary judgment is appropriate only when the moving party demonstrates (1) no genuine issue of material fact exists, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds could come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence most strongly construed in its favor. Civ.R. 56(C); *State ex rel. Grady v. State Emp. Relations Bd.*, 78 Ohio St.3d 181, 183 (1997).

{¶ 12} Pursuant to Civ.R. 56(C), the moving party bears the initial burden of informing the trial court of the basis for the motion and identifying those portions of the record demonstrating the absence of a material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 293 (1996). However, the moving party cannot discharge its initial burden under this rule with a conclusory assertion that the nonmoving party has no evidence to prove its case; the moving party must specifically point to evidence of the type listed in Civ.R. 56(C)

affirmatively demonstrating that the nonmoving party has no evidence to support the nonmoving party's claims. *Id.*; *Vahila v. Hall*, 77 Ohio St.3d 421, 429 (1997). Once the moving party discharges its initial burden, summary judgment is appropriate if the nonmoving party does not respond, by affidavit or as otherwise provided in Civ.R. 56, with specific facts showing that a genuine issue exists for trial. *Dresher* at 293; *Vahila* at 430; Civ.R. 56(E).

{¶ 13} Dr. Wu argues the trial court erred in granting summary judgment as to his claims of breach of contract, race and national origin discrimination, and retaliation.[1] We address each of these claims in turn.

1. Breach of Contract

{¶ 14} Dr. Wu alleges NEOMED committed breach of contract. To succeed on a breach of contract claim, a plaintiff must demonstrate (1) the existence of a contract, (2) plaintiff's performance, (3) defendant's breach, and (4) damages or loss to the plaintiff. *Thyssen Krupp Elevator Corp. v. Constr. Plus, Inc.*, 10th Dist. No. 09AP-788, 2010-Ohio-1649, ¶ 13, citing *Jarupan v. Hanna*, 173 Ohio App.3d 284, 2007-Ohio-5081, ¶ 18 (10th Dist.) The interpretation of a written contract is an issue of law. *Nationwide Mut. Fire Ins. Co. v. Guman Bros. Farm*, 73 Ohio St.3d 107, 108 (1995). The purpose of contract construction is to realize and give effect to the parties' intent. *Skivolocki v. E. Ohio Gas Co.*, 38 Ohio St.2d 244 (1974), paragraph one of the syllabus. "[T]he intent of the parties to a contract resides in the language they chose to employ in the agreement." *Shifrin v. Forest City Ents., Inc.*, 64 Ohio St.3d 635, 638 (1992). When " 'the terms in a contract are unambiguous, courts will not in effect create a new contract by finding an intent not expressed in the clear language employed by the parties.' " *Holdeman v. Epperson*, 111 Ohio St.3d 551, 2006-Ohio-6209, ¶ 12, quoting *Shifrin* at 638.

{¶ 15} According to Dr. Wu, NEOMED violated the terms of his employment agreement by terminating his employment prior to the expiration of his three-year term ending on September 1, 2017. In Ohio, an employment relationship with no fixed duration is deemed to be at will, and the employer may terminate the employment relationship at any time, even without cause. *Welch v. Finlay Fine Jewelry Corp.*, 10th Dist. No. 01AP-

[1] Dr. Wu does not challenge the trial court's disposition of his harassment claim.

508 (Feb. 12, 2002); *see Dayton Power & Light Co. v. Henry*, 2d Dist. No. 96-CA-0054 (Oct. 25, 1996) ("The employment relationship in which the employee promises to provide a service and the employer agrees to pay a wage in compensation is a contract between those parties. Their contract is simply revocable by either 'at will' * * * absent any contrary provision."). However, the Supreme Court of Ohio has delineated two exceptions to the employment-at-will doctrine: "(1) the existence of implied or express contractual provisions which alter the terms of discharge; and (2) the existence of promissory estoppel where representations or promises have been made to an employee." *Wright v. Honda of Am. Mfg., Inc.*, 73 Ohio St.3d 571, 574 (1995), citing *Mers v. Dispatch Printing Co.*, 19 Ohio St.3d 100, 104-05 (1985).

{¶ 16} In the trial court, Dr. Wu argued that his employment was not at will because the employment offer provided the term would be 12 months, renewable each year. Under this interpretation, the term of his employment ended on September 1, 2015, subject to reappointment each year. But Dr. Wu was timely notified that his employment would end in June 2017. Dr. Wu's employment offer indicated his employment would be governed by NEOMED's faculty bylaws. Dr. Taylor, pursuant to the College of Pharmacy bylaws, which amends the university's bylaws, notified Dr. Wu in March 2016 that he would not be reappointed and that his employment would end on June 30, 2017. NEOMED's College of Pharmacy bylaws defines "Notice of Non-reappointment" as follows:

> A Notice of Non-reappointment is a written notification by the Dean that the College intends to terminate a faculty member's appointment at a specified time. Notice of Non-reappointment will be given by March 15. During the first year of service, the last day of service will be June 30 of the calendar year in which the notice is given. After one or more years of service, the last day of service will be June 30 of the next calendar year.

(Def.'s Ex. O-4 at 2, attached to May 25, 2018 Def.'s Mot. for Summ. Jgmt.) Thus, even under Dr. Wu's interpretation that his employment was for renewable one-year definite terms, he was timely informed that his appointment would not be renewed pursuant to the applicable bylaws.

{¶ 17} Now, on appeal, Dr. Wu argues his employment was for a three-year term as mandated by paragraph (L)(6)(c) of NEOMED's faculty bylaws, and therefore his term of

employment should have ended on September 1, 2017, at the earliest. This provision of the bylaws states that "[a] faculty member will be considered for reappointment every three (3) years to determine if he/she fulfills the criteria outlined in the appendices to these Bylaws and assists the department in accomplishing its mission." (Def.'s Ex. O-3 at 19, attached to May 25, 2018 Def.'s Mot. for Summ. Jgmt.) Dr. Wu presented no argument regarding paragraph (L)(6)(c) of NEOMED's faculty bylaws in the trial court; instead, as set forth above, he argued the evidence showed he was employed for renewable one-year terms of employment pursuant to the offer letter. A party who fails to raise an argument in the trial court waives the right to raise it on appeal. *Betz v. Penske Truck Leasing Co., L.P.*, 10th Dist. No. 11AP-982, 2012-Ohio-3472, ¶ 34. Therefore, we decline to consider this argument for the first time on appeal. *See Hunter v. Shield*, 10th Dist. No. 17AP-751, 2018-Ohio-2371, ¶ 23 ("even a de novo standard of review does not supersede the settled practice of not addressing issues raised for the first time on appeal").

{¶ 18} Accordingly, Dr. Wu's first assignment of error is overruled.

2. Race and National Origin Discrimination

{¶ 19} Dr. Wu claims that NEOMED terminated his employment based on his Chinese race and national origin in violation of Title VII of the Civil Rights Act, codified in 42 U.S.C. 2000e, and R.C. Chapter 4112.

{¶ 20} R.C. Chapter 4112 governs anti-discrimination actions brought under Ohio law. R.C. 4112.02(A) provides that it is an unlawful discriminatory practice "[f]or any employer, because of the race, color, religion, sex, military status, national origin, disability, age, or ancestry of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment." R.C. 4112.99 authorizes civil actions for any violations of R.C. Chapter 4112. And pursuant to 42 U.S.C. 2000e-2(a), "[i]t shall be an unlawful employment practice for an employer -- (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." Generally, Ohio courts look to federal anti-discrimination case law when examining employment discrimination cases made under state law. *Nelson v. Univ. of Cincinnati*,

10th Dist. No. 16AP-224, 2017-Ohio-514, ¶ 31, citing *Coryell v. Bank One Trust Co. N.A.*, 101 Ohio St.3d 175, 2004-Ohio-723, ¶ 15. *But see Williams v. Akron*, 107 Ohio St.3d 203, 2005-Ohio-6268, ¶ 31 (stating that Ohio courts are not bound to federal interpretation of analogous statutes).

{¶ 21} In order to prevail in an employment discrimination case, a plaintiff must prove discriminatory intent through either direct or indirect methods of proof. *Ricker v. John Deere Ins. Co.*, 133 Ohio App.3d 759, 766 (10th Dist.1998), citing *Mauzy v. Kelly Servs., Inc.*, 75 Ohio St.3d 578, 583 (1996); *United States Postal Serv. Bd. of Governors v. Aikens*, 460 U.S. 711, 714 (1983), fn. 3. Direct evidence is evidence that, if believed, requires the conclusion that unlawful discrimination was at least a motivating factor in the employer's actions. *Ray v. Ohio Dept. of Health*, 10th Dist. No. 17AP-526, 2018-Ohio-2163, ¶ 27.

{¶ 22} Dr. Wu asserts the record contains direct evidence of race and national origin discrimination. Evidence in the record indicates Dr. Wu's office space was relocated on NEOMED's campus shortly after he was notified of his non-reappointment in March 2016. He contends this evidence constitutes direct evidence of unlawful discrimination. According to Dr. Wu, his segregation from others in his department was analogous to the segregation outlawed in *Brown v. Bd. of Edn.*, 347 U.S. 483 (1954), wherein the Supreme Court of the United States concluded that "in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." *Id.* at 495. Contrary to Dr. Wu's argument, the relocation of his office space to a different building as a faculty member of the college is not the equivalent of the racial segregation of school children that was found to violate the U.S. Constitution in the seminal case of *Brown v. Board of Education*. This is simply not direct evidence of discrimination.

{¶ 23} Dr. Wu also argues that he has presented indirect evidence of race and national origin discrimination. A plaintiff may indirectly establish discriminatory intent using the analysis promulgated in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), first adopted by the Supreme Court of Ohio in *Plumbers & Steamfitters Joint Apprenticeship Commt. v. Ohio Civ. Rights Comm.*, 66 Ohio St.2d 192, 197 (1981). A plaintiff claiming discrimination in employment through indirect evidence must first demonstrate a prima facie case of discrimination. *Bowditch v. Mettler Toledo Internatl.*,

Inc., 10th Dist. No. 12AP-776, 2013-Ohio-4206, ¶ 15. If a plaintiff establishes a prima facie case, the burden of production shifts to the employer to articulate some legitimate nondiscriminatory reason for the challenged action. *Id.* at ¶ 16. If the employer meets its burden of production, a plaintiff must prove by a preponderance of the evidence that the employer's legitimate nondiscriminatory reason is merely a pretext for unlawful discrimination. *Id.* at ¶ 17.

{¶ 24} A plaintiff establishes a prima facie case of discrimination by showing that: (1) he or she was a member of a statutorily protected class; (2) he or she was subjected to an adverse employment action; (3) he or she was qualified for the position; and (4) he or she was replaced by, or that the removal permitted the retention of, a person not belonging to the protected class. *Hall v. Ohio State Univ. College of Humanities*, 10th Dist. No. 11AP-1068, 2012-Ohio-5036, ¶ 15. There is no dispute that Dr. Wu is of Chinese race and national origin, that NEOMED discharged him, and that he was qualified for the position. At issue is the fourth element of a prima facie case. Dr. Wu asserts he was replaced by a person outside his class, Dr. Fitsanakis. NEOMED argues there is no evidence as to Dr. Fitsanakis' race or national origin or that Dr. Fitsanakis replaced Dr. Wu. We agree.

{¶ 25} The record contains no evidence indicating Dr. Fitsanakis' race or national origin. Dr. Wu simply asserts, without any evidentiary support, that she "is clearly not" of Chinese race or national origin. (Appellant's Brief at 19.) Additionally, the undisputed evidence demonstrates that Dr. Fitsanakis did not replace Dr. Wu. Civ.R. 56(C) limits the type of evidentiary materials that a trial court can consider when ruling on summary judgment to "the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, [that are] timely filed in the action." Thus, the rule "places strict limitations upon the type of documentary evidence that a party may use in support of or in opposition to summary judgment." *Arnold v. Columbus*, 10th Dist. No. 14AP-418, 2015-Ohio-4873, ¶ 31. Documents that do not fall within one of the categories of evidence listed in Civ.R. 56(C) may be introduced as proper evidentiary material only when incorporated by reference into a properly framed affidavit pursuant to Civ.R. 56(E). *Thompson v. Hayes*, 10th Dist. No. 05AP-476, 2006-Ohio-6000, ¶ 103. " 'Documents which are not sworn, certified, or authenticated by way of affidavit have no evidentiary value and shall not be considered by the trial court.' " *Id.*, quoting *State ex*

rel. Shumway v. Ohio State Teachers Retirement Bd., 114 Ohio App.3d 280, 287 (10th Dist.1996).

{¶ 26} In support of its summary judgment motion, NEOMED submitted evidence demonstrating Dr. Fitsanakis did not replace Dr. Wu. A person is considered "replaced" when another employee is hired or reassigned to perform the plaintiff's duties. *Blake v. Beachwood City Schools Bd. of Edn.*, 8th Dist. No. 95295, 2011-Ohio-1099, ¶ 23. "A person is not replaced when another employee is assigned to perform the plaintiff's duties in addition to other duties, or when the work is redistributed among other existing employees already performing related work." *Mazzitti v. Garden City Group, Inc.*, 10th Dist. No. 06AP-850, 2007-Ohio-3285, ¶ 19. Dr. Kasmer's affidavit indicates that Dr. Fitsanakis was a tenure-track faculty member, who was hired with outside grant funding to support the research focus area, neurodegenerative diseases and aging. Dr. Wu was not a tenure-track faculty member, his area of expertise is cardiovascular research, and his salary was funded by NEOMED. Thus, NEOMED presented evidence indicating Dr. Fitsanakis did not replace Dr. Wu. Dr. Wu argues that Dr. Kasmer testified at his deposition that Dr. Fitsanakis replaced Dr. Wu. But that is not an accurate characterization of Dr. Kasmer's testimony. Dr. Kasmer testified at his deposition that Dr. Wu's employment termination "freed up a salary line" that enabled the college to hire a research scientist in the research focus area. (Kasmer Dep. at 103.) He did not testify that Dr. Fitsanakis was hired to perform the same work as Dr. Wu. Further, in an attempt to rebut NEOMED's evidence, Dr. Wu attached "exhibits" to his response to NEOMED's motion for summary judgment. However, as found by the trial court, the exhibits were neither documents a court may consider in ruling on a motion for summary judgment nor incorporated by reference in a properly framed affidavit. Nor was the complaint verified. Thus, NEOMED demonstrated as a matter of law Dr. Wu's failure to establish a prima facie race or national origin discrimination claim.

{¶ 27} For these reasons, we overrule Dr. Wu's second assignment of error.

3. Retaliation

{¶ 28} Dr. Wu claims NEOMED unlawfully retaliated against him because he participated as a witness in his wife's discrimination lawsuits against NEOMED and

because he filed a lawsuit against NEOMED in 2016.[2] R.C. 4112.02(I) provides that it is an unlawful discriminatory practice "[f]or any person to discriminate in any manner against any other person because that person has opposed any unlawful discriminatory practice defined in this section or because that person has made a charge, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under sections 4112.01 to 4112.07 of the Revised Code."

{¶ 29} In the absence of direct evidence of retaliatory intent, which is not alleged here, the plaintiff must rely on the *McDonnell Douglas* evidentiary framework. *Veal v. Upreach LLC*, 10th Dist. No. 11AP-192, 2011-Ohio-5406, ¶ 16. The establishment of a prima facie case creates a presumption that the employer unlawfully retaliated against the plaintiff. *Housden v. Wilke Global, Inc.*, 10th Dist. No. 17AP-420, 2018-Ohio-3959, ¶ 62. In order to establish a prima facie case of retaliation pursuant to R.C. 4112.02(I), a plaintiff must demonstrate that (1) the plaintiff engaged in a protected activity, (2) the employer knew the plaintiff engaged in the protected activity, (3) the employer subjected the plaintiff to an adverse employment action, and (4) a causal link existed between the protected activity and the adverse action. *Dautartas v. Abbott Laboratories*, 10th Dist. No. 11AP-706, 2012-Ohio-1709, ¶ 49. If the plaintiff establishes a prima facie case of retaliation, the burden shifts to the employer to articulate a legitimate reason for its action. *Knepper v. Ohio State Univ.*, 10th Dist. No. 10AP-1155, 2011-Ohio-6054, ¶ 25. If the employer meets its burden, the burden then shifts back to the plaintiff to demonstrate that the proffered reason was a pretext for retaliation. *Id.*

{¶ 30} Dr. Wu alleges that, in addition to terminating his employment, NEOMED took other adverse actions against him because he engaged in protected conduct. In particular, Dr. Wu claims NEOMED retaliated against him by transferring all international program discussions to Dr. Kasmer, by not including him in the delegation to China in May 2015, by removing him from the Outcomes Assessment Committee, by directing him on March 23, 2016 to move his office location, by issuing a memorandum to him for his failure to report and walk in the college's commencement ceremony, by giving him an unfavorable

[2] Dr. Wu voluntarily dismissed his first lawsuit against NEOMED in May 2017.

performance evaluation as to his administrative duties on June 17, 2016, and by locking him out of campus buildings by deactivating his identification badge.

{¶ 31} Generally, an "adverse employment action" is a materially adverse change in the terms and conditions of the plaintiff's employment. *Canady v. Rekau & Rekau, Inc.*, 10th Dist. No. 09AP-32, 2009-Ohio-4974, ¶ 25, citing *Michael v. Caterpillar Fin. Servs. Corp.*, 496 F.3d 584, 593 (6th Cir.2007). Employment actions that result in mere inconvenience or an alteration of job responsibilities are not disruptive enough to constitute adverse employment actions. *Canady* at ¶ 25, citing *Mitchell v. Vanderbilt Univ.*, 389 F.3d 177, 182 (6th Cir.2004); *Samadder v. DMF of Ohio, Inc.*, 154 Ohio App.3d 770, 2003-Ohio-5340, ¶ 38 (10th Dist.). Instead, the action must constitute "a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits." *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 761 (1998). Although adverse employment actions are not limited to economic losses, "not everything that makes an employee unhappy is an actionable adverse action." *Smart v. Ball State Univ.*, 89 F.3d 437, 441 (7th Cir.1996).

{¶ 32} While Dr. Wu's employment termination is clearly an adverse employment action, the other circumstances he complains of did not affect the terms and conditions of his employment. The decision to shift international program duties away from Dr. Wu, including withdrawing Dr. Wu from the May 2015 China delegation, after he initially was to take part in the trip, did not result in him losing any pay despite the decrease in his administrative responsibilities. While Dr. Wu asserts he received as retaliation an unfavorable performance evaluation on June 17, 2016, and a memorandum on May 23, 2016 admonishing him for not walking in the commencement ceremony, he fails to explain how the memorandum or performance evaluation impacted the terms and conditions of his employment. To the extent he alleges the memorandum and performance evaluation led to his employment termination, this allegation is baseless because they were both dated after he had been given notice of his non-reappointment. As to the identification badge issue, Dr. Wu testified that his badge did not work on multiple occasions between June and October 2015. However, Dr. Kasmer testified that identification badge malfunctions were fairly common at NEOMED, and there was otherwise no evidence that Dr. Wu was singled

out and precluded from gaining building access despite instances in which his badge did not work. Dr. Kasmer further testified that committee assignments are reevaluated each year to account for committee, teaching, and research workloads within the college. The committee assignments also may be changed due to the accreditation process, and that was the basis for Dr. Wu's removal from a particular committee. There is no evidence his removal from that committee resulted in a significant change in his employment status or benefits. Lastly, even though it is undisputed Dr. Wu's office was relocated on NEOMED's campus, there is no evidence that this relocation, which may have created some inconvenience for Dr. Wu, caused a material change in his employment conditions. Thus, the only adverse employment action taken against Dr. Wu was his employment termination.

{¶ 33} Dr. Wu alleges that he engaged in protected activity by serving as a witness in cases that his wife filed against NEOMED in Portage County Court of Common Pleas in April 2015 and the Court of Claims in August 2015, and by initiating his first lawsuit against NEOMED in the Court of Claims in 2016. Dr. Wu asserts there was a causal connection between the alleged protected activity and his employment termination based on the temporal proximity between that activity and the decision to terminate his employment. "[I]n limited cases, '[w]here an adverse employment action occurs very close in time after an employer learns of a protected activity, such temporal proximity between the events is significant enough to constitute evidence of a causal connection for the purposes of satisfying a prima facie case of retaliation.' " *Sells v. Holiday Mgt.*, 10th Dist. No. 11AP-205, 2011-Ohio-5974, ¶ 33, quoting *Mickey v. Zeidler Tool & Die Co.*, 516 F.3d 516, 525 (6th Cir.2008); *Dautartas* at ¶ 55. However, temporal proximity alone is insufficient to show pretext. *Sells* at ¶ 35.

{¶ 34} Dr. Wu has failed to make a prima facie showing of retaliation. Insofar as he claims his wife's lawsuits constituted protected activities that are imputed to him, the filing of those lawsuits was not close in time to the issuance of the notice of non-reappointment in March 2016. Additionally, Dr. Wu has presented no evidence as to when he provided testimony in his wife's actions against NEOMED. Instead, he cites Dr. Taylor's March 2016 testimony in Dr. You's Court of Claims case as being close in time to the decision not to reappoint him. However, the temporal proximity between when Dr. Taylor testified at a

deposition in Dr. You's case and the decision to not reappoint Dr. Wu does not create an inference of retaliatory motive against Dr. Wu. Dr. Wu was required to present evidence of a causal connection between his alleged protected activity and the adverse action. Moreover, to the extent Dr. Wu relies on the filing of his first action against NEOMED in the Court of Claims as constituting protected activity, that action was filed on April 4, 2016, which was after he was notified of the non-reappointment decision. Therefore, Dr. Wu failed to present evidence reasonably establishing a causal link between his alleged protected activity and his employment termination.

{¶ 35} Accordingly, we overrule Dr. Wu's third assignment of error.

B. Dr. Wu's Fourth Assignment of Error

{¶ 36} In his fourth assignment of error, Dr. Wu contends the trial court erred in denying his motion to strike NEOMED's reply brief in support of its motion for summary judgment for failure to comply with the page limitation under the local court rule. He argues NEOMED's filing should have been stricken because it contained two pages more than the number of pages permitted under the local rules. This assignment of error lacks merit.

{¶ 37} Pursuant to L.C.C.R. 4(E), "[r]eply briefs shall not exceed seven pages in length, exclusive of attachments. Applications for leave to file a long brief shall be by motion that sets forth the unusual and extraordinary circumstances which necessitate the filing of a long brief." " 'The enforcement of local court rules is well within the sound discretion of the court, including the power to strike a brief that does not comply with such rules.' " *Hetrick v. Ohio Dept. of Agriculture*, 10th Dist. No. 15AP-944, 2017-Ohio-303, ¶ 67, quoting *Boggs v. Ohio Real Estate Comm.*, 186 Ohio App.3d 96, 2009-Ohio-6325, ¶ 42 (10th Dist.). Further, it is well-established that "trial courts have inherent power to manage their own dockets." *State ex rel. Charvat v. Frye*, 114 Ohio St.3d 76, 2007-Ohio-2882, ¶ 23.

{¶ 38} Here, NEOMED's reply brief was nine pages in length, including the last page that only contained the signature line and the certificate of service. The first page was not numbered and the second page was labeled as page number one of the document. After NEOMED filed its reply brief, but on the same day, it moved for leave to file the reply brief in excess of the page limitation. NEOMED represented to the court that the misnumbering

of the document was inadvertent. Dr. Wu correctly asserts that NEOMED's reply brief did not strictly comply the page limitation set forth in the local rule, but striking the entire brief because it is a page or two over the limit reasonably could be viewed as an excessive sanction. Thus, the trial court did not abuse its discretion in not striking the brief.

{¶ 39} Accordingly, we overrule Dr. Wu's fourth assignment of error.

IV. Disposition

{¶ 40} Having overruled all four of Dr. Wu's assignments of error, we affirm the judgment of the Court of Claims of Ohio.

Judgment affirmed.

BRUNNER and BEATTY BLUNT, JJ., concur.