DIVISION ONE
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RUTH A. WILLINGHAM, CLERK
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

DONNA M.K. MALONE, Plaintiff/Appellant, v. DYSART UNIFIED SCHOOL DISTRICT NO. 89, an Arizona School District; DR. GAIL PLETNICK, as Superintendent of Dysart Unified School District No. 89, Defendants/Appellees.	1 CA-CV 10-0555 DEPARTMENT E **MEMORANDUM DECISION** (Not for Publication – Rule 28, Arizona Rules of Civil Appellate Procedure)

Appeal from the Superior Court in Maricopa County

Cause No. CV 2008-011235

The Honorable Sam J. Myers, Judge

AFFIRMED

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by Gary L. Lassen
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I R V I N E, Judge

¶1 Donna M. K. Malone appeals from the superior court's

grant of summary judgment in favor of Dysart Unified School District No. 89, its superintendent, and Malone's former supervisor, Dr. Gail Pletnick (collectively "Dysart") in Malone's claim arising from the non-renewal of her employment contract, and from the denial of a motion for new trial in that action. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 We assume the facts and all reasonable inferences therefrom in the light most favorable to Malone. *See McCloud v. Kimbro*, 224 Ariz. 121, 122, ¶ 2, 228 P.3d 113, 114 (App. 2010). The Dysart Unified School District No. 89 ("the District") employed Malone as an administrator from July 2006 until June 2007, under a one-year contract. Malone was assigned as principal of Ashton Ranch School.

¶3 On January 23, 2007, an eighth-grader at Ashton Ranch School ("the student") disclosed to Malone that he had made a list entitled, "The people I want to kill." The student and his mother assured Malone that he was not dangerous to himself or others. After speaking to a counselor and a school psychologist, Malone determined that there was no genuine threat, so she did not reveal the list to the police or District-level administrators.

¶4 Several days later, Malone was informed that the student brought a knife to school and was seen cutting himself

with a razor blade in the cafeteria the day before. Malone met with the parent, and they discovered a steak knife in his backpack. The student explained he carried the knife to hurt himself if he got angry. Malone suspended the student for ten days, but did not immediately report the incident to the District or the police.

¶5 On February 7, Malone and her staff performed a threat assessment of the student and notified a District-level administrator for the first time. On February 8, the District-level administrator instructed Malone to send a letter to the parents of eighth-grade students, informing them that "a student created a list of people to kill." The media became aware of the letter and contacted Mark Maksimowicz, the District's superintendent at the time.

¶6 According to online media reports on February 9 and 10, Maksimowicz stated that Malone knew about the list as early as January 23, but did not report the incident to the District until February 8. The reports also claimed Maksimowicz said that an internal investigation is underway to determine whether Malone failed to report to the District sooner; that appropriate action would be taken pending the outcome of that investigation, though he declined to discuss consequences the principal could face; and that Malone was familiar with the student and acted

with the best intentions, not believing that there was a threat to others.

¶7 Maksimowicz delivered a letter to Malone on February 9, stating that he was placing her on paid administrative leave pending the investigation. The investigation concluded that Malone materially complied with District policy, but that she should have informed the District sooner.

¶8 Maksimowicz sent another letter to Malone on April 5, 2007, informing her that he intended to recommend that the Board not renew her contract. The letter stated, "As an alternative to these formal proceedings and as a courtesy to you, I would recommend that the Board accept your resignation if you tender it in writing, no later than 2:00 p.m. on April 9, 2007." Malone resigned as principal of Ashton Ranch School on April 10. At the District meeting the next day, the Board took no action regarding Malone's employment status. The Board formally accepted Malone's resignation on April 19, but continued to pay Malone through the end of her contract.

¶9 Malone filed a notice of claim against Dysart on August 20, 2007. On May 15, 2008, Malone filed a complaint and alleged negligence, including negligent supervision (Count 1); breach of contract (Count 2); violation of District and public policies and Arizona Revised Statutes ("A.R.S.") section 15-503

(Supp. 2010)[1] (Count 3); intentional and negligent infliction of emotional distress (Count 4); breach of the covenant of good faith and fair dealing (Count 5); false light invasion of privacy under Article 2, section 8, of the Arizona Constitution (Count 6); and violation of due process under Article 2, section 4 of the Arizona Constitution (Count 7). Dysart moved to dismiss the complaint, raising inter alia, the statute of limitations. The superior court ruled that Malone's claims were not statutorily barred, but granted Dysart's motion with respect to any portion of the claim arising from events that occurred before February 22.

¶10 Malone subsequently filed a motion for partial summary judgment on the breach of contract, failure to renew her contract, and violations of due process counts. The superior court denied the motion because there were genuine disputes of material fact.

¶11 Dysart filed an answer and moved for summary judgment. The superior court granted Dysart's motion after finding that the counts of negligence, negligent and intentional infliction of emotional distress, and false light were statutorily barred because there was no support in the record that they accrued in March or June 2007. The court also found that Malone was not

[1] We cite to the current version of the applicable statutes where no changes material to this decision have occurred.

injured because she received the benefits of her 2006 to 2007 contract and was not entitled to a new one. The court then dismissed the remaining claims because there was no private right of action for the violation of A.R.S. § 15-503, and Malone did not have a protected liberty interest. The court denied Malone's motion for a new trial and awarded Dysart attorneys' fees. Malone timely appeals.

DISCUSSION

¶12 Summary judgment is proper when there is no genuine dispute of material fact, and the moving party is entitled to a judgment as a matter of law. Ariz.R.Civ.P. 56(c)(1). We review de novo whether any genuine issues of material fact exists and whether the trial court applied the law properly. *McCloud*, 224 Ariz. at 123, ¶ 6, 228 P.3d at 115.

¶13 Malone argues that the superior court erred by finding that A.R.S. § 15-503(D) did not create a private cause of action; by ruling that the statute of limitations barred claims arising before February 22, 2007; and by relying on Malone's resignation, a disputed material fact, to conclude that she had no due process claim. We discern no error.

¶14 Section 12-821 (2003) bars any claim against a public person or entity not filed within a year the cause of action accrues. Accrual does not occur until "the damaged party realizes he or she has been damaged and knows or reasonably

should know the cause, source, act, event, instrumentality or condition which caused or contributed to the damage." A.R.S. § 12-821.01(B).

¶15 Because Malone's lawsuit was filed on May 15, 2008, she was statutorily barred from bringing any claim for actions arising before May 16, 2007. The record shows that the statements the superintendent allegedly made to the media occurred on February 9 or 10; the conduct resulting in Malone's constructive dismissal occurred by the time she resigned as principal of Ashton Ranch on April 10; any statutory violation relating to the non-renewal of her contract occurred by the April 15 deadline under A.R.S. § 15-503(D); and that any failure to offer Malone a new contract under A.R.S. §§ 15-503(D) and -538.01 (Supp. 2010) occurred by May 15. Consequently, Malone's tort (Counts 1, 3 and 4) and contract claims (Counts 2 and 5) against Dysart are barred under A.R.S. § 12-821, as well as any constitutional claims arising before May 16, 2007 (Counts 6 and 7).

¶16 Malone has not addressed the dismissal of tort claims against Maksimowicz or Gail Pletnick in their individual capacities. Because issues not clearly raised in a party's appellate brief are waived, we do not address them further. *See Schabel v. Deer Valley Unified Sch. Dist. No. 97*, 186 Ariz. 161, 167, 920 P.2d 41, 47 (App. 1996).

¶17 To the extent Malone claims due process violations arising on or after May 16, 2007, we also find no error. Procedural due process protections do not apply unless an employee can demonstrate a property or liberty interest in her job. *McLeod v. Chilton*, 132 Ariz. 9, 19, 643 P.2d 712, 722 (App. 1981). The record does not show that Malone had a property interest in continued employment. First, Malone had a one-year contract without an automatic renewal clause. Second, Malone was an administrator not statutorily guaranteed continued employment. *See Paczosa v. Cartwright Elem. Sch. Dist. No. 83*, 222 Ariz. 73, 80, ¶¶ 35-37, 213 P.3d 222, 229 (App. 2009) (holding administrators have no property interest in continued employment under the statutes that protect tenured teachers).

¶18 Nor was Malone entitled to a liberty interest hearing. Assuming that Malone was constructively dismissed, the stigma of dismissal alone does not give rise to a due process claim based on the deprivation of a liberty interest. *McLeod*, 132 Ariz. at 18, 643 P.2d at 721. Similarly, the "[n]onrenewal of a teaching contract alone does not constitute a deprivation of an interest in liberty." *Id.* at 19, 643 P.2d at 722 (quoting *Cato v. Collins*, 539 F.2d 656, 660 (8th Cir. 1976)). Such a deprivation might occur, however, if "the reasons for nonrenewal are announced publicly or are incorporated into a record made available to prospective employers" in a manner that "affect[s]

a teacher's chances of securing another job." *Id.* Neither situation occurred here. On this record, the superior court did not err in granting Dysart's motion for summary judgment.

¶19 Lastly, Malone argues the superior court erred in awarding $18,710 of attorneys' fees to Dysart under A.R.S. § 12-341.01 (2003). Malone argues the award is inappropriate because Dysart's litigation costs were covered by insurance, and the award would result in a windfall to Dysart's insurance company, which was not a party to the contract.

¶20 Section 12-341.01 permits a court to award attorneys' fees to the successful party in a contested action arising out of contract. Because Dysart prevailed on all of Malone's claims arising from the employment contract, the trial court was within its discretion to award fees under A.R.S. § 12-341.01. *See Orfally v. Tucson Symphony Soc.*, 209 Ariz. 260, 265, ¶ 18, 99 P.3d 1030, 1035 (App. 2004). Dysart's insurance status does not preclude the trial court from awarding fees or otherwise establish an abuse of discretion. *See id.* at 267, ¶ 27, 99 P.3d at 1037. We therefore affirm the trial court's award of attorneys' fees in favor of Dysart.

¶21 Both parties seek attorneys' fees on appeal. Because Malone is not the prevailing party, she is not entitled to attorneys' fees. In the exercise of our discretion, we decline to award Dysart its attorneys' fees on appeal pursuant to A.R.S.

§ 12-341.01(A). While we recognize deficiencies in Malone's appellate briefs, we also decline to award sanctions under ARCAP 25. We grant Dysart's request for costs upon compliance with ARCAP 21.

CONCLUSION

¶22 For the reasons stated, we affirm.

/s/
PATRICK IRVINE, Judge

CONCURRING:

/s/
PETER B. SWANN, Presiding Judge

/s/
MAURICE PORTLEY, Judge