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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2013-CA-001487-MR

PETER HADJIEV

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. CLARK, JUDGE
ACTION NO. 08-CI-03350

BOARD OF TRUSTEES OF UNIVERSITY
OF KENTUCKY; MARY A. ARTHUR;
STEVE BULLARD; CHRISTOPHER
D. BARTON; MILINDA HAMILTON;
MICHAEL D. GAY; AND JEAUNE HADL

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, STUMBO, AND THOMPSON, JUDGES.

COMBS, JUDGE: Peter Hadjiev appeals the order of the Fayette Circuit Court which granted summary judgment to the University of Kentucky and to individuals who were also named as parties to the lawsuit. After our review, we affirm.

As a preliminary matter, we note that this court granted motions for both parties to exceed the page limit of their briefs. Nevertheless, both parties failed to provide the procedural history. Kentucky Rule[s] of Civil Procedure (CR) 76.12(c)(iv) provides that the statement of the case shall be “a chronological summary of the facts *and procedural events* necessary to an understanding of the issues presented by the appeal[.]” In this case, the record is extensive and replete with numerous exhibits. The parties’ omission to follow the rule impaired our expeditious review of the record. Counsel are reminded of the importance of complying with the rules which are designed to promote efficient judicial process.

Hadjiev is a native of Bulgaria, where he began a career in forestry. In 1993, he relocated to the United States.¹ In June 1996, Hadjiev began employment at the University of Kentucky in the Department of Forestry as a research analyst. Primarily, he worked in the field – various forests throughout the Commonwealth – collecting specimens to be analyzed in the laboratory. When he was not in the field, Hadjiev assisted his co-worker, Milinda Hamilton, in the laboratory. Additionally, as a university employee, Hadjiev was eligible to take classes, and he exercised that privilege several times.

Hadjiev was hired by Dr. Dave Brown, but he was also supervised by Dr. Mary Arthur, and he worked on projects for both professors. Dr. Brown left UK, and Dr. Chris Barton replaced him.

¹ Hadjiev became a citizen of the United States in 2001.

In May 2005, Hadjiev took Family Medical Leave in order to assist his ailing mother in Bulgaria. Soon after he returned, on August 12, 2005, Hadjiev received notification of a schedule change from Dr. Barton. Hadjiev was to work two nine-hour days and two nine-and-one-half hour days each week. The reason was that it took several hours to drive to some of the locations. Because the long driving time significantly reduced the number of hours for conducting work in the forests, a longer work day provided a larger time frame for the actual research. Prior to the schedule change, Hadjiev had been working seven and one-half hours over five days per week. The new schedule created time conflicts with classes which Hadjiev wanted to take.

On the same day of his notification of the change in schedule, Hadjiev filed a complaint with the University's Employee Relations Office (ERO). The ERO closed the complaint after explaining to Hadjiev that departments were authorized to amend their employees' schedules unilaterally and with short notice.

Hadjiev next sent a letter to Dr. Arthur asking for permission to take a class during hours which conflicted with his new schedule. Drs. Barton and Arthur responded with a written memorandum which explained: "You may, of course, attend all class periods that occur on days when you are working in the building and not in the field, but you must recognize that you are likely to miss a substantial number of class meetings." Hadjiev then complained about his new schedule to the Forestry Department Chairman, Dr. Steve Bullard. Dr. Bullard replied with a memorandum expressing his approval of the new schedule.

On January 8, 2006, Hadjiev emailed Dr. Arthur, seeking approval for taking vacation on January 23 and 24, a Monday and Tuesday. Dr. Arthur complied with his request on the proviso that she and Dr. Barton would share Hadjiev on his other two work days. They agreed that Hadjiev would work for Dr. Arthur on Wednesday and Dr. Arthur on Thursday. Hadjiev took vacation days on the Monday and Tuesday; but he failed to report to work on Wednesday, January 25.

On February 6, 2006, Dr. Barton received an email containing the amount of Hadjiev's remaining vacation time. He thought that the number of days seemed high; he also recalled that Hadjiev's time sheet had not reflected the two requested vacation days. He did not remember Hadjiev's working for him on January 25, the day following the vacation days. Dr. Barton confirmed with Hamilton that Hadjiev had not reported to the laboratory that day.

The Forestry Department's administrative assistant advised Hadjiev to correct the time sheet by reporting the equivalent time of his absences on his timesheet for the following time period. Hadjiev reported two-days' vacation time, again omitting the third day. Dr. Barton consulted Michael Gay, a specialist in Human Resources, who advised Dr. Barton that Hadjiev's original time sheet must be modified because it was improper to report the vacation time during a different pay period.

Dr. Barton informed Hadjiev that he needed to correct the first time sheet. Once again, Hadjiev claimed taking only two vacation days. On February 24, 2006, Drs. Barton and Arthur sent Hadjiev a memo advising him that his

timesheets were incorrect and needed to be revised to “reflect an accurate accounting of [his] work time.” The same day, Hadjiev filed a charge of discrimination with the Kentucky Commission on Human Rights (KCHR) and with the Equal Employment Opportunity Commission (EEOC).

On March 6, 2006, Drs. Barton and Arthur informed Hadjiev that he was being suspended for falsifying his time records until he could provide proof that his records were accurate. Hadjiev responded with a letter declaring that he had made “an honest mistake.” Because Hadjiev was unable to account for his time on the Wednesday in question, his employment was terminated consistent with the recommendation of the University’s Human Resources Department.

Hadjiev initiated a lengthy grievance process within the University. His termination was upheld at every stage. The proceedings culminated in a hearing before a three-member panel consisting of representatives from departments unrelated to the Forestry Department. The purpose of the hearing was to make a recommendation to the Executive Vice-President for Finance and Administration. After hearing approximately six hours of testimony, the panel determined that the termination should be upheld. The Executive Vice-President upheld the termination, completing the grievance process.

In January 2007, Michael Gay (the Human Resources specialist) was contacted by the United States State Department. Hadjiev was a candidate for a position with the State Department. Gay provided Hadjiev’s separation

information; *i.e.*, that he had been terminated for falsifying time records.

Subsequently, the State Department rejected Hadjiev's application.

On July 3, 2008, Hadjiev filed a complaint in Fayette Circuit Court alleging that he had been fired as a result of discrimination and retaliation. The complaint also included an allegation of defamation based on Gay's conversation with the State Department investigator. The University of Kentucky Board of Trustees, Dr. Arthur, Dr. Bullard, Dr. Barton, Hamilton, Gay, and Jeune Hadl (unemployment office representative) were named as defendants. The defense filed a motion for summary judgment, which the trial court granted on August 20, 2013. This appeal followed.

Hadjiev first contends that the trial court erred in granting summary judgment on all his claims. Summary judgment is a device utilized by the courts to expedite litigation. *Ross v. Powell*, 206 S.W.3d 327, 330 (Ky. 2006). It is a "delicate matter" because it "takes the case away from the trier of fact before the evidence is actually heard." *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 482 (Ky. 1991). The movant must prove that no genuine issue of material fact exists and "should not succeed unless his right to judgment is shown with such clarity that there is no room left for controversy." *Id.*

The trial court must view the evidence in favor of the non-moving party. *City of Florence v. Chipman*, 38 S.W.3d 387, 390 (Ky. 2001). In order to overcome a motion for summary judgment, the non-moving party must present "at least some affirmative evidence showing the existence of a genuine issue of

material fact.” *Id.* See also Kentucky Rule[s] of Civil Procedure (CR) 56.03. On appeal, our standard of review is “whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law.” *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996). Because summary judgments do not involve fact finding, our review is *de novo*. *Pinkston v. Audubon Area Community Services, Inc.*, 210 S.W.2d 188, 189 (Ky. App. 2006).

In this case, the only evidence that Hadjiev has presented are his own statements and allegations. A party’s own statements alone are insufficient to overcome summary judgment. *Haugh v. City of Louisville*, 242 S.W.3d 683, 686 (Ky. App. 2007).

Hadjiev asserted claims of discrimination based on national origin, reverse sex discrimination, a hostile work environment, wrongful discharge, retaliation, and wrongful termination – all of which fail. He has not provided any evidence to support his allegations. Despite the disorganization of his brief and the extensive record, we nonetheless conducted a review. Our analysis reveals that he failed to present a case. Therefore, the trial court correctly sustained the motion for summary judgment.

Hadjiev also argues that the trial court erred in denying his motion to compel inspection of Dr. Barton’s hard drive. He sought evidence that he had emailed a request for vacation on Wednesday, January 25. The trial court has broad discretion over the regulation of discovery. *Sexton v. Bates*, 41 S.W.3d 452, 455

(Ky. App. 2001). CR 26.02 permits discovery of material that is *relevant* to the subject matter at issue.

In this case, the trial judge correctly denied Hadjiev's motion. The requested email was not relevant to the issue presented. The basis of Hadjiev's termination was not whether he had *requested* a day of vacation. The termination was due to his failure to *report* a day of vacation in spite of several directives and opportunities to do so. Hadjiev has not presented any proof that the trial court's decision was an abuse of its discretion.

Hadjiev also contends that the trial court erred in declining to grant his motion to compel preservation notices and a deposition of UK's general counsel, Barbara Jones. And again, Hadjiev has failed to demonstrate the relevance of this discovery. The record includes a memorandum from Jones to Dr. Arthur advising her to save all communications with and documents pertaining to Hadjiev. Hadjiev does not specify how any other preservation notices would have affected his case.

Hadjiev argues that Jones should have been deposed as a fact witness. He contends that she should explain why she authorized Gay's communication with the State Department investigator. However, Jones was not involved in communication of the facts with the State Department. She merely authorized the communication; she did not have first-hand knowledge of any facts about Hadjiev's termination. Additionally, her testimony would have been limited by the attorney-client privilege. Thus, the trial court did not abuse its discretion with its ruling.

We affirm the Fayette Circuit Court.

ALL CONCUR.

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