STATE OF MICHIGAN

COURT OF APPEALS

DORIS M. CASON,

Plaintiff-Appellant,

v

JACKSON PUBLIC SCHOOLS and MARVIN L. GOAD,

Defendants-Appellees.

UNPUBLISHED
November 14, 1997

No. 199428
Jackson Circuit Court
LC No. 94-069916-CL

Before: MacKenzie, P.J., and Sawyer and Neff, JJ.

PER CURIAM.

Plaintiff, an African American fourth-grade teacher, brought this action against her employer and supervising principal for alleged violations of public policy and of the Civil Rights Act, MCL 37.2202(1)(a); MSA 3.548(202)(1)(a), and MCL 37.2701(a); MSA 3.548(701)(a). She now appeals as of right from an order granting summary disposition to defendants pursuant to MCR 2.116(C)(10). We affirm.

Near the end of the 1990-1991 school year, defendant Marvin Goad, the principal of the school where plaintiff taught, asked plaintiff to allow two of her students to make up some work they had missed. Goad, who is white, administered make-up tests to the students, who were also white, but plaintiff subsequently refused to change their grades because she felt it was unfair to her other students. A review panel was convened pursuant to MCL 380.1249; MSA 15.41251 (the "Grade Change Act"), and plaintiff's decision was ultimately upheld.

The following school year, plaintiff received a class with a large number of minority students and students with discipline problems. She felt that she was being retaliated against because she had refused to acquiesce to Goad's request to change the two students' grades. Within a few weeks of the start of school, she approached Goad and Assistant Principal Cook to advise them that her class was unmanageable, but she felt that they did not address her concerns. Plaintiff also filed a complaint with the Civil Rights Commission. A meeting was subsequently convened between plaintiff, Goad, and the union president in order to propose some solutions, and students were soon transferred out of the class. By this point, however, plaintiff had taken a leave of absence and was being treated for stress. Plaintiff

took leaves of absence intermittently throughout the next two years, primarily to be treated for her stress condition.

Plaintiff alleged that, in addition to "stacking" her class with a large number of unruly students, defendants continued to retaliate against her by giving her a negative performance review, reassigning her to an uncarpeted smaller classroom near Goad's office, and monitoring her room more frequently than other teachers' classrooms. Her complaint included three counts claiming that defendants' conduct was in violation of public policy, constituted race discrimination, and constituted unlawful retaliation for filing her civil rights complaint. The trial court found that there was no factual basis to support plaintiff's claims and granted summary disposition to defendants.

On appeal, plaintiff contends that the trial court improperly dismissed her claim that defendants violated public policy by retaliating against her for her refusal to change the two students' grades and her decision to file discrimination charges. In order for plaintiff's public policy claim to survive summary disposition, she had to establish that one of three grounds was met: (1) the retaliation violated an explicit legislative statement that prohibits retaliation against employees who act in accordance with a statutory right or duty; (2) she was retaliated against because she refused to violate the law in the course of employment; or (3) she was retaliated against because she exercised a right conferred by a well established legislative enactment. *Suchodolski v Michigan Consolidated Gas Co*, 412 Mich 692; 316 NW2d 710 (1981).

The first of these factors has been limited, if not eliminated, by our Supreme Court in *Dudewicz v Norris-Schmid, Inc*, 443 Mich 68; 503 NW2d 645 (1993). See *Vagts v Perry Drugs Stores, Inc*, 204 Mich App 481, 485; 516 NW2d 102 (1994) and *Garavaglia v Centra, Inc,* 211 Mich App 625, 630; 536 NW2d 805 (1995). If it has been eliminated, then plaintiff obviously is unable to sustain a claim for violation of public policy on that ground. If it still exists, then it may only be used as the basis for a public policy claim if there is an explicit statutory prohibition against discharge or retaliation for the conduct at issue. Because there is no legislative statement prohibiting retaliation for acts in accordance with the Grade Change Act, plaintiff could not maintain a public policy claim based on the first *Suchodolski* ground.

Plaintiff's claim also fails to meet the second ground enumerated in *Suchodolski, supra*, with respect to the grade change issue. Plaintiff was not asked to violate the law, nor did she in any way refuse to violate the law. Instead, she was asked to change a grade, which is not an illegal act. Accordingly, even if defendants' acts were found to be retaliatory, they were not a result of plaintiff's failure or refusal to violate the law in the course of employment.

Finally, with respect to the grade change issue, there are no facts to support the claim that defendants' acts were retaliatory; plaintiff therefore could not establish that she was retaliated against for exercising a right conferred by a well established statute, the third ground for a public policy claim under *Suchodolski, supra*. The evidence shows that Goad and Cook formulated the class assignments without information as to which students had discipline problems. Once the students' names were grouped into classroom rosters, each teacher randomly selected a roster. Thus, even if there was evidence that Goad attempted to stack the classes, the "lottery" by which the teachers chose their

classes would have prevented Goad from intentionally placing certain students in plaintiff's class. Plaintiff's assertions that Goad altered the class lists during the summer in order to retaliate against her is unsupported by any factual record and amounts to nothing more than speculation. Accordingly, plaintiff's public policy claim with respect to the grade change issue was correctly disposed of by summary disposition.

Similarly, with respect to plaintiff's argument that she was retaliated against for filing civil rights charges, the trial court correctly found that the acts alleged by plaintiff did not constitute retaliation. There can be no finding that the alleged stacking of plaintiff's class was a result of her decision to file race discrimination charges because those charges were filed after the start of the school year, when plaintiff already had her class assignment. None of the other allegations made by plaintiff have factual support, and thus there can be no finding of retaliation. Plaintiff admitted that the monitoring of her class that occurred subsequent to the filing of her race discrimination charge was reasonable in light of her complaints about the number of discipline problems that she had and her requests for assistance. Plaintiff's negative performance review was a result of her inexperience in teaching the sixth grade curriculum. Finally, the fact that plaintiff's classroom location was changed was in direct response to a note written by her doctor stating that she needed easy access to restroom facilities. Because plaintiff has not made a showing that defendants retaliated against her, there can be no subsequent finding that they violated public policy in so doing. Summary disposition was properly granted.

Plaintiff next claims that the court erred in granting summary disposition with respect to her claim that defendants discriminated against her because of her race. Plaintiff argues that because she and other black teachers were assigned more black and minority students than the white teachers, she was treated differently than similarly situated teachers because she was black.

To sustain a claim of racial discrimination, a plaintiff must first make a prima facie showing of discrimination. *Lytle v Malady*, 456 Mich 1, 29 (op of Riley, J.), 48 (op of Cavanagh, J.), 52 (op of Boyle, J.), 68 (op of Brickley, J.); 566 NW2d 582 (1997). Once a plaintiff makes a prima facie showing, the burden shifts to the defendant to articulate a legitimate, nondiscriminatory reason for its actions. *Id.* If the employer is unable to satisfy its burden of production, it is presumed that the basis of the employer's decision was discriminatory. *Id.* If the defendant makes such a showing, the burden shifts back to plaintiff to show that defendant's proffered reason was merely a pretext for discrimination. *Id.*

Here, plaintiff essentially argues that her actions with respect to not changing white students' grades convinced Goad that she was unfit to teach white students, so he gave her a disproportionate number of black students. Other than her inference and speculation, however, plaintiff did not provide any evidence to support her claim. Plaintiff did show, however, that minority teachers received more minority students than did white teachers. Assuming that that fact alone constitutes a prima facie showing of discrimination, defendants articulated a legitimate, nondiscriminatory explanation for the assignments. *Lytle, supra*. As previously noted, the evidence established that the class selection process for the 1991-92 school year was virtually a random assignment with the teachers drawing a student roster. Thus, even assuming that some classes were stacked with more minority students, these classes could not be intentionally given to specific teachers. This explanation is a legitimate,

nondiscriminatory reason for the disparity. Other than plaintiff's speculation that Goad altered the lists after the random draw, plaintiff submitted no evidence to demonstrate that this explanation was only a pretext for discrimination. Speculation and conjecture are insufficient to establish the existence of a disputed fact, *Libralter Plastics, Inc v Chubb Group of Ins Cos*, 199 Mich App 482, 486; 502 NW2d 742 (1993), and summary disposition with respect to plaintiff's race discrimination claim was therefore properly granted.

Finally, plaintiff claims that the trial court erred in dismissing her race retaliation claim. After a review of the record, we disagree. It is unlawful to retaliate or discriminate against a person because that person has made a charge or filed a civil rights complaint. The elements necessary to establish a prima facie case of retaliation under the Michigan Civil Rights Act are: (1) the plaintiff was engaged in a protected activity; (2) the defendant took action that was adverse to the plaintiff; and (3) there was a causal connection between the protected activity and the adverse employment action. *Kocenda v Detroit Edison Co*, 139 Mich App 721, 725-726; 363 NW2d 20 (1984).

In this case, plaintiff has not established a causal connection between her act of filing race discrimination charges and defendants' conduct. Plaintiff lists four acts which she classifies as defendants' retaliation against her: (1) defendants' refusal to rectify the problem created by the number of incorrigible students in her classroom; (2) defendants' excessive and unreasonable monitoring of her classroom; (3) their negative review of her performance as a sixth grade teacher; and (4) their relocation of her classroom.

First, with respect to plaintiff's allegation that Goad refused to rectify her discipline problems, the record shows that the administration removed problem students from her classroom both during and shortly after plaintiff's sick leave. Second, plaintiff concedes that the monitoring of her classroom was reasonable in light of her complaints and requests for assistance. Further, Goad's visits to her classroom in March and April 1993 were required visitations for purposes of preparing her performance evaluation, which was due to occur that year.

Third, plaintiff's performance review was conducted according to the specified procedure, including the number and timing of classroom visits. The appraisal itself discusses plaintiff's weaknesses with respect to the sixth grade curriculum, which was new to her that year because she decided to change grade levels. Numerous letters from parents supported the contention that plaintiff was simply unable to teach the sixth grade curriculum effectively. Finally, plaintiff's unsubstantiated assertion, that defendants reassigned her to a different classroom so that they could monitor and harass her, is insufficient to create a genuine issue of material fact. The reassignment occurred ten months after plaintiff filed her discrimination charges and was a new assignment for the following school year; many faculty members were relocated to different classrooms that year. Moreover, as previously noted, defendants relocated plaintiff to a room directly across from the adult restroom in response to her doctor's recommendation. Plaintiff's speculation and conjecture are insufficient to establish the existence of a genuine issue of material fact. *Libralter Plastics, supra*, 486. The trial court therefore correctly granted summary disposition to defendants.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ David H. Sawyer
/s/ Janet T. Neff