STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0403

Sarah Dickhausen,
Appellant,

Charlotte Parayno,
Plaintiff,

vs.

St. Paul Public Schools, et al.,
Respondent,

Securitas Security Services USA, Inc.,
Defendant.

Filed August 26, 2019
Affirmed
Connolly, Judge

Ramsey County District Court
File No. 62-CV-17-4712

Leslie L. Lienemann, Celeste E. Culberth, Culberth & Lienemann, LLP, St. Paul, Minnesota (for appellant)

Sarah E. Bushnell, Jeffrey M. Markowitz, Arthur, Chapman, Kettering, Smetak & Pikala, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Hooten, Judge; and Smith, John, Judge.*

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

Appellant challenges the summary-judgment dismissal of her reprisal claims under the Minnesota Human Rights Act (MHRA), arguing that the district court erred by determining that she could not support a reprisal claim under either a direct-evidence theory or the *McDonnell Douglas* test. Because there are no material facts in dispute and the district court did not err in its application of the law, we affirm.

FACTS

Appellant Sarah Dickhausen was employed as a teacher by respondent St. Paul Public Schools, Independent School District No. 625 (SPPS), under a two-year probationary teaching contract for the 2014-2015 and the 2015-2016 school years. During 2014-2015, appellant taught reading at Harding High School. Appellant transferred to the Open World Learning Community (OWL) in 2015-2016 and taught social studies. After appellant's second year of teaching, the school board voted not to renew her teaching contract. Appellant initiated the present action, alleging that she suffered reprisal stemming from her association with students of color in violation of the MHRA.

SPPS teachers cannot achieve tenure without successfully completing three probationary school years. *See* Minn. Stat. § 122A.41, subd. 2(a) (2018). Probationary

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

teachers are provided with Peer Assistance and Review (PAR) coaching and at least three written reviews per year, called Standards of Effective Teaching (SET) evaluations. *See id.* In her first year, teaching reading at Harding High School, appellant had a PAR coach and received three SET reviews that rated her as "Developing" and "Proficient" on a scale of four categories: Below Standard, Developing, Proficient, and Distinguished. Appellant's position was discontinued at the end that year for budgetary reasons and she transferred to OWL.

Appellant quickly built trusting relationships with some of her students at OWL, particularly with underprivileged black students. The principal at OWL, David Gundale, and appellant's PAR, Brett Asleson, recognized appellant's ability to build relationships with these students as one of her strengths. However, appellant admitted that she struggled to find a balance between teaching her students and supporting them in other ways. She was observed on more than one occasion leaving a classroom of students that she was scheduled to teach for 20 or 30 minutes to talk with a student who had also left his or her own scheduled class.

In addition to these observed and admitted teaching concerns, Gundale began receiving reports from parents of OWL students that appellant's course did not have sufficient rigor or appropriate expectations for students. Gundale and Asleson shared these concerns. They made their first formal SET observation of appellant in November, noting "Areas of Growth" that included both a failure to set "High Academic Expectations" and a failure to assess whether students understand the learning targets. Appellant received an overall rating of "Developing" on her first SET evaluation.

By mid-November, appellant had students of color frequently coming to her classroom, not only during homeroom or advisory periods but also when she was scheduled to be teaching. Appellant stated that, "[E]very hour that I taught there was a knock on the door." Appellant also began to observe what she perceived as racial inequalities at the school. She believed that white students were often given various privileges at school while students of color were treated differently. These observations led appellant to open up her classroom at lunch time as a safe space for students to gather and talk about the racial inequities they were experiencing at OWL. Appellant stated that she heard Gundale had told students that "Minnesota is a white state, and I'm here to help you prepare for that."

In January 2016, appellant sent Gundale an email discussing the "racial divide" among students at OWL and giving him an example from her classroom. She also sent him an email detailing some of her teaching frustrations, stating that, "[T]he real truth is that I am struggling with meeting the needs of some of the students in the class, and those students are making our learning environment non-existent. . . . We are so behind in that class. I am struggling to catch up."

That same month, Gundale and Asleson met with appellant to discuss her second SET evaluation. Appellant stated that Gundale asked her about the email and told her that "This is a white school. It will continue to be white, and there is nothing wrong with being white." The overall assessment of appellant's second SET evaluation was that appellant was performing "Below Standard."

In March, appellant attended SPPS's 'Beyond Diversity" racial equity training. She stated that, during the training, she told others "that [she] was dealing with racism at [her] school." A few days after the training, appellant emailed Gundale to ask whether she could do a project with a group of black, female students over the interim instead of teaching a previously scheduled class with another teacher. She described this email as a "courageous conversation" about race.

The next day, Gundale emailed both Assistant Superintendent Theresa Battle and Human Resources that appellant was a struggling second-year teacher who "did well as a reading teacher last year" and who "has worked very hard and has taken feedback very well." However, he stated that "I still feel like the rigor in her history classes is lacking and [there] is a lack of belief by parents and students (with the exception of some) and the history position at OWL is not a good fit for her—I will reserve final judgment until her final eval[uation]." The human resources coordinator responded by asking Gundale whether "PAR indicated if they are recommending her for non-renewal or not?" On March 18, Gundale responded to that email by stating "the PAR and I are on the same page with not renewing at this point. However, [the PAR] did feel, as did I, that [appellant] is working toward improvement. We have invited [Battle] to the last observation if she can make it."

In April, Gundale and Asleson performed the final formal observation and presented the written SET evaluation to appellant. Appellant's overall rating was "Developing." The SET noted that appellant continued to demonstrate "minimal rigor" and that "[m]any times during [the] lesson, conversation deviated from [the] learning target and focus." Appellant responded to the evaluation by acknowledging that she needed to have "less teacher voice

and more student voice." She told Gundale that she was afraid that students would check out, but agreed that "I need to let that go because I can see that it is not making for effective instruction." Gundale met with appellant and told her that he was recommending that her contract not be renewed. After receiving this news, appellant told her students about the nonrenewal.

Over the weekend, some OWL students created a social media #savesarah campaign, gathered signatures on a petition, and organized a walkout that occurred on Monday, April 25. That same weekend, appellant used the school's electronic message system to send a letter to all her students' families. She wrote that she had raised "concerns with the racial tensions" at OWL and that it had become clear that she had "touched on a subject that was off-limits or that was not ready to be dealt with." Parents, teachers, and students responded to appellant's allegations by providing comment and sending emails; some were supportive of appellant's concerns, while others were upset that appellant accused OWL faculty and staff of fostering racial inequality.

Appellant's teaching contract was not renewed on June 21, 2016, by the SPPS school board. In March 2017, appellant filed her complaint, alleging that SPPS violated the MHRA by engaging in reprisal against her for associating with students of a different race and for opposing a practice forbidden by the MHRA. SPPS moved for summary judgment, arguing that appellant failed to put forth evidence of reprisal stemming from her association with students of color or her opposition to a practice forbidden by the MHRA. The district court granted SPPS's motion and dismissed appellant's claims. This appeal follows.

D E C I S I O N

The district court may grant summary judgment when "there is no genuine issue as to any material fact" and one party "is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. We review "de novo whether there are any genuine issues of material fact and whether the district court erred in its application of the law to the facts." *Commerce Bank v. W. Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015). The evidence must be viewed in the light most favorable to the nonmoving party--in this case, appellant. *See id.*

Appellant asserts that the district court erred by determining that she failed to present sufficient evidence of reprisal, under either the direct-evidence theory or the *McDonnell Douglas* test. Under the MHRA, it is "an unfair discriminatory practice for any individual who participated in the alleged discrimination as a[n] . . . employer . . . [or] educational institution . . . to intentionally engage in any reprisal against any person because that person" did one of two things: "(1) opposed a practice forbidden under this chapter" or "(2) associated with a person or group of persons . . . who are of different race [or] color." Minn. Stat. § 363A.15 (2018).

The MHRA states that

> [a] reprisal includes, but is not limited to, any form of intimidation, retaliation, or harassment. It is a reprisal for an employer to do any of the following with respect to an individual because that individual has engaged in the activities listed in clause (1) or (2): refuse to hire the individual; depart from any customary employment practice; transfer or assign the individual to a lesser position in terms of wages, hours, job classification, job security, or other employment status; or inform another employer that the individual has engaged in the activities listed in clause (1) or (2).

Id.

Minnesota courts considering MHRA reprisal claims may "apply law developed in federal cases arising under Title VII of the 1964 Civil Rights Act." *Bahr v. Capella Univ.*, 788 N.W.2d 76, 83 (Minn. 2010) (quotation omitted).

Appellant argues first that she presented direct evidence that the nonrenewal of her teaching contract was motivated by retaliatory animus resulting from her association with students of color and her raising of race and equity issues at OWL. An MHRA reprisal claim can be proven by direct evidence. *Goins v. W. Grp.*, 635 N.W.2d 717, 722 (Minn. 2001). "[D]irect evidence is evidence showing a specific link between the alleged discriminatory animus and the challenged decision, sufficient to support a finding by a reasonable fact finder that an illegitimate criterion actually motivated the adverse employment action." *Griffith v. City of Des Moines*, 387 F.3d 733, 736 (8th Cir. 2004) (quotation omitted).

Appellant contends that "Battle's testimony that letters from teachers and parents outraged that [appellant] had accused Gundale of racial inequity played a part in [Battle's] decision to approve [appellant's] non-renewal is direct evidence of reprisal." However, Battle's testimony does not establish that parent emails influenced her recommendation to not renew appellant's teaching contract; nor does it support appellant's argument that her teaching contract was not renewed because she spoke at OWL on race, equity, and equality. This testimony merely established that Battle reviewed certain emails. Moreover, while appellant presented evidence that Gundale shared his insensitive view that OWL was a "white school" with her, appellant presented no evidence that any other decision-maker,

specifically Battle, ever uttered a negative remark about appellant's association with students of color or condemned her purported advocacy for black students.

Consequently, appellant's proffered evidence lacks the "requisite causal link" between Battle's testimony that she reviewed certain emails and appellant's claim that her teaching contract was not renewed because she associated with students of color and raised race and equity issues at OWL. *See Griffith*, 387 F.3d at 736.

Absent direct evidence, summary judgment may be avoided by demonstrating a prima facie case of reprisal based on circumstantial evidence. *Id.* Appellant argues that she presented sufficient evidence to overcome summary judgment and establish an inference of reprisal under the *McDonnell Douglas* framework that this court applies to MHRA claims. To establish a prima facie case of reprisal, an employee must demonstrate: (1) that she engaged in statutorily protected conduct; (2) an adverse employment action by the employer; and (3) a causal connection between the two. *Hubbard v. United Press Int'l, Inc.*, 330 N.W.2d 428, 444 (Minn. 1983) (applying *McDonnell Douglas* analysis to reprisal claims).

If a prima facie case is established, "the burden of production shifts to the defendant who . . . must produce admissible evidence sufficient to allow a reasonable trier of fact to conclude that there was a legitimate, nondiscriminatory reason for the discharge." *Hoover v. Norwest Private Mortg. Banking*, 632 N.W.2d 534, 542 (Minn. 2001). "If the defendant provides a legitimate, nondiscriminatory reason for its actions, the presumption of discrimination disappears and the plaintiff has the burden of establishing that the employer's proffered reason is a pretext for discrimination." *Id.*

Prima Facie Case

The district court determined, and respondent concedes, that appellant engaged in protected conduct by associating with students of a different race or color. *See* Minn. Stat. § 363A.15. There is also no dispute that appellant suffered an adverse employment action when the school district voted to not renew her teaching contract. *See* Minn. Stat. § 363A.15 (reprisal includes retaliation). Thus, the only element of the prima facie case in dispute is the third element—causation.

A causal connection "may be demonstrated indirectly by evidence of circumstances that justify an inference of retaliatory motive, such as a showing that the employer has actual or imputed knowledge of the protected activity and the adverse employment action follows closely in time." *Hubbard*, 330 N.W.2d at 445. To prove causation, appellant must only show that the retaliation was part of the motivation for the nonrenewal, not that it was the only motivation. *LaPoint v. Family Orthodontics, P.A.*, 892 N.W.2d 506, 513 (Minn. 2017). The district court concluded that appellant "has only argued that there is evidence of a causal link between her questions to Gundale about what she perceived as racial inequities and her nonrenewal. She has not identified any evidence of causation related to her association with black students." We agree with the district court's reasoning.

The only evidence appellant points to that minimally suggests Gundale disapproved of appellant's support for, or association with, students of color was Gundale's comments that (1) OWL was a "white school" and (2) it was okay that OWL was a "white school."

This comment, while it is offensive, does not, on its face, suggest any intent to discriminate against appellant for associating with non-white students.

Appellant nonetheless argues that the timing of Gundale's decision to not renew her teaching contract is evidence of causation because his decision was made immediately after appellant's "courageous conversation" email. She also argues that Gundale's decision to recommend not renewing her teaching contract prior to the final evaluation demonstrates causation.

Although timing alone can establish causation, "[t]he mere coincidence of timing . . . is rarely sufficient." *Hite v. Vermeer Mfg. Co.*, 446 F.3d 858, 866 (8th Cir. 2006). Cases in which courts have determined that temporal proximity alone was sufficient to create an inference of a causal link have held that the temporal proximity must be very close. *Id.*

Appellant asserts that Gundale recommended not renewing her contract on March 18, five days after she raised race and equity issues with him, and that this was a departure from a customary employment practice[1] and therefore established causation. *See* Minn. Stat. § 363A.15. But appellant's suggestion that the record supports this inference is not reasonable. The referenced email reads:

> T]he PAR [Asleson] and I are on the same page with not renewing *at this point*. However, he did feel, as did I, that she is working hard towards improvement. We have invited [Battle] to the last observation if she can make it.

(Emphasis added.)

[1] SPPS's customary employment practice is not to make recommendations about contract nonrenewal prior to conducting three SET evaluations.

The email clearly states that Gundale was not in favor of renewing appellant's contract *at the time* he sent the email. But it also clearly indicates that Gundale understood appellant was working hard toward improvement and that another observation would be conducted. Moreover, this email was part of a sequence of emails occurring around the same time frame: all of them indicate that Gundale was searching for options to retain appellant within SPPS and specifically stated, "I will reserve final judgement until the final evaluation." For these reasons, this email does not demonstrate that Gundale recommended not renewing appellant's teaching contract immediately after she raised race and equity issues with him.

Additionally, as respondent indicates, Gundale's recommendation was only one of the recommendations for a decision made by the school board months after appellant's email. Appellant's PAR, Asleson, also recommended to not renew appellant's contract, and Asleson was not alleged to have any animus toward appellant's association with students of color.

The most problematic issue with appellant's argument concerns the nature of the "courageous conversation" email itself. Specifically, the email to which appellant refers did not address any protected conduct or suggest that the school, or Gundale personally, was fostering discrimination or racial inequality. The email simply asked if appellant could teach an interim class composed of of only black, female students. As the district court found, "[appellant] has continuously engaged in associations with black students throughout her tenure at OWL—no rational finder of fact could conclude based on

temporal proximity alone that this email *caused* Gundale's ultimate decision to recommend not renewing [appellant]."

Accordingly, appellant has failed to present any evidence that would permit a reasonable finder of fact to conclude that her teaching contract was not renewed because she associated with students of color.

Pretext

Even if we were to conclude that appellant presented a prima facie case of reprisal, she still failed to present evidence sufficient for a reasonable jury to find that SPPS's legitimate nondiscriminatory reason for her termination—her poor performance—was pretextual. *See Logan v. Liberty Healthcare Corp.*, 416 F.3d 877, 881 (8th Cir. 2005). "[T]o survive the motion for summary judgment appellant was required to show that there is a material question of fact as to whether [defendant's] stated reason for discharge is pretexual." *Sieden v. Chipotle Mexican Grill, Inc.*, 846 F.3d 1013, 1017 (8th Cir. 2017) "[I]n deciding whether a plaintiff has presented sufficient evidence to demonstrate pretext or retaliation, we evaluate the timing of an adverse action in light of other evidence, or lack of other evidence, in the record." *Logan*, 416 F.3d at 881. "Evidence of pretext and retaliation is viewed in light of the employer's justification." *Id.* (quotation omitted).

Unlike causation, "timing on its own is usually not sufficient to show that an employer's non-discriminatory [or non-retaliatory] reason for [an adverse employment action] is merely pretext." *Sherman v. Runyon*, 235 F.3d 406, 410 (8th Cir. 2000). Moreover, "[a]n employee's attempt to prove pretext . . . requires more substantial evidence" than it takes to make a prima facie case. *Sprenger v. Federal Home Loan Bank*,

253 F.3d 1106, 1111 (8th Cir. 2001). Appellant "may sustain this burden either directly by persuading the court that a discriminatory reason likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence." *Sigurdson v. Isanti Cty.*, 386 N.W.2d 715, 720 (Minn. 1986) (quotation omitted).

As stated, "one method of proving pretext is to show that the employer's proffered explanation has no basis in fact." *Logan*, 416 F.3d at 881 (quotation omitted). But appellant cannot show this. As SPPS argues, appellant admitted to her teaching struggles. In her letter to students' families, appellant stated:

> Admin told me that my instruction was ineffective, perhaps it was, but as any of my students will testify to, my door never stopped opening and shutting. All day long, every class, students came into my room looking for help, guidance, and advice. It got to the point that I was unable to teach at times because the need for me was greater outside of my classroom. I blame myself for not being able to find the balance in teaching to my students and being supportive to my students. I am one person and I was taking on more than I could handle, and I see now that it has contributed to the loss of my career in SPPS and the loss of a beloved teacher to many of my students. . . .

Despite the admitted teaching deficiencies, appellant's argument that SPPS's legitimate performance-based concerns were a pretext for reprisal stemming from her association with students of color concerns her SET evaluations. She argues that Gundale testified that a teacher should be moving from "Developing" to "Proficient" by the end of the second year, and that "[b]y Gundale's own yardstick, [appellant's] teaching was between 'Developing' and 'Proficient' prior to the end of her second year of teaching." However, based on Battle's testimony, "not all of the SET criteria are equally weighted as some deficiencies are more problematic than others." Moreover, as the district court

indicated, appellant's "deficiencies related more to fundamental aspects of teaching such as completing her lessons, keeping students focused, and differentiating her teaching to reach and engage all students, including those who required more rigor." The fact that appellant's SET ratings varied fails to support any reasonable inference that SPPS's nonrenewal was not based on appellant's performance.

For the same reason that appellant's varied SET evaluations at OWL are insufficient to demonstrate pretext, so too is the fact that she had a more favorable evaluation the prior year at Harding High School. Specifically, "evidence of a strong employment history will not alone create a genuine issue of fact regarding pretext and discrimination." *Lindeman v. Saint Luke's Hosp. of Kansas City*, 899 F.3d 603, 607 (8th Cir. 2018) (quotation omitted). Moreover, the SET evaluations were made by different evaluators, at different schools, regarding appellant's teaching of different academic subjects. Thus, "any potential inference of discrimination is weakened substantially by another rational explanation for the change—the shifting expectations of different supervisors."[2] *Id.*

Consequently, although we conclude that the district court did not err when it determined that appellant failed to present evidence showing a causal link between her

[2] We acknowledge this court's recent decision in *Moore v. City of New Brighton*, ___ N.W.2d ___ (Minn. App. July 29, 2019), which concluded that the plaintiff met his burden of showing pretext when the defendant failed to reasonably explain why it placed the plaintiff on an extraordinarily long administrative leave that continued months after the internal investigation into his alleged misconduct had been completed. Unlike the defendant in *Moore*, who could not reasonably explain why it continued to place the plaintiff on administrative leave months after the completed investigation, SPPS's legitimate performance related concerns, and its response to those concerns, are supported by the evidence.

association with students of color and SPPS's decision to not renew her contract, appellant's claim also fails because she has failed to present any reasonable evidence to show that SPPS's performance-related concerns were a pretext.

Affirmed.