King v Central Islip Union Free Sch. Dist.
2015 NY Slip Op 31727(U)
September 4, 2015
Supreme Court, Suffolk County
Docket Number: 13-25143
Judge: Joseph C. Pastoressa
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SHORT FORM ORDER

INDEX No. 13-25143

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SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 34 - SUFFOLK COUNTY

PRESENT:

Hon. JOSEPH C. PASTORESSA
Justice of the Supreme Court

MOTION DATE 11-15-14
ADJ. DATE 1-28-15
Mot. Seq. # 001 - MD

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DAPHNE KING,

Plaintiff,

- against -

CENTRAL ISLIP UNION FREE SCHOOL DISTRICT, FRANKLIN CAESAR, in his official and individual capacity,

Defendants.

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Upon the following papers numbered 1 to 21 read on this motion for summary judgment Notice of Motion/ Order to Show Cause and supporting papers 1 - 11; Notice of Cross Motion and supporting papers ____; Answering Affidavits and supporting papers 12 - 19; Replying Affidavits and supporting papers 20 - 21; Other ____; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that the motion by defendants Central Islip Union Free School District and Franklin Caesar, in his individual capacity and official capacity as principal of Central Islip Senior High School, for an order pursuant to CPLR 3212 granting summary judgment dismissing the complaint, or, in the alternative, for a preclusion order pursuant to CPLR 3042, 3124 and 3126 is granted to the extent that the complaint is dismissed in its entirety as asserted against Franklin Caesar, the second cause of action is dismissed as against Central Islip Union Free School District, and the motion is otherwise denied, and it is further

ORDERED that counsel for the parties shall appear for a conference on October 7, 2015 at 10:00 A.M. in Part 34.

This is an action to recover damages arising from the alleged hostile work environment and constructive discharge of plaintiff Daphne King, an assistant principal of Central Islip High School. Ms.

King is African American and has been an employee of the defendant Central Islip Union Free School District ("CI UFSD") for more than 30 years. According to Ms. King, following a meeting in October 2012 with a part-time teacher of African American and Hispanic descent and the parent of a student who filed a complaint against the part-time teacher, she was subjected to retaliation and abuse by her supervisor and principal of Central Islip High School, defendant Franklin Caesar, who is also of African American and Hispanic decent. Ms. King claims that the retaliation and abuse rendered it impossible for her to fulfill her duties. More specifically, Ms. King claims that following a subsequent meeting with defendant Caesar and the part-time teacher regarding the aforementioned October 2012 meeting, defendant Caesar "constructively demoted" her by (1) requiring another assistant principal and union representative be present at all future meetings involving subordinates; (2) requiring the door remain open when meeting with parents, in addition to having another assistant principal and union representative present; and (3) assigning her tasks, such as preparing the proctoring schedule for the New York State Regent's Exam, that were within the principal's job description. Ms. King also avers that defendant Caesar placed a "false and fraudulent" complaint against her in her employee file regarding the proctoring and collection of test results during the Regents Exams.

Prior to the completion of discovery, defendants move for summary judgment on the grounds that plaintiff, who did not resign and continues to be employed as an assistant principal with the CI UFSD, was neither subjected to a hostile work environment nor discriminated against. In essence, defendants assert that the allegations amount to nothing more than plaintiff's disagreement with how defendant Caesar handled the situation with the part-time teacher. Defendants specifically argue that summary judgment is warranted because the notice of claim failed to include defendant Caesar, and, thus, plaintiff failed to satisfy the condition precedent to bringing this action against the principal, the hostile work environment claim is unsubstantiated as plaintiff failed to identify an adverse employment action on the basis of her race or other protected status, and further the intentional and negligent infliction of emotional distress claims cannot continue against a government entity. In support of the motion, defendants submit the pleadings, bill of particulars, the notice of claim, plaintiff's 50-H hearing testimony, the CI UFSD policies against discrimination and harassment, and counsel's affirmation. In opposition, plaintiff submits her affidavit, recognitions and citations received for her work as an employee of the CI UFSD, the parent's complaint describing the part-time teacher's classroom conduct and incident report dated October 26, 2012, and an inter-office CI UFSD memorandum regarding the underlying incident.

Initially, that portion of the motion seeking dismissal of all claims asserted against defendant Caesar because he was not named in the caption of the notice of claim is granted. Service of a notice of claim within 90 days after accrual of the claim is a condition precedent to the commencement of a tort action against a public corporation or any employee thereof (see Education Law § 3813(2); General Municipal Law § 50-e(1); Matter of Manuel v Riverhead School Dist.,116 AD3d 1048 [2d Dept 2014]; Matter of Walker v Riverhead Cent. School Dist., 107 AD3d 727 [2d Dept 2013]; Bazile v City of New York, 94 AD3d 929 [2d Dept 2012]; Matter of Allende v City of New York, 69 AD3d 931 [2d Dept 2010]). It is well-established that a school district is deemed to be a public corporation (see Matter of East Meadow Union Free School Dist. v New York State Div. of Human Rights, 65 AD3d 1342 [2d Dept 2009]). An exception to the rule requiring service of the notice of claim upon a municipal employee prior to commencing suit exists where plaintiff demonstrates that the unlawful acts occurred outside the scope of employment (Zwecker v Clinch, 279 AD2d 572 [2d Dept 2001] [citing International Shared Servs., Inc. v. County of Nassau, 222 AD2d 407 [2d Dept 1995]). Here, it is undisputed that plaintiff did not name defendant Caesar in the notice of claim

and further she does not assert that the alleged unlawful conduct and hostile work environment occurred outside the scope of his employment as plaintiff's supervisor and principal of Central Islip High School (see DeRise v Kreinik, 10 AD3d 381 [2d Dept 2004]; McCormack v Port Washington Union Free School District, 214 AD2d 546 [2d Dept 1995]). Under these circumstances, the complaint is dismissed in its entirety as asserted against defendant Franklin Caesar.

With regard to the first cause of action alleging a hostile work environment, defendant CI UFSD demonstrated prima facie entitlement to summary judgment. Article 15 of the Executive Law, known as the Human Rights Law, makes it an unlawful "for an employer . . . because of an individual's age, race, creed, color, national origin . . . disability . . . to discriminate against such individual in compensation or in terms, conditions or privileges of employment" (Executive Law § 296(1)(a)). The standards for recovery under section 296 of the Executive Law are in accord with Federal standards under title VII of the Civil Rights Act of 1964 (see 42 U.S.C. § 2000e et seq.; Rainer N. Mittl, Ophthalmologist, P.C. v New York State Div. of Human Rights, 100 NY2d 326 [2003]; Ferrante v American Lung Assn., 90 NY2d 623 [1997]).

For purposes of the Human Rights Law, a hostile work environment exists "[w]hen the workplace is permeated with discriminatory intimidation, ridicule, and insult . . . that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment" (Harris v Forklift Sys., 510 US 17 [1993]; see Forrest v Jewish Guild for the Blind, 3 NY3d 295 [2004]; Matter of New State Div. of Human Rights v ABS Elecs., Inc., 102 AD3d 967 [2d Dept 2013]). A determination as to whether a work place is hostile or abusive requires consideration of the surrounding circumstances, including the frequency of the alleged discriminatory conduct, the severity of such conduct, whether it is physically threatening or humiliating or merely offensive, whether it affected the employee's psychological well being, and whether is interferes with the employee's performance at work (Harris v Forklift Sys., supra; Forrest v Jewish Guild for the Blind, supra). Significantly, the conduct at issue must have altered the conditions of the employee's employment by being subjectively perceived by the employee as abusive, and it must have created what a reasonable person would consider to be an "objectively hostile or abusive environment" (id.; see McRedmond v Sutton Place Rest. & Bar, Inc., 95 AD3d 671, 945 NYS2d 35 [1st Dept 2012]).

Further, to hold an employer liable for a hostile work place caused by an employee's discriminatory behavior, a plaintiff must establish that the employer became a party to such behavior by encouraging, condoning or approving it (see Matter of Totem Taxi, Inc. v New York State Human Rights Appeal Bd., 65 NY2d 300 [1985]; Matter of State Div. of Human Rights v St. Elizabeth's Hosp., 66 NY2d 684 [1985]; Doe v State of New York, 89 AD3d 787 [2d Dept 2011]). Although calculated inaction to discriminatory conduct may indicate condonation, "only after an employer knows or should have known of the improper conduct can it undertake or fail to undertake action which may be construed as condoning the improper conduct" (Matter of Medical Express Ambulance Corp. v Kirkland, 79 AD3d 886 [2d Dept 2010], *lv denied* 17 NY3d 716, 934 NYS2d 374 [2011]; see Bianco v Flushing Hosp. Med. Ctr., 54 AD3d 304, 863 NYS2d 453 [2d Dept 2008]).

Here, defendants demonstrated prima facie entitlement to summary judgment that plaintiff was not subjected to a hostile work environment based on her race (see Morse v Cowton & Tout, Inc., 41 AD3d 563, 838 NYS2d 162 [2d Dept 2007]). In that regard, defendants introduced evidence that plaintiff's employment

was neither terminated nor suspended, but rather disciplinary actions were implemented in response to her handling of an altercation with a part-time teacher. Specifically, following the incident plaintiff was required to have a union representative and another assistant principal present when conducting official meetings, and the door open when meeting with parents. Defendant further presented proof that these restrictions were imposed as a solution to the situation, and were not intended to create a work environment that was hostile or abusive (see Reyes v Brinks Global Servs., USA, Inc., 112 AD3d 805 [2d Dept 2013]; Novak v Royal Life Ins. Co. of N.Y., 284 AD2d 892, 726 NYS2d 784 [3d Dept 2001]).

In opposition, plaintiff raises triable issues of fact as to whether the disciplinary measures created an environment that was objectively hostile and abusive. According to plaintiff, she felt ridiculed and betrayed by defendant Caesar's taking the part-time teacher's side and then disciplining her as a result of the part-time teacher's poor judgment. She further contends that although she has not resigned, the change in work conditions, which stripped her of independent responsibility and restricted her authority in performing her duties, resulted in working conditions "so difficult or unpleasant that a reasonable person in [plaintiff's] shoes would have felt compelled to resign" (see Nelson v Vigorito, 121 AD3d 872 [2d Dept 2014]). Plaintiff, who apparently sought the position of principal attained by defendant Caesar, contends that defendant Caesar, who is of African American and Hispanic descent, implemented these disciplinary procedures on account of her being African American. The Court notes that defendant Caesar did not submit an affidavit refuting the claims and there was no evidence in the form of a by-law and/or negotiated instrument or agreement which authorized such sanctions which, on their face, undermine plaintiff's authority when dealing with subordinates and parents. Moreover, there was no indication that any other assistant principal had been subjected to the same or similar restrictions. Plaintiff averred that she viewed the actions as abusive and in response to her race, and arguably a reasonable person viewing the same evidence could come to the same conclusion. The Court notes that although the punishment arises from what appears to be a single isolated incident, the discipline is for an indefinite period. Accordingly, the motion of CI UFSD for summary judgment dismissing the first cause of action is denied.

With regard to the second cause of action for intentional infliction of emotional distress, defendants' motion for summary judgment is granted. A claim for intentional infliction of emotional distress is to be invoked "only as a last resort" (McIntyre v Manhattan Ford, Lincoln-Mercury, Inc., 256 AD2d 269 [1st Dept 1998]; see Doin v Dame, 82 AD3d 1338 [3d Dept 2011]). To set forth a prima facie claim, a plaintiff's allegations must show the defendant's conduct was "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in civilized society" (Taggart v Costabile, 2015 N.Y. Slip Op 05464 [2d Dept June 24, 2015])). The tort involves four elements: (1) extreme and outrageous conduct; (2) intent to cause, or disregard of a substantial probability of causing, severe emotional distress; (3) a causal relationship between the conduct and the injury; and (4) severe emotional distress (Howell v New York Post Co., Inc., 81 NY2d 115 [1993]). Here, defendant Caesar's conduct was not of such an outrageous manner or so extreme as to substantiate the claim of intentional infliction of emotional distress. Moreover, "[p]ublic policy bars claims for intentional infliction of emotional distress against a governmental entity" (see Ellison v City of New Rochelle, 62 AD3d 830 [2d Dept 2009]; Liranzo v New York City Health & Hosps. Corp., 300 AD2d 548 [2d Dept 2002]; Lauer v City of New York, 240 AD2d 543 [2d Dept 1997]). Accordingly, the second cause of action is dismissed to the extent it asserts a claim for the intentional infliction of emotional distress.

The second cause of action is similarly dismissed to the extent it asserts a claim for the negligent infliction of emotional distress but for reasons different than those asserted by defendants. In Taggart, supra, the Appellate Division, Second Department recently clarified that the outrageous conduct that serves as a prerequisite to sustain a claim for the intentional infliction of emotional distress is *no longer* required to prevail on a claim for the negligent infliction of emotional distress. The Appellate Division held, "[n]otwithstanding the case law to the contrary, extreme and outrageous conduct is not an essential element of a cause of action to recover damages for negligent infliction of emotional distress" (Taggart, supra). However, although physical injury is not required, a cause of action for the negligent infliction of emotional distress is generally premised upon a breach of duty which either "unreasonably endangers the plaintiff's physical safety, or causes the plaintiff to fear for his or her own safety" (Santana v Leith, 117 AD3d 711 [2d Dept 2014] [quoting Sheila C. v Povich, 11 AD3d 120 [1st Dept 2004]). The record before the Court fails to establish that plaintiff's physical well-being was jeopardized or that she feared for her safety as a result of defendant Caesar's conduct. Under these circumstances, to the extent the second cause of action asserts a cause of action for negligent infliction of emotional distress, the complaint is similarly dismissed.

Finally, since the note of issue and certificate of readiness have yet to be filed, plaintiff's alternative request for an order of preclusion is denied. The parties shall appear for a conference on October 7, 2015 at 10:00 a.m. at the Part 34 of the Supreme Court, One Court Street, Riverhead, New York.

Dated: September 4, 2015

HON. JOSEPH C. PASTORESSA, J.S.C.

____ FINAL DISPOSITION __X__ NON-FINAL DISPOSITION