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IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs December 1, 2022

SHIRLEY V. QUINN v. SHELBY COUNTY SCHOOLS

Appeal from the Circuit Court for Shelby County
No. CT-003465-17 Felicia Corbin Johnson, Judge

No. W2022-00104-COA-R3-CV

This is an employment discrimination case. The plaintiff, a female secretary at a high school, sued the county school board for discrimination alleging that she was terminated because of her sex in violation of the Tennessee Human Rights Act. Following a bench trial, the trial court held in favor of the plaintiff and awarded damages. The school board appeals, asserting that the plaintiff failed to make out a prima facie case of discrimination. We have determined that the plaintiff failed to identify a "similarly situated" employee and therefore failed to make out a prima facie case of sex discrimination. We reverse the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed

ANDY D. BENNETT, J., delivered the opinion of the Court, in which JOHN W. MCCLARTY and KENNY W. ARMSTRONG, JJ., joined.

Rodney Gregory Moore, Atlanta, Georgia, for the appellant, Shelby County Board of Education.

Linda Kendall Garner, Memphis, Tennessee, for the appellee, Shirley V. Quinn.

OPINION

This is an employment discrimination case that centers on a grading scandal at Trezevant High School ("Trezevant High") in Memphis, Tennessee. Plaintiff, Shirley Quinn ("Plaintiff" or "Ms. Quinn"), was employed by Defendant, Shelby County Board of Education ("SCBE"), for approximately twenty-two years as a general office secretary and records secretary at Trezevant High. Ms. Quinn was responsible for, among other things, maintaining accurate transcript data for Trezevant High students. Ms. Quinn alleges she was terminated from her employment because of her sex in violation of the Tennessee Human Rights Act. The circumstances surrounding her termination are discussed below

and are derived from testimony and exhibits introduced during a bench trial before the Shelby County Circuit Court.

In 2016, the Trezevant High leadership team performed an internal transcript audit and discovered discrepancies between report card grades and grades on student transcripts. It was noted that many, but not all, of the discrepancies were found in the student records of members of the Trezevant High football team. The Trezevant High leadership team reported the discrepancies to the SCBE, and the SCBE commenced an investigation, including an electronic audit, of grade entry and grade adjustment data from SCBE's electronic grading database known as SMS PowerSchool ("SMS"). The SMS electronic audit revealed that Ms. Quinn's SMS username was used to make "inappropriate transcript edits"[1] to approximately thirty-three transcripts during the 2016-2017 school year.

In late September and early October 2016, the SCBE Department of Labor and Employee Relations identified four main individuals to interview regarding the transcript discrepancies: 1) Plaintiff; 2) Teli White ("Coach White"), a tenured Physical Education and Lifetime Wellness teacher and football coach; 3) Brandon Hill, a special education teacher and assistant football coach; and 4) Gregory Howard, a world history teacher and athletic director. All four of the individuals who were interviewed were placed on administrative leave with pay pending the investigation led by Chantay Branch, SCBE Director of Employee Relations.

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[1] Ms. Quinn had previously received training regarding the appropriate procedures for adjusting transcripts. The proper procedure required certain documentation to support the transcript edits, including a Historical Transcript Change of Data Form signed by both the teacher requesting the change and the principal "authorizing the change." No such documentation accompanied the edited transcripts. At trial, Ms. Quinn provided the following explanation of why she did not follow the transcript adjustment procedures:

> A. . . . I changed grades for teachers without written documentation because the teacher was my documentation.
> Q. And so that I'm clear, you changed grades on transcripts for Teli White without any written documentation; isn't that true?
> A. Teli White and all the teachers without written documentation.
> Q. You believed that it would have been disrespectful to a teacher to ask for backup support prior to making a grade change at their request?
> A. I'm not following you. Please explain that.
> Q. Is it your testimony that you did not ask teachers for backup because you believed asking for backup would be disrespectful?
> A. I don't think I was qualified nor was I certified to question a teacher about their students, their grades, their work, right. I do not feel that I was qualified neither was I certified. I have a high school diploma. They have the bachelor's and doctor and master's. How do I look like questioning an educator. I just never felt that I had that right to do that.

During Ms. Quinn's final interview on October 5, 2016, she was presented with and signed the following "Garrity Warning":

> GARRITY WARNING
>
> I wish to advise you are being questioned as part of an official investigation of your employer. You will be asked questions specifically, directly and narrowly related to performance of your official duties or fitness for office. You are entitled to all the rights and privileges guaranteed by the law and the Constitution of the United States, including the right not to be compelled to incriminate yourself. I further wish to advise you that if you refuse to testify or to answer questions relating to the performance of your official duties or fitness for duty, you could be subject to discharge. If you do answer, neither your statement, nor any information or evidence which is gained by reason of such statement, can be used against you in any subsequent criminal proceedings. However, these statements may be used against you in relation to subsequent discipline.

Ms. Quinn testified that during the course of her third interview she refused to provide names of the teachers who requested her to change grades. Ms. Quinn testified that during the course of the interview, she was threatened with criminal prosecution. An excerpt of Ms. Quinn's testimony regarding the final interview is as follows:

> He began to tell me, he said you know this is a crime and you can be prosecuted -- you could be prosecuted, you can go to jail for this. And I said for what? . . . What did I do? For changing transcripts without authorization. And I said I had authorization, the teacher was there. And then he was like, he kept saying that I could be prosecuted, I could go to jail and he said you are going to go down because your password was used. He said you're going to go down because your password was used. I said well, if I'm going to go down regardless to what I say to you-all, I am not going to sit here and name names to make anybody go through this what you-all are putting me through.
> . . . .
> [H]e looked at me, and he said you know what - - he didn't raise his voice, he told me, he said you are a criminal and you should not have ever been allowed to work with children and you need to go to jail. And I said what? And tears started rolling down my face because that man hurt me.
> . . . .
> And I stood up . . . and I said this meeting is adjourned. And I turned and I walked out crying, hurt, broken . . . .[2]

[2] We note the countervailing testimony from William Edward "Bill" White, II, the SCBE Executive Director of Planning and Accountability, who listened to Ms. Quinn's interview by phone:

As a result of the investigation, Ms. Quinn was terminated by letter sent certified mail on October 6, 2016 ("termination letter"). The letter was signed by Ms. Branch, and stated:

> Dear Ms. Quinn:
>
> This letter is a result of the conferences that were held with you on September 28, 2016 and October 5, 2016. The purpose [of] both conferences was to share and discuss the results of an internal audit, which indicated that you made unauthorized changes to students' transcripts.
>
> During the conferences, you acknowledged that you made the changes to the transcript grades, but refused to identify who directed you to make the changes. You also inferred that you were careless with your SMS login (user id and password), which may have given staff members and students unauthorized access to the transcripts.
>
> The audit revealed that several students' grades and courses were changed on the transcripts, which resulted in some students receiving diplomas who did not meet graduation requirements. Your behavior is a clear violation of Board Policy No. 4002, Staff Ethics, and Board Policy No. 5004, Graduation Requirements.
>
> Based on the foregoing, the preponderance of evidence indicates that you engaged in inappropriate conduct and violated the abovementioned policies. Therefore, I have recommended to the Superintendent that your employment be terminated. Enclosed you will find a letter signed by Superintendent Dorsey E. Hopson, II.

Coach White also received a disciplinary letter from Ms. Branch dated October 28, 2016. The letter described Coach White's infractions and discipline as follows:

> During the disciplinary hearing, you expressed several times that you were not involved with the NCAA Clearinghouse process, had little dealings

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Q. Do you remember . . . anybody in that room threatening Ms. Quinn in any way?
A. Absolutely not.
Q. And if you did, you would be under an obligation to testify truthfully in court today, correct?
A. Absolutely.
Q. And do you remember Mr. Woods or anybody calling Ms. Quinn a criminal?
A. No.
Q. Threatening her with jail?
A. No.

with transcripts, and did not attend recruiting trips. Contrary to your statements, however, the investigation revealed that you intentionally misled District representatives during its investigation regarding the extent of your involvement in maintaining control of the Trezevant High School interscholastic football program. We discovered that you played an intricate role in supporting the recruitment of Trezevant High School student-athletes, as evidenced by witness accounts of your interaction with college coaches, photographs of you on recruitment trips with players, actual copies of ten (10) student-athletes' transcripts on your desktop computer, and an e-mail from a clerical assistant sending the affected students' transcripts to your attention.

You emphatically denied ever requesting or directly falsifying a student's academic record. However, at least three (3) out of ten (10) transcripts found on your desktop computer had been altered at some point while the affected students were enrolled at Trezevant High School, despite your claim that you routinely monitor the football players' grades by asking for weekly progress reports. Additionally, evidence collected by the investigative team shows that you possessed altered transcripts on your desktop computer for at least eight (8) football players dating back to 2013 graduates.

The investigation also revealed that you intentionally conducted football-related business using an unauthorized District e-mail account for such use. Evidence supporting this finding shows that you rarely conducted football recruiting-related business on your District e-mail account, but that you, instead, routinely emailed invoices, travel information, and other documents to your SCS District e-mail from a personal Gmail account using the Trezevant High School moniker without District authorization.

All employees are responsible for exercising good judgment. Board Policy No. 6051 (Interscholastic Athletics) requires school athletic personnel to follow appropriate policies, rules and regulations established by Shelby County Schools, the Tennessee Secondary Schools Athletic Association, and other specified sports-governing bodies. The policy also requires school athletic personnel to monitor the academic progress of student athletes by encouraging them to complete their school assignments on time, reviewing their academic progress and providing them with information to obtain academic support, when necessary. Coaches are also responsible for monitoring the yearlong academic progress of student-athletes and are responsible for reviewing the progress reports and report card grades for those students. The results of our investigation show that you did not comply with Board Policy No. 6051 (Interscholastic Athletics), that your conduct

> with respect to the investigation was unbecoming to a member of the teaching profession, as defined in T.C.A. § 49-5-501.
>
> I find that discipline is warranted in this case. Therefore, on behalf of the Superintendent, you are to be suspended without pay for five (5) days. The dates of your suspension are October 24 - 28, 2016. Any future infractions of rules, policies, or procedures of the Shelby County Schools or any referral to the Department, of Labor and Employee Relations will lead to more stringent disciplinary action up to and including termination.

In June 2017, the SCBE retained a law firm to further investigate the transcript discrepancies. When gathering information during the continuing investigation, the SCBE discovered additional information on Coach White's SCBE-issued computer showing that he not only possessed altered transcripts, but also that he either made the changes himself or facilitated the changes to those transcripts. At the conclusion of the second investigation, and in light of the newly discovered evidence, the SCBE terminated Coach White on the grounds that he violated Board Policy No. 4002, "Staff Ethics"; Board Policy No. 5015, "Grading System for Grades 6-12"; and Board Policy No. 6051, "Interscholastic Athletics." The SCBE also determined that Coach White engaged in "conduct unbecoming to a member of the teaching profession" and "neglect of duty."

Ms. Quinn filed suit against the SCBE on August 22, 2017, alleging the SCBE's actions in terminating her violated the Tennessee Human Rights Act.[3] She asserted that she suffered lost wages and benefits, emotional distress, and damages to both her personal and vocational reputation as a result of SCBE's discriminatory conduct. The trial court denied SCBE's motion for summary judgment, and the case proceeded to a bench trial on September 17-23, 2019. Seven witnesses testified at trial, including: Plaintiff; Ms. Branch; William Edward "Bill" White, II ("Bill White"), SCBE Executive Director of Planning and Accountability; Michael Woods, SCBE Senior Employee Relations Advisor; Mr. Howard; Mr. Hill; and Edward Stanton, a lawyer engaged by the SCBE to conduct an investigation into "academic fraud" at Trezevant High.

On October 12, 2020, the trial court issued an oral verdict finding in favor of Ms. Quinn. On November 12, 2021, the trial court entered an Order on Compensatory Damages and Attorney Fees holding that "while there is no mathematical formula to determine non-economic damages, the Court believes that based upon the proof and testimony adduced at trial, the amount of $125,000 represents a fair measurement of Plaintiff's damages." The court went on to explain:

[3] Ms. Quinn initially advanced claims based on sex and age discrimination. Ms. Quinn later voluntarily dismissed her age discrimination claim.

9. The Court finds that Plaintiff's case involved some very unusual and extraordinary facts and testimony, the testimony of Plaintiff exhibited an anguish that was far beyond mere disappointment at the loss of her job. The proof at trial was as certain as the nature of the case permitted and the Court found Plaintiff to be the most credible witness ever to give testimony before this Court.
10. The Court finds that Plaintiff devoted her entire adult life to Shelby County Schools and her students Those kids were her life and the Court finds Plaintiff was in a unique situation. Plaintiff testified that when she developed cancer those children gave her unconditional love and helped in her recovery Plaintiff was treated differently from the men who were also suspected in the same grade scandal. Plaintiff, a female, was not given the same opportunity to defend herself as were the males Plaintiff was treated like a criminal by Defendant during the investigative hearing and the men were treated with respect Plaintiff was threatened with prosecution by the Defendant and the male suspects were not.
11. The Court finds that the Plaintiff received horrific treatment from Defendant on September 28, 2016; following a break down, Plaintiff was unable to leave the hearing without assistance and was incapable of driving home Although Plaintiff drove to the hearing, her daughter was called to drive her home.
12. Plaintiff testified that the accusations against her left her in shock and she testified that her good name was taken from her by Defendant, she expressed humiliation at the media's portrayal of her as a liar and cheat and a negative perception of Plaintiff ignited in her community.
13. Plaintiff[] testified about the humiliation she experienced at Defendant's portrayal of her as the person responsible for the grading scandal; she testified of her anguish and fear of going to jail when she was accused of conspiring with others to illegally change grades.
14. The Court finds that the evidence at trial supported Plaintiff's testimony that she was doing her job just as she was instructed to do it by Defendant.
15. The Court finds that Plaintiff's testimony describing the heartache and despair she felt at losing her "kids" at Trezevant High School was palpable and real and was the most convincing testimony ever heard by this Court
16. The Court finds that the preponderance of the evidence adduced at trial supported a finding that Plaintiff's treatment by Defendant occurred because she is a woman and was the most vulnerable target to hold publicly accountable for the scandal; of the four accused, 3 males and Plaintiff, only the Plaintiff was treated like a criminal and summarily terminated. Two of the males were returned to work and the football coach, Teli White, was not terminated by Defendant until one year later.
17. The Court observed the demeanor of the Plaintiff and finds that as a result of the Defendant's conduct Plaintiff suffered intense shame, embarrassment

> and humiliation from which it is extremely difficult to recover. Plaintiff testified that she was depressed and she took medication for that depression She testified that she did not want to go outside, that she did not want to see anyone because of her shame. Plaintiff was credible, the Court saw her despair and it was felt in the Courtroom.
>
> 18. As a result of the foregoing, the Court finds $125,000 00 to be a reasonable and proper compensation in light of the extensive humiliation, embarrassment, emotional and mental anguish that Plaintiff endured from Defendant simply because she is a woman.

On January 11, 2022, the trial court entered a one-paragraph Order on Trial Verdict that incorporated the 122-page transcript of the court's October 12, 2020 oral ruling. The court's verdict can be summarized from this excerpt from the transcript:

> this is what it boils down to, Mr. White was treated more favorably, because he was a man. Mr. [Teli] White was not spoken to harshly by Mr. [Bill] White and Mr. Woods, because they wouldn't have been able to get away with that, talking to Teli White that way. They knew better.
>
> . . . .
>
> But, at the end of the day, our jurisprudence system is designed for fairness and justice, and we have to have rules that govern the way that we conduct ourselves as a modern society. And, you know, I read through these cases about similarly situated, and I know what it says, you know. I know what these cases say. We all know.
>
> You all have done a very good job at articulating what the law is, but this is a very unique case. And the system, the law cannot allow a situation where we have employees being investigated for the same conduct, a very serious conduct. And because of the status of one employee versus the other, that they can use that to somehow obligate any responsibility or insulat[e], themselves, from liability. I don't think law is intended for that purpose.
>
> When you look at the history that women have endured, their fight for equality, for civil rights, for equal protection, for equal pay, and so forth and so on, employers have to be held accountable for when they conduct themselves in a manner that raises the question about why was she treated this way.
>
> So the Court does find that there is an inference here of discrimination based on Ms. Quinn's sex, that Ms. Quinn has met her burden to demonstrate that there is an inference -- a reasonable inference to be drawn that she was treated more harshly, because she was a female, a secretary. Just happened to be a secretary; but, the first and foremost, that she was a female and that Mr. White was a male.

The SCBE appeals the trial court's verdict, raising the following issues, copied verbatim from its brief:

I. Whether the Court erred in granting a verdict in favor of Appellee finding that Appellee was discriminated against based on her gender in violation of the Tennessee Human Rights Act.

II. Whether the Court erred in taking judicial notice, sua sponte, to establish that, (1) women have historically been discriminated against in the history of this country (2) women didn't have the right to-vote until the 19th Amendment" (3) women have historically occupied the positions of secretary and that men have historically occupied the positions of coaches (within school systems); (4) women have had to endure certain treatments in the workplace that their male counter parts have not had to incur historically; and (5) "it is intolerable and wholly unacceptable for any person to be demeaned by their employer during an investigatory or disciplinary process and that it is historically not uncommon for women to have been treated differently in the workplace" as a "backdrop for [the] case.

III. Whether the court erred in excluding impeachment evidence to establish 1) prior inconsistent statement and 2) party admission.

IV. Whether the award of damages [was] excessive and inconsistent with Tennessee law.

STANDARD OF REVIEW

This case was tried before the trial court without a jury; therefore, we review the trial court's findings of fact de novo upon the record, with a presumption that the trial court's findings are correct, unless the preponderance of the evidence is otherwise. TENN. R. APP. P. 13 (d); *Williams v. City of Burns*, 465 S.W.3d 96, 108 (Tenn. 2015). We review questions of law de novo, with no presumption of correctness "and reach [our] own independent legal conclusions regarding these issues." *Nashville Ford Tractor, Inc. v. Great Am. Ins. Co.*, 194 S.W.3d 415, 425 (Tenn. 2005).

ANALYSIS

A. Sex Discrimination Under the Tennessee Human Rights Act ("THRA")

This case requires us to examine and apply the Tennessee Human Rights Act ("THRA"), Tenn. Code Ann. §§ 4-21-101 to -702, Tennessee's "comprehensive anti-discrimination statute." *Goree v. United Parcel Serv., Inc.*, 490 S.W.3d 413, 426 (Tenn. Ct. App. 2015) (citing *Phillips v. Interstate Hotels Corp. No. L07*, 974 S.W.2d 680, 683 (Tenn. 1998). The THRA prohibits employers from "discharg[ing]" or otherwise "discriminat[ing] against an individual with respect to compensation, terms, conditions or

privileges of employment because of such individual's race, creed, color, religion, sex, age or national origin." Tenn. Code Ann. § 4-21-401(a)(1). The THRA is intended to promote "the policies embodied in the federal Civil Rights Acts of 1964[,]" thus, Tennessee courts often cite and rely upon federal anti-discrimination cases when interpreting the THRA. Tenn. Code Ann. § 4-21-101(a)(1); *see also Ferguson v. Middle Tenn. State Univ.*, 451 S.W.3d 375, 381 (Tenn. 2014) ("Generally, we interpret the THRA similarly, if not identically, to Title VII, but we are not obligated to follow and we are not limited by federal law when interpreting the THRA."). "The burden of proving the ultimate issue of unlawful employment discrimination always rests with the employee." *Wilson v. Rubin*, 104 S.W.3d 39, 49 (Tenn. Ct. App. 2002) (citing *Tex. Dep't of Cmty. Affs. v. Burdine,* 450 U.S. 248, 253 (1981); *Spann v. Abraham*, 36 S.W.3d 452, 464 (Tenn. Ct. App. Nov. 5, 1999)).

In this case, Ms. Quinn alleges she has been discriminated against because of her sex. "Disparate treatment cases of discrimination occur 'where an employer has treated a particular person less favorably than others because of a protected trait.'" *Goree*, 490 S.W.3d at 426 (quoting *Maddox v. Tenn. Student Assistance Corp.*, No. M2009-02171-COA-R3-CV, 2010 WL 2943279, at *6 (Tenn. Ct. App. July 27, 2010)). "A plaintiff asserting a claim of . . . discrimination based on [sex[4]], can proceed to trial either by offering direct evidence that the employer's action was motivated by [her sex], or by presenting circumstantial evidence[5] sufficient to raise an inference of discrimination." *Paschall v. Henry Cty. Bd. of Educ.*, No. W1999-00070-COA-R3-CV, 2000 WL 33774557, at *4 (Tenn. Ct. App. June 2, 2000). Because it is difficult to provide direct evidence of an employer's discriminatory conduct, "most plaintiffs must proceed by offering circumstantial evidence that creates an inference of discrimination, under the shifting burden of production framework developed by the Supreme Court in *McDonnell Douglas Corp v. Green*, 411 U.S. 792 (1973)." *Id.* Here, Ms. Quinn relies on circumstantial evidence to establish her disparate-treatment claim; thus, we apply the burden-shifting framework articulated in *McDonnell Douglas*.

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[4] Although *Paschall* involved claims of racial discrimination, "[t]he same general analytical framework and allocation of the burden of proof is used for claims under both federal and state statutes, irrespective of whether the claim asserts discrimination on the basis of race, age, sex, or any other class protected under the Act." *Bundy v. First Tenn. Bank Nat'l Ass'n*, 266 S.W.3d 410, 416 (Tenn. Ct. App. 2007) (citing *Dennis v. White Way Cleaners, L.P.*, 119 S.W.3d 688, 693 (Tenn. Ct. App. 2003)).

[5] The difference between direct and circumstantial evidence in a discrimination case has been described as follows:

> Direct evidence of intentional discrimination includes an acknowledgment by an employer of discriminatory intent. Circumstantial evidence of discrimination includes ambiguous statements, suspicious timing, or instances in which similarly situated . . . employees received systematically better treatment.

Spann, 36 S.W.3d at 464.

The *McDonnell Douglas* framework is "'an allocation of the burden of production and an order for the presentation of proof.'" *Williams*, 465 S.W.3d at 112 (quoting *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 506 (1993)). The framework can be summarized as follows:

> First, the plaintiff has the burden of proving by the preponderance of the evidence a prima facie case of discrimination. Second, if the plaintiff succeeds in proving the prima facie case, the burden shifts to the defendant "to articulate some legitimate, non-discriminatory reason for [its actions.]" [*McDonnell Douglas Corp. v. Green,* 411 U.S. 792, 802 (1973).] Third, should the defendant carry this burden, the plaintiff must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination. *Id.*[] at 804[.]

Versa v. Pol'y Stud., Inc., 45 S.W.3d 575, 580 (Tenn. Ct. App. 2000) (footnote omitted) (quoting *Tex. Dep't of Cmty. Affs.*, 450 U.S. at 252-53).

B. The Prima Facie Case

We turn to the first element of the *McDonnell Douglas* framework, the prima facie case. To establish a prima facie claim of sex discrimination, the plaintiff must establish the following four elements:

> (1) the plaintiff is a member of the protected class, (2) she suffered an adverse employment action, (3) she was qualified for the job position at issue, and (4) she was either replaced by a person outside of the protected class *or* was treated less favorably than a similarly situated employee who is not a member of the protected class.

Pierce v. City of Humboldt, No. W2012-00217-COA-R3CV, 2013 WL 1190823, at *10 (Tenn. Ct. App. Mar. 25, 2013) (citing *Hartman v. Tenn. Bd. of Regents*, No. M2010-02084-COA-R3-CV, 2011 WL 3849848, at *7 (Tenn. Ct. App. Aug. 31, 2011)). The parties do not dispute that the first three factors of the prima facie case have been satisfied: 1) Ms. Quinn, a female, is in a protected class,[6] 2) she suffered an adverse employment action when she was terminated, and 3) she was qualified for her role. The SCBE argues that factor number four has not be met in this case because Ms. Quinn has failed to show that a similarly situated employee outside her protected class received more favorable treatment.

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[6] We note that the THRA has been interpreted to "prohibit all gender discrimination in the workplace no matter whether the discrimination disadvantages women or men." *Wilson*, 104 S.W.3d at 52 (citing *Newport News Shipbuilding & Dry Dock Co. v. EEOC*, 462 U.S. 669, 682 (1983)).

What does it mean for two employees to be "similarly situated" for purposes of the prima facie case? We have previously considered this question and have explained the analysis as follows:

> A plaintiff who seeks to rely on a similarly situated employee to establish a claim of discrimination is not required to show "an exact correlation" between the compared employee's situation and his own, but he is required to show that their situations "'were similar in all relevant respects.'" *Pierce*, 2013 WL 1190823, at *11 (quoting *Bobo v. UPS*, 665 F.3d 741, 751 (6th Cir. 2012)). To meet this element of proof, the plaintiff "'must make meaningful comparisons between [him]self and other employees who are similarly situated in all material respects.'" *Id.* (quoting *Spann*, 36 S.W.3d at 468). "[I]t is not necessary to show that the compared employee's situation was identical to that of the plaintiff." *Id.* However, "[t]he comparable employees should have held similar positions, dealt with the same level of supervision, and been subject to the same general employer-imposed work rules and requirements." *Id.* Also, the "similarly situated" individuals must have "engaged in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the employer's treatment of them for it." *Castro*, 2013 WL 684785, at *6; *Versa*, 45 S.W.3d at 581.

Goree, 490 S.W.3d at 450. While there is no precise formula for determining whether two employees are sufficiently comparable, courts focus primarily on whether the employees: "(1) share the same supervisor; (2) are subject to the same standards; and (3) have engaged in the same conduct 'without such differentiating or mitigating circumstances that would distinguish their conduct or the employer's treatment of them for it.'" *Barry v. Noble Metal Processing, Inc.*, 276 F. App'x 477, 480-81 (6th Cir. 2008) (quoting *Ercegovich v. Goodyear Tire & Rubber Co.*, 154 F.3d 344, 352 (6th Cir. 1998)); *see also Pertiller v. City of Murfreesboro*, No. 3:19-CV-00832, 2020 WL 7055553, at *16 (M.D. Tenn. Dec. 2, 2020) (quoting *Mitchell v. Toledo Hosp.*, 964 F.2d 577, 583 (6th Cir. 1992)) (reviewing the considerations for determining similarly situated employees in cases alleging differential disciplinary action). In addition, courts consider "'differences in job title and responsibilities, experience, and disciplinary history'" as "mitigating circumstances that may establish that two employees are not similarly situated." *Woods v. QuickFuel Fleet Servs.*, No. 2:05-CV-02964-JTF-dkv, 2013 WL 3966946, at *7 (W.D. Tenn. July 31, 2013) (quoting *Campbell v. Hamilton Cty.*, 23 F. App'x 318, 325 (6th Cir. 2001)); *see also Hartman v. Tenn. Bd. of Regents*, No. M2010-02084-COA-R3-CV, 2011 WL 3849848, at *8 (Tenn. Ct. App. Aug. 31, 2011) (finding that employees were not similarly situated "because they have substantially different job titles and responsibilities").

Ms. Quinn compares her employment at Trezevant High with Coach White's employment and argues he is a similarly situated employee who was treated more favorably (*i.e.*, initially given a five-day suspension rather than termination) for conduct that was similar to hers. The SCBE counters that, unlike Ms. Quinn who was an "at-will" employee, Coach White was a tenured teacher subject to different employment standards and procedures, he had different job responsibilities,[7] he had a different disciplinary history, and he engaged in different conduct than Ms. Quinn; therefore, the SCBE argues, he was not similarly situated for purposes of the prima facie case.

We begin our analysis by applying the evidence adduced at trial to the three-step formula articulated in *Barry v. Noble Metal Processing, Inc.*, 276 F. App'x 477, 480-81 (6th Cir. 2008), mentioned above. First, the parties agree that Ms. Quinn and Coach White shared the same supervisor because they were both disciplined by Ms. Branch and ultimately terminated by the superintendent. Thus, the first factor is met.

Next, we consider whether Ms. Quinn and Coach White were "subject to the same standards." Ms. Quinn was terminated for violation of Board Policy Nos. 4002[8] and 5004,

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[7] Unfortunately, neither Ms. Quinn's nor Coach White's job descriptions were entered into evidence at trial, but Ms. Quinn testified as follows regarding her job duties:

> A. . . . I was responsible for records, transcripts, greeting parents, answering the main line phone, keeping the file[s] . . .
> Q. So you were responsible for records?
> A. Yes.
> Q. What kind of records?
> A. Student records.
> . . .
> Q. And you were responsible for transcripts?
> A. Yes.
> Q. In what way were you responsible for transcripts?
> A. I had to -- I made corrections on transcripts. I had to send out transcripts like send them out to like . . . employers, people would come in, ex-students would come in and get a copy of their transcript. I was responsible for going and finding them, putting the seal on them and putting them in a sealed envelope. They had to be sealed.
> Q. You were responsible for greeting visitors?
> A. Visitors, yeah. Everyone had to report in the main office and I was that face that they met first at Trezevant.

[8] SCBE Policy No. 4002, "Staff Ethics," applies "to all individuals employed by Shelby County Schools" and states, in part:

> Each employee serves as a representative of the District and should strive to maintain standards of ethical behavior which will not detract from the educational process.
>
> Employees are expected to adhere to standards of ethical behavior including, but not limited to, the following:

entitled "Staff Ethics" and "Graduation Requirements,"[9] respectively. All individuals employed by the SCBE, including Coach White, were subject to Board Policy No. 4002; however, in his initial disciplinary letter from Ms. Branch, Coach White was disciplined for violation of Board Policy No. 6051, "Interscholastic Athletics." It is unclear from the record whether Ms. Quinn was also subject to Board Policy No. 6051. Coach White's status as a tenured teacher is also relevant to our analysis.[10] *See Hammons v. George C. Wallace State Cmty. Coll.*, 174 F. App'x 459, 462-463 (11th Cir. 2006) (considering tenure status as one factor in finding two employees were not similarly situated); *Vargas v. Globetrotters Eng'g Corp.*, 4 F. Supp. 2d 780, 785 (N.D. Ill. 1998) (finding employees were not similarly situated where one employee "had a form of 'tenure' while the other was an employee-at-will"). Indeed, in *Russell v. Drabik*, 24 F. App'x 408, 413 (6th Cir. 2001), the plaintiff was a "classified state employee" and two of her alleged comparators were "unclassified state employees" with different job titles. The *Russell* court held, "[a]s a matter of law, classified (tenured) and unclassified (untenured) employees are not similarly-situated." *Russell*, 24 F. App'x at 413 (citing *Vargas*, 4 F. Supp. 2d at 785). We cannot ignore this strongly worded precedent. While Ms. Quinn and Coach White were both subject to Board Policy 4002, Coach White was subject to additional policies, procedures, and statutes as a tenured employee with different job responsibilities than Ms. Quinn. For example, the "causes for which a teacher may be dismissed or suspended" are outlined in the Teachers' Tenure Act, in Tenn. Code Ann. § 49-5-511(a)(2).[11] Ms. Quinn

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1. Maintain two-way communication with pupils, parents, staff members and community.
2. Solve problems which arise in a just and equitable manner.
3. Grow in skill and understanding in the job assigned.
4. Interpret the system's goals and operations to the public.
5. Represent the Board in such a manner that criticism is not directed at the Board.
6. Refrain from any activities or dealings which will personally enhance the employee to the detriment of the system.
7. Abide by established procedures to air complaints and grievances.
8. Follow all policies and administrative rules.
9. Maintain a professional relationship with students, parents, staff members, and community.
10. Maintain confidentiality of records as required by school system policy, state and federal laws.

[9] SCBE Policy No. 5004, "Graduation Requirements," was not entered as an exhibit at trial, and it is unclear from the record whether it applied to Coach White.

[10] We note that the trial court found Coach White's tenured status to be a "red herring."

[11] Tennessee Code Annotated section 49-5-511(a)(1), (2) states, in relevant part: "(a)(1) No teacher shall be dismissed or suspended except as provided in this part. . . . The causes for which a teacher may be dismissed or suspended are: incompetence, inefficiency, neglect of duty, unprofessional conduct, and insubordination, as defined in § 49-5-501." This Court has also determined that "[t]enured teachers possess 'a constitutionally protected property interest in continued employment,' and the state cannot deprive them of this right without procedural due process." *Finney v. Franklin Special Sch. Dist. Bd. of Educ.*, 576

was not subject to the requisites of Tenn. Code Ann. § 49-5-511 because she was an "at-will" office secretary.[12] Under these circumstances, Ms. Quinn was not "subject to the same standards" as Coach White. Furthermore, some federal courts have considered a difference in tenured status to be dispositive of the similarly situated analysis; nevertheless, we will continue to consider the third factor, whether Ms. Quinn and Coach White engaged in the same conduct.

With regard to whether a plaintiff and a purported comparator engaged in the same conduct, "courts are instructed to focus on whether [the plaintiff and comparator] engaged in conduct of 'comparable seriousness,' not whether their actions were identical." *Pertiller*, 2020 WL 7055553 at *16 (quoting *Jackson v. VHS Detroit Receiving Hosp., Inc.*, 814 F.3d 769, 777 (6th Cir. 2016)). "[A] plaintiff cannot establish a reasonable inference of discriminatory motive based on her 'employer's more severe treatment of more egregious circumstances.'" *Id.* (quoting *Clayton v. Meijer, Inc.*, 281 F.3d 605, 612 (6th Cir. 2002)). Regarding the conduct that warranted Ms. Quinn's termination, Ms. Branch testified as follows:

> Q. Now, with regard to your findings with Ms. Quinn, can you tell me what they are, based on the report that you have in front of you?
> A. There were falsified student records by making unauthorized changes to student transcripts, failing to secure her PowerSchool SMS login information for -- from use by unauthorized users, allowing unauthorized access to PowerSchool and failing to follow procedures or protocols related to the grade changes.
> Q. Now, the falsifying student records by making unauthorized changes, tell me what that was about.
> A. It was determined through the audit of our SMS records that the grade changes were made utilizing Ms. Quinn's login access and so that basically connected her to making the changes to the grades.
> Q. And unauthorized changes, what does that mean?
> A. That she did not have permission to make the grade changes nor did she have documentation to support the changes.

S.W.3d 663, 682 (Tenn. Ct. App. 2018) (quoting *Thompson v. Memphis City Schools Bd. of Educ.*, 395 S.W.3d 616, 627 (Tenn. 2012)). In contrast, Ms. Quinn was an at-will employee.

[12] Tennessee courts have explained that the "'employment-at-will doctrine is a bedrock of Tennessee common law.'" *Terry v. Jackson-Madison Cty. Gen. Hosp. Dist.*, 572 S.W.3d 614, 626 (Tenn. Ct. App. 2018) (quoting *Williams*, 465 S.W.3d at 108). "The doctrine 'recognizes that employers need the freedom to make their own business judgments without interference from the courts.'" *Id.* (quoting *Mason v. Seaton*, 942 S.W.2d 470, 474 (Tenn. 1997)). Therefore, at-will employees "may be terminated at any time, for any reason, or for no reason at all." *Id.* Nevertheless, the THRA is an exception to the employment at-will doctrine with the purpose of protecting individuals from unlawful discrimination. *Id.*

Q. And if the teacher directed a change then what should Ms. Quinn have done?

A. Asked for the appropriate documentation to support the change.

Therefore, based on this testimony and the termination letter Ms. Quinn received, Ms. Quinn was terminated for 1) changing or falsifying transcript grades and courses resulting in students receiving diplomas who did not meet graduation requirements; 2) refusing to identify the teacher(s) who directed her to make the changes;[13] and 3) being careless with her SMS login credentials which could have allowed unauthorized access to the transcripts. In contrast, Coach White's initial disciplinary letter described infractions related to 1) recruitment of Trezevant High student-athletes; 2) harboring altered transcripts but denying he altered them or requested them to be altered;[14] and 3) using an unauthorized email account to conduct football-related business. Coach White, a tenured teacher, was initially disciplined for different conduct than Ms. Quinn. Specifically, Ms. Quinn admitted to changing grades for unnamed teachers without documentation, and Coach White denied that he altered transcripts or requested transcripts to be altered. Notably, when further information came to light that implicated Coach White in falsifying or improperly requesting changes to transcripts, Coach White was terminated. Based on the information known to the SCBE at the time of Ms. Quinn's termination, her conduct differed in kind and severity from the conduct for which Coach White was initially disciplined; however,

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[13] Mr. Woods, one of the SCBE employees who interviewed Ms. Quinn prior to the termination testified as follows regarding Ms. Quinn's refusal to provide information about the teacher(s) who requested her to make changes to the transcripts:

> [Mr. Bill] White asked her specifically this past year, what admin have asked you to change grades. She said, I don't know. And then Mr. [Bill] White asked her what teachers have asked her to change grades. She said, I don't want to name names. I don't want to get into that. I will take the hit. I will take whatever it is. I will take this. I don't want to bring anyone else into this. I'll be the fall guy. I'm just going to take this.
> Q. Stop right there, Mr. Woods. What did you take that to mean when Mr. Quinn responded in that way?
> A. She was not willing to help us further the investigation by telling us who advised her or told her to make the grade changes. She -- by that statement, she was saying to me, she was saying that she is the one responsible for making the changes.

[14] Regarding the reasons for Coach White's discipline following the initial investigation, Mr. Woods testified as follows:

> Q. Okay. Do you recall, at this time when you-all suspended him, whether or not his active user directory was associated with any unauthorized changes?
> A. No, sir.
> Q. Are you saying no, sir you don't know or are you saying, no, sir, they weren't?
> A. They weren't, not at that time.
> . . .
> Q. Why couldn't you prove it?
> A. We didn't have the evidence to prove it at that time.

when it became clear that Coach White engaged in similar conduct to Ms. Quinn, he was likewise terminated.

After reviewing the evidence and circumstances surrounding Ms. Quinn's termination, we conclude that she has failed to demonstrate that she was treated less favorably than a similarly situated employee who engaged in similar conduct. Specifically, Coach White was not a similarly situated employee for purposes of the prima facie case because he was subject to different standards and was initially disciplined for dissimilar conduct. Moreover, Coach White had a different job title and job responsibilities than Ms. Quinn. In sum, Ms. Quinn's attempt to show that Coach White was a similarly situated employee fails; therefore, she has not made out a prima facie case, and her claim of discrimination under the THRA must also fail.

Despite ultimately finding that Ms. Quinn failed to make out a prima facie case of sex discrimination, we are sympathetic to Ms. Quinn and feel compelled to express disapproval of any harsh investigatory tactics that were meted out against her during her final interview. We have no doubt that Ms. Quinn was a beloved staff member at Trezevant High. Notwithstanding our sympathies to Ms. Quinn, we simply do not find that a prima facie case of sex discrimination was established by the evidence in this case; thus, the judgment of the trial court must be reversed. Any remaining issues of the SCBE are pretermitted.

CONCLUSION

The judgment of the trial court is reversed. Costs of this appeal are assessed against the appellee, Shirley V. Quinn, for which execution may issue if necessary.

_/s/ Andy D. Bennett_______________
ANDY D. BENNETT, JUDGE