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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2203-20**

**ROSEMARIE SESTITO and
MICHAEL K. BALLARD,**

Plaintiffs-Appellants,

v.

**NEPTUNE TOWNSHIP BOARD
OF EDUCATION, TAMI CRADER,
MATTHEW GRISTINA, and
JAMES NULLE,**

Defendants-Respondents.

Argued April 6, 2022 – Decided May 2, 2022

Before Judges Gilson, Gooden Brown, and Gummer.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Docket No. L-3247-17.

Theodore Campbell argued the cause for appellants (Law Offices of Theodore Campbell, attorneys; Theodore Campbell, of counsel; Jeffrey Zajac, on the brief).

Michael A. Pattanite, Jr., argued the cause for respondents Neptune Township Board of Education,

Tami Crader, and James Nulle (Lenox Law Firm, attorneys; Michael A. Pattanite, Jr., of counsel and on the brief; Stephanie J. Viola, on the brief).

PER CURIAM

In this employment case, plaintiffs Rosemarie Sestito and her husband Michael Ballard appeal an order granting summary judgment in favor of defendants Neptune Township Board of Education (the Board), Superintendent Tami Crader, and Principal James Nulle.¹ We affirm substantially for the reasons set forth in Judge Linda Grasso Jones's comprehensive, written decision.

We briefly summarize the relevant facts. Sestito, who was fifty-six years old when she filed this lawsuit in 2017, was hired by the Board in 2006 as a paraprofessional. In 2012, Sestito obtained a bachelor's degree and an elementary-education teaching certificate for grades kindergarten through fifth grade. After obtaining the certificate, Sestito applied for various teaching positions within the school district. She received few interviews and was not hired for any of the positions for which she had applied. In her complaint Sestito

¹ The trial court previously dismissed counts plaintiffs had pleaded against Assistant Superintendent Matthew Gristina. In this appeal, plaintiffs also sought reinstatement of those counts "in the event of a reversal" of the summary-judgment order granted in favor of the other defendants. Because we affirm the summary-judgment order, we do not reach plaintiffs' argument about the Gristina counts.

highlights three job openings, asserting she was qualified for those positions, but they were not offered to her due to her age. Sestito also asserts defendants retaliated against her after she had complained about not receiving interviews or job offers by giving her poor performance reviews, not hiring her for teaching positions in the school district, and not granting her home instruction assignments.

As the motion judge found in granting defendants' summary-judgment motion, although "Sestito believes that her student teaching in the school district, and the time she has spent in the school district working as a paraprofessional, should give her an advantage over other applications for [e]lementary [e]ducation teaching positions," she "has failed to rebut defendant's legitimate and non-discriminatory reasons for its hiring decisions." That failure is fatal to her claims. See Young v. Hobart W. Grp., 385 N.J. Super. 448, 463, 467 (App Div. 2005) (upholding a grant of summary judgment as to plaintiff's age-discrimination and retaliation claims when plaintiff was unable to demonstrate the employer's legitimate proffered reasons for their adverse employment actions toward her were pretextual). For that reason and the other reasons expressed in Judge Grasso Jones's opinion, we affirm the order granting defendants' summary-judgment motion.

To the extent plaintiffs raised issues in this appeal, including at the oral argument of this appeal, that they had not raised before the trial court, those issues were not properly before us and we did not consider them. See *Murphy v. Luongo*, 338 N.J. Super. 260, 268 (App. Div. 2001) (an issue not raised or decided in the trial court is not properly before an appellate court).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION