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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0026-21

VALARIE DAVIS,

Plaintiff-Appellant,

v.

MONMOUTH COUNTY VOCATIONAL SCHOOL DISTRICT,

Defendant-Respondent.

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Submitted October 12, 2022 – Decided November 16, 2022

Before Judges Messano and Gummer.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Docket No. L-2033-19.

John R. Tatulli, attorney for appellant.

Lenox, Socey, Formidoni, Giordano, Lang, Carrigg & Casey, LLC, attorneys for respondent (Michael A. Pattanite, Jr., and Patrick F. Carrigg, on the brief).

PER CURIAM

Plaintiff Valarie Davis was expelled as a student from the adult cosmetology program of defendant Monmouth County Vocational School District. She appeals an order granting defendant's summary-judgment motion and dismissing her complaint with prejudice. Specifically, she challenges the dismissal of her claims under the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -50 and her punitive-damages claim.[1] We affirm substantially for the reasons set forth in Judge Owen C. McCarthy's written decision.

In her complaint, plaintiff, who is African American, alleged her teacher, Deborah Obst, had mistreated her because of her race. She claimed Obst had filed two false reports about her yelling and cursing in a classroom and acting inappropriately towards other students and that defendant had expelled her from the program based on those reports. Plaintiff contended her race was a substantial factor in defendant's "decision to harass, bully, intimidate and discriminate against her" and to "expel her from the class," in violation of the LAD. Plaintiff also claimed defendant's actions were "especially egregious," entitling her to punitive damages.

[1] Plaintiff does not challenge the dismissal of her claims under the New Jersey Civil Rights Act, N.J.S.A. 10:6-2.

In opposition to defendant's summary-judgment motion, plaintiff submitted certifications from three students: Gracia K. Phillips, Vincent Castro, and Kayla Nortrup. Plaintiff also responded to defendant's statement of undisputed facts and provided a copy of the deposition of her transcript.

Regarding the incident that was the basis of the first allegedly false report, plaintiff testified that after Obst had called her lazy, she had told Obst she was "greedy and fat." Regarding the incident that was the subject of the second allegedly false report, plaintiff testified that after Obst threatened to call the police, plaintiff had told her "[b]rush your teeth while you are at it. Your breath [is] stinking." Plaintiff testified she was "upset" during that incident and that she sometimes curses when she is upset. She stated she "might have" told Obst to "shut the fuck up" and that she was "tired of her shit." When plaintiff left and went to the principal's office, she testified she "might have called [Obst] a cunt" in front of the secretary's office. During her deposition, plaintiff agreed that using that language in reference to a teacher is not professional. Regarding an earlier third incident not mentioned in the complaint, plaintiff testified she "went into the bathroom" and "slammed the stall door" because she "was angry . . . ." She testified "[i]t is possible" she was cursing when she slammed the stall door and that she might have called Obst a "fucking bitch" in the bathroom stall.

When asked whether "Obst ever use[d] any racial slurs or ma[de] any racial statements" against her, plaintiff testified Obst "was encouraging us not to vote for Trump. And she was saying how her parents were . . . racist, but she is not a racist." Other than that statement, the only other racial slur or racial statement identified by plaintiff was when Obst "called [her] lazy." Plaintiff said she "knew [Obst] was a racist" when Obst reported plaintiff had drawn a picture of her on the board. Plaintiff testified she felt "like [she] was targeted because [she has] a voice" and speaks up for herself when disrespected.

In granting defendant's summary-judgment motion, Judge McCarthy found "no evidence that [p]laintiff was subject to discrimination based upon her race" while she was a student in defendant's program and "no statement, indication, suggestion and/or implication . . . that Ms. Obst ever used/directed/ implied a racial epithet or slur toward" plaintiff. He also held plaintiff could not "overcome her requirement under McDonnell Douglas [Corp. v. Green, 411 U.S. 792 (1973),] regarding the nondiscriminatory reasons for termination from the cosmetology program" and that she had "not offered any evidence suggesting the decision to expel [her] was a pretext to hide racial discrimination – rather than for the disruptive and inappropriate conduct that violated [the school

district's] handbook and the teacher's policies for proper behavior in the classroom."[2]

In deciding defendant's motion, the judge characterized the Phillips and Castro certifications as being "extremely vague" and contrary to our holding in Worthy v. Kennedy Health Systems that "[a] motion for summary judgment will not be defeated by bare conclusions lacking factual support, . . . self-serving statements, . . . or disputed facts 'of an insubstantial nature.'" 446 N.J. Super. 71, 85 (App. Div. 2016) (citations omitted) (quoting Pressler & Verniero, Current N.J. Court Rules, cmt. 2.1 on R. 4:46-2 (2016)). Although the judge stated he had not considered Nortrup's certification because she had not been identified during discovery, he, in fact, considered it and found that none of the certifications, including Nortrup's, "identif[ied] any specific instances of discrimination and/or any hostility based on [plaintiff's] race." Instead, each student stated his or her subjective belief that Obst had discriminated against plaintiff, "without providing the why and wherefore of the conclusion."

[2] Our Supreme Court has held "[a]ll LAD claims are evaluated in accordance with the United States Supreme Court's burden-shifting mechanism" set out in McDonnell Douglas. Battaglia v. United Parcel Serv., Inc., 214 N.J. 518, 546 (2013).

On appeal, plaintiff argues the judge erred in failing to consider the facts set forth in the students' certifications, contending those certifications demonstrated the existence of genuine issues of material facts sufficient to defeat defendant's motion. She also argues she satisfied the McDonnell Douglas analysis and is entitled to punitive damages.

We review a grant of summary judgment "de novo and apply the same standard as the trial court." Rios v. Meda Pharm., Inc., 247 N.J. 1, 13 (2021). Summary judgment should be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 199 (2016) (quoting R. 4:46-2(c)). "An issue of material fact is 'genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.'" Grande v. St. Clare's Health Sys., 230 N.J. 1, 24 (2017) (quoting Bhagat v. Bhagat, 217 N.J. 22, 38 (2014)).

Applying that standard, we agree with Judge McCarthy's conclusions, including his findings regarding the students' certifications; given her admissions about her own behavior and comments, plaintiff's inability to meet her burden under McDonnell Douglas to show defendant's reasons for expelling her were a pretext for discrimination; and that the record is devoid of facts from which a factfinder could reasonably infer plaintiff was subjected to discrimination based on her race while she was a student or that race played any role in defendant's decision to expel plaintiff. Accordingly, for the reasons stated in Judge McCarthy's cogent decision, we affirm.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION