2017 IL App (4th) 160406-U

NO. 4-16-0406

FILED
February 2, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

JASON HANSON, Plaintiff-Appellant, v. BALL-CHATHAM COMMUNITY UNIT SCHOOL DISTRICT #5, Defendant-Appellee.	)	Appeal from Circuit Court of Sangamon County No. 14L88 Honorable Peter C. Cavanagh, Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Steigmann and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court upheld the trial court's grant of summary judgment where plaintiff failed to establish a *prima facie* case of unlawful discrimination based on his gender.

¶ 2 Plaintiff, Jason Hanson, filed a complaint against defendant, Ball-Chatham Community Unit School District # 5, alleging unlawful discrimination based on his gender, in violation of the Illinois Human Rights Act (Act) (775 ILCS 5/1-101 to 10-104 (West 2012)). The trial court granted defendant's motion for summary judgment and entered judgment in defendant's favor. On appeal, plaintiff challenges the trial court's decision to grant defendant's motion for summary judgment, asserting that the "court erroneously made findings of disputed facts in order to conclude that [he] was not able to establish a *prima facie* case of gender discrimination." We affirm.

¶ 3 I. BACKGROUND

¶ 4 The following facts were gleaned from the complaint and the various exhibits attached to the pleadings in this case.

¶ 5 A. Plaintiff's Job

¶ 6 Plaintiff began working for defendant as a part-time school resource officer in November 2002. He was one of two school resource officers assigned to the middle school, only one of whom worked at a time.

¶ 7 The record shows that the function of a school resource officer is "[t]o provide a safe and secure learning and working environment for all students, faculty, staff and visitors." According to the job description for a student resource officer, plaintiff reported to the "[b]uilding [p]rincipal," and his responsibilities included, but were not limited to, the following:

> "[(1)] Provid[ing] assistance, information, and direction to staff, students, and visitors on campus[;]
>
> [(2)] Patrol[ling] campus walks, drives, parking lots and buildings[;] reporting maintenance needs, *i.e.*[,] lights out or other safety hazards[;]
>
> [(3)] Lock[ing] and unlock[ing] building classrooms, lockers and offices as needed[;]
>
> [(4)] Provid[ing] transportation on or off campus as assigned[;]
>
> [(5)] Enforc[ing] parking rules and regulations on campus[;]
>
> [(6)] Direct[ing] and/or control[ling] vehicular and pedestrian traffic on campus[;]
>
> [(7)] Assist[ing] local emergency service agencies and personnel *** as needed[;]
>
> [(8)] Provid[ing] written reports of incidents that occur on campus[;]

[(9)] Tak[ing] necessary action to maintain order on campus pursuant to [defendant's] policies and state law[;]

[(10)] Talk[ing] informally with students in the hallway and during lunch—develop[ing] rapport and trust, check[ing] student passes, and monitor[ing] lunch periods[;]

[(11)] Attend[ing] as many student activities as possible, [providing] security for athletic events and various dances[;]

[(12)] Advis[ing] the administration on security matters[;]

[(13)] Act[ing] as a liaison between law enforcement agencies and the administration[;]

[(14)] Supervis[ing] hall monitors[;] ensur[ing] coverage of building[;] supervis[ing] and scheduling of Chatham Police Department officers[;] daily school security, athletic events, and dances[;]

[(15)] Maintain[ing] high visibility at all times[;]

[(16)] Serv[ing] as a sounding board on student safety issues[;]

[(17)] Review[ing] the crisis management plan and advis[ing] administration. Talk[ing] to students having legal issues and home situations[;]

[(18)] Advis[ing] principle [*sic*] on security issues—scheduling, use, and location of cameras[;]

[(19)] Participat[ing] in the Student Assistance Program Core Team (SAP) and report[ing] appropriate information to the SAP coordinator and other team members[.]"

Randy Allen, the director of safety and security for defendant, described plaintiff's position as "a security guard with a variety of other responsibilities."

¶ 8 At his deposition, plaintiff testified that his job was to "take[] care of all the security issues in the building" as well as "all of the discipline of the kids." In that regard, he monitored students in the hallways, the cafeteria, and outside of the building. In his personal affidavit, he noted that "[d]uring the course of the school day, students are supposed to be in class when they are not going between classes and when they are at lunch. The need to engage in any type of patrol during these periods is limited because there were not [any] students in the hallways." Plaintiff further averred that during class periods, when students were in class, he "would spend a healthy percentage of this time in [his] office dealing with paperwork and other matters." When called to do so, he would also assist with student discipline issues which required that he go to the classroom or area of the building where the student was located. In addition, he "would frequently go and spend time in the classrooms or offices of teachers and staff." He stated his purpose for doing this was "to build rapport with the teachers and to make sure that they felt comfortable coming to me with any issues that they might have." Plaintiff further noted that "going into the classrooms of teachers and/or offices of other staff members was something that I did throughout my entire tenure with [defendant]. It was something that was known to the administration and no one ever complained to me about it and no one ever suggested to me that it wasn't something that I should do."

¶ 9 The record shows that claimant received high marks on his annual performance reviews during his tenure with defendant. No areas for improvement were identified and the comments—all of which related to plaintiff's job performance—were positive. Plaintiff stated he "was hired under [Jill Larson], and she was also *** in a way she was my supervisor."

When asked if he had any other supervisor, plaintiff responded, "Randy Allen has got the title of director of security."

¶ 10 B. Y.J.'s Job

¶ 11 The record shows that Y.J. began working for defendant in July 2012 as a district technology coordinator. The stated purpose of a district technology coordinator is to "provide[] technical support, training, and direction to staff using computer equipment and applications on a wide area network (WAN) or large local area network (LAN)." This includes installing, testing, maintaining, and resolving computer problems and the like. Her job description indicates that she reports to the "[d]istrict [t]echnology [d]irector." During her deposition, Y.J. testified that she maintained the district's servers and computers and repaired software issues. Y.J.'s direct supervisor was Chad Kent, but she also reported to the middle school principal, Kerry Cox.

¶ 12 C. The Incident Leading to the Termination of Plaintiff's Employment

¶ 13 During his deposition, plaintiff testified as follows. He reported to work on the morning of January 8, 2013, and went about his usual job duties, which included monitoring the children in the cafeteria; checking doors around the building; and walking the halls. Sometime after 10 a.m., he went to Y.J.'s office for assistance with his personal laptop computer. In particular, he was having issues uploading images to craigslist. Y.J. was expecting him because he had asked her the day before if she would look at his laptop. Plaintiff entered Y.J.'s office, closing the office door behind him, and Y.J. began working on his computer.

¶ 14 Plaintiff stated that approximately 10 minutes after entering Y.J.'s office, someone knocked on the office door. There were no windows to see who was knocking and neither he nor Y.J. answered the door. According to plaintiff, Y.J. continued working on his computer, after stating that "[s]he thought it was a student [knocking on the door] that normally comes by on that

period, normally stops by and visits with her." Approximately 5 to 10 minutes later, there was another knock on Y.J.'s office door and they heard someone "fiddling around" with the door handle. Y.J. opened her door and saw another staff member standing there. That staff member asked Y.J. to come with her to the computer lab because there was an issue in the lab. While Y.J. went to the computer lab, plaintiff remained in Y.J.'s office, working on his computer. Plaintiff stated that Y.J. returned to her office approximately 15 minutes later and confirmed with plaintiff that his computer issue was resolved. The two talked for a few more minutes, and then plaintiff left Y.J.'s office and resumed his normal duties. Plaintiff had his radio and cell phone on him the entire time he was in Y.J.'s office.

¶ 15 Plaintiff further testified that later that afternoon, after he had clocked out and was no longer on duty, plaintiff again met with Y.J. in her office to teach her some self-defense moves. According to plaintiff, Y.J. had asked for help because she was having issues in her personal life. With the office door closed, plaintiff demonstrated some self-defense techniques, specifically how to "get out of a chokehold," as that was Y.J.'s main concern. Plaintiff was in Y.J.'s office for approximately 20 to 30 minutes, after which he left the building and went home.

¶ 16 At her deposition, Y.J. testified that plaintiff came to her office on the morning of January 8, 2013, for help with his laptop. At the time, she was running updates on a server, so she agreed to look at plaintiff's laptop. According to Y.J., when plaintiff entered her office, he "pulled [the door] in [behind him], but it wasn't shut all the way." Y.J. stated she had been looking at plaintiff's computer for "probably barely a minute or so" when she heard a knock on her door. She testified it was "probably two minutes later" when a staff member "started keying in" to her office. After the staff member told her of the computer lab problem, Y.J. accompanied the staff member to the computer lab, where she spent "about 20 minutes or so" fixing the

problem, which basically involved plugging computers back into electrical outlets and booting them up. She then returned to her office, where she logged into the server from her computer and checked to make sure the computers in the lab had booted up correctly. Y.J. testified that plaintiff was still in her office when she returned from the computer lab. As she was working on the server, she asked him if his laptop was working. According to Y.J., plaintiff responded that it was, and then he closed his laptop and left her office.

¶ 17 D. Administrative Proceedings

¶ 18 The record shows a number of administrative meetings and proceedings occurred over the course of several days following the January 8, 2010, incident.

¶ 19 Plaintiff was first called to a meeting with the administration on January 10, 2013. Also present at the meeting were Randy Allen, assistant superintendent Jill Larson, and Michelle Kissel (formally Michelle Bulinski), the director of human resources. Larson described the purpose of the meeting was to "fact-find and see what—why people were not where they should be when they're on the job."

¶ 20 During the meeting, plaintiff was asked whether he had any interactions with Y.J. on January 8, 2010, to which he responded he had spoken with her about a security camera issue and had helped her with self-defense. Upon further questioning, plaintiff also stated he had taken his computer into Y.J.'s office for her to work on. The group discussed the initial knock on Y.J.'s office door which went unanswered, and the staff member entering Y.J.'s office later. Plaintiff was unable to recall how long he was in Y.J.'s office, but he estimated it was 10 to 15 minutes. Plaintiff explained he that "he [did] not know how long [he] was in Y.J.'s office because [he] was not timing it." However, he knew that he went into her office after third period began and left before it ended.

¶ 21 At the time of the meeting, plaintiff did not understand why he was being questioned because he did not feel he had done anything inappropriate. He recalled asking if there had been a sexual harassment complaint made against him, since all he knew at the time was that they were asking what he was doing in Y.J.'s office with the door closed. According to Larson, they also discussed the recent school shooting at Sandy Hook and the responsibilities of a school resource officer, mainly "that he should have been out and about and not using—not behind closed doors doing something personal."

¶ 22 Shortly after the meeting with plaintiff, Larson, Kissel, and Chad Kent met with Y.J. During that meeting, Y.J. told the group that she did not answer the first knock on the door because she thought it was a student. They then discussed the staff member coming to Y.J.'s office, Y.J.'s work in the computer lab, and plaintiff still being in Y.J.'s office when she returned from the computer lab. According to Y.J., Larson told her throughout the meeting that "it was inappropriate for [plaintiff] and [her] to be in the same room alone." Y.J. also averred that she felt Larson "was seeking to make a case that [plaintiff] was sexually harassing [her]—an assertion that [she] denied." According to Y.J., Larson told her "[plaintiff] was quite a flirt." However, Y.J. stated that she had never felt uncomfortable around plaintiff and he did nothing that could be considered sexual harassment. For her part, Larson denied making these statements. It was further discovered during this meeting that Y.J. was still clocked in and on duty when she received self-defense instructions from plaintiff.

¶ 23 At the conclusion of the administration's meeting with Y.J., plaintiff was summoned for a second meeting. Also present at the meeting were Larson, Kissel, Kent, and Y.J. This meeting focused on discrepancies in the version of events given by plaintiff and Y.J.,

notably, the length of time plaintiff was in Y.J.'s office and whether Y.J. answered the door when the staff member knocked or whether the staff member "keyed" herself in.

¶ 24 Later that afternoon, Randy Allen met with the administration again. Present during this meet were Kissel, Larson, superintendent Carrie Hruby (formerly Carrie VanAlstine), and possibly the principal, Kerry Cox. According to Allen, during the meeting, the administration voiced its "concern that we still weren't getting the full story" on what had transpired between plaintiff and Y.J. while in her office. He admitted, however, that they "[e]ventually g[o]t to the bottom of what [plaintiff] was doing in [Y.J.'s office]." Allen was referring to plaintiff's initial account of having gone to Y.J.'s office regarding a camera issue, and his later account of having gone to Y.J.'s office for help with his personal laptop, as well as the length of time plaintiff was in Y.J.'s office. Allen opined, however, that "any amount of time that [plaintiff's] in a location in the building and not out in the building where he's supposed to be is significant." Allen further testified, "based upon the fact that [plaintiff] held a security position" and was not "being factual," the appropriate remedy was to terminate plaintiff's employment.

¶ 25 Following the meeting with the administration, Allen met with plaintiff in plaintiff's office. Allen testified that he "was frank with [plaintiff]" and told plaintiff that he thought, "they're going to try to terminate you," and that it "would be better" for plaintiff if he resigned. Approximately one hour later, Allen called plaintiff and told him that he needed plaintiff's keys and district identification. Thereafter, plaintiff met with Allen to give him his keys and identification.

¶ 26 Later that evening, Y.J. received a telephone call from Kissel, informing her that her employment was going to be terminated. After speaking to Kissel, Y.J. called Hruby and

"explained the situation." On January 11, 2013, Y.J. again met with the administration. Also present during this meeting were Hruby, Kent, and Kissel. According to Y.J., the administration presented her with documents related to the termination of her employment for her conduct. Specifically, the documents stated Y.J.'s employment was being terminated for job abandonment (not answering her office door); insubordination (working on an employee's personal computer when she was told not to do so by her supervisor); misuse of time (learning self-defense moves while clocked in); and an ethics violation. Y.J. averred that during the meeting, "[t]hese documents, however, were torn up and I was told that while I would be punished, I would not be terminated. I was told that I would probably be suspended for a couple of days." According to Hruby, Y.J.'s supervisor, Kent, felt comfortable with suspending Y.J. because he was able to limit her access on the computer and monitor her actions. On January 14, 2013, Y.J. was suspended from work for one day.

¶ 27 On January 16, 2013, plaintiff again met with the administration, including Hruby, Kissel, and Allen. Plaintiff was given four disciplinary reports to read and then told that the administration needed to speak to Larson and then would contact him.

¶ 28 On January 17, 2013, plaintiff again met with the administration. Present during this meeting were Hruby, Larson, Kissel, Cox, and Allen. Plaintiff was encouraged to resign his position at this meeting, but he refused. According to plaintiff, Hruby told him she would be recommending his termination to the school board and that he had until January 23, 2013, to resign.

¶ 29 In her deposition, Hruby testified that she recommended plaintiff's employment be terminated for several reasons, including the abandonment of his patrol duties. She stated that plaintiff "didn’t make himself available" and "wasn't alert," as evidenced by his failure to answer

Y.J.'s office door at the first knock, since that person "could have been needing his assistance and so that was a concern." She further testified that she did not feel plaintiff was honest with them because he changed his story multiple times. Hruby stated that plaintiff's dishonesty was a big concern for Allen, who "ha[d] to be able to trust [his] security officers because of their role and their responsibilities."

¶ 30 On January 28, 2013, plaintiff's employment was terminated.

¶ 31 E. The Procedural History

¶ 32 In February 2013, plaintiff filed a charge with the Illinois Department of Human Rights (Department), alleging that defendant unlawfully discriminated against him based on his gender by subjecting him to harsher discipline, *i.e.*, termination of his employment, than a female coworker who engaged in the same conduct. In January 2014, following an investigation, plaintiff received notice from the Department informing him of his right to file a complaint in the circuit court prior to April 21, 2014.

¶ 33 On April 11, 2014, plaintiff filed his complaint against defendant, alleging unlawful discrimination based on his gender in violation of the Act (775 ILCS 5/1-101 to 10-104 (West 2012)). Specifically, he alleged that on January 8, 2013, he and a female coworker, Y.J., violated the same district policy by working on a personal matter during work hours. He maintained that following the policy violation, he and Y.J. were treated differently. In particular, defendant terminated plaintiff's employment but only suspended Y.J. for one day, even though Y.J. was found to have violated a second district policy by falsifying her time record.

¶ 34 In February 2015, defendant filed a motion for summary judgment. In its motion, defendant argued that plaintiff had failed to establish a *prima facie* case of unlawful gender discrimination. Alternatively, defendant asserted that even if plaintiff had established a *prima*

facie case of unlawful gender discrimination, it had a legitimate, nondiscriminatory reason for terminating plaintiff's employment which was not a pretext for unlawful gender discrimination. Attached to defendant's motion for summary judgment were a number of documents, including excerpts of the depositions of plaintiff, Carrie Hruby, Randy Allen, Y.J., and Jill Larson; a job description for a school resource officer (plaintiff's job); a description for a district technology coordinator (Y.J.'s job); and copies of the disciplinary reports terminating plaintiff's employment.

¶ 35 In March 2015, plaintiff filed a memorandum of law in opposition to defendant's motion for summary judgment. Although not labeled as exhibits, their placement in the record suggests a number of documents were attached to plaintiff's memorandum of law, including a personal affidavit of plaintiff; a personal affidavit of Y.J.; copies of plaintiff's performance evaluations; and the depositions of plaintiff, Y.J, Hruby, Larson, and Allen.

¶ 36 On March 18, 2016, defendant filed a reply to plaintiff's response in opposition of summary judgment. Defendant maintained that (1) plaintiff failed to establish a *prima facie* case of unlawful gender discrimination because he was terminated due to "violat[ing] his work expectations"; and (2) if he did establish a *prima facie* case of unlawful gender discrimination, the undisputed facts establish a legitimate, nonpretextual reason for the termination of plaintiff's employment.

¶ 37 In March 2016, the trial court conducted a hearing on defendant's motion for summary judgment—the transcript of which is not in the record. On May 1, 2016, the court entered its order, granting defendant's motion for summary judgment. It found that plaintiff failed to establish a *prima facie* case of unlawful gender discrimination because he did not show he was discharged despite the adequacy of his work or that Y.J. was a similarly situated employee who was not discharged.

¶ 38 This appeal followed.

¶ 39 II. ANALYSIS

¶ 40 On appeal, plaintiff challenges the trial court's decision to grant defendant's motion for summary judgment, asserting that the "court erroneously made findings of disputed facts in order to conclude that [he] was not able to establish a *prima facie* case of gender discrimination."

¶ 41 A. Summary Judgment and the Standard of Review

¶ 42 Summary judgment is appropriate when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2014). "At the summary judgment stage, there must be a demonstration of more than a mere scintilla of evidence to support the elements of plaintiff's claim. There must be admissible evidence on which a fact finder could reasonably find for the plaintiff." *Robinson v. Village of Oak Park*, 2013 IL App (1st) 121220, ¶ 21, 990 N.E.2d 251.

¶ 43 "When reviewing a grant of summary judgment, this court must determine whether, when viewed in the light most favorable to the nonmoving party, the pleadings, depositions, admissions, and affidavits on file reveal any genuine issues of material fact and, if not, whether the moving party is entitled to judgment as a matter of law." *Brugger v. Joseph Academy, Inc.*, 202 Ill. 2d 435, 446, 781 N.E.2d 269, 275 (2002). We review a trial court's entry of summary judgment *de novo*. *Illinois State Bar Ass'n Mutual Insurance Co. v. Law Office of Tuzzolino & Terpinas*, 2015 IL 117096, ¶ 14, 27 N.E.3d 67.

¶ 44 B. Unlawful Discrimination Claims Under the Act

¶ 45 The Act provides that it is a civil rights violation for an employer "to refuse to hire, to segregate, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment on the basis of unlawful discrimination or citizenship status." 775 ILCS 5/2-102(A) (West 2012). "Unlawful discrimination" is defined as "discrimination against a person because of his or her race, color, religion, national origin, ancestry, age, sex, marital status, order of protection status, disability, military status, sexual orientation, or unfavorable discharge from military service." 775 ILCS 5/1-103(Q) (West 2012).

¶ 46 In analyzing employment-discrimination cases brought under the Act, we adopt the same analytical framework set forth in United States Supreme Court decisions addressing claims arising under Title VII of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000e to 2000e-17 (2014)). *Zaderaka v. Illinois Human Rights Comm'n*, 131 Ill. 2d 172, 178, 545 N.E.2d 684, 687 (1989). Generally, a plaintiff may present either direct or indirect evidence in support of his unlawful discrimination claim. *Lalvani v. Human Rights Comm'n*, 324 Ill. App. 3d 774, 790, 755 N.E.2d 51, 64 (2001).

¶ 47 Direct evidence has been defined as evidence which "prove[s] the particular fact in question, without reliance on inference or presumption." *Id*. at 791, 755 N.E.2d at 65. Under the direct method, "once a plaintiff in a Title VII case establishes by direct evidence that the employer placed substantial reliance on a prohibited factor, the burden shifts to the employer to prove by a preponderance of the evidence that it would have made the same decision even if the prohibited factor had not been considered." *Id.* at 790, 755 N.E.2d at 65.

¶ 48 In contrast, under the indirect method of proof, the plaintiff must prove unlawful discrimination under the three-part test established by the United States Supreme Court in

McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-04 (1973). *Kalush v. Department of Human Rights Chief Legal Counsel*, 298 Ill. App. 3d 980, 993, 700 N.E.2d 132, 141 (1998). Pursuant to this three-part test, a "plaintiff must [first] establish by a preponderance of the evidence a *prima facie* case of unlawful discrimination." *Zaderaka*, 131 Ill. 2d at 178-79, 545 N.E.2d at 687. If the plaintiff establishes a *prima facie* case of unlawful discrimination, a rebuttable presumption of unlawful discrimination arises. *Id*. at 179, 545 N.E.2d at 687. At this point, the employer must then rebut the presumption by articulating a legitimate, nondiscriminatory reason for the alleged discriminatory act. *Id*. Finally, if the employer rebuts the presumption, the presumption vanishes and it falls on the plaintiff to "prove by a preponderance of the evidence that the employer's articulated reason was not its true reason, but was instead a pretext for unlawful discrimination." *Id*. "This merges with plaintiff's ultimate burden of persuading the trier of fact that the employer unlawfully discriminated against plaintiff. [Citation.] This ultimate burden remains at all times with plaintiff." *Id*.

¶ 49 C. Recent Changes Regarding the Analysis of Discrimination Claims at the Summary Judgment Stage in the Federal Courts

¶ 50 Before proceeding to the merits, we first address plaintiff's contention that in recent years, our federal courts "are modifying the way that they analyze discrimination claims at the summary judgment stage." According to plaintiff, "rather than engaging in a variety of burden shifting tests that are very narrowly tailored, the courts are looking to the critical question: could a jury permissibly conclude that the facts *** are sufficient to find that the employment action was caused, at least in part, by an impermissible motive." After reviewing the relevant authority, we agree that the current trend in our federal courts—at least within the Seventh Circuit—is to "stop separating 'direct' from 'indirect' evidence and proceeding as if they

were subject to different legal standards." *Ortiz v. Werner Enterprises, Inc.*, 834 F.3d 760, 765 (7th Cir. 2016).

¶ 51 In *Ortiz*, the court stated, "[t]he use of disparate methods and the search for elusive mosaics has complicated and sidetracked employment-discrimination litigation for many years. During the last decade, every member of this court has disapproved both the multiple methods and the search for mosaics." *Id.* at 764. The court continued, "[t]he time has come to jettison these diversions and refocus analysis on the substantive legal issue." *Id*. In that regard, the *Ortiz* court overruled a number of its prior decisions "to the extent that these opinions insist on the use of the direct-and-indirect framework." *Id.* at 765-66. However, the *Ortiz* court provided the following clarification:

> "The burden-shifting framework created by *McDonnell Douglas* *** sometimes is referred to as an 'indirect' means of proving employment discrimination. Today's decision does not concern *McDonnell Douglas* or any other burden-shifting framework, no matter what it is called as a shorthand. We are instead concerned about the proposition that evidence must be sorted into different piles, labeled 'direct' or 'indirect,' that are evaluated differently. Instead, all evidence belongs in a single pile and must be evaluated as a whole. That conclusion is consistent with *McDonnell Douglas* and its successors." *Id*. at 766.

¶ 52 In other words, *Ortiz* teaches that, consistent with the framework established in *McDonnell Douglas*, courts should evaluate unlawful discrimination claims by considering the totality of the evidence before the court. See *Young v. United Parcel Service, Inc.*, __ U.S. __,

__, 135 S. Ct. 1338, 1354 (2015) (A plaintiff alleging disparate treatment under the Pregnancy Discrimination Act "may make out a prima facie case by showing, as in *McDonnell Douglas*, that she belongs to the protected class, that she sought accommodation, that the employer did not accommodate her, and the employer did accommodate others 'similar in their ability or inability to work.' "); see also *Kuttner v. Zaruba*, 819 F.3d 970, 976 (7th Cir. 2016) (noting "[t]he default method of proving discrimination is the burden-shifting approach of *McDonnell Douglas*"). Thus, we continue to analyze claims of employment discrimination under the *McDonnell Douglas* framework.

¶ 53 D. Plaintiff's Unlawful Gender Discrimination Claim

¶ 54 As noted, plaintiff must first establish a *prima facie* case of unlawful gender discrimination. *Zaderaka*, 131 Ill. 2d at 178-79, 545 N.E.2d at 687. "To establish a *prima facie* case of [gender] discrimination, [he] must prove (1) [he] is a member of a protected class; (2) [he] was performing [his] job satisfactorily; (3) [he] was discharged despite the adequacy of [his] work; and (4) similarly situated employees who were not members of the protected group were not discharged." *Wal-Mart Stores, Inc. v. Human Rights Comm'n*, 307 Ill. App. 3d 264, 267, 717 N.E.2d 552, 555 (1999). The trial court granted summary judgment in favor of defendant after finding plaintiff failed to prove the third and fourth elements of his *prima facie* case, *i.e.*, that he was discharged despite the adequacy of his work and that a similarly situated employee who was not a member of the protected group was not discharged.

¶ 55 1. *Similarly Situated Employees*

¶ 56 On appeal, plaintiff asserts that the trial court's "analysis of [his] ability to establish a *prima facie* case is marred because the court erroneously resolved factual disputes against [him]." In particular, plaintiff contends the court's finding that plaintiff and Y.J. "had

different decision makers," and therefore were not similarly situated employees, is "problematic because it is a finding of a critical and disputed fact."

¶ 57 The Seventh Circuit has stated that "[t]he similarly situated [employee] inquiry is a flexible, common-sense one that asks, at bottom, whether 'there are enough common factors *** to allow for a meaningful comparison in order to divine whether intentional discrimination was at play.' " *Henry v. Jones*, 507 F.3d 558, 564 (7th Cir. 2007) (quoting *Barricks v. Elie Lilly & Co.*, 481 F.3d 556, 560 (7th Cir. 2007)). "Similarly situated employees 'must be "directly comparable" to the plaintiff "in all material respects," ' but they need not be identical in every conceivable way." *Coleman v. Donahoe*, 667 F.3d 835, 846 (7th Cir. 2012) (quoting *Patterson v. Indiana Newspapers, Inc.*, 589 F.3d 357, 365-66 (7th Cir. 2009), quoting *Raymond v. Ameritech Corp.*, 442 F.3d 600, 610-11 (7th Cir. 2006)). "[T]he similarly situated requirement '*normally* entails a showing that the two employees dealt with the same supervisor, were subject to the same standards, and had engaged in similar conduct without such differentiating or mitigating circumstances as would distinguish their conduct or the employer's treatment of them.' " (Emphasis is original.) *Humphries v. CBOCS West, Inc.*, 474 F.3d 387, 404-05 (7th Cir. 2007) (quoting *Radue v. Kimberly-Clark Corp.*, 219 F.3d 612, 617-18 (7th Cir. 2000)).

¶ 58 Plaintiff cites *Coleman*, 667 F.3d 835 (7th Cir. 2012), in support of his contention that he and Y.J. were similarly situated employees. In that case, the plaintiff was an African-American woman who had worked for the United States Postal Service as a mail processing clerk for 32 years. *Id.* at 840-41. Her employment was terminated for the stated reason of violating the employer's policy prohibiting " 'violence or threats of violence by anyone at any level of the Postal Service.' " *Id.* at 844. The conduct preceding her termination involved

" 'homicidal ideations' " toward her supervisor. *Id*. However, two other employees, both white males, were suspended without pay for 14 days after violating the same policy when they " 'held a knife to the throat of a black male co-worker' 'while holding down his legs.' " *Id*. at 847. The same person approved the plaintiff's termination and the comparators' suspension. *Id.* The Seventh Circuit found that the plaintiff's proposed comparators were "similar enough to permit a reasonable inference of discrimination" because they "(1) 'dealt with the same supervisor,' (2) 'were subject to the same standards,' and (3) 'engaged in similar conduct' of comparable seriousness." *Id*. at 852. We find *Coleman* distinguishable.

¶ 59 Contrary to plaintiff's contention, the evidence here shows that he and Y.J. were not similarly situated employees. While plaintiff asserts Allen was not his supervisor, he testified at his deposition that Allen was his supervisor. The record also shows that Allen was present during all but one of the administrative meetings with plaintiff regarding the January 8, 2013, incident. Allen was present at the administrative meeting where the termination of plaintiff's employment was recommended. In fact, shortly after this meeting, Allen met with plaintiff one-on-one, informed plaintiff that his employment was likely going to be terminated, and suggested it would be better for plaintiff if he resigned. One hour after that, Allen called plaintiff and told him to turn in his keys and badge. On the other hand, there is no dispute that Kent was Y.J.'s supervisor, or that it was Kent's decision to suspend Y.J. Thus, unlike the employees in *Coleman*, although plaintiff and Y.J. may have reported to some of the same administration officials (Larson, Kissel, Hruby), the main decision maker was not the same person.

¶ 60 Even if we found that plaintiff and Y.J. dealt with the same supervisor or decision maker, we would still find they were not similarly situated employees. Although plaintiff and

Y.J. were subjected to the same employee policy, they were not subject to the same standards by virtue of their job duties. Plaintiff was essentially a security guard with a variety of job duties. Perhaps most important, he was to provide assistance to staff, students, and visitors; patrol the campus; and *maintain a high visibility at all times*. While he was in Y.J.'s office with the door closed working on a personal issue, he clearly was not fulfilling the duties of his job. He was not patrolling the campus or maintaining high visibility. Further, although plaintiff testified he was available if needed because he had his radio and cell phone on him, the evidence shows that the first knock on Y.J.'s door went unanswered by either him or Y.J., which suggests that plaintiff was not in fact available to the staff, students, or visitors while he was in Y.J.'s office. In contrast, Y.J.'s job duties did not require her to provide security to the campus. She was not expected to patrol the campus or maintain a high visibility. In sum, plaintiff's job was to secure the campus, while Y.J.'s job was to provide technical support. As in *Coleman*, plaintiff and Y.J. violated the same unwritten employer policy. However, unlike in *Coleman*, the job expectations of plaintiff and Y.J. are relevant here, and they are so different that the two are simply not comparable. See *Senske v. Sybase, Inc.*, 588 F.3d 501, 510 (7th Cir. 2009) ("the comparators must be similar enough that differences in their treatment cannot be explained by other variables, such as distinctions in their roles or performance histories").

¶ 61 2. *Adequacy of Plaintiff's Work*

¶ 62 In addition to finding plaintiff and Y.J. were not similarly situated employees, the trial court found plaintiff failed to establish he was discharged despite the adequacy of his work. On appeal, however, plaintiff does not raise an issue with the trial court's finding that he failed to prove the third element of his *prima facie* case. In the context of establishing his *prima facie* case, he focuses exclusively on the similarly situated employee issue. We note, however, Illinois

Supreme Court Rule 341(h)(7) (eff. Jan. 1, 2016), provides that points not argued in the appellant's brief "are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing." See also *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 23, 6 N.E.3d 162 ("this court has repeatedly held an appellant's failure to argue a point in the opening brief results in forfeiture under Supreme Court Rule 341(h)(7)"). Thus, even if we were to find that plaintiff established Y.J. was a similarly situated employee who was not discharged, we would affirm the trial court's grant of summary judgment based on plaintiff's failure to provide any argument with respect to establishing the third element of his *prima facie* case.

¶ 63 E. Remaining Issue

¶ 64 Because we find plaintiff failed to establish a *prima facie* case of unlawful gender discrimination, we need not determine whether defendant's proffered reason for termination was a pretext for unlawful discrimination.

¶ 65 III. CONCLUSION

¶ 66 For the reasons stated, we affirm the trial court's grant of summary judgment.

¶ 67 Affirmed.