2019 IL App (1st) 172935-U
Order filed: March 29, 2019

FIRST DISTRICT
FIFTH DIVISION

No. 1-17-2935

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LaSHONDRA PEEBLES, Plaintiff-Appellant, v. WAYNE MR. WATSON, individually and in his capacity as University President, and THE BOARD OF TRUSTEES OF CHICAGO STATE UNIVERSITY, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 2015 L 1706 Honorable Margaret Brennan, Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Lampkin concurring in the judgment.

ORDER

¶ 1 *Held*: We affirmed summary judgment in favor of defendants, where the circuit court properly concluded that there was no genuine issue of material fact with respect to plaintiff's failure to provide evidence of a violation of the State Officials and Employees Ethics Act.

¶ 2 Plaintiff-appellant, LaShondra Peebles, appeals from an order granting summary judgment in favor of defendants-appellees, Wayne Watson, individually and in his capacity as President of Chicago State University (CSU), and The Board of Trustees of Chicago State University (Board). For the following reasons, we affirm.[1]

[1] In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1,

¶ 3 I. BACKGROUND

¶ 4 On February 18, 2015, plaintiff filed this action against CSU, Mr. Watson, the Board, and each member of the Board individually, seeking to recover damages for an alleged violation of the Whistle Blower article of the Illinois State Officials and Employees Ethics Act, 5 ILCS 430/15 *et seq*. (West 2016).[2]

¶ 5 In her complaint, plaintiff alleged that she was hired by CSU as a temporary process improvement manager in March of 2012, was later promoted to Compliance Director, and was then promoted to Interim Vice-President of Enrollment and Student Affairs in July 2013. In her most recent role, plaintiff's duties included management of 11 departments, including the management of CSU's residence halls and related meal service provided to students residing in CSU's dormitories.

¶ 6 To provide meals for these students, CSU utilized the services of Sodexo, a food vendor. The complaint alleged that in late fall of 2013, in her capacity as Interim Vice-President of Enrollment and Student Affairs, plaintiff was asked to sign and approve two Sodexo invoices for food services. Combined, the invoices required payment in excess of one million dollars to Sodexo.

¶ 7 However, plaintiff subsequently learned there was no signed contract in place with Sodexo. Plaintiff subsequently requested to review copies of the invoices at issue. Nevertheless, Larry Pinkelton, CSU's financial officer, repeatedly insisted that plaintiff sign her approval for the payment of the Sodexo invoices.

2018), this appeal has been resolved without oral argument upon the entry of a separate written order stating with specificity why no substantial question is presented.

[2] CSU and the individual members of the Board were dismissed from this lawsuit below, and are not parties to this appeal.

¶ 8 After several email exchanges, plaintiff attended a meeting with—among others— Mr. Pinkelton, Mr. Watson, and CSU's Ethics Officer, retired judge Bernetta Bush. According to the complaint, Judge Bush's role at CSU was to "advise all CSU employees with respect to legal and ethical questions concerning the operation of CSU," and to receive and resolve "complaints of unethical and inappropriate activity." At the meeting, the Sodexo invoices and the lack of a signed contract with Sodexo were discussed. In her complaint, plaintiff admits that, despite being told by Judge Bush that a final contract could be backdated if needed, and that these payments needed to be made, she threatened to contact the Illinois Auditor General if a final contract was backdated. The issue was not resolved.

¶ 9 Following a subsequent meeting, plaintiff met with Mr. Watson and informed him that she would not be signing the invoices and threatened to contact the Illinois Auditor General if she was further pressured to approve the invoices. In response, the complaint alleged that Mr. Watson told Mr. Pinkelton and CSU General Counsel Patrick Cage to issue payment to Sodexo and to "keep plaintiff out of it."

¶ 10 The complaint further alleged that several months later, plaintiff took medical leave from April 21, 2014 to May 30, 2014. Upon plaintiff's return from medical leave on June 2, 2014, she was terminated. According to plaintiff's complaint, she was terminated due to: (1) her refusal to approve payment to Sodexo without a signed contract in place and her threat to report CSU's conduct regarding the Sodexo invoices to the Illinois Auditor General, (2) an instance where Mr. Watson refused plaintiff's request to inform the Board of CSU's provisional status with the federal Department of Education with respect to a financial aid program, and (3) plaintiff's refusal to make false claims of sexual harassment against a coworker, at the behest of Mr.

Watson.[3] Plaintiff's complaint alleged that her termination for these reasons violated the Whistle Blower article of the Illinois State Officials and Employees Ethics Act, which prohibits retaliation when a state employee "[d]iscloses or threatens to disclose to a supervisor or to a public body an activity, policy, or practice of any officer, member, State agency, or other State employee that the State employee reasonably believes is in violation of a law, rule, or regulation." 5 ILCS 430/15-10(1) (West 2016).

¶ 11 After this case was removed to federal court and returned to the circuit court, the parties engaged in significant discovery. That discovery revealed the following.

¶ 12 First, while no final contract had been signed with Sodexo in the fall of 2013, Sodexo had been providing services pursuant to an interim letter of agreement ("LOA") signed in June 2013. This agreement was executed so that students could receive meals while Sodexo and CSU negotiated a final contract. A subsequent August 2013 LOA stated that CSU and Sodexo agreed to continue to negotiate in good faith the terms and conditions of a final contract for food services, and further stated that the prior LOA would continue to govern the relationship between CSU and Sodexo "[d]uring the pendency of negotiations of the contract for services." It was pursuant to these interim agreements—particularly with regard to a provision of the LOA's requiring CSU to pay interest on late payments, and the fact that food services had already been provided pursuant to those LOA's and paid for by CSU students—that CSU contended plaintiff should have signed and authorize payment of the two Sodexo invoices. The discovery also revealed that the Board's internal regulations provided Mr. Watson with authority to enter into such interim agreements.

[3] The specifics of the plaintiff's claims with respect to the latter two allegations need not be set out with any further specificity, for reasons explained below.

¶ 13 In addition, the parties' discovery responses revealed that, while plaintiff was on leave, CSU learned of several purported misconduct violations by plaintiff and conducted an investigation. The first violation was discovered by then-Interim Provost at CSU, Angela Henderson, who discovered that plaintiff had approved a contract between CSU and a company called PMO501, Inc. ("PMO501") on behalf of CSU's purchasing department and its legal department.

¶ 14 CSU further learned that plaintiff had purportedly made two payments to PMO501, totaling $4,748, which she paid by splitting up the purchase into two parts to get around her CSU-issued credit card transaction limit of $3,000. CSU asserted that plaintiff did not have authority to approve of such transactions, and it was against CSU's credit card policies to string or split up payments to evade the single transaction limit.

¶ 15 The second purported violation that CSU discovered was that plaintiff hired her mother, Shirley Kyle ("Kyle"), as an "extra-help" employee, notwithstanding CSU's policy that employees should not be involved in hiring decisions regarding relatives. Moreover, no department head within Enrollment Management knew of Ms. Kyle's alleged position or any related work performed, or that plaintiff had been approving Ms. Kyle's time. CSU contended that Ms. Kyle actually performed no work for the school. CSU also contended that it was actually on the basis of these two purported violations that plaintiff was terminated.

¶ 16 Following the completion of discovery, both the Board and Mr. Watson filed motions for summary judgment. In the briefing and oral arguments with respect to defendants' motions for summary judgment below, plaintiff explicitly disclaimed reliance upon any of the protected activities alleged in her complaint other than her actions with respect to the Sodexo invoices. The circuit court ultimately granted defendants' motions for summary judgment, concluding that

plaintiff could not have held a reasonable belief that the conduct related to the Sodexo invoices, which she threatened to report to the state authorities violated a law, rule, or regulation. Therefore, the circuit court found that plaintiff failed to engage in protected activity under the Whistle Blower article. Plaintiff timely appealed.

¶ 17 II. ANALYSIS

¶ 18 On appeal, plaintiff contends that the trial court improperly granted summary judgment in favor of defendants. We disagree.

¶ 19 Summary judgment is properly granted where the pleadings, depositions, and admissions on file, together with any affidavits, indicate there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2–1005(c) (West 2016). The court must examine the evidence in the light most favorable to the nonmoving party (*Pavlik v. Wal–Mart Stores, Inc.*, 323 Ill. App. 3d 1060, 1063 (2001)), and must construe the material strictly against the movant and liberally in favor of the nonmovant (*Espinoza v. Elgin, Joliet and Eastern Ry. Co.*, 165 Ill. 2d 107, 113 (1995)). Although a drastic means of disposing of litigation, summary judgment is, nonetheless, an appropriate measure to expeditiously dispose of a suit when the moving party's right to the judgment is clear and free from doubt. *Gaston v. City of Danville*, 393 Ill. App. 3d 591, 601 (2009).

¶ 20 A plaintiff is not required to prove her case in response to a motion for summary judgment, but must present evidentiary facts to support the elements of the cause of action. *Richardson v. Bond Drug Co. of Illinois*, 387 Ill. App. 3d 881, 885 (2009). When reviewing an order granting summary judgment, "we conduct a *de novo* review of the evidence in the record." *Espinoza*, 165 Ill. 2d at 113. We may affirm the circuit court's grant of summary judgment for

any reason that is supported by the record, regardless of whether that reason formed the basis for the circuit court's judgment. *Nava v. Sears, Roebuck & Co.*, 2013 IL App (1st) 122063, ¶ 10.

¶ 21 In relevant part, under section 15-10(1) of the Whistle Blower article, a state employee or state agency shall not take any retaliatory action against a state employee where the state employee "[d]iscloses or threatens to disclose to a supervisor or to a public body an activity, policy, or practice of any officer, member, State agency, or other State employee that the State employee reasonably believes is in violation of a law, rule, or regulation." 5 ILCS 430/15-10(1) (West 2016). "A violation of this Article may be established only upon a finding that (i) the State employee engaged in conduct described in Section 15-10 and (ii) that conduct was a contributing factor in the retaliatory action alleged by the State employee." 5 ILCS 430/15-20 (West 2016). Retaliatory action is defined as "reprimand, discharge, suspension, demotion, denial of promotion or transfer, or change in the terms or conditions of employment of any State employee, that is taken in retaliation for a State employee's involvement in protected activity, as set forth in section 15-10." 5 ILCS 430/15-5 (West 2016). A defendant may refute the alleged retaliatory action by demonstrating "clear and convincing evidence that the officer, member, other State employee, or State agency would have taken the same unfavorable personnel action in the absence of that conduct." 5 ILCS 430/15-20 (West 2016).

¶ 22 As an initial matter, we note again that in the briefing and oral arguments with respect to defendants' motions for summary judgment below, plaintiff explicitly disclaimed reliance upon any of the protected activities alleged in her complaint other than her actions with respect to the Sodexo invoices. Nevertheless, on appeal plaintiff appears to rely upon the other allegations of protected activity contained in her complaint. This is improper. "The rule of invited error or acquiescence is a form of procedural default also described as estoppel. [Citation.] The rule

prohibits a party from requesting to proceed in one manner and then contending on appeal that the requested action was error. [Citation.] The rationale for the rule is that it would be manifestly unfair to grant a party relief based on error introduced into the proceedings by that party. [Citation.]" *Gaffney v. Board of Trustees of Orland Fire Protection District*, 2012 IL 110012, ¶ 33. To the extent that on appeal plaintiff relies upon anything other than the allegations of protected activity with respect to the Sodexo invoices, we find such arguments to be procedurally defaulted. See *Crowley v. Mr. Watson*, 2016 IL App (1st) 142847, ¶ 39 (noting that a party waives her right to complain of an error where to do so is inconsistent with a position taken by that party in an earlier court proceeding).

¶ 23 Turning to plaintiff's actions with respect to the Sodexo invoices, we find that the circuit court properly concluded that they could not support a claim under the Whistle Blower article. Specifically, we agree that plaintiff's threat to make a report to State authorities if she was further pressured to sign the Sodexo invoices cannot support a violation of the Whistle Blower article, as plaintiff could not reasonably have believed that signing those invoices without a final, executed contract would be in violation of a law, rule, or regulation. While "reasonableness" is generally a question of fact rather than a question of law, where reasonable minds could not differ, it can be determined as a matter of law. *Brame v. City of North Chicago*, 2011 IL App (2d) 100760, ¶ 13.

¶ 24 Plaintiff first contends that she reasonably believed that signing the Sodexo invoices would run afoul of section 3001 of the Fiscal Control and Internal Auditing Act. 30 ILCS 10/3001 (West 2016). However, this section provides only generalized requirements that "[a]ll State agencies shall establish and maintain a system, or systems, of internal fiscal and administrative controls." *Id.* At no point has plaintiff explained how she reasonably believed that

any of the generalized requirements of this section would have been violated had she signed the Sodexo invoices.

¶ 25 Plaintiff also relies upon section 9.02 of the State Finance Act, which provides in relevant part that "[a]ny new contract or contract renewal in the amount of $250,000 or more in a fiscal year, or any order against a master contract in the amount of $250,000 or more in a fiscal year, or any contract amendment or change to an existing contract that increases the value of the contract to or by $250,000 or more in a fiscal year, shall be signed or approved in writing by the chief executive officer of the agency, and shall also be signed or approved in writing by the agency's chief legal counsel and chief fiscal officer." 30 ILCS 105/9.02 (West 2016). However, this section is simply irrelevant here. It is undisputed—indeed it is one of plaintiff's chief complaints—that there was no formal contract in place with Sodexo at the time plaintiff was asked to sign the Sodexo invoices. Rather, the invoices were for services rendered by Sodexo pursuant to the interim agreements, agreements put in place to ensure Sodexo's continued provision of services while a formal contract was negotiated and finalized.

¶ 26 Nor is there any doubt that the use of such interim agreements was proper. CSU introduced unrebutted evidence below that CSU's own internal regulations permitted such interim agreements to be signed by Mr. Watson, where "in his *** judgment a letter of intent is necessary to insure receipt of an advantageous price or delivery date for goods or services and approval of the purchase by the President or the Board *** above cannot be obtained on a timely basis." It is clear from the record that Mr. Watson reasonably approved of the interim agreements with Sodexo so that food service could be provided to CSU students residing in the schools dormitories while a final contract was negotiated.

¶ 27 Lastly, and as specifically noted by the circuit court in granting defendants' motions for summary judgment, any remaining qualms plaintiff may have had with respect to signing the Sodexo invoices should reasonably have been mitigated by her conversation with CSU's Ethics Officer, a retired judge who's role at CSU was to "advise all CSU employees with respect to legal and ethical questions concerning the operation of CSU," and to receive and resolve "complaints of unethical and inappropriate activity." In that conversation, plaintiff was informed that the invoices could properly be signed and any final, formalized contract with Sodexo could be "backdated." The only arguments plaintiff raises to challenge Judge Bush's recommendation have already been rejected above.

¶ 28 For all these reasons, we agree with the circuit court that—as a matter of law— plaintiff could not reasonably have believed that signing the Sodexo invoices without a final, executed contract would be in violation of a law, rule, or regulation. Because she therefore has failed to present any evidentiary facts to support an essential element of her cause of action; *i.e.*, that she engaged in protected activity under the Whistle Blower article by threatening to report this activity. As such, we affirm the circuit court's grant of summary judgment in favor of defendants. *Richardson*, 387 Ill. App. 3d at 885.[4]

¶ 29 III. CONCLUSION

¶ 30 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 31 Affirmed.

[4] Because we rule in defendants' favor on this issue, we need not reach defendants' alternative arguments that plaintiff's cause of action otherwise fails on the merits or that her appellate briefs should be stricken in whole or in part for purported violations of Illinois Supreme Court Rule 341 (eff. May 25, 2018).