[Cite as *Varasso v. Williamsburg Local School Dist. Bd. of Edn.*, 2009-Ohio-3419.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

CLERMONT COUNTY

CARLA A. VARASSO,	:	
Plaintiff-Appellant,	:	CASE NO. CA2008-10-100
	:	O P I N I O N
- vs -	:	7/13/2009
WILLIAMSBURG LOCAL SCHOOL DISTRICT BOARD OF EDUCATION,	:	
Defendant-Appellee.	:	

CIVIL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
Case No. 2006-CVH-0041

T. David Burgess, 110 N. Third Street, Williamsburg, Ohio, 45176-1322, for plaintiff-appellant

R. Gary Winters, 900 Provident Bank Bldg., 632 Vine Street, Cincinnati, Ohio 45202, for defendant-appellee

HENDRICKSON, J.

{¶1} Plaintiff-appellant, Carla A. Varasso, appeals a decision by the Clermont County Court of Common Pleas granting summary judgment in favor of defendant-appellee, Williamsburg Local School District Board of Education (Williamsburg). We affirm the trial court's decision.

{¶2} Williamsburg employed Varasso as an art teacher under a continuing contract. Pursuant to that contract, Varasso was required to work 183 days of the year

for an annual salary of $56,422.16, or $308.32 per day. In May of 2004, Varasso was severely injured in an accident which resulted in her inability to resume teaching when the school year began in the fall of 2004. Varasso was eventually able to return to work in November, but by that time had missed 58 days of the school year, only nine of which had been covered by sick leave.

{¶3} When compensating its teachers, Williamsburg disperses salaries bi-monthly over a twelve month period, rather than only paying them during the months of the school year. Thus, had Varasso worked the entire 183 school days of the school year, she would have received 24 payments of $2,350.92, totaling $56,422.16.

{¶4} Upon Varasso's return to work, there were only 19 pay periods remaining in the year. Williamsburg recalculated Varasso's earnings to take into account the time she was absent from teaching, by multiplying the remaining work days (125) by Varasso's daily rate of pay ($308.32) and dividing that number by the remaining pay periods (19) which resulted in a calculation of $2,028.42 per pay period. For the 2004-2005 school year, Varasso received a total of $42,509.26.[1]

{¶5} Varasso filed a complaint alleging that Williamsburg had violated R.C. 3319.12 by reducing her salary; two causes of action for breach of contract; and violation of her due process rights.[2] Williamsburg subsequently filed a motion for summary judgment, and Varasso filed a memorandum in opposition, which was later converted to a cross-motion for summary judgment. In granting summary judgment to Williamsburg, the trial court stated, "[t]he appearance that her salary was reduced was

1. This number includes $2,028.42 for 19 weeks, or $38,539.98, plus $3,969.28 in paid sick leave. We note that Varasso was actually overpaid for the school year as she missed 49 (58 - 9) unpaid days which should have resulted in her earning $41,314.48 ($56,422.16 – (49 x $308.32)) for the 2004-2005 school year instead of $42,509.26.

2. Varasso dismissed counts two through four of her complaint leaving only the alleged violation of R.C. 3319.12 at issue.

solely as a result of her inability to work the requisite hours during the school year." The trial court concluded Williamsburg did not violate R.C. 3319.12. The trial court found that Varasso's salary was not reduced because she was paid the same rate as she was receiving prior to her injury. Varasso filed an appeal alleging two assignments of error.

{¶6} Because Varasso's assignments of error are essentially the same argument, we have elected to address them together.

{¶7} Assignment of Error No. 1:

{¶8} "THE TRIAL COURT ERRED BY GRANTING DEFENDANT-APPELLEE'S MOTION FOR SUMMARY JUDGMENT AND DENYING THE PLAINTIFF-APPELLANT'S MOTION FOR SUMMARY JUDGMENT."

{¶9} Assignment of Error No. 2:

{¶10} "THE TRIAL COURT ERRED BY GRANTING DEFENDANT-APPELLEE'S MOTION FOR SUMMARY JUDGMENT."

{¶11} Varasso argues that the trial court erred by granting Williamsburg summary judgment because Williamsburg violated R.C. 3319.12 when it decreased her salary upon her return to work. Since there was no "uniform plan" in place to address her situation, Varasso claims that Williamsburg "reduced" her salary in contravention of the statute. We find no merit to Varasso's argument.

{¶12} As an appellate court, we examine a trial court's decision to grant summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 1996-Ohio-336. Thus, an appellate court is required to "us[e] the same standard that the trial court should have used, and * * * examine the evidence to determine whether as a matter of law no genuine issues exist for trial." *Bravard v. Curran,* 155 Ohio App.3d 713, 2004-Ohio-181, ¶9, quoting *Brewer v. Cleveland Bd. of Edn.* (1997), 122 Ohio App.3d 378, 383. We must also review a trial court's decision regarding summary judgment

independently, without any deference to the trial court's judgment. *Bravard* at ¶9, citing *Burgess v. Tackas* (1998), 125 Ohio App.3d 294, 295.

{¶13} Summary judgment is proper where (1) there is no genuine issue as to any material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) the evidence submitted can only lead reasonable minds to a conclusion adverse to the nonmoving party. Civ.R. 56(C); *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66. The party moving for summary judgment bears the burden of demonstrating no genuine issue of material fact exists with regard to the essential elements of the claim(s) of the nonmoving party. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 292-93. A material fact is one which would affect the outcome of the suit under the applicable substantive law. *Anderson v. Liberty Lobby, Inc.* (1986), 477 U.S. 242, 248, 106 S.Ct. 2505.

{¶14} The burden is then on the nonmoving party to present evidence showing that there is some issue of material fact yet remaining for the trial court to resolve. *Dresher* at 293. The nonmoving party may not rely on mere allegations or denials in his pleading. Civ. R. 56(E); *Mitseff v. Wheeler* (1988), 38 Ohio St.3d 112, 115. Instead, the nonmoving party must respond with specificity to show a genuine issue of material fact. Id. The nonmoving party is, however, entitled to have any doubts resolved and evidence construed most strongly in his favor. *Welco Indus., Inc. v. Applied Cos.*, 67 Ohio St.3d 344, 346, 1993-Ohio-191. Nevertheless, summary judgment is appropriate where a nonmoving party fails to produce evidence essential to its claim. Id.

{¶15} R.C. 3319.12 states, in pertinent part, "[e]ach board of education shall cause notice to be given annually not later than the first day of July to each teacher who holds a contract valid for the succeeding school year, as to the salary to be paid such teacher during such year. *Such salary shall not be lower than the salary paid during the*

preceding school year unless such reduction is part of a uniform plan affecting the entire district." (Emphasis added).

{¶16} Varasso asserts that Williamsburg did not have a "uniform plan" in place to manage those situations where teachers on medical leave exhaust their sick time. Instead of having a uniform policy to address this possible circumstance, she argues that Williamsburg's procedure "allows and promotes subjective selection and preferential treatment."[3] She also points out that Williamsburg even conceded it approached situations such as these on a "case by case basis."

{¶17} In light of the fact Varasso received $42,509.26 for the 2004-2005 school year rather than the contracted $56,422.16, at first blush it appears as though Varasso's salary for the school year was indeed reduced. However, this assessment is incorrect.

{¶18} In *Shields v. Dayton Board of Education* (July 11, 1984), Montgomery App. No. CA 8593, 1984 WL 5374, the Second District Court of Appeals concluded that "the General Assembly's intent when enacting R.C. 3319.12 was to equate 'salary' with one's rate of pay." Id. at *3. See, also, *Ohio Assn. of Pub. School Employees # 672 v. Twin Valley Local School Dist. Bd. of Edn.* (1983), 6 Ohio St.3d 178 (interpreting an analogous statute, R.C. 3319.082, and finding the term "salary" equates to "rate of pay"). Examining the record, we note that Varasso's "rate of pay," $308.32 per day, was never reduced upon her return from her leave of absence. Thus, although her take home pay was diminished due to her absence, her "salary," or more correctly, "rate of pay" was not reduced within the meaning of the statute. Because there was no reduction in salary, we expressly find that the prohibitions within R.C. 3319.12 are in no way implicated in this case. Cf. *Graves v. Bd. of Edn. of the Youngstown City School*

3. We note that Varasso did not present any evidence to show Williamsburg treated any teacher in a different manner because he or she exhausted sick time during a work absence.

Dist. (Jan. 11, 1983), Mahoning App. No. 82 C.A. 40, 1983 WL 6734, at *2 (finding no application of R.C. 3319.12 where a teacher's rate of salary was the same but her hours were only half as much as the previous year). As R.C. 3319.12 is inapplicable to this case, we need not address Varasso's arguments regarding uniform plans.

{¶19} Furthermore, it appears it was the intention of the General Assembly, in enacting this statute, to prohibit school boards from arbitrarily reducing the salaries of certain teachers based on their length of service, avocations, etc.; instead requiring boards to reduce the salaries of all teachers within their districts under a single standardized scheme. See *Buckles v. Granville Exempted Village School Dist. Bd. of Edn.* (July 27, 1988), Licking App. No. 3358, 1988 WL 82144, at *8, citing *Bohman v. Bd. of Edn.* (1983), 2 Ohio St.3d 136, 139 (finding a school board did not comply with R.C. 3319.12 by reducing the salaries of all guidance counselors in a district because a reduction cannot apply only to teachers in a particular field; it must be applied to all teachers within the district). The General Assembly's intent certainly was not to require a school board to pay a teacher the same, or greater, salary than in the previous year, when the teacher did not comply with the terms of her contract by missing approximately 27 percent of the school year.

{¶20} We also observe that Varasso herself admitted that she expected to lose some of her salary based on the fact that she missed almost three months of the school year. What Varasso did not anticipate was the effect of having essentially a "seasonal" job that only encompasses ten months, and a salary that is distributed over the entire year, presumably to ensure a paycheck during the summer months when teachers are not expected to be in the classroom.

{¶21} In conclusion, we find Williamsburg did not violate R.C. 3119.12 by adjusting Varasso's salary based upon her absence. Because there was no reduction in

Varasso's

salary, the statute has no application in this matter. Construing the evidence most strongly in Varasso's favor, there is no genuine issue of material fact that requires resolution in this case. Therefore, the trial court was correct in granting summary judgment to Williamsburg. Varasso's assignments of error are overruled.

{¶22} Judgment affirmed.

POWELL, P.J., and YOUNG, J., concur.