[Cite as *Williams v. Clinton-Massie Local School Dist. Bd. of Edn.*, 2012-Ohio-3537.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

CLINTON COUNTY

ANNA M. WILLIAMS, et al.,	:	
Plaintiffs-Appellants,	:	CASE NO. CA2011-10-022
	:	O P I N I O N
- vs -		8/6/2012
	:	
CLINTON-MASSIE LOCAL SCHOOL DISTRICT BOARD OF EDUCATION,	:	
	:	
Defendant-Appellee.	:	

CIVIL APPEAL FROM CLINTON COUNTY COURT OF COMMON PLEAS
Case No. CVH20100273

Steven F. Stuhlbarg, 7809 Shadowhill Way, Cincinnati, Ohio 45242, for plaintiffs-appellants

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HENDRICKSON, P.J.

{¶ 1} Plaintiff-appellants, Anna M. Williams and Brittany Henry, appeal the decision and judgment entry of the Clinton County Common Pleas Court granting summary judgment in favor of defendant-appellee, Clinton-Massie Local School District Board of Education (the Board), and denying appellants' motion for summary judgment.

{¶ 2} Prior to the 2009/2010 school year, Williams and Henry were both employed by the Board as full-time custodians under two-year, limited contracts. At that time, they were the two least senior custodians employed by the Board under limited contracts. Also employed by the Board was Sandra Achor, a custodial supervisor with over 20 years of experience working under a continuing contract. However, in the summer of 2009, due to a large budget deficit, the Board determined that a reduction in force was necessary. This reduction in force would affect Williams, Henry, and Achor.

{¶ 3} Achor was subject to a "partial reduction in force" in July of 2009 and was moved from a salaried custodial supervisor position to an hourly custodian position. Although Achor was, essentially, demoted, she maintained her continuing employment contract. The decision to reclassify Achor as a custodian was recommended to the Board by then-superintendent Ron Rudduck. Rudduck had learned of an ethics investigation against Achor from the Board's then-treasurer, Cathy Leichliter, and told Leichliter that he would somehow help Achor retain her employment. Thus, Achor was reclassified as a custodian. A short time later, on August 1, 2009, Rudduck retired.

{¶ 4} On August 17, 2009, Williams and Henry were subject to a full reduction in force recommended to the Board by Rudduck's successor, Superintendent Michael Sander. Superintendent Sander recommended that Williams' and Henry's contracts be suspended because of financial reasons, pursuant to R.C. 3319.172, and because Williams and Henry were the least senior custodial employees working under limited contracts.

{¶ 5} Also during the summer of 2009, the Board retained a third-party vendor, Cooper's Dustbusters, Inc. (CDB), to perform supervisory services over the custodians. CDB's president, Anita Cooper, was interviewed by Rudduck and the company was hired in May. During the interview with Rudduck, Cooper stated that if her company was hired, the school district would be able to lay off at least two custodians. Cooper admits, however, that

neither Rudduck nor the Board ever discussed with her the desire to lay off custodial employees and that she volunteered the statement to make an impression during the interview.

{¶ 6} Although the contract between the Board and CDB was for supervisory services only, Cooper determined that she would have herself and her employee, Scott Sprowle, perform custodial duties alongside the regular custodians for a total of 40 hours per week. Cooper stated that this was a personal choice she made for her company and that neither Rudduck nor the Board required her to offer this service, though she felt that it was part of her general contractual duties to maintain the cleanliness of the school buildings.

{¶ 7} In April of 2011, Williams and Henry filed separate lawsuits against the Board for breach of contract. Both argued that their contracts were improperly suspended because their positions had been replaced by a third-party vendor, CDB, and by a custodian with less seniority, Achor.

{¶ 8} In Williams' lawsuit, both parties moved for summary judgment, but the trial court denied the motions. The lawsuits of Williams and Henry were then consolidated and the Board moved the trial court to reconsider its motion for summary judgment as applied to both Williams and Henry. At a hearing on the matter, Williams and Henry argued that the Board's motion to reconsider should be denied but, if the trial court did wish to reconsider, it should reexamine both the Board's and Williams' motions and allow Henry to respond.

{¶ 9} On September 28, 2011, the trial court reconsidered the motions for summary judgment and found in favor of the Board as to both Williams and Henry. The trial court found that neither CDB nor Achor replaced Williams and Henry. From this decision, Henry and Williams (hereinafter appellants) appeal, raising the following assignment of error:

{¶ 10} Assignment of Error No. 1:

{¶ 11} THE TRIAL COURT ERRED BY GRANTING [THE BOARD'S] MOTION FOR

SUMMARY JUDGMENT, AND BY FAILING TO GRANT [APPELLANT] WILLIAMS' MOTION FOR SUMMARY JUDGMENT.

{¶ 12} In their sole assignment of error, appellants argue that summary judgment was improperly granted in the Board's favor and denied in Williams' favor.

{¶ 13} This court reviews a trial court's decision on summary judgment under a de novo standard of review. *Discover Bank v. Brockmeier*, 12th Dist. No. CA2006-057-078, 2007-Ohio-1552, ¶ 6. "Summary judgment is proper when: (1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can only come to a conclusion adverse to the party against whom the motion is made, construing the evidence most strongly in that party's favor." *Id*.; Civ.R. 56(C). The party requesting summary judgment bears the initial burden of informing the court of the basis for the motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact as to the essential elements of the nonmoving party's claims. *Dresher v. Burt*, 75 Ohio St.3d 280, 293 (1996). Once a party moving for summary judgment has satisfied its initial burden, the nonmoving party has the reciprocal burden to set forth specific facts showing that genuine issues remain. *Id*.; Civ.R. 56(E). Summary judgment is proper if the party opposing the motion fails to set forth such facts. *Id*.

{¶ 14} The case at hand turns on the application of R.C. 3319.172, the statute involving reductions in force of nonteaching employees. R.C. 3319.172 provides, in pertinent part:

> The board of education of each school district * * * may adopt a resolution ordering reasonable reductions in the number of nonteaching employees for any of the reasons for which the board of education * * * may make reductions in teaching employees * * *. In making any reduction under this section, the board of education * * * shall proceed to suspend contracts in accordance with the recommendation of the superintendent of

> the district * * * who shall, within each pay classification affected, given preference first to employees under continuing contract and then to employees on the basis of seniority.

R.C. 3319.17 governs a board of education's right to reduce the number of teaching employees on staff in a school district. The statute provides that one reason why a teaching employee and, subsequently, a nonteaching employee, may have their contract suspended is for "financial reasons."

{¶ 15} Although the parties agree that the school district was in the midst of financial difficulties, appellants argue that their contracts were not suspended due to financial reasons but, rather, because: (1) the Board wished to replace them with a third-party vendor; (2) Rudduck wished to keep Achor employed even though she was the least senior custodian; and (3) Rudduck did not like Williams and expressly targeted the reduction in force so that Williams would lose her job.

Replacement of a Custodian with an Outside Vendor

{¶ 16} Appellants first argue that the trial court's decision on summary judgment was improper because appellants' custodial positions were replaced by a third-party vendor. Specifically, appellants contend that, just after their contracts were suspended for financial reasons, the Board hired CDB to perform custodial duties and that Cooper and Sprowle began working alongside the remaining custodians undertaking appellants' previous responsibilities. Thus, appellants assert that their positions were replaced by Cooper and Sprowle.

{¶ 17} We find appellants' argument unpersuasive for several reasons. First, there is no evidence that the Board or Rudduck desired to lay off school district custodians upon the hiring of CDB. Rather, it was Cooper who, during the interview process, brought up the discussion of the Board being able to lay off two custodians. Cooper admitted that this statement was part of her sales pitch to gain employment.

{¶ 18} Second, the contract between CDB and the Board is for supervisory services only. Nowhere in the contract is there a requirement that CDB provide additional custodians or have employees work alongside the regular custodians. Cooper stated that the decision that she and Sprowle perform custodial duties alongside the regular custodial employees was a personal decision she made for the betterment of her company and to impress the Board. She was never instructed to perform this service.

{¶ 19} Finally, CDB was hired in May of 2009, three months before the suspension of appellants' contracts. In fact, at least Williams, and presumably Henry, worked alongside Cooper and Sprowle during the summer months leading up to the 2009/2010 school year. Appellants argue that this was a special situation, as the custodians were assisting with the move into a new school building. However, the unusual circumstance of preparing a new school building does not negate the fact that CDB began working while Williams and Henry were still employed. Moreover, Cooper and Sprowle worked alongside at least Williams from the time they were hired in May, until Williams' suspension in August. Thus, the argument that CDB was hired to replace appellants is unconvincing.

{¶ 20} Appellants additionally argue that we should apply the reasoning of the Ohio Supreme Court in *Ohio Association of Public School Employees/AFSCME Local 4, AFL-CIO (OAPSE) v. Batavia Local School District Board of Education*, 89 Ohio St.3d 191, 2000-Ohio-130; and *Stacy v. Batavia Local School District Board of Education*, 97 Ohio St.3d 269, 2002-Ohio-6322, to the case at hand. Both *OAPSE* and *Stacy* address issues where nonteaching employees had their positions abolished when the school board decided to replace them with a third-party vendor. *OAPSE* at 193; *Stacy* at ¶ 2.

{¶ 21} We find analyses of these cases unnecessary, as we have determined that appellants' custodial positions were not replaced by a third-party vendor. However, even had we found that appellants' positions were replaced, these cases would not be dispositive of

the issues before us, as they address the application of R.C. 3319.081, the statute regarding contract termination, and not R.C. 3319.172, the statute regarding contract suspension and reduction in force.

{¶ 22} As CDB was hired prior to the suspension of appellants' contracts to perform a supervisory role only and was never instructed to perform regular custodial duties, reasonable minds could conclude only that appellants' custodial positions were not replaced by a third-party vendor and no genuine issues of material fact remain.

Appellants Were Suspended Over a Less Senior Employee

{¶ 23} Appellants next argue that at least one of their contracts should not have been suspended prior to that of Achor's. Specifically, appellants contend that Achor's "demotion" from custodial supervisor to custodian meant that she changed pay classifications and was, thus, the least senior custodian at the time of the reductions in force. As such, the Board was required by R.C. 3319.172 to suspend Achor's contract prior to any other.

{¶ 24} As stated above, R.C. 3319.172 provides that, in making a reduction in force, the board of education shall suspend contracts based upon the recommendation of the superintendent "who shall, within each pay classification affected, give preference first to employees under continuing contracts and then to employees on the basis of seniority." A continuing contract is a contract that remains in effect until resignation, retirement, or the employee is terminated for reasons not at issue here. *See* R.C. 3319.08.

{¶ 25} In July of 2009, Achor was moved from the salaried position of custodial supervisor to the hourly position of custodian. This "demotion" or "partial reduction in force" placed Achor in a new pay classification. Thus, Achor was the least senior member of the custodial staff. However, Achor was hired as a custodian under a continuing contract. Therefore, the Board and the superintendent were required to give Achor's contract preference over those custodians with contracts limited by years, such as those contracts

held by appellants.

{¶ 26} Based upon these facts, the Board acted properly in suspending appellants and no genuine issues of material fact remain.

Targeting of Williams

{¶ 27} In their final argument, appellants contend that genuine issues of material fact remain as to whether the Board's decision to reduce its custodial force was expressly targeted at Williams. Specifically, appellants argue that the Board did not act in good faith in suspending their contracts because Rudduck did not like Williams and wanted to have her fired.

{¶ 28} During the summer of 2009, the Board's then-treasurer, Leichliter, learned of an ethics investigation against Achor. Leichliter informed Rudduck of the investigation and, according to Leichliter, Rudduck became very upset. He stated that he would do anything to help Achor keep her job, even if that meant he would have to pay for her attorney. The plan was then formed to "partially reduce" Achor's position from custodial supervisor to custodian while allowing Achor to keep her 20-year seniority and work under a continuing contract.

{¶ 29} Also in 2009, prior to his retirement, Rudduck had a conversation with Cooper in which he admitted to thinking that Williams was a "troublemaker." Rudduck also stated to Cooper that he was happy to know that Williams would lose her job due to the reduction in force.

{¶ 30} Based upon these two discussions, appellants argue that judgment should not have been awarded in favor of the Board where fact questions remain as to whether the Board's decision to reduce its custodial force was done in good faith.

{¶ 31} Appellants cite *Mash v. Board of Education of the Westerville City School District*, 10th Dist. No. 80AP-950, 1981 WL 3443 (Aug. 27, 1981), for the proposition that a school board must act in good faith in suspending nonteaching employee contracts for

financial reasons. *Mash* addresses the issue of abolishing a public employee's position and states that "[a] job must be abolished in good faith and cannot be done as a subterfuge for eliminating a particular employee." *Id*. at *3. *Mash* does not address the issues of reduction in force, contract suspension, or R.C. 3319.172.

{¶ 32} The case at hand does not address the abolition of a nonteaching employee's position but, rather, the suspension of a nonteaching employee's contract due to a reduction in force. Whether a nonteaching employee's contract shall be suspended is governed by statute. The parties fail to present case law, and we can find none, which indicates that a school board must act in good faith in reducing its workforce pursuant to R.C. 3319.172. Therefore, in order to suspend a nonteaching employee for financial reasons, the school board is required only to give preference to those with continuing contracts and then to employees with limited contracts "on the basis of seniority." R.C. 3319.172. Thus, even if Rudduck was pleased with Williams' contract suspension, the Board still followed the requirements of R.C. 3319.172 by suspending the contract of the least senior nonteaching employee with a limited contract.

{¶ 33} Appellants argue that the Board did not act in good faith because Achor's contract should have been suspended first, but Rudduck prevented this by arbitrarily giving Achor seniority. However, as we have previously discussed, Achor was working under a continuing contract and, therefore, was given preference over those employees with limited contracts. Therefore, this argument is without merit.

{¶ 34} Furthermore, even if we assume that there is a requirement that the Board act in good faith in suspending nonteaching employees' contracts under R.C. 3319.172, the evidence, or lack thereof, in this case leads us to believe that the Board's suspension of appellants' contracts was appropriate.

{¶ 35} No evidence was presented that Rudduck's dislike of Williams was known to

the Board. Rudduck made the statements that Williams was a troublemaker to Cooper, and Cooper never told any Board members. In addition, it was not Rudduck who recommended that Williams' contract be suspended. Rudduck had retired a few weeks prior to this recommendation, which was made by Superintendent Sander. Superintendent Sander testified that his recommendation was premised upon the school district's financial situation and the fact that Williams was the least senior custodian working under a limited contract. Superintendent Sander further stated that he was unaware of Rudduck's feelings towards Williams when he made the recommendation.

{¶ 36} Thus, based upon the foregoing, reasonable minds could only conclude that the Board acted appropriately in suspending the contracts of appellants. Therefore, appellants' sole assignment of error is overruled.

{¶ 37} Judgment affirmed.

PIPER and HUTZEL, JJ., concur.