

[Cite as *Collins v. Orange City School Dist. Bd. of Edn.*, 2010-Ohio-3195.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93778

LESHUN COLLINS

PLAINTIFF-APPELLANT

vs.

**ORANGE CITY SCHOOL DISTRICT BOARD
OF EDUCATION**

DEFENDANT-APPELLEE

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-674769

BEFORE: Cooney, J., Boyle, P.J., and Celebrezze, J.

RELEASED: July 8, 2010

JOURNALIZED:

ATTORNEYS FOR APPELLANT

Sandra J. Rosenthal
600 Standard Building
1370 Ontario Street
Cleveland, Ohio 44113

David A. Forrest
Jeffries, Kube, Forrest & Monteleone Co., LPA
1650 Midland Building
101 Prospect Avenue West
Cleveland, Ohio 44115-1093

ATTORNEYS FOR APPELLEE

Sherrie C. Massey
David Kane Smith
Britton, Smith, Peters & Kalail Co., LPA
3 Summit Park Drive
Suite 400
Cleveland, Ohio 44131-2582

Susan R. Hartung
Walter & Haverfield LLP
The Tower at Erieview
1301 East Ninth St., Suite 3500
Cleveland, Ohio 44114

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

COLLEEN CONWAY COONEY, J.:

{¶ 1} Plaintiff-appellant, LeShun Collins (“Collins”), appeals the trial court’s decision granting summary judgment in favor of defendant-appellee, Orange City School District Board of Education (“Orange” or “District”), on Collins’s claims of employment discrimination. We find no merit to the appeal and affirm.

{¶ 2} In October 2008, Collins, who is African-American, filed a complaint against Orange alleging that it failed to promote him to the position of assistant principal and hired a less-qualified Caucasian applicant instead. After completing discovery, Orange filed a motion for summary judgment, and Collins filed a response brief in which the following evidence was presented.

{¶ 3} Collins began his employment with Orange in 1993 as a teacher’s aide at Orange High School. While working as a teacher’s aide, Collins served as a long-term substitute teacher, teaching science to several grades in the high school from January to June 1994. He took a one-year leave of absence in the fall of 1996 to obtain his certification to teach health in grades ranging from kindergarten to twelfth grade and subsequently returned to his position as a teacher’s aide.

{¶ 4} While continuing to work as a teacher’s aide, Collins taught eighth grade science as a substitute teacher from November 1998 until January 1999,

after which Orange hired him as an eighth grade health teacher. He continued to work as an eighth grade health teacher until Orange had a reduction in staff in 2001.

{¶ 5} Collins received his Masters in Education in 2001 and accepted a job that year teaching physical education at Warrensville Heights High School. However, he returned to Orange in 2002 to work as a health teacher at New Directions, a nonprofit agency located within the Orange City School District that offers various levels of care for adolescents dealing with substance abuse and mental health issues.

{¶ 6} In 2004, Collins obtained his licensure in administration and, in 2005, he entered the Doctoral Educational Leadership Program at Walden University, seeking to obtain his Ph.D. degree. In 2006, Collins transferred to Orange High School to teach health, a position he continued to hold at the time of the court's ruling.

{¶ 7} In addition to his teaching duties, Collins served as a coach to various sports teams. He also participated in some educational initiatives and volunteered to work as an advisor for senior projects and for minority students. Collins was respected and liked as a coach and as a teacher by students, parents, and staff.

{¶ 8} In the spring of 2006, Orange posted a notice for an opening for a middle school principal. Interested individuals were invited to submit a letter of

interest, accompanied by a résumé, university credentials, and three letters of recommendation to the Director of Human Resources. A search committee, consisting of three teachers and the Assistant Principal's secretary, interviewed the applicants. The search committee selected a candidate by consensus, and the Human Resources Director, Dr. Joseph Webb ("Webb"); the Superintendent, Dr. Daniel Lukich ("Lukich"); and a former Middle School Principal, Steven Hegner ("Hegner"), interviewed the candidates. Lukich made the final selection, subject to approval by the Board of Education.

{¶ 9} Orange hired Paul Lucas ("Lucas"), a high school math teacher who had been employed by Orange since August 2002, for the position of assistant principal. Collins subsequently filed this racial discrimination action.

{¶ 10} In the sole assignment of error, Collins contends the trial court erred in granting summary judgment in favor of Orange. He argues there are genuine issues of material fact with respect to Collins's prima facie case of discrimination, Orange's reasons for failing to promote Collins are pretextual, and Orange does not have governmental immunity from liability.

{¶ 11} We review an order granting summary judgment de novo, applying the same standard of review the trial court applied. Pursuant to Civ.R. 56, summary judgment is appropriate 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 come to but one conclusion and that conclusion is

adverse to the nonmoving party. *Zivich v. Mentor Soccer Club, Inc.*, 82 Ohio St.3d 367, 369, 1998-Ohio-389, 696 N.E.2d 201.

{¶ 12} R.C. 4112.02 governs unlawful discriminatory practices and states that it is unlawful “[f]or any employer, because of the race, color, religion, sex, military status, national origin, disability, age, or ancestry of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment.”

{¶ 13} In *Mauzy v. Kelly Services, Inc.*, 75 Ohio St.3d 578, 1996-Ohio-265, 664 N.E.2d 1272, the Ohio Supreme Court held that a plaintiff may establish a prima facie case of discrimination in one of two ways: (1) by using the indirect method of proof articulated in *McDonnell Douglas Corp. v. Green* (1973), 411 U.S. 792, 935 S.Ct. 1817; or (2) by directly proving the prima facie case through the presentation of evidence of any nature to show that the employer was more likely than not motivated by a discriminatory animus. *Id.* at 586-87.

{¶ 14} Generally, a prima facie case of racial discrimination under *McDonnell Douglas* requires a plaintiff to establish that he: (1) is a member of a protected class; (2) suffered an adverse employment action; (3) was qualified for the position lost or not gained; and (4) that the position remained open or was filled by a person not of the protected class. *McDonnell Douglas*, 411 U.S. 792 at 802.

{¶ 15} If a plaintiff is able to establish a prima facie case of discrimination under *McDonnell Douglas*, then a presumption is created that the employer unlawfully discriminated against the employee, and the burden shifts to the employer to produce evidence that its actions regarding the plaintiff were based on legitimate nondiscriminatory reasons. *Texas Dept. of Community Affairs v. Burdine* (1981), 450 U.S. 248, 254, 101 S.Ct. 1089, 67 L.Ed.2d 207. Thereafter, the burden switches to the plaintiff, who must show that defendant's stated justification is in fact merely a pretext for unlawful discrimination. However, the ultimate burden of persuasion remains at all times with the plaintiff. *Id.*

{¶ 16} The parties do not dispute that Collins is a member of a protected class, that he was not promoted, and that the assistant principal position was filled by a person outside the protected class. It is also undisputed that Collins met the initial qualifications. Indeed, both candidates share the same educational background (master's degree, administrative certification, and course work towards a doctorate). Thus, the prima facie case of discrimination under the *McDonnell Douglas* test is established.

{¶ 17} However, Orange demonstrated a legitimate, nondiscriminatory reason for its decision to promote Lucas to the assistant principal position over Collins. Although both candidates were qualified for the position, the record reflects that the administrators and teachers involved in making the hiring recommendation determined that Lucas was best qualified for the position.

{¶ 18} Collins argues he was more qualified than Lucas because he had more teaching experience in the Orange school district as well as the ability to relate well with students. Collins also argues that Lucas had only four years of teaching experience and no evidence showing his ability to deal with crisis situations.

{¶ 19} However, after the interviews were completed, the search committee met to discuss the candidates and make a recommendation to the Superintendent. During the meeting, the search committee discussed the strengths and areas of concern for each candidate. The committee members agreed that Collins would work well with students and build relationships with them, but there was concern as to whether he would be an effective disciplinarian. A major function of the assistant principal is discipline.

{¶ 20} There was also concern that because Collins had worked at New Directions the previous four years, he had limited exposure to the broad base of students at the Middle School and their unique academic experiences. Collins transferred from New Directions to Orange High School to teach health the same year the vacant position for assistant principal was posted. The committee believed Collins's lack of exposure would impair his effectiveness in implementing Orange's initiatives centered around school improvement and student performance in the school buildings. Although Collins had extensive experience

as a coach, the committee found that he lacked relevant leadership experience with respect to building and district-wide initiatives.

{¶ 21} With respect to academic and curricular issues, the committee determined that Collins was not as effective as Lucas in communicating how he would deal with staff issues such as teacher observations and evaluations. There was also some concern regarding Collins's ability to relate to teachers in academic subject areas of science, math, reading, English, and social studies because Collins's background was in the special subject area of health.

{¶ 22} In contrast, the committee agreed that Lucas demonstrated knowledge of current concepts related to Professional Learning Communities ("PLCs"), school reform (as a participant in the Center for Learning in School Reform), school improvement that led to improved student performance and academic achievement, building leadership teams, and other district initiatives.

{¶ 23} The committee found Lucas's participation in building and district-wide initiatives to be of critical importance because it demonstrated his leadership experience, experience implementing initiatives, and experience collaborating with other administrators and teachers in the district. Lucas took the lead in many of these initiatives and had represented Orange at several state and national conferences. While the committee acknowledged that Lucas had fewer years of teaching experience than Collins, they agreed that based on Lucas's demonstrated leadership experience, he would most easily be able to

assume the duties of assistant principal and lead the building teachers through the District's initiatives.

{¶ 24} Collins asserts that he had similar experience with building and district-wide initiatives. He had exposure to the PLCs through presentations made to Orange teachers, and he had participated in the Teachers' Academy, collaborating with other teachers to create an interdisciplinary lesson plan. However, the search committee found this experience to be less extensive than Lucas's experience, and there is no evidence that Collins led any initiatives.

{¶ 25} Collins further argues that Lucas was afforded professional development opportunities that were not offered to Collins. Specifically, Collins claims that Orange provided Lucas opportunities to participate in committees and conferences related to building and district initiatives while Collins was neither invited nor made aware of such activities until after Lucas received the promotion to assistant principal. Collins contends he was intentionally left uninformed because of his race, while Lucas was advised of these opportunities to help further his career. However, the record reflects that rather than being invited to many of these opportunities, Lucas sought them out on his own accord. Logically, Collins could have done the same.

{¶ 26} Many of these professional development opportunities were communicated to teachers at staff meetings. Union leaders were responsible for selecting individual teachers to participate in various initiatives. Teachers also

networked and advised each other about various opportunities. Teachers could seek out opportunities and discuss them with the administration. The record demonstrates that there were numerous professional development opportunities available and there was nothing to stop Collins from seeking out these opportunities. Lucas actively pursued these opportunities. Thus, we find no evidence that Orange intentionally deprived Collins of professional development opportunities as the result of some discriminatory animus.

{¶ 27} Collins contends that Orange's articulated reason for hiring Lucas instead of him (i.e., that Lucas was more qualified) is a pretext for intentional discrimination. To establish that an employer's proffered reasons for not promoting an employee were pretextual, the employee must show that the employer was more likely than not motivated by a discriminatory purpose or that the employer's proffered explanation is unworthy of belief. *Wixson v. Dowagiac Nursing Home* (C.A.6, 1996), 87 F.3d 164, 170; *Texas Dept. of Community Affairs*. The employee cannot establish pretext simply by claiming that the proffered reason is inaccurate. See, e.g., *Majewski v. Automatic Data Processing, Inc.* (C.A.6, 2001), 274 F.3d 1106, 1117.

{¶ 28} To challenge the credibility of an employer's explanation, the plaintiff must demonstrate, by a preponderance of the evidence that: (1) the proffered reasons had no basis in fact; (2) the proffered reasons did not actually motivate the adverse employment action; or (3) the proffered reasons were insufficient to

motivate the adverse employment action. *EEOC v. Yenkin-Majestic Paint Corp.* (C.A.6, 1997), 112 F.3d 831, 834.

{¶ 29} It is important to note that the employer need not prove a nondiscriminatory reason for not promoting an employee, but need merely articulate a valid rationale. *Hartsel v. Keys* (C.A.6, 1996), 87 F.3d 795, 800.

{¶ 30} Collins claims that Orange's reasons for not selecting him for the assistant principal position were pretextual because the Director of Human Resources manipulated the interview process and steered the committee into selecting Lucas for the vacant position. Collins also claims that Orange had a self-imposed quota limiting the number of African-American administrators in the district.

{¶ 31} Collins supported his contentions with his own affidavit and affidavits from two past administrators who were not involved in the current selection process. Both administrators worked at Orange High School, rather than the Middle School where Collins had applied for the assistant principal position. Although they both state that Collins was qualified for the position, neither of them offer any evidence of discrimination against Collins, and Collins's qualifications for the position are not in dispute.

{¶ 32} The record indicates that Orange selected Lucas over Collins because the search committee, the Superintendent, and the Board of Education determined that Lucas was better qualified for the assistant principal position.

The committee reviewed the candidates' application materials, asked each candidate the same questions from a prepared list of questions, and considered the strengths and concerns related to each candidate. As previously described, the committee believed that both men were qualified but Lucas was better qualified because he had more leadership experience related to building and district-wide initiatives that relate to both students and staff issues. Accordingly, we find no evidence in the record of a discriminatory animus.

{¶ 33} Having found no evidence of racial discrimination, Collins's alleged claim of emotional distress resulting therefrom also fails.

{¶ 34} Accordingly, the sole assignment of error is overruled.

{¶ 35} Judgment is affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

COLLEEN CONWAY COONEY, JUDGE

FRANK D. CELEBREZZE, JR., J., CONCURS;

MARY J. BOYLE, P.J., DISSENTS
(SEE ATTACHED DISSENTING OPINION)

MARY J. BOYLE, J., DISSENTING:

{¶ 36} I agree with the majority that Collins has established a prima facie case of discrimination. I disagree, however, that Orange has “demonstrated a legitimate, nondiscriminatory reason for its decision to promote Lucas to the assistant principal position over Collins.” It is my view that genuine issues of material fact exist as to whether Orange’s reasons for not choosing Collins were pretextual — especially considering that we must view the evidence in a light most favorable to the nonmoving party. Civ.R. 56.

{¶ 37} First, the affidavits of Steven Lloyd and Sandranette Sellers, both former administrators at Orange High School, cannot be discounted. Collins and Lucas worked at the high school when they applied for the middle school assistant principal position. Certainly, Lloyd’s opinion cannot be overlooked. He oversaw and evaluated Collins’s and Lucas’s job performances. He averred that Collins was the better qualified candidate for the position. He stated that Collins had stronger leadership abilities than Lucas, and that Collins handled discipline issues more competently than Lucas.

{¶ 38} The record further reveals that there was also conflicting testimony given by members of the search committee regarding whether a consensus was reached among the committee that Lucas was the better candidate. And as far

as Lucas having more leadership experience by attending building and district-wide initiatives, Superintendent Lukich and Lloyd testified that this is not important to the selection of a middle school assistant principal position.

{¶ 39} Thus, it is my view that Collins submitted more than enough evidence to create genuine issues of material fact that Orange's reasons for promoting Lucas over him were pretextual. Thus, I respectfully dissent.