

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO EX REL. KRISTY
STOICOIU, et al.

C.A. No. 30345

Appellants

v.

STOW-MUNROE FALLS CITY SCHOOL
DISTRICT BOARD OF EDUCATION

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CV-2019-03-1182

Appellee

DECISION AND JOURNAL ENTRY

Dated: July 26, 2023

HENSAL, Presiding Judge.

{¶1} Kristy Stoicoiu appeals a judgment of the Summit County Court of Common Pleas that granted summary judgment to the Stow-Munroe Falls City School District Board of Education (“the Board”). This Court reverses.

I.

{¶2} Ms. Stoicoiu sued the Board for breach of contract, retaliatory discharge, and wrongful termination arising from the Board’s decision not to renew her contract as treasurer of the Stow-Munroe Falls City School District. She also petitioned the trial court for a writ of mandamus compelling the Board to renew her contract, maintained that the Board committed a Sunshine Law violation in connection with the non-renewal of her contract, and sought a declaratory judgment that the Board was in violation of various statutory obligations with respect to non-renewal of her contract. The Board moved for summary judgment, arguing, with respect

to Ms. Stoicoiu's retaliatory discharge claim, that she was not a whistleblower for purposes of Revised Code Section 4113.52.

{¶3} After Ms. Stoicoiu opposed the motion for summary judgment, the trial court granted the Board leave to file a reply brief, in which the Board reiterated that Ms. Stoicoiu was not entitled to protection as a whistleblower. The Board also maintained that Ms. Stoicoiu had not demonstrated the remaining elements of a prima facie case of retaliatory discharge and, in the alternative, that the Board had a legitimate, nondiscriminatory basis for not renewing her contract. Ms. Stoicoiu moved to strike the Board's reply brief. The trial court denied her motion to strike and granted summary judgment to the Board. In doing so, the trial court concluded that Ms. Stoicoiu was a whistleblower for purposes of Section 4113.52. The trial court also concluded, however, that even assuming that Ms. Stoicoiu had established a prima facie case of retaliation, the Board had articulated a legitimate, nondiscriminatory basis for non-renewal of her contract and Ms. Stoicoiu had not produced evidence demonstrating that the Board's justification was pretext.

{¶4} The trial court granted summary judgment to the Board on that basis, and Ms. Stoicoiu appealed. She has assigned two errors for this Court's review.

II.

ASSIGNMENT OF ERROR I

THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT GRANTED SUMMARY JUDGMENT IN FAVOR OF THE BOARD BASED ON ARGUMENTS MADE FOR THE FIRST TIME IN THE BOARD'S REPLY BRIEF.

{¶5} Ms. Stoicoiu's first assignment of error argues that the trial court erred by granting summary judgment to the Board based on an argument that it articulated for the first time in its reply brief. This Court agrees.

{¶6} Under Civ.R. 56(C), “[s]ummary judgment will be granted only when there remains no genuine issue of material fact and, when construing the evidence most strongly in favor of the nonmoving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law.” *Byrd v. Smith*, 110 Ohio St.3d 24, 2006-Ohio-3455, ¶ 10. The moving party bears the burden of demonstrating that there are no genuine issues of material fact with reference to “appropriate evidentiary materials.” *Id.* Similarly, the nonmoving party must “set forth specific facts showing that there is a genuine issue for trial[]” with reference to the type of evidentiary materials specified in Rule 56(E). *Id.*, quoting Civ.R. 56(E).

{¶7} In light of the evidentiary framework provided by Rule 56(C), a trial court errs by granting summary judgment on grounds that are not specified in the motion because doing so denies the nonmoving party the meaningful opportunity to respond. *State ex rel. Sawicki v. Court of Common Pleas of Lucas Cty.*, 121 Ohio St.3d 507, 2009-Ohio-1523, ¶ 27. *See also Smith v. Ray Esser & Sons, Inc.*, 9th Dist. Lorain No. 10CA009798, 2011-Ohio-1529, ¶ 15. When a nonmoving party argues on appeal that the trial court erred by granting summary judgment on a ground not argued in the motion, this Court conducts a de novo review. *Smith* at ¶ 8-17. *See generally Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105 (1996).

{¶8} Section 4113.52(B) prohibits employers from taking “any disciplinary or retaliatory action” against an employee who reports a violation of the law as required by Section 4113.52(A). *See also Lee v. Cardington*, 142 Ohio St.3d 488, 2014-Ohio-5458, ¶ 1. To establish a claim of retaliatory discharge in violation of Section 4113.52(B), an employee must demonstrate that he or she was entitled to protection under the statute, that adverse employment action was taken, and that there was a causal link between the adverse action and the protected activity. *Pohmer v. JPMorgan Chase Bank, N.A.*, 10th Dist. Franklin No. 14AP-429, 2015-Ohio-1229. ¶ 52. *See*

generally *Thatcher v. Goodwill Industries of Akron*, 117 Ohio App.3d 525, 534-535 (9th Dist.1997). “Once an employee establishes a prima facie claim of retaliation, then the burden shifts to the employer to show that there was a legitimate reason[] for the discharge. If the employer can establish a legitimate reason, the burden shifts back to the employee to show that the employer’s articulated reason was pretextual.” *O’Malley-Donagan v. MetroHealth System*, 8th Dist. Cuyahoga No. 104544, 2017-Ohio-1362, ¶ 20. In the context of summary judgment, an employer may prevail under this burden-shifting framework “by either demonstrating that the plaintiff’s proffered evidence fails to establish a prima facie case, or by presenting a legitimate, nondiscriminatory explanation for the adverse employment action about which the plaintiff fails to create a factual dispute that the explanation is a pretext for discrimination.” *Dunn v. GOJO Industries*, 9th Dist. Summit No. 28392, 2017-Ohio-7230, ¶ 13, quoting *Williams v. Time Warner Cable*, 9th Dist. Wayne No. 18663, 1998 WL 332937, *2 (June 24, 1998).

{¶9} In this case, the Board’s motion for summary judgment only argued that Ms. Stoicoiu failed to establish a prima facie case of retaliation under Section 4113.52(B) because she was not a whistleblower entitled to protection under the statute. *See Pohmer* at ¶ 52. More specifically, the Board did not argue in its motion that it had a legitimate, nondiscriminatory reason for non-renewal of her contract and that Ms. Stoicoiu would fail to demonstrate a factual dispute about pretext. *See Dunn* at ¶ 13. Instead, the Board did so in its reply brief.

{¶10} As this Court has acknowledged, however, “a reply brief should not set forth new arguments.” *Smith*, 2011-Ohio-1529, at ¶ 15. Nonetheless, the trial court denied Ms. Stoicoiu’s motion to strike the reply brief and granted summary judgment to the Board based on the conclusion that Ms. Stoicoiu could not demonstrate that the legitimate, nondiscriminatory reason for non-renewal of her contract articulated by the Board was pretext. In doing so, the trial court

denied Ms. Stoicoiu the meaningful opportunity to respond to that argument. *See State ex rel. Sawicki*, 121 Ohio St.3d 507, 2009-Ohio-1523, at ¶ 27. This Court, therefore, agrees that the trial court erred in granting summary judgment on this basis. Ms. Stoicoiu's first assignment of error is sustained.

ASSIGNMENT OF ERROR II

THE TRIAL COURT ERRED WHEN IT WEIGHED THE EVIDENCE IN THE BOARD'S FAVOR, RESULTING IN GRANTING THE BOARD'S MOTION FOR SUMMARY JUDGMENT.

{¶11} Ms. Stoicoiu's second assignment of error argues that the trial court erred in granting summary judgment to the Board because it weighed the evidence. In light of this Court's resolution of Ms. Stoicoiu's first assignment of error, her second is premature.

III.

{¶12} Ms. Stoicoiu's first assignment of error is sustained. Her second assignment of error is premature. The judgment of the Summit County Court of Common Pleas is reversed, and this matter is remanded for proceedings consistent with this opinion.

Judgment reversed
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period

for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

JENNIFER HENSAL
FOR THE COURT

CARR, J.
STEVENSON, J.
CONCUR.

APPEARANCES:

JACK MORRISON, JR and CHRISTINE M. FARANDA, Attorneys at Law, for Appellants.

ARETTA K. BERNARD and STEPHANIE OLIVERA MITTICA, Attorneys at Law, for Appellee.