

NO. 42011-2-II

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STATE OF WASHINGTON

BY *JSW*

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IN THE COURT OF APPEALS, DIVISION TWO  
OF THE STATE OF WASHINGTON

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JULIE SHORT, Appellant,

v.

BATTLEGROUND SCHOOL DISTRICT and ROCHONNE BRIA,  
Respondents.

FILED  
COURT OF APPEALS  
STATE OF WASHINGTON  
2011 OCT 10 PM 3:30

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APPELLANT'S REPLY BRIEF

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## I. ARGUMENT

### A. **Genuine Issues of Material Fact Exist Regarding Julie Short's Claim for Religious Discrimination.**

Defendants repeatedly and erroneously assert that Julie Short was not required to lie by Defendant Bria, but had been given the option of lying or withholding information from Ms. Short's supervisor, Kelly O'Brien. *Brief of Respondent at 6.* In fact, the record is clear that Ms. Short was not given the option of withholding information from Ms. O'Brien, but was explicitly directed by Dr. Bria to lie. CP 233. Ms. Short specifically asked that she be permitted to either refer Ms. O'Brien to Ms. Bria or tell Ms. O'Brien that Ms. Bria had asked Ms. Short not to share the requested information with Ms. O'Brien, if Ms. O'Brien were to ask about the planning information for the opening of the Amboy Middle School in which Ms. O'Brien had been extensively involved. CP 176. Ms. Bria flatly refused both requests. *Id.* When Ms. Short reiterated to Ms. Bria that her Christian beliefs did not permit her to lie, Ms. Bria's response to Ms. Short was that Ms. Short was "not going to get through this and be honest" and that she "would have to make a choice." CP 175.

When Ms. Short continued to refuse to lie, Ms. Bria yelled at her, threatening that Ms. Short's reputation would be ruined and that Ms. Bria would appoint a hostile supervisor to conduct Ms. Short's performance evaluation. CP 175.

In support of Defendants' claim that Dr. Bria gave Ms. Short the option of withholding information from Ms. O'Brien rather than not having to explicitly lie, Defendants rely upon an allegation contained in Plaintiff's unverified Amended Complaint. The Complaint is not evidence, is unsworn, and would not be admissible in Court as is required under CR 56 in order to support Defendants' Motion for Summary Judgment. The sworn statements from Ms. Short's declaration, deposition and interrogatory responses clearly establish that Ms. Short was not given the option of merely withholding the information from Ms. O'Brien, but was ordered by Superintendent Bria to lie to Ms. O'Brien.

Defendants argue that Ms. Short has not established the elements of a prima facie case on her religious discrimination claim. *Brief of Respondents at 6-7.* To the contrary, Ms. Short has presented substantial evidence that creates issues of material fact with regard to the prima facie elements of her claim for religious discrimination.

**1. Ms. Short Presented Substantial Evidence that She Has a Religious Belief Against Lying that Conflicted with an Employment Requirement that She Lie.**

Ms. Short presented substantial evidence that she has a religious belief against lying, and that this belief conflicted with Dr. Bria's order that she lie to Kelly O'Brien. Defendants erroneously assert that Ms. Short "admits that she was never directed to lie as a part of her job. All

she was requested and required to do was to keep specific district information confidential.” *Brief of Respondents at 7*. Defendants further argue that “at deposition, Ms. Short testified that all that the superintendent asked her to do was to keep confidential the topics discussed at the meeting.” *Brief of Respondent at 9*. In support of this statement, Defendants cite to CP 50. This citation does not support Defendants’ assertion that all that Ms. Bria asked Ms. Short to do was to keep confidential the topics discussed at the meeting. In her testimony at CP 50, Ms. Short merely acknowledges that Ms. Bria did direct her to not tell Kelly O’Brien about what was being discussed at the meeting. CP 50:

Q: And do you recall being given a direction by the Superintendent to not tell Kelly O’Brien about what was being discussed at the meeting?

A: Yes.

In fact, the record establishes that Ms. Bria did order Ms. Short to lie to Kelly O’Brien. See: CP 168; CP 175; CP 186-187.

Defendants argue that Ms. Short was able to do her job without having to lie. *Brief of Respondent at 9*. However, this argument disregards the fact that Ms. Short was only at work for several days after she was directed to lie by Ms. Bria before she was out on leave, which started on February 26, 2008. *Brief of Respondent at 5*. On or about February 26, Ms. Short was permitted to work from home to care for a

sick child. She was then on leave starting March 2, 2008, and did not return to work before she resigned on March 20, 2008. After March 2, Ms. Short did not work from home while she was on leave. CP 84. Thus, between the time that Ms. Short was directed to lie by Ms. Bria on February 22 and when Ms. Short was last at the district office on February 26, there would have been very limited opportunity for Ms. Short to interact with Kelly O'Brien. This is particularly true since Ms. O'Brien was rarely at the District office. CP 68.

Thus, in the brief period that Ms. Short was at work after Ms. Bria ordered her to lie, Ms. Short was not confronted with having to follow Dr. Bria's order to lie to Ms. O'Brien. Rather than continue to work under Ms. Bria's direction that Ms. Short lie, Ms. Short felt compelled to resign before she would have been required to violate her religious beliefs.

**2. The Record is Clear That Ms. Short Informed Her Employer of the Conflict.**

Defendants argue that Ms. Short did not advise the District of her religious conflict with being ordered to lie. *Brief of Respondent at 10*. Again, this is simply not correct. First, the record shows that at a meeting on or about November 26, 2007, Ms. Short explicitly told Ms. Bria "that to lie would violate [Ms. Short's] religious beliefs." CP 182.

Furthermore, Ms. Short explicitly told Ms. Bria that Bria's order that Ms. Short lie to Ms. O'Brien conflicted with Ms. Short's Christian beliefs:

When I indicated to Ms. Bria that my Christian beliefs did not permit me to lie to Ms. O'Brien, Ms. Bria attempted first to entice me, and then to threaten me, into following her instructions.

CP 175. Thus, Defendants are simply wrong when they assert that "at no time did anyone tell Ms. Short that she would have to compromise her religious beliefs because of a directive she was given by Dr. Bria in February 2008." *Brief of Respondent at 11*. Again, at a minimum, there are genuine issues of material fact on this point.

**3. Ms. Short Has Presented Substantial Evidence that She Was Constructively Discharged Because of Her Refusal to Comply With the Requirement that She Lie.**

Defendants argue that Ms. Short has failed to establish that she was discharged because of her refusal to comply with Ms. Bria's instruction that she lie. *Brief of Respondent at 11*. Again, Ms. Short has presented substantial evidence that establishes that after she informed Ms. Bria that she would not lie, Defendants made Ms. Short's working conditions so difficult that she was compelled to resign. After Ms. Short told Ms. Bria that she would not lie, Ms. Bria was intimidating and threatening toward Ms. Short. CP 169. Ms. Short was treated so poorly by Ms. Bria that Ms. Short felt it necessary to go out on leave. CP 214. Ms. Bria had explicitly told Ms. Short that Ms. Short could not "get through this and be honest.

There's no way. You have to make a choice." CP 187. It must be borne in mind that Ms. Short had been working with Ms. O'Brien closely for several months planning the Amboy Middle School opening. CP 176. It was inevitable that Ms. Short would have been confronted with a choice of lying to Ms. O'Brien or violating Ms. Bria's instruction that Ms. Short lie to Ms. O'Brien. Faced with this situation, Ms. Short felt that she had no choice but to resign in order to not violate her religious beliefs. Under these circumstances, particularly given the actions of Ms. Bria toward Ms. Short after Ms. Short said that she would not lie, Ms. Short has established that Defendants constructively discharged Ms. Short.

**B. Ms. Short Has Established a Claim for Failure to Accommodate Her Religious Beliefs.**

Defendants argue that the court's decision in *Hiatt v. Walker Chevrolet*, 120 Wn.2d 57, 837 P.2 618 (1992) precludes this Court from finding that Ms. Short has established a claim for failure to accommodate her religious belief. *Brief of Respondent at 12-14*. Such argument does not comport with the Washington Law Against Discrimination, RCW 49.60 *et seq.* ("WLAD"). The WLAD contains a legislative mandate that "the provisions of this chapter shall be construed liberally for the purposes thereof." RCW 49.60.020. Furthermore, federal cases interpreting Title VII are "persuasive authority for the construction of RCW 49.60." *Oliver*

*v. Pacific Northwest Bell Telephone Co.*, 106 Wn.2d 675, 678 (1986). Given the legislative mandate that RCW 49.60 be liberally construed, as well as the persuasive authority of federal cases interpreting Title VII, this Court should adopt the Title VII standard for establishing a prima facie case of religious discrimination based on failure to accommodate. These elements are: 1) the employee holds a bona fide religious belief, the practice of which conflicts with her employment; 2) she informed the employer of the belief in conflict; and 3) the employer thereafter threatened the employee or subjected her to discriminatory treatment because of her inability to fulfill the job requirements. *Lawson v. Washington*, 296 F.3d 799, 804 (9<sup>th</sup> Cir. 2002). For the reasons previously stated above, Ms. Short has established all of the elements of the prima facie case.

Defendants argue that Ms. Short did not request an accommodation and has not established that an accommodation was necessary. *Brief of Respondent at 14*. This is incorrect. When Ms. Short told Ms. Bria that she objected to lying to Ms. O'Brien, she asked Ms. Bria if she could refer Ms. O'Brien to Ms. Bria in the event that Ms. O'Brien asked Ms. Short why Ms. Short was not sharing information with her. This was a request by Ms. Short for Defendants to accommodate Ms. Short's religious beliefs against lying. In response to Ms. Short's request for this accommodation,

“Ms. Bria flatly refused” to allow Ms. Short to refer Ms. O’Brien to Ms. Bria. CP 176.

After Ms. Short said that she would refuse to lie, Ms. Bria threatened Ms. Short with adverse treatment because of Ms. Short’s refusal to lie. CP 177.

Ms. Short has presented substantial evidence that establishes a prima facie case for her claim of failure to accommodate her religious beliefs. Accordingly, the trial court erred in granting summary judgment to Defendants on this claim.

**C. Ms. Short Has Presented Substantial Evidence Establishing Her Retaliation Claim.**

Defendants claim that “the record is devoid of any evidence that Superintendent Bria mistreated Ms. Short in any manner after the February 2008 meeting.” *Brief of Respondent at 16, fn. 6.* This statement is simply not true. Ms. Short testified that after the February 2008 meeting, “when I continued to refuse to lie to Ms. O’Brien, Ms. Bria began yelling at me. She threatened that my reputation would be ruined and suggested that if I did not comply she was going to place me under a hostile supervisor.” CP 175. When Ms. Bria told Ms. Short that Ms. Bria was going to have her evaluated by Diana Gilsinger, Dr. Bria threatened: “Trust me, you don’t want Diana evaluating you.” CP 254.

Defendants argue that Ms. Short did not engage in any protected activity, in that she did not oppose religious discrimination. *Brief of Respondent at 16*. This too is incorrect. Ms. Short opposed Ms. Bria's order that Ms. Short lie to Ms. O'Brien. The religious discrimination that Ms. Short opposed was being required to lie in violation of her religious beliefs. She asked that she not be required to lie. Ms. Bria's response to Ms. Short was that Ms. Short "was not going to get through this and be honest" and that she "would have to make a choice." CP 175.

The evidence also shows that Ms. Bria took adverse action against Ms. Short. Under the anti-retaliation provision of RCW 49.60.210, what constitutes "adverse action" is much broader than actions that only concern "terms or conditions of employment." In *Burlington Northern Santa Fe Railway Co. v. White*, 548 U.S. 53, 67 (2006), the United States Supreme Court held that the scope of the anti-retaliation provision of Title VII is broader than the law's substantive discrimination provision, and extends beyond workplace-related or employment-related retaliatory acts and harm. An employer's action can constitute retaliation if the action "well might have dissuaded a reasonable worker from making a charge of discrimination." *White*, 548 U.S. at 67.

As described above, Ms. Bria's attempts to alternately entice and then threaten Ms. Short when Ms. Short opposed Ms. Bria's order that she

lie might well have dissuaded Ms. Short from making a charge of discrimination. Thus, Ms. Short has presented substantial evidence that retaliatory action was taken against her by Ms. Bria. The *White* standard has been cited with approval by this Court. See *Tyner v. State*, 137 Wn. App. 545, 565, 154 P.3d 920 (2007) review denied 162 Wn.2d 1012 (2008).

Finally, Ms. Short has presented evidence of a causal link between her protected activity and the adverse action. The adverse action occurred in the very same conversation in which Ms. Short engaged in protected activity. Ms. Bria's threats to Ms. Short were in direct response to Ms. Short's protected activity. There is no question that there is more than a reasonable inference that there is a causal link between Ms. Short's protected activity and Ms. Bria's adverse action. In addition, Ms. Short's constructive discharge on March 20, 2008, occurred about a month after her protected activity of February 22, 2008. This temporal proximity is persuasive evidence of a causal link between the protected activity and the adverse action. *Kahn v. Salerno*, 90 Wn. App. 110, 130-131 (1998).

Ms. Short has established the elements of a prima facie case of retaliation in violation of RCW 49.60.210. Accordingly, the trial court erred when it granted summary judgment to Defendants on this claim.

## II. CONCLUSION

Ms. Short presented substantial evidence that created genuine issues of material fact with regard to her claims of religious discrimination, failure to accommodate her religion, and retaliation. Accordingly, the trial court erred in granting summary judgment.

For the foregoing reasons, the Court should reverse the trial court's order granting summary judgment to Defendants.

Dated this 10<sup>th</sup> day of October, 2011.

LAW OFFICES OF  
JUDITH A. LONNQUIST, P.S.

A handwritten signature in black ink, appearing to read "Mitchell A. Riese". The signature is written in a cursive style with a large, looped initial "M".

Mitchell A. Riese, WSBA #11947  
Attorney for Appellant

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

10/10/11 10:55  
STATE OF WASHINGTON  
BY \_\_\_\_\_

JULIE SHORT,

Appellant,

NO. 42011-2-II

v.

CERTIFICATE OF SERVICE

BATTLEGROUNDS SCHOOL  
DISTRICT and ROCHONNE  
BRIA,

Respondents.

I HEREBY CERTIFY that on the 10<sup>th</sup> day of October, 2011, I caused to be delivered a true and correct copy of the APPELLANTS' REPLY BRIEF and this document by method indicated below and addressed to the following:

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- VIA HAND DELIVERY
- VIA ELECTRONIC MAIL

DATED this 10<sup>th</sup> day of October, 2011.

  
Ann Holiday