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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 325407

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

KEESHA KNUTSON

Appellant

v.

WENATCHEE SCHOOL DISTRICT #246, a Washington school district

Respondent

APPEAL FROM THE SUPERIOR COURT
FOR CHELAN COUNTY
JUDGE THE HONORABLE LESLEY A. ALLAN

APPELLANT'S BRIEF

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I. ASSIGNMENT OF ERROR

A. The trial court erred in entering the Order of Dismissal on May 13, 2014 dismissing the plaintiff's hostile work environment claim.

B. The trial court erred in entering the Order of Dismissal on May 13, 2014 dismissing the plaintiff's retaliation claim.

II. ISSUES PRESENTED

A. Les Vandervort, Appellant Knutson's direct supervisor with the Wenatchee School District, directed flirtatious, sexually motivated comments towards Ms. Knutson until learning she was in a committed relationship, at which time he began berating her and manufacturing circumstances that made her look incompetent in front of District decision makers. The flirtatious conduct occurred outside of the statute of limitations while the offensive behavior occurred within the statutory time period. Washington law requires that, if any action occurs within the statute of limitations, the court must consider all acts that are part of the same actionable hostile work environment, even if they occurred outside of the statutory period. Is the flirtatious conduct part of the same hostile work environment as the offensive conduct and thus to be considered by the court when determining the existence of a genuine issue

of material fact on a motion for summary judgment? (Assignment of Error 1).

B. After Ms. Knutson complained about Mr. Vandervort's behavior to Human Resources (HR), Mr. Vandervort gave Ms. Knutson her first unsatisfactory employment evaluation in nearly twelve years of service to the District. Soon after, Ms. Knutson was placed on her first and only Personal Improvement Plan (PIP) until her job was eliminated due to a non-existent "budget crisis". To succeed on a retaliation claim, the plaintiff must show a causal link between the complaint and an adverse employment action. Does a genuine issue of material fact exist precluding summary judgment when evidence in the record establishes that Ms. Knutson's negative evaluation, placement on PIP, or job elimination were causally linked to her complaint to HR? (Assignment of Error 2).

III. STATEMENT OF THE CASE

Les Vandervort, chief financial officer for the Wenatchee School District (hereinafter District), was one of Ms. Knutson's supervisors for several years. In the workplace, Mr. Vandervort regularly and openly engaged in inappropriate behavior with female coworkers, including Ms. Knutson. Female employees who were receptive to Mr. Vandervort's flirtations received favorable treatment, whereas those who were not receptive to his flirtations were excluded from favorable treatment and, in

some cases, their employment terminated or positions eliminated. When Mr. Vandervort's learned that Ms. Knutson was in a committed relationship, Ms. Knutson was harassed and her position was eventually eliminated. The District cites a budget crisis as the reason for her elimination.

A. Mr. Vandervort's Behavior Towards Ms. Knutson.

For a substantial period of time, Mr. Vandervort was particularly flirtatious toward Ms. Knutson and engaged her in an overly friendly manner. CP 274 at ¶ 3. Mr. Vandervort made flirtatious comments about Ms. Knutson in her performance evaluations and sent her flirtatious emails. CP 274 at ¶ 3.

In late June 2008, Ms. Knutson wore casual clothes during a brief visit to the District office on her day off. CP 274 at ¶ 4. Another employee complained about Ms. Knutson's attire, not realizing that she was not working that day. CP 274 at ¶ 4. Mr. Vandervort called Ms. Knutson into his office to inform her about the complaint. CP 274 at ¶ 4. When Ms. Knutson expressed some frustration about the complaint, Mr. Vandervort stated, "I don't know. I kinda like your cleavage." CP 274 at ¶ 4. Later, in Ms. Knutson's September 2008 employment evaluation, Mr. Vandervort stated, "As a role model, you set the standard for appropriate dress." CP 274 at ¶ 4. Ms. Knutson asked Mr. Vandervort if he "put this

in here because of the complaint so they can't complain anymore?" Mr. Vandervort looked at Ms. Knutson, laughed, and said "Well..." in a flirtatious manner. CP 274 at ¶ 4.

In 2006, Mr. Vandervort invited Ms. Knutson to attend a conference in Tacoma with members of Mr. Vandervort's financial department. CP 274 at ¶5. Mr. Vandervort unexpectedly came to Ms. Knutson's hotel room on the Thursday night of the conference. CP 274 at ¶5. Mr. Vandervort stayed past 9:00 p.m. CP 276 at ¶5. Ms. Knutson pretended to be tired so that Mr. Vandervort would leave. CP 274 at ¶5. She felt uncomfortable with the situation and feared his presence in the room late at night might start rumors. CP 274 at ¶5. Ms. Knutson and Mr. Vandervort were both married at the time. CP 274 at ¶5.

On a separate occasion, Mr. Vandervort started talking to Ms. Knutson in his office about the HBO series "Cathouse." CP 275 at ¶6. During this conversation, Mr. Vandervort told Ms. Knutson that his favorite girls on the show were "Sunset" and "Summer" and that being the owner of the "Bunny Ranch" would be the perfect job for him. CP 275 at ¶6. Ms. Knutson found this conversation odd and uncomfortable. CP 275 at ¶6.

Mr. Vandervort also told Ms. Knutson about an affair that he had with a woman in another school district in response to Ms. Knutson

confiding with Mr. Vandervort about her marital struggles, none of which had anything to do with infidelity. CP 275 at ¶7. He told Ms. Knutson that he and his mistress would meet in a hotel and were able to remain discrete. CP 275 at ¶7.

In 2008 Mr. Vandervort offered to use his personal funds to pay Ms. Knutson's tuition costs so that she could complete her college degree. CP 275 at ¶8. He also offered to study with her. CP 275 at ¶8. Ms. Knutson rejected this offer, as it made her uncomfortable. CP 275 at ¶8. Mr. Vandervort later brought up the subject of Ms. Knutson's failure to obtain her school degree during an annual performance review and criticized her for not obtaining the degree. CP 275 at ¶8. When Ms. Knutson objected to this criticism in her performance review, Mr. Vandervort reminded her that he had offered to pay for her tuition out of his own pocket. CP 275 at ¶8.

Mr. Vandervort's flirtatious behavior toward Ms. Knutson abruptly changed when Mr. Vandervort learned that Ms. Knutson was dating a man named Russ Waterman. CP 275-76 at ¶9. In October 2008, Mr. Vandervort called Ms. Knutson into his office and asked, "So, you're dating Waterman?" CP 275-76 at ¶9. Ms. Knutson responded that she was dating Russ Waterman, explained how they were introduced, and asked if there was a problem. CP 275-76 at ¶9. Mr. Vandervort then asked "Do

you think that's smart?" *Id.* Ms. Knutson asked what he was referring to, but Mr. Vandervort simply stared at her. CP 275-76 at ¶9. Ms. Knutson asked if there was any other reason why Mr. Vandervort had called her into his office. CP 275-76 at ¶9. When he did not respond, Ms. Knutson removed herself from the situation. CP 275-76 at ¶9.

After the October 2008 incident, Mr. Vandervort's behavior toward Ms. Knutson changed significantly. CP 276 at ¶10; CP 285 at ¶9. He began to ignore her, put her down in meetings with coworkers and superiors, no longer invited her to office social functions, and berated and belittled her in front of other coworkers, including human resources personnel. CP 276 at ¶10. While Mr. Vandervort, as Ms. Knutson's supervisor, had previously helped her with job questions or problems, particularly when it came to budgetary issues, he abruptly refused to do so. CP 276 at ¶10.

Mr. Vandervort's pattern of negative behavior toward Ms. Knutson became so pervasive that she had to seek a new supervisor. CP 276 at ¶11. Ms. Knutson complained about Mr. Vandervort's behavior on multiple occasions to HR personnel and her new supervisor, both of whom failed to remedy Mr. Vandervort's behavior. CP 276 at ¶11. The human resources manager, Lisa Turner, responded with the following comment: "If you want to swim in the swamp, you better make nice with the

alligators.” CP 276 at ¶11. While Ms. Turner denies ever using this statement in any capacity, CP 252 at line 15 – CP 253 at 12, one of Ms. Turner’s subordinates in the Human Resources Department heard Ms. Turner use the phrase numerous times, often in reference to Mr. Vandervort. CP 292 at ¶7.

Soon after Ms. Knutson’s complaints, the District withdrew critical employee resources from the childcare program which interfered with Ms. Knutson’s ability to perform her job and added to her job responsibilities. *See* CP 277 at ¶12. The District denied Ms. Knutson’s requests to replace portions of those necessary employee resources, yet criticized Ms. Knutson for failing to satisfy her job responsibilities. CP 277. at ¶¶ 13 and 14.

The District also refused to provide information to Ms. Knutson regarding grant money that was supposed to fund her program, making it impossible for her to create budget reports, resulting in Mr. Vandervort publicly reprimanding her. CP 277 at ¶¶ 13 and 14. The District refused to respond to her emails expressing concerns over responsibilities and expectations being placed upon her without adequate experience or training. CP 277-78 at ¶ 14.

Following her complaints about Mr. Vandervort, Ms. Knutson began to receive negative comments on her annual job performance

reviews for the first time in her twelve year career. CP 278 at ¶15. The District began criticizing her for alleged mismanagement and budget problems, eventually targeting her position for elimination. CP 278 at ¶15. This resulted in her being placed on a Personal Improvement Plan (“PIP”) in February 2011. CP 278 at ¶15.

In December 2011, the District published a job notice for an Early Learning Supervisor to supervise early learning and school-age center services at the District. CP 278 at ¶16. Ms. Knutson applied for this job but was never given an interview or taken seriously as a candidate, even though she served for over twelve years as the program director for childcare services. CP 278 at ¶16. The District denies the job posting was ever published publicly. CP 254 at lines 2-13.

Despite her excellent performance record prior to Mr. Vandervort’s realization that Ms. Knutson was dating Mr. Waterman, the District Human Resources Director, Lisa Turner, continues to refuse to give Ms. Knutson a job reference. CP 278 at ¶17.

B. Mr. Vandervort’s Behavior Concerning Ms. Knutson’s Female Coworkers.

Mr. Vandervort’s disputed conduct was not only imposed upon Ms. Knutson, but was commonly experienced by many of the female employees in the finance office. Mr. Vandervort occasionally gave

backrubs to his female coworkers and requested backrubs from them in return. CP 295-96 at ¶6. On at least one occasion such a backrub was conducted on the floor of the office in front of human resource personnel. CP 295-96 at ¶6. Mr. Vandervort often purchased gifts for his female coworkers and regularly conducted a dance class at the District office in which he was the only male in attendance. CP 287 at ¶15.

1. Melissa Campbell's Experiences.

Melissa Campbell worked at the District from 2005 to 2010, first as a substitute coordinator and then as human resource secretary under HR director, Lisa Turner. CP 283-84 at ¶¶ 2 and 3. Ms. Campbell worked in the same office as Les Vandervort at the District Office and was around him frequently. CP 284 at ¶4.

Melissa observed that Mr. Vandervort held a lot of power and control at the District office, even over superintendent Brian Fiones, and was very manipulative. CP 284 at ¶5. She describes Mr. Vandervort as fine to work with if you were on his good side and fed his ego, but if you were on his bad side, often vindictive. CP 284-85 at ¶6.

On one occasion, Mr. Vandervort wanted to get rid of a District employee, Trisha Johnson. CP 285 at ¶8. Mr. Vandervort told Trisha he eliminated her position because of budget cuts. CP 285 at ¶8. He then told other members of the staff that the budget was not really an issue and

that he would repost Trisha's job several months later with slightly different job credentials so that Trisha could not reapply. CP 285 at ¶8.

Melissa also observed Mr. Vandervort flirting with nearly every female employee at the District office. CP 286 at ¶10. On one occasion, Melissa was wearing a "Kiss Me I'm Irish" shirt on St. Patrick's Day. CP 286 at ¶10. Without warning, Mr. Vandervort kissed her on the lips in front of several other staff members, which Melissa felt was completely inappropriate. CP 286 at ¶10. She immediately reported the incident to the Human Resources Department - Lisa Turner and Steve Cole. CP 286 at ¶11. While Steve Cole seemed upset about the incident, Lisa Turner laughed about Mr. Vandervort's conduct and failed to take action. CP 286 at ¶¶ 11 and 12. Melissa wore the shirt on the following St. Patrick's Day, and Mr. Vandervort kissed Melissa again without warning or permission. CP 286 at ¶13. Melissa never wore the shirt to work again. CP 286 at ¶13.

2. *Sandra Mueller's Experiences.*

Sandra Mueller worked at the District in the human resources department from 2004 until 2012. CP 290 at ¶2. Lisa Turner was her direct supervisor. CP 290 at ¶2.

Sandra observed that Les Vandervort was unprofessional and disrespectful to certain staff at the office (primarily women). CP 290-91

at ¶3. On multiple occasions, Mr. Vandervort would throw reports and paperwork in the trash as people would hand them to him. CP 291 at ¶4.

On one occasion in 2010, Mr. Vandervort confronted Sandra and asked why she did not talk to him as often as he wished. CP at 291-92 ¶5. She explained that it was because of how he treated others at the District office. CP at 291-92 ¶5. Soon after Sandra's conversation with Mr. Vandervort, she began receiving negative employment reviews. CP 292 at ¶6. She had always received excellent reviews prior to her conversation with Mr. Vandervort. CP 292 at ¶6. Sandra confronted Lisa Turner about this and said, "You are documenting me out of this job, aren't you?" CP 292 at ¶6. Ms. Turner replied, "No, maybe you are no longer suited for this position." CP 292 at ¶6. Ms. Turner told Sandra she should start looking for a new job. CP 292 at ¶6. Shortly thereafter Sandra found a new job and left the District to avoid being pushed out. CP 292 at ¶6.

3. Trisha Johnson's Experiences.

Trisha Johnson worked closely with Les Vandervort from March 2004 to February 2006 as his assistant and as an assistant accountant. CP 294 at ¶2.

Trisha felt that many of Mr. Vandervort's interactions with women at the office were inappropriate. CP 295-96 at ¶6. He met with one female employee, Jennifer Henderson, every day at 5 a.m. to work out at

Gold's Gym. CP 295-96 at ¶6. Also, about once a month Mr. Vandervort would bring in cheap gifts (\$15) that he bought at Costco and would give them out to the female staff members. CP 295-96 at ¶6. Mr. Vandervort would sometimes give these women backrubs and on one occasion Trisha saw these women giving Mr. Vandervort a backrub while he was laying on the floor in the middle of the office. CP 295-96 at ¶6. This display occurred in front of human resources personnel. CP 295-96 at ¶6.

At first Mr. Vandervort was very friendly with Trisha, but he then became very critical of her work. CP 295 at ¶4. Mr. Vandervort excluded Trisha from office functions without providing any explanations. CP 295 at ¶4. In 2005, Trisha was not invited by Mr. Vandervort to go a conference that dealt with school business accounting, even though she was working in the accounting department at the time. CP 296 at ¶7. Other District personnel were invited to the conference, despite the fact that their jobs were unrelated to District accounting. CP 296 at ¶7.

Mr. Vandervort told Trisha that the District had to eliminate the finance assistant position that another employee occupied due to budget cuts. CP 295 at ¶5. Since the other employee had seniority, she was allowed to take Trisha's position and Trisha was laid off. CP 295 at ¶5. However, Mr. Vandervort told Trisha that she was a good employee and could reapply. CP 295 at ¶5. Approximately one year later, the woman

who took Trisha's position left the District and the vacancy was posted by the District. CP 295 at ¶5. Trisha submitted her application but, despite being qualified for the position, being considered a "good employee," and already having worked at the job, Trisha never received a call back. CP 295 at ¶5.

C. The Budget Crisis.

The District claims to have suffered a severe budget crisis during the 2010-2011 school year due to reductions in state funding, requiring it to "eliminate" Ms. Knutson's \$64,000 per year position as director of childcare. The District also claims that this budget crisis required it to eliminate positions or terminate approximately 33 employees, in addition to Ms. Knutson. *See* CP 230-31 at ¶3. However, all but nine of the 33 employees were rehired or retained by the District the following year in the same or similar positions. CP 278 at ¶18. Of the nine that left, nearly half had either retired or quit their employment. CP 278 at ¶18.

Despite the District's claimed efforts to trim its budget, the District increased their total expenditures by \$777,825.99 from the 2009-2010 to 2010-2011 school years, and by an additional \$1,526,312.88 between the 2010-2011, and 2011-2012 school years. *See* CP 268, 270, 272.

The District also definitively states that its budget had been cut by \$3 million in approximately 2010. CP 202 at ¶6; CP 192 at ¶5; CP 206 at

¶4. However, these declarations are inconsistent with the budget figures reported to the state by the District. *See* CP 266, 268, 270, 272. The District's total revenues went from \$72,062,491.64 in the 2008-2009 school year (consisting of state and federal funding) to \$73,225,364.82 in the 2009-2010 school year, an increase of \$1,162,873.18. *See* CP 266, 268. District revenues further increased by an additional \$793,019.75 in the 2010-2011 school year ending at \$74,018,384.57. *See* CP 270.

From 2008 to 2012, during the crux of the "budget crisis," the District finished each fiscal year on average with \$1,338,525.49 of excess revenues per year. CP 216-17 at ¶8; CP 266-72.

D. Procedural History.

On April 7, 2014, the District filed a Motion and Memorandum for Summary Judgment of Dismissal in Chelan County Superior Court. The motion was heard before The Honorable Judge L. Allen on May 8, 2014. The Court dismissed Ms. Knutson's retaliation claims because it did not find the presented evidence sufficient to display a causal link between Mr. Vandervort's behavior and the elimination of Ms. Knutson's position. CP 356 at ¶1. The Court also dismissed Ms. Knutson's hostile work environment claim, excluding from consideration events occurring prior to the statute of limitations and finding the conduct occurring before and

after the statute of limitations to be “not the same course of behavior.” CP 356 at ¶2.

However, the Court cautioned the District to remedy Mr. Vandervort’s behavior, noting that “The Court expressed its hope that the school district has done something regarding Mr. Vandervort since his inappropriate behaviors were not something that should be reflective of the school district.” CP 356 at ¶1. The Court further stated that it “would not be surprised if future lawsuits could be filed if the school district failed to require Mr. Vandervort to complete some remedial measures to prevent future inappropriate behavior.” CP 356 at ¶3.

The case is now before this court on appeal. Ms. Knutson assigns error to the lower court’s order granting summary judgment.

IV. ARGUMENT

Plaintiff Ms. Knutson respectfully requests this Court reverse the lower court’s grant of Defendant’s Motion for Summary Judgment because (1) genuine issues of material fact remain, and (2) Defendants are not entitled to judgment as a matter of law.

A. This Court Must Reverse the Grant of Summary Judgment.

When deciding the motion before it, this court must keep in mind the positions of the parties. This is an employment discrimination case.

The appellant's allegations relate to discretionary decision making and improper motivation. Evidence of discretion and motivation are by definition primarily intangible, and the little tangible evidence that exists necessarily resides in the hands of the person acting with discretion and motivation. In employment cases such as these, courts should be hesitant to grant summary judgment, and must keep in mind the imbalance of the parties' positions when examining the facts. "Summary judgment should rarely be granted in employment discrimination cases." *Sangster v. Albertson's, Inc.*, 99 Wn.App. 156, 160, 991 P.2d 674 (2000).

1. *This Court Reviews the Grant of Summary Judgment De Novo.*

A decision to grant summary judgment is reviewed de novo. *Campbell v. State*, 129 Wn.App. 10, 18, 118 P.3d 888 (2005); *Crownover v. State ex. rel. Dept. of Transp.*, 165 Wn.App. 131, 141, 265 P.3d 971 (2011) (citing *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300, 45 P.3d 1068 (2002)). If this court finds that Ms. Knutson has shown a genuine issue of material fact regarding any of her claims, this court must reverse the grant of summary judgment.

2. Summary Judgment May Only be Granted if There is No Issue of Material Fact.

A motion for summary judgment may be granted only if the pleadings, affidavits, depositions, and admissions on file demonstrate no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. CR 56(c). All facts submitted and all reasonable inferences therefrom must be construed in the light most favorable to the nonmoving party. *Yakima Fruit & Cold Storage Co. v. Central Heating & Plumbing Co.*, 81 Wn.2d 528, 530, 503 P.2d 108 (1972); *City of Spokane v. Spokane County*, 158 Wn.2d 661, 671, 146 P.3d 893 (2006). The motion may only be granted if, from all the evidence, reasonable persons could reach but one conclusion. *Morris v. McNicol*, 83 Wn.2d 491, 494–95, 519 P.2d 7 (1974).

In the present case, the facts on record and all reasonable inferences derived therefrom must be construed in the light most favorable to Ms. Knutson. Ms. Knutson has produced sufficient specific, competent evidence to at the least support an inference that there is a genuine issue of material fact in regard to each element of her claims. See *Sangster v. Albertson's, Inc.*, 99 Wn.App. 156, 160, 991 P.2d 674 (2000) (“To

defeat summary judgment, the employee must establish specific and material facts to support each element of her prima facie case.”).

B. Genuine Issues of Material Fact Exist Regarding the Allegations of Sexual Harassment.

To establish the elements of an actionable hostile work environment claim, Plaintiff must demonstrate, “(1) offensive and unwelcome conduct that (2) was serious enough to affect the terms or conditions of employment, (3) occurred because of sex, and (4) can be imputed to the employer.” *Adams v. Able Bldg. Supply, Inc.*, 114 Wn. App. 291, 296, 57 P.3d 280, 283 (2002). The court must look at the totality of the circumstances to determine whether the conduct was sufficiently pervasive so as to alter the conditions of employment and create an abusive working environment. *Id.*

1. *This Court Must Consider the Harassment Occurring Outside of the Statute of Limitations.*

The statute of limitations for a hostile work environment claim is three years. *Antonius v. King County*, 153 Wn.2d 256, 261-62, 103 P.3d 729 (2004). Ms. Knutson filed her Complaint against the District in Chelan County Superior Court on October 30, 2012. CP 3. The majority of events occurring before Mr. Vandervort learned Ms. Knutson was in a committed relationship with Mr. Waterman occurred outside of the statute

of limitations. However, the majority of Mr. Vandervort's unprofessional, offensive behavior that ultimately resulted in Ms. Knutson losing her position occurred within the statutory period after Mr. Vandervort discovered Ms. Knutson was dating Russ Waterman in October 2008. *See* CP 275-276.

Washington law requires courts to determine “whether the acts about which an employee complaints are part of the same actionable hostile work environment practice, and if so, whether any act falls within the statutory time period.” *Antonius*, 152 Wn.2d at 270, 103 P.3d 729 (2004) (citing *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 118, 122 S.Ct. 2061 (2002)) . When any act falls within the statutory time period, acts that are part of the same hostile practice but fall outside of the statute of limitations are rightfully considered when assessing a hostile work environment claim. This doctrine allows courts to respect the nature of a hostile work environment claim which “should not be parsed into component parts” but should instead be considered as “a series of acts that collectively constitute one unlawful employment practice.” *Id.* at 266.

The United States Supreme Court explains:

Hostile work environment claims are different in kind from discrete acts. Because their very nature involves repeated conduct, the “unlawful employment practice,” ... cannot be said to occur on any particular day. It occurs over a series of days or perhaps years and, in direct contrast to discrete

acts, a single act of harassment may not be actionable on its own.

Morgan, 536 U.S. at 103, 122 S.Ct. 2061 (2002) (The *Morgan* Court's reasoning was adopted by the Washington Supreme Court in *Antionius*, 153 Wn.2d 256, 103 P.3d 729).

The District contends that the hostile acts occurring within the statute of limitation were not sexual harassment, but instead retaliatory conduct. CP 52. It then cites *Burkhart v. American Railcar Industries Inc.*, 603 F.3d 472, 475 (8th Cir.2010) for the proposition that “[r]etaliatory conduct cannot be combined with the alleged discrimination to avoid the statute of limitations on the hostile work environment claim.” CP 52 at n. 1.

The harassment examined in *Burkhart* and the conduct apparent in the present case are not analogous. In *Burkhart*, the plaintiff complained about sexually motivated emails and comments occurring outside of the statute of limitations. 603 F.3d at 474-75. The conduct occurring within the statute of limitations consisted solely of fellow co-workers treating the plaintiff poorly, as opposed to the harassing supervisor, and the company's eventual termination of her employment. *Id.* at 476. After the complaint, the supervisor was formally reprimanded and had no further conduct with the plaintiff. *Id.* It is also important to note that the plaintiff had been

subject to multiple instances of discipline before she was harassed and ultimately terminated. *Id.* at 474. The present case is quite distinguishable. The harassment occurring within the statute of limitations was not retaliatory conduct by Ms. Knutson's fellow co-workers. Instead, it was directly perpetrated by Mr. Vandervort and arose out of the same sexual desire as did the flirtatious behavior occurring outside of the statutory period.

The parties agree that some of Mr. Vandervort's harassing conduct occurred within the statute of limitations. CP 52. The parties merely differ in their characterization of the later conduct as harassment as compared to retaliation. Thus, the only question this court must consider is whether the flirtatious, sexually suggestive acts (occurring outside of the statute of limitations) are part of the same hostile work environment as the offensive, but still sexually motivated, acts that occurred within the statute of limitations. Acts are part of the same hostile work environment practice if they (1) "involve the same type of employment actions", (2) "occur[] relatively frequently", and (3) are "perpetrated by the same managers." *Morgan*, 536 U.S. at 120, 122 S.Ct. 2061 (2002).

All of the harassing conduct levied against Ms. Knutson is part of a series of acts that collectively constitute one actionable employment claim. Her claim is not regarding multiple discrete acts of harassment. Her claim

is for a hostile work *environment*: a series of acts that collectively created a hostile environment. Mr. Vandervort's harassment satisfies the three elements articulated by the *Morgan* court discussed above.

First, these acts involved the same type of employment action: communication between a female employee and her male supervisor in the workplace. All of the harassment experienced by Ms. Knutson arose from Mr. Vandervort's sexual desire for Ms. Knutson. He offered sexual innuendos, special favors, flirtation, and shared personal sexual secrets when he believed he could satisfy that desire. CP 274-75. When Ms. Knutson began dating Mr. Waterman, Mr. Vandervort realized his efforts to attract Ms. Knutson had failed, and he nursed his bruised ego by treating her poorly, publicly ridiculing her, and sabotaging her work reputation in front of fellow supervisors, CP 275-78, creating the circumstances that eventually resulted in the elimination of Ms. Knutson's job. CP 278. The respondent's attempt to distinguish the conduct occurring before and after Ms. Knutson began dating Mr. Waterman ignores the motivation behind Mr. Vandervort's actions.

Second, these actions occurred frequently, as is evidenced by the numerous declarations on record. And finally, these acts were all perpetrated by the same manager, the man who supervised Ms. Knutson, and the CFO of the District: Les Vandervort. All of the harassing conduct

directed at Ms. Knutson must be considered by this court when deciding Ms. Knutson's hostile work environment claim.

2. *Viewing The Evidence in the Light Most Favorable to the Appellant, There is at the Least a Genuine Issue of Material Fact Regarding Each Element of Ms. Knutson's Hostile Work Environment Claim.*

Mr. Vandervort's behavior towards Ms. Knutson and other women at the District office, along with the Human Resource Department's failure to take any action against Mr. Vandervort, created a hostile work environment where women were required to "make nice with the alligator." CP 276 at ¶11; CP 292 at ¶7. Female employees had to entertain Mr. Vandervort's flirtations and inappropriate comments or face negative employment evaluations and possible termination. At the very least, issues of material fact exist as to the existence of the unlawful work environment described above, which the District denies.

a. *Mr. Vandervort's Harassing Actions Were Offensive and Unwelcome.*

Although the respondent contends Mr. Vandervort's actions were neither offensive nor unwelcome, CP 52-53, Ms. Knutson has provided competent evidence indicating the harassing conduct was not welcome. "Conduct is unwelcome if the plaintiff did not solicit or incite it. The

employee also must regard the conduct as offensive or undesirable.”
Campbell v. State, 129 Wn.App. 10, 19, 118 P.3d 888 (Div. 3 2005).

Ms. Knutson did not incite Mr. Vandervort’s conduct. She never solicited Mr. Vandervort’s flirtatious behavior, nor his sexual attraction toward her. Indeed, she was married during many of the flirtatious encounters. She surely did not solicit the impolite and demeaning behavior he displayed after she entered a committed relationship.

The operative question in this case is whether or not Ms. Knutson regarded the conduct as offensive or undesirable. It does not matter that she did not report all instances of conduct to HR as such. *Id.* (“Although failing to mention [that she found the conduct offensive] to [the employer] in her response to evaluations, what [the plaintiff’s] true feelings were is a question of fact the jury should decide.”).

Ms. Knutson admits that she did not originally find the flirtatious behavior to be offensive. However, the conduct made her uncomfortable thus making it undesirable, when Mr. Vandervort’s advances became more aggressive. CP 274-75 at ¶¶5-8. Ms. Knutson was clearly offended when Mr. Vandervort began punishing her for dating Mr. Waterman. CP 275-78. In its explanation for granting the District’s motion for summary judgment, the lower court found the facts to be “questionable” as to whether Mr. Vandervort’s conduct was unwelcome. CP 356 at ¶2. At the

very least, there is an issue of material fact as to whether Ms. Knutson found the harassing conduct to be offensive or undesirable.

b. Mr. Vandervort's Harassment Adversely Affected Ms. Knutson's Employment, Ultimately Resulting in the "Elimination" of Her Position.

In order to adversely affect employment, the harassing conduct must "amount to a change in the terms and conditions of employment." *Adams*, 114 Wn.App. at 297, 57 P.3d 280 (2002).

In *Campbell*, the plaintiff's supervisor sent offensive emails singling her out to members of the department. 129 Wn.App. at 19, 118 P.3d 888 (2005). He also mocked her and yelled at her in front of others. *Id.* The plaintiff claimed this conduct made her feel intimidated and harassed. *Id.* at 14. The plaintiff received two negative evaluations and was later demoted to her previous custodial position. *Id.* at 18. The court reversed the lower court's grant of summary judgment holding that the evidence was sufficient to raise a legitimate question of material fact in regards to the plaintiff's hostile work environment claim. *Id.* at 21.

Mr. Vandervort's harassing conduct similarly resulted in a change in the terms of Ms. Knutson's employment. His sexual interest and grooming behavior, evidenced by his flirtatious conduct, created an expectation of reciprocation. When she unknowingly violated this implied condition of her employment, Mr. Vandervort immediately began

punishing her for that violation. He treated her poorly and unprofessionally which upset her and made her feel uncomfortable and harassed. He even went so far as to artificially manufacture situations wherein Ms. Knutson looked incompetent at her position at no fault of her own. CP 276 at ¶11. She was often upset at work, entirely because of Mr. Vandervort's actions. Because she violated this implied condition of employment arising out of Mr. Vandervort's unrequited sexual interest in her, Ms. Knutson's work environment changed substantially for the worst and her position was ultimately eliminated.

Mr. Vandervort's unprofessional, harassing conduct has devastated Ms. Knutson, both mentally and financially. Because of his sexual interest in her, she was eliminated from her position which she had occupied for over twelve years, always receiving excellent reviews. *See* CP 5 at ¶10. Her reputation and position within the District was irrefutably damaged to such a point as to result in the first and only formal disciplinary action taken against her by the District. CP 278 at ¶15. Mr. Vandervort's harassment resulted in a complete "change in the terms and conditions of employment."

c. Mr. Vandervort's Harassment Occurred Because of Ms. Knutson's Sex.

The operative question when determining if the harassment occurred because of the plaintiff's sex is: would the plaintiff have been subjected to the conduct if she was a male? *Adams*, 114 Wn.App. at 298, 57 P.3d 280 (2002). The answer to this question is unequivocally "no." Both the sexually charged flirtatious comments and the offensive, career destroying behavior that Mr. Vandervort engaged in when his sexual interest was not reciprocated, were directly due to Ms. Knutson's sex. Mr. Vandervort acted in the ways that he did because of his interest in her as a female.

In *Sangster*, this Court overturned a grant of summary judgment to an employer. 99 Wn.App. at 162 (2000). The court explained that the comments and innuendos made to the employee by her male supervisor were of an explicitly and impliedly sexual nature, supporting the reasonable inference that the harassment occurred because of the employee's female gender. *Id.*

The flirtatious comments directed towards Ms. Knutson were undoubtedly because of her gender. It does not require a great leap of the imagination to infer that Mr. Vandervort, as a heterosexual male, was

aiming flirtatious comments towards Ms. Knutson because she is an attractive, heterosexual female. It similarly requires no stretch of imagination to infer that Mr. Vandervort's sudden abysmal treatment, which began when Mr. Vandervort learned of Ms. Knutson's committed relationship, was a result of her failing to return that flirtatious affection.

d. Mr. Vandervort's Harassment is Imputed to the District, Which Was Well Aware of the Conduct But Failed to Remedy the Situation.

An employee's harassing conduct is imputed to an employer when an owner, manager, partner, or corporate officer personally participates in the harassment. *See Alonso v. Quest Commc'ns Co.*, 178 Wn.App. 734, 752 (Div. 2 2013). Furthermore, when an adverse employment action is taken, "[a]n employer is subject to vicarious liability to a victimized employee for an actionable hostile environment created by a supervisor with immediately (or successively higher) authority over the employee." *Burlington Indus. Inc. v. Ellerth*, 524 U.S. 742, 765, 118 S.Ct. 2257 (1998).

As the Chief Financial Officer, Mr. Vandervort is a managing officer of the District and is granted significant influence on the District's board of directors, particularly regarding budget issues. Most significantly, Mr. Vandervort was Ms. Knutson's direct supervisor. CP 273. Thus, as a

matter of law, the District is vicariously liable for Mr. Vandervort's harassment.

Even if this court were to question whether an adverse employment action was taken, the District would still be liable for Mr. Vandervort's actions. If no adverse employment action is taken, employers may avoid vicarious liability by proving an affirmative defense consisting of two elements: (a) the employer must have exercised reasonable care to prevent and correct the harassment and (b) the plaintiff must have "unreasonably failed to take advantage of any preventative or corrective opportunities." *Id.* The District cannot satisfy either of these elements. The Human Resource Department was well aware of Mr. Vandervort's conduct as a result of Ms. Knutson's complaints. In making these complaints, Ms. Knutson took full advantage of the corrective and preventative avenues established by District policy. The District failed to satisfy its duty to protect Ms. Knutson from Mr. Vandervort. The department's failure to take any action, destroys any assertion of an affirmative defense it may have employed against liability for Mr. Vandervort's harassment.

Lisa Turner, the Human Resource Director for the District, admits that each action on the following list are concerning to her. Les Vandervort admits to participating in all of them.

- Supervisor flirting with a female employee (CP 245-46 at lines 25-3);
- Supervisor kissing a subordinate (CP 246 at lines 4-7; Mr. Vandervort admits to kissing Melissa Campbell, CP 256 at lines 3-14);
- Supervisor giving back rubs to employees (CP 246 at lines 8-11; Mr. Vandervort admits to giving and receiving backrubs during office hours, CP 256 at lines 15-23);
- Supervisor purchasing gifts for female employees (CP 246-47 at lines 12-5; Mr. Vandervort admits to conduct, CP 256-59);
- Supervisor dancing with female employees at work (CP 247 at lines 6-17; Vandervort admits to conduct, CP 259-61; see also CP 287 at ¶16);
- Supervisor paying a subordinate employee's tuition with private funds (CP 248-49; Mr. Vandervort admits to offering to pay Ms. Knutson's tuition, CP 261-62);
- Supervisor visiting a subordinate employee's hotel room at work conference (CP 249-50 at lines 24-9; Mr. Vandervort admits to visiting Ms. Knutson's hotel room, CP 263-64 at lines 5-1);
- Supervisor discussing an extra-marital affair with a subordinate employee (CP 250-51 at lines 10-7; the District admits that Mr. Vandervort discussed with Ms. Knutson his prior extra-marital affair, CP 46 at ¶C); and
- Supervisor commenting on an employee's cleavage (CP 251 at lines 8-11).

Despite Ms. Turner's claimed concern over the above behavior, the Human Resources Department failed to even investigate any of Ms. Knutson's formal allegations concerning Mr. Vandervort. *See* CP 242-44 (Lisa Turner has only investigated claims against Mr. Vandervort twice,

neither involving Ms. Knutson). The District willfully failed to correct and prevent the harassment, even after Ms. Knutson attempted to take advantage of the District's preventative and corrective policies. As a matter of law, Mr. Vandervort's behavior is imputed to the District.

e. *Ms. Knutson's Experiences with Les Vandervort are Corroborated by Others' Experiences.*

According to the U.S. Court of Appeals, 9th Circuit, it is an abuse of discretion to reject evidence of fellow female employees who experienced similar harassment or discrimination from the defendant. *See Heyne v. Caruso*, 69 F.3d 1475, 1482 (9th Cir. 1995). *See also, Larson v. Harrington*, 11 F.Supp, 2d 1198, 1201 (E.E. Cal 1998). Such additional testimony is relevant to a jury's determination of whether the defendant "was motivated by a non-discriminatory reason, ... or for a forbidden reason."

The declarations of Melissa Campbell, Sandra Mueller, and Trisha Johnson further illustrate Les Vandervort's trend of harassing female employees and creating a hostile work environment at the District. They also reiterate the District's failure to take appropriate action to ensure that such harassment was not tolerated. Mr. Vandervort has a predatory personality as evidenced by his commonplace harassing conduct. Even the lower court recognized his unsavory predation: "The Court expressed

Its hope that the school district had done something regarding Mr. Vandervort since his inappropriate behaviors were not something that should be reflective of the school district.” CP 356 at ¶1. After entering an Order of Dismissal, the court cautioned that the “Court, however, would not be surprised if future lawsuits could be filed if the school district failed to require Mr. Vandervort to complete some remedial measures to prevent future inappropriate behavior.” CP 356 at ¶3.

C. Genuine issues of material fact exist regarding Plaintiff’s claim for retaliation.

To establish a prima facie case for unlawful retaliation in employment, a plaintiff must show that (1) the plaintiff engaged in statutorily protected activity, (2) the employer took an adverse employment action against the plaintiff, and (3) there is a causal link between the statutorily protected activity and the adverse employment action. *Alonso*, 178 Wn.App. at 753-754 (2013); *Milligan v. Thompson*, 110 Wn.App. 628, 638, 42 P.3d 418 (2002). Once the plaintiff establishes their prima facie case, the burden shifts to the employer to show a legitimate purpose for the adverse employment action. *Crownover*, 165 Wn.App. at 148 (2011). If the employer satisfies that burden, the burden is then on the employee to show the stated purpose was simply pretext. *Id.*

1. Ms. Knutson has Satisfied her Burden to Produce Competent Evidence Suggesting (1) That She Engaged in a Statutorily Protected Activity and (2) that she was Subject to an Adverse Employment Action.

The District concedes in its Motion and Memorandum for Summary Judgment of Dismissal that Ms. Knutson has satisfied the first two elements of retaliation. CP 60 at ¶2. Thus, as a matter of law, Ms. Knutson has satisfied her burden to prove the first two elements of retaliation for summary judgment purposes. The only element of Ms. Knutson's retaliation claim disputed by the District is the causation requirement.

2. The Facts, Viewed in the Light Most Favorable to Ms. Knutson, Demonstrate a Causal Link Between Ms. Knutson's Privileged Complaints and the Adverse Employment Action.

In its Motion and Memorandum for Summary Judgment of Dismissal, the District cites *Lakeside-Scott v. Multnomah County*, 556 F.3d 797 (2009) for the proposition that "a final appointing authority's wholly independent decision making would negate any causal connection between a subordinate's retaliatory bias and the appointing authority's decision to terminate." CP 60-61. In that case, the plaintiff complained about her supervisor Ms. Brown. *Lakeside-Scott*, 556 F.3d at 876. Subsequently, the plaintiff was subjected to investigation after a journal

authored by the plaintiff was discovered containing discriminatory contents. *Id.* This journal was discovered by a neutral third employee who reported the journal to Brown. *Id.* Brown submitted the journal to a superior, Ms. Fuller, and then removed herself from all subsequent investigation. *Id.* Ms. Fuller made the decision to terminate the plaintiff entirely without Brown's influence, leading the court to hold that there was "no evidence that, but for Brown, Fuller would have ignored the journal and let the matter drop." *Id.* at 807-08. The factual circumstances in this case require the holding be applied very narrowly – the decision to instigate an adverse employment action must be wholly independent of any biased employee. In the present case, the record indicates that at the least there is a question of fact as to whether or not the decision to fire Ms. Knutson was made wholly independently of Mr. Vandervort.

Further examination of case law paints a more comprehensive picture of this court's jurisprudence. In *Gilbrook v. City of Westminster*, the city employed a multi-tiered termination process for the plaintiff firefighters. 177 F.3d 839, 852 (1999). The disciplinary process was instigated by an individual with a retaliatory motive, but the final decision maker was clearly unbiased. *Id.* at 854. Despite the final decision maker's impartiality, the court affirmed the jury verdict finding the plaintiffs' terminations to be retaliatory. *Id.* at 856. "[A] subordinate cannot use the

nonretaliatory motive of a superior as a shield against liability if that superior never would have considered a dismissal but for the subordinate's retaliatory conduct." *Id.* at 855. The court also explained that the causation element can be satisfied even if the biased individual did not directly contribute to the adverse action: "the 'requisite causal connection can be established not only by some kind of direct personal participation in the deprivation, but also by setting in motion a series of acts by others which the actor knows or reasonably should know would cause others to inflict the constitutional injury.'" *Id.* at 854 (citing *Johnson v. Duffy*, 588 F.2d 740, 743-44 (9th Cir.1978)).

Gilbrook is more analogous to the present case than is *Lakeside-Scott*. Ms. Knutson's complaints about Mr. Vandervort and her perceived refusal of Mr. Vandervort's flirtations by entering a committed relationship played an integral role in helping the District target Ms. Knutson's job for "elimination" in early 2011. As the Chief Financial Officer for the District, Mr. Vandervort by definition played an integral part in the District's response to perceived budget issues. He used this influence to indirectly instigate the "elimination" of Ms. Knutson's job.

Mr. Vandervort's negative comments about Ms. Knutson, his abusive treatment, and continuous efforts to embarrass Ms. Knutson in front of other District decision makers all but assured Ms. Knutson's

inclusion as a prime candidate to lose her job. *See* CP 276 at ¶10. In fact, after having never received a negative performance review in over twelve years, Ms. Knutson was disciplined by the District in February 2011 for not adequately handling her program’s budget, a job that Mr. Vandervort had previously worked with Ms. Knutson collaboratively on for years, and was placed on PIP. CP 278 at ¶15. The PIP for Ms. Knutson was abruptly terminated in April 2011, and Ms. Knutson soon received notification from the District that it was “eliminating” her position for budgetary reasons, CP 278 at ¶15, despite the fact that there was no budget crisis whatsoever.

The Appellant is not suggesting that the District’s School Board was acting with bias towards Ms. Knutson when it made the determination to eliminate her position. However, finding the board of directors unbiased as a matter of law does not preclude a finding of retaliation. “[A] final decision maker cannot escape liability when the facts on which he ‘rel[ies] have been filtered’ by a subordinate with illegitimate motives.” *Lakeside-Scott*, 556 F.3d at 808 (quoting *Stacks v. Sw. Bell Yellow Pages, Inc.*, 27 F.3d 1316, 1323 (8th Cir.1994)). As explained below, the District’s financial statements indicate that the sworn declarations produced by the District are inaccurate. As CFO, Mr. Vandevort’s opinion and advice were given substantial weight. It is difficult to imagine a scenario in which an

organization would not consult its CFO during a financial crisis. As the CFO, Mr. Vandervort was a member of the District's 5 person administrative team (aka "Cabinet"), *see* CP 285 at ¶7, which made the budget cut recommendations that were adopted by the school board. CP 202 at ¶6-7. A reasonable person could conclude that this inaccuracy of information provided to the Cabinet and school board was due to Mr. Vandervort's biased filtering of the facts. At the very least, issues of material fact exist as to whether the District's claimed reason for terminating Ms. Knutson's employment was non-retaliatory or simply pretextual.

But for Mr. Vandervort's retaliatory conduct, Ms. Knutson would not have been dismissed. Issues of material fact exist as to the causation element of Ms. Knutson's claim for retaliation. This court should not allow Mr. Vandervort to wield the board's impartiality as a shield to legitimize his retaliation.

Furthermore, finding the school board's alleged impartiality to preclude a finding of retaliation would set a precedent organizations could readily abuse. "In the vicarious liability context, the concern is that, in the absence of a rule imposing vicarious liability, an employer could evade liability by isolating the final decision-maker and, in essence, willfully ignoring the bias of a subordinate." *Lakeside-Scott*, 556 F.3d at 811

(Berzon, J., dissenting). Finding that the District is not liable for Mr. Vandervort's retaliatory conduct signals to organizations that they can escape liability for retaliation claims simply by maintaining willful ignorance. By refusing to hear reports regarding employee complaints, boards or individuals making termination decisions can rely on the advice of individuals exercising retaliatory motives and satisfy those retaliatory motives without fearing liability. Allowing this type of behavior flies in the face of the legislature's intent behind Washington state's anti-harassment and retaliation laws.

3. *The District's Budget Defense is Mere Pretext.*

The district responds to Ms. Knutson's allegations of retaliation by claiming she was not fired as a result of her privileged activities, but was instead fired due to wholly independent and legitimate budget concerns. Ms. Knutson has refuted this assertion by providing material evidence suggesting the "budget crisis" was a mere pretext to remove her and other unwanted employees.

The District claims that this budget crisis required it to eliminate positions or terminate approximately 33 employees, in addition to Ms. Knutson. CP 230-31 (Answer to Interrogatory No. 2). However, all but nine of the 33 employees were rehired or retained by the District the following year in the same or similar positions. CP 278-79 at ¶18. Of the

nine that left, nearly half had either retired or quit their employment. CP 279 at ¶18.

The District's "necessary" reduction in staff failed to have any effect on the budget. Instead the District increased their total expenditures by \$777,825.99 from the 2009-2010 to 2010-2011 school years, and by an additional \$1,526,312.88 between the 2010-2011, and 2011-2012 school years. *See* CP 268, 270, 272. Although the District claims it was trimming the budget, it was actually spending substantially more money.

Most curiously, District CFO Les Vandervort, superintendent Brian Fones, and school board member Laura Jaecks each definitively state that the District's budget was actually cut by \$3 million in approximately 2010 and that nearly \$3 million in additional cuts were on the horizon, thus necessitating the District's immediate action to cut jobs throughout the District. CP 202 at ¶6; CP 192 at ¶5; CP 206 at ¶4. However, these declarations are inconsistent with the budget figures reported to the state by the District. The District's total revenues went from \$72,062,491.64 in the 2008-2009 school year (consisting of state and federal funding) to \$73,225,364.82 in the 2009-2010 school year, an increase of \$1,162,873.18. CP 266, 268. District revenues further increased by an additional \$793,019.75 in the 2010-2011 school year ending at \$74,018,384.57. CP 270.

From 2008 to 2012, during the crux of the “budget crisis,” the District finished each fiscal year on average with \$1,338,525.49 of excess revenues per year. CP 216-17 at ¶8. In short, the District did not lose \$3 million dollars in funding. When the Appellant pointed this fact out to the Superior Court in its summary judgment response brief, Mr. Vandervort subsequently changed his prior statement in a supplemental declaration stating that the District’s budget issues were based solely on “potential” reductions, as opposed to actual reductions (\$3 million dollars was not actually cut), and increased the figures on the potential cuts to almost \$9 million. CP 328 at ¶5. Mr. Vandervort further complicated matters by stating that, despite the increased annual revenues for the District during the “budget crisis”, the District’s funding from the state had indeed been cut, but was offset by federal stimulus money. CP 328 at ¶6. However, this statement proved to be false as well.

State revenues for the 2009-10 school year increased from \$48,991,890.37 (2008-09 total) to \$49,503,935.28. CP 338, 343. During the 2010-11 school year, state revenues to the District increased yet again to \$50,260,904.54. CP 348. Yet again, the District’s reported figures show that state revenues were not cut, in opposition to Mr. Vandervort’s claims.

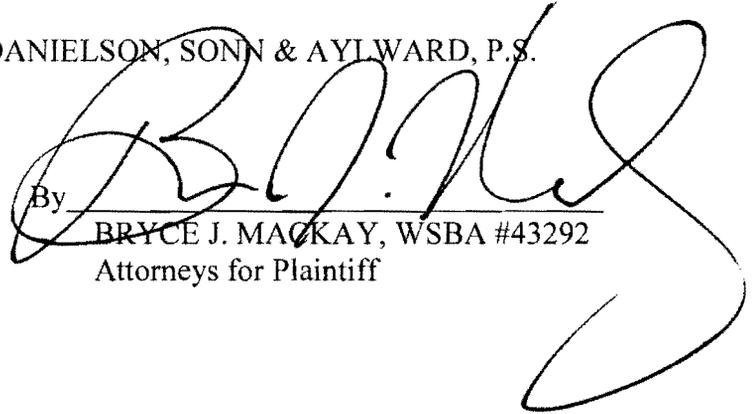
While Mr. Vandervort's statements to the Court were disingenuous, most troubling is the fact that the District superintendent and school board clearly believed that substantial cuts had already hit the District. *See* CP 202 at ¶6; CP 206 at ¶4. The superintendent and school board must have received this misinformation directly from the District CFO, Mr. Vandervort. It can reasonably be assumed, based on the District's eagerness to rehire the majority of the terminated employees, once it was determined that the "potential" budget cuts would not go in to effect, that the school board would not have taken such swift action in terminating 33 employees, including Ms. Knutson, but for its belief that the District's budget situation was more dire than it really was. Mr. Vandervort's misinformation unnecessarily created a sense of urgency within the District to take immediate action. At the very least, Mr. Vandervort's actions create an issue of material fact as to whether the District's decision to eliminate Ms. Knutson's position was pretextual.

V. CONCLUSION

Appellant has provided sufficient evidence to establish a prima facie case of sexual harassment and unlawful retaliation, and genuine issues of material fact remain in regards to Defendant's justifications for the adverse employment action. The Court should deny Defendants' Motion for Summary Judgment.

DATED this 2nd day of September, 2014.

JEFFERS, DANIELSON, SONN & AYLWARD, P.S.

By  _____
BRYCE J. MACKAY, WSBA #43292
Attorneys for Plaintiff

FILED

SEP 03 2014

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO: 325407

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

KEESHA KNUTSON,)	
)	
Appellant,)	AFFIDAVIT OF MAILING
)	
vs.)	
)	
WENATCHEE SCHOOL DISTRICT,)	
a Washington school district,)	
)	
<u>Respondent.</u>)	
STATE OF WASHINGTON)	
)	ss.
COUNTY OF CHELAN)	

JANA T. KIRSCHNER, being first duly sworn on oath, deposes and says: That she is, and all times hereinafter mentioned was, a citizen of the United States of America and a resident of the State of Washington, over the age of twenty-one (21) years, and competent to be a witness in this action and not a party thereto;

That on the 2nd day of September, 2014, she mailed the **Appellant's Brief** in this action by depositing in the United States mails,

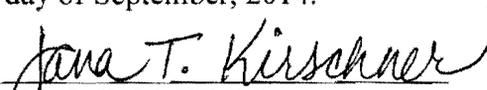
postage prepaid, the original of said **Appellant's Brief** addressed as follows:

Ms. Renee S. Townsley
Clerk/Administrator
Washington State Court of Appeals, Division III
500 North Cedar Street
Spokane, WA 99201-1905

and mailed said **Appellant's Brief** in this action by depositing in the United States mails, postage prepaid a copy of **Appellant's Brief** to:

Mr. Jerry Moberg
Jerry Moberg & Associates
P.O. Box 130
124 Third Avenue SW
Ephrata, WA 98823

DATED this 2nd day of September, 2014.


JANA T. KIRSCHNER

SUBSCRIBED AND SWORN to before me this 2nd day of September, 2014, by Jana T. Kirschner.




Typed/Printed Name VERONICA FARIAS
NOTARY PUBLIC
In and for the State of Washington.
My commission expires 10-10-2017