No. 1000332

SUPREME COURT OF THE STATE OF WASHINGTON

SAMIHA CARROLL,

Petitioner,

vs.

RENTON SCHOOL DISTRICT,

Respondent.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION AND IDENTITY OF RESPONDENT

Petitioner Samiha Carroll sued the Renton School District alleging employment discrimination under the Washington Law Against Discrimination (WLAD). Both the trial court and the Court of Appeals concluded her claims lacked sufficient evidentiary support to survive summary judgment. In her petition to this Court, Carroll abandons her argument that summary judgment was precluded by issues of material fact, and instead seeks review to request additional guidance from this Court regarding the standard for evaluating discrimination claims under the WLAD based on the possibility that judges hearing those claims may be affected by impermissible bias.

But Carroll makes no attempt to present any facts indicating impermissible bias affected the trial court or the Court of Appeals in this case. Nor does she explain how additional guidance from this Court would have altered the case's outcome. Carroll's petition is thus no more than an invitation for this Court to issue an advisory opinion, which it has consistently declined to do.

Further, Carroll fails to explain how the current standard for summary judgment in discrimination claims under the WLAD—which gives the nonmoving party the benefit of all reasonable factual inferences

and allows for de novo appellate review—raises a constitutional concern or an issue of substantial interest. *See* RAP 13.4(b)(3) and (4).

This Court should deny the petition.

II. ISSUES PRESENTED

1. Whether review is appropriate where Petitioner is seeking an advisory opinion based on hypothetical facts.

2. Whether review under RAP 13.4(b)(3) is appropriate where Petitioner objects on due process grounds to the Court of Appeals' decision affirming the trial court's grant of summary judgment, but does not allege or provide evidence of a due process violation.

3. Whether the petition presents an issue of substantial public interest under RAP 13.4(b)(4) even though the Court of Appeals' unpublished decision hinges on a fact-specific application of well-established legal standards.

III. STATEMENT OF THE CASE

On June 28, 2019, the trial court granted the District's motion for summary judgment on all of Carroll's claims, emphasizing the lack of any sufficient evidence:

> I have read and reread. I went back and actually reread your brief and reread the declaration of the plaintiff and all the deposition testimony that you submitted. There are a number of assertions that I think are unsupported by admissible evidence, or any evidence for that matter.

RP 18-19. Carroll filed a motion for reconsideration that the trial court also denied. CP 518-520.

Undeterred, Carrol next moved for direct review by this Court under RAP 4.2(a)(4) on the grounds that issues of material fact precluded summary judgment and that judges need additional guidance regarding the standard for evaluating discrimination claims. Petition for Review ("Petition"), App. A at 10, 23. This Court rejected Carroll's request for direct review and transferred the case to the Court of Appeals. *Id*., App. A at 23. Reviewing the trial court's order de novo, the Court of Appeals unanimously reached the same conclusion—that the record was devoid of any evidence establishing an issue of material fact—and affirmed summary judgment dismissal. *Id*., at App. A.

In her Petition, Carroll recycles the same scant allegations that both the trial court and the Court of Appeals rejected due to the lack of any plausible evidentiary support. The District here highlights the key unsupported allegations that formed the basis of Carroll's discrimination claims in the lower courts and that she repeats in the factual background of her petition.[1]

[1] The District does not address other allegations Carroll makes that are irrelevant to the elements of her claims. (*e.g.*, that her supervisor struggled with "cultural competency" or that the president of Carroll's union sent an unprofessional email after Carroll resigned). To the extent the Court is inclined to explore those allegations, close attention should be given to Carroll's cited evidentiary support. For example, Carroll cites CP 182-183 as support for her proposition that Thompson struggled with cultural competency, but CP 182-183 is a portion of a deposition transcript in which the deponent described her concerns with a prior assistant principal, not Thompson. A significant portion of the citations are to Carroll's self-serving declaration which is replete with non-specific factual assertions, speculation, hearsay, and argument.

Carroll claims that District employees "challenge[d], disrespect[ed] and belittle[d] her." Petition at 7-8. The Court of Appeals evaluated that allegation and found it entirely speculative:

> Those allegations are not supported by details such as identities of the parties, the content of the statements, the nature of the actions, or dates, times, and places of the incidents. Such conclusory allegations are not facts and do not raise questions of fact.

Petition, App. A at 14. Carroll also claims that her supervisor, Ms. Thompson, directed her subordinates to monitor and investigate her in a presumably discriminatory manner based on her status as a mother. Petition at 7. This allegation was similarly addressed by the Court of Appeals which acknowledged the undisputed fact that Carrol was coming to work late and/or leaving work to take her son to school and concluded:

> the record shows only that Thompson told the office administrator to 'let me know what time Ms. Carroll had gotten to work and if she noticed if [Carroll] left campus, because we had already had issues where she had left campus, and I couldn't always be in the office.'
>
> . . .
>
> [Carroll] has not provided evidence that it was objectively abusive for her direct supervisor to monitor her work attendance and compliance with school district policy. The record does not raise a question of fact let alone state any facts in support of the claim that Thompson was testing Carroll's fitness as a mother.

Petition, App. A at 16-17.

Carroll alleges she was "harassed for trying to pump breastmilk at work to the point that she was often physically uncomfortable from not expressing milk while at work." Petition at 8. This is a muted version of what she alleged at the Court of Appeals—that "Thompson initiated an investigation by the highest levels of HR around Ms. Carroll's physiological need to pump breastmilk at work." Petition, App. A at 15. But however the allegation is framed, the Court of Appeals found it unsupported:

> The record shows that Thompson spoke with her supervisors only for direction about how to manage Carroll's need to pump breastmilk. And, by Carroll's own admission, she and Thompson agreed to a plan for Carroll to pump breastmilk at specific times of the day. . . . Carroll had worked only five days before the plan was put in place. Carroll acknowledges that she did not utilize all of the time afforded to her by that plan.

Id., App. A at 15.

Carroll claims that Thompson's alleged harassment "came to a head when Ms. Thompson made a false report to Child Protective Services that Ms. Carroll was physically neglecting her 8-year old son." Petition at 8. The Court of Appeals rejected this claim, too, finding no facts to support it:

> 'Inadequate supervision (unattended)' is listed as an indicator of physical neglect. Carroll does not dispute that she left her son in the car unattended. . . . When Carroll's son knocked on the school door he was crying, having become scared while sitting alone in Carroll's car. A member of the staff observed an indicator of physical neglect and reported it to Thompson, the principal. Thompson was initially disinclined to file a report and indicated that to Carroll. But,

> at the direction of her supervisor, Thompson contacted HR and was instructed to contact CPS.
>
> . . .
>
> There is no evidence in the record that the District could have or would have responded differently on these facts if the employee was not a member of a protected class. . . . Thompson was legally obligated to file the report.

Id. at 17-18.

Carroll's argumentative and unsupported factual background should be ignored. An objective summary statement of this case is contained in the Court of Appeals' decision. *See* Petition, App. A.

IV. ARGUMENT

A. Petitioner concedes that the Court of Appeals reached the correct decision under the well-established standard for summary judgment.

Carroll does not dispute that the Court of Appeals identified the correct legal standard for reviewing the trial court's grant of summary judgment. The Court of Appeals accurately stated that it reviewed the trial court's grant of summary judgment de novo; that "[s]ummary judgment is proper only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law"; and that all facts and reasonable factual inferences are considered in a light most favorable to the nonmoving party. Petition, App. A at 10-11 (citing CR 56(c); *Camicia v. Howard S. Wright Constr. Co.*, 179 Wn.2d 684, 693, 317 P.3d 987

(2014); *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 226, 770 P.2d 182 (1989)). Carroll similarly concedes that the Court of Appeals correctly applied the summary judgment standard to the facts before it. Specifically, Carroll does not assert in her petition that an issue of material fact existed upon which its decision to affirm the trial court's grant of summary judgment was improper or in conflict with a decision of this Court or a published decision of the Court of Appeals. *See* RAP 13.4(b)(1) and (2). The term "material fact" does not appear anywhere in the petition.

B. By urging this Court to issue additional guidance regarding the standard for evaluating discrimination claims without explaining how that standard would result in a different outcome here, the Petitioner seeks an advisory opinion.

Rather than argue that the Court of Appeals' decision conflicts with existing law, Carroll asks this Court to issue additional guidance regarding the standard for evaluating discrimination claims without any mention of how that standard changes the analysis of the particular facts in this case. In essence, Carroll invites this Court to produce an advisory opinion, which it has "repeatedly refused" to do:

> To decide this case upon neither the facts presented nor the applicable law would constitute an advisory opinion. This court has repeatedly refused to issue such opinions, and we maintain that position today. 'We do not give advisory opinions. . . . Our decision must be limited to the facts of the instant case.'

Obert v. Env't Rsch. & Dev. Corp., 112 Wn.2d 323, 335, 771 P.2d 340, 347 (1989) (quoting *Hutchinson v. Port of Benton,* 62 Wn.2d 451, 456, 383 P.2d 500 (1963)). Carroll's petition should be rejected on the same grounds. She requests the Court's intervention to address hypothetical situations where a judge's ruling is infected by impermissible bias, but makes no attempt to analyze how that standard applies here.

Instead, she raises hypothetical questions of general application that are entirely untethered from the facts of her case: "what guidance is necessary to avoid possible identity bias of trial court judges" and "[d]oes the failure to account for . . . biases . . . improperly deny WLAD plaintiffs a right to trial on their claims?" Petition at 3. Carroll speculates that hypothetical bias may be "possible" or "potential" or something to which judges may be "susceptible." *Id*. at 2, 14, 16. But she does not actually allege or provide any evidence that the unanimous decision of three appellate judges—reviewing the trial court decision de novo—was affected by impermissible bias in any way. Indeed, Carroll does not even make a single reference to the judges or their decision in the entirety of her argument. *See id*.

Further, Carroll does not argue that the Court's intervention here would affect the outcome of her case. She does not identify any factual finding that would change on remand, even with additional guidance. For

example, she makes no attempt to argue that additional guidance from this Court would alter the Court of Appeals' conclusion that '[a] reasonable person could not find that the District's response to her need to pump breastmilk constituted discrimination" where the record established that "by Carroll's own admission, she and Thompson agreed to a plan for Carroll to pump breastmilk at specific times of the day . . . [and] Carroll acknowledges that she did not utilize all of the time afforded to her by that plan." Petition, App. A at 15, 16. Nor does she argue that guidance would alter its conclusion that "[a] reasonable person could not infer from the facts that filing the CPS report in this instance constituted discrimination" where "[t]here is no evidence in the record that the District could have or would have responded differently on these facts if the employee was not a member of a protected class" and "Thompson was legally obligated to file the report." *Id.*, App. A at 18.

Analyzing whether the additional guidance regarding the standard for evaluating discrimination claims is necessary to account for the presence of impermissible bias in judicial decision-making would be a purely academic endeavor here because Carroll fails to address how the guidance would yield a different result given the facts of this case. Because Carroll fails to identify any impermissible bias that affected the two courts that found her claims factually deficient, her petition seeks an advisory opinion

and this Court must reject it. *See Obert*, 112 Wn.2d 323, 335, 771 P.2d 340 (1989) ("We do not give advisory opinions.").

C. This case does not raise a due process concern under RAP 13.4(b)(3).

Carroll hints that there may be a due process concern in this case by reference to secondary sources and other court decisions that acknowledge that impermissible bias in a jury or judge may implicate due process concerns. Petition at 17-19. But she does not actually allege or provide any evidence that any member of the three-judge panel of the Court of Appeals was affected by impermissible bias when deciding this case. Her argument therefore must be that summary judgment in this case, albeit properly granted, still denied her due process.

"The constitutional guaranty of due process of law in its essence requires notice and an opportunity to be heard." *State v. Rogers*, 127 Wn.2d 270, 275, 898 P.2d 294 (1995). It has been established for well over a hundred years that dismissal of a case on summary judgment does not deny due process. *See*, *e.g.*, *Byrnes v. Lockheed Martin Corp.*, 257 Fed. Appx. 34, 36–37 (9th Cir. 2007) (claims that summary judgment violates due process "have been rejected for more than one hundred years.") (citing cases); *Nave v. City of Seattle*, 68 Wn.2d 721, 725, 415 P.2d 93, 95 (1966) (rejecting argument that summary judgment infringed right to jury trial). In

the absence of any allegation or evidence that impermissible bias affected the Court of Appeals' affirmation of the superior court's grant of summary judgment, Carroll's due process argument is meritless. *See, e.g., Meyer v. Univ. of Washington*, 105 Wn.2d 847, 855, 719 P.2d 98 (1986) ("[N]aked castings into the constitutional sea are not sufficient to command judicial consideration and discussion." (Quoted source omitted)).

D. This case does not present an issue of substantial public interest under RAP 13.4(b)(4).

Carroll's argument that this case presents an issue of substantial public interest is misplaced. The Court of Appeals' unpublished decision is a fact-specific application of well-established legal standards that are clearly articulated in numerous published decisions by this Court. *See*, *e.g.*, *Cornwell v. Microsoft Corp.*, 192 Wn.2d 43, 410, 430 P.3d 229, 233–34 (2018). Carroll does not address how the current standard for summary judgment and de novo review on appeal is insufficient to account for potential impermissible judicial bias.

The nonmoving party is provided all facts and reasonable inferences from those facts viewed in their favor. *Cornwell*, 192 Wn.2d at 410 (quoting *Scrivener v. Clark Coll.,* 181 Wn.2d 439, 444, 334 P.3d 541 (2014)). Furthermore, this Court has instructed lower courts that summary judgment in favor of an employer in an employment discrimination case is seldom

appropriate due to the difficulty of proving discriminatory motivation. *Id*. The Court of Appeals recognized this exacting standard for granting summary judgment in its decision.

> Summary judgment is often inappropriate in discrimination cases brought under WLAD, as the evidence will generally contain reasonable but competing inferences of both discrimination and nondiscrimination that must be resolved by a jury. Direct, smoking gun evidence of discriminatory animus is rare, since there will seldom be eyewitness testimony as to the employer's mental processes. Accordingly, plaintiffs may rely on circumstantial, indirect, and inferential evidence to establish discriminatory action.

Petition, App. A at 11-12. (internal quotations and citations omitted).

Trial courts are capable of determining whether a constellation of facts provide sufficient evidence of discrimination to require resolution by a jury. Even if they fail, the Court of Appeals is capable of performing de novo review to correct the error. *See*, *e.g.*, *Davis v. West One Automotive Grp.*, 140 Wn. App. 449, 166 P.3d 807 (2007) (reversing trial court's order granting summary judgment dismissal of hostile work environment claims, where defendant claimed that certain statements were not "racially motivated" but Court of Appeals held reasonable minds could disagree as to whether statements/disparate treatment was "racially charged" or not). This Court may then intervene in the event the Court of Appeals also fails to recognize an issue of material fact and the plaintiff raises that issue in their petition, something Carroll does not do here. Carroll's argument that

more guidance is needed ignores this layered safety net designed to ensure the correct decision is reached.

She also ignores the fact that judges in this state are governed by the Washington State Code of Judicial Conduct (CJC), which prohibits them from acting with bias. CJC Rule 2.3. In addition, the CJC defines "impartiality" as "absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge" and requires judges perform their duties impartially and to disqualify themselves from proceedings where their impartiality might reasonably be questioned. CJC Rule 2.2 and 2.11. Carroll does not articulate how further guidance from this Court instructing judges on acting without bias would impact the outcome of any decision, let alone the decision in this case.

Even if the Court were inclined to consider issuing a new standard or additional guidance to judges regarding the evaluation of discrimination claims, this case does not present the appropriate vehicle to do so because, as described above, Carroll offers no argument or evidence that a revised standard or additional guidance would affect the outcome of this case.

V. CONCLUSION

Carroll concedes that the Court of Appeals reached the correct conclusion under applicable law. Rather than attempt to challenge that

decision, she seeks an advisory opinion based on hypothetical facts unrelated to this case. In addition, there is no basis to review this matter under RAP 13.4(b). There is no due process issue associated with the Court of Appeals' affirmation of the trial court's grant of summary judgment and the unanimous unpublished decision's application of well-established legal standards does not raise an issue of substantial public interest. The Petition should be denied.

Dated this 26th day of August, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that I emailed directly to and electronically filed the foregoing document with the Clerk of the Court using the Washington State Appellate Courts' Portal that will send notification with a link to such document to the following party:

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Dated this 26th day of August, 2021.

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