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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 REPLY BRIEF

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I. ARGUMENT

The Respondent, Wenatchee School District, attempts to justify the illegal actions of its administrators by overgeneralizing the facts of this case.

A. Mr. Vandervort's Unwelcome Conduct Was Gender Based.

The Respondent continues to push the false narrative that because Les Vandervort did not yell at and berate woman within the District as a class and because he yelled at men within the District, Mr. Vandervort's unwelcome behavior toward the Appellant could not have been gender based. *See* Brief of Respondent 18-19. State law explains that the operative question in determining if unwelcome conduct is gender based is: would the Appellant/plaintiff have been subjected to the conduct if she had been a male? *Adams v. Able Bldg. Supply, Inc.*, 114 Wn.App. 291, 298, 57 P.3d 280 (Div. 3 2002). The Respondent's overgeneralized answer to this question selectively ignores the former relationship of Mr. Vandervort and Appellant as "office friends", which the Respondent has attempted to establish, Brief of Respondent 3-6, and the drastic change in that relationship that occurred after Mr. Vandervort learned that the Appellant was dating Russ Waterman. CP 276 at ¶10; CP 285 at ¶9. The Respondent gives no explanation for Mr. Vandervort's dramatic shift in

his treatment of the Appellant, outside of positing that Mr. Vandervort “may have been rude, unfriendly, or even disliked” the Appellant. Brief of Respondent 26.

Mr. Vandervort’s behavioral change, specifically with Appellant, is critical to understanding his gender based motives for harassing the Appellant. Would an “office friend” have been upset if their friend started dating someone? More importantly, would that “office friend” then resort to ignoring their friend and start publically and privately berating them when they had never done so previously? While the Appellant may have initially perceived her relationship with Mr. Vandervort as friendly, Mr. Vandervort clearly perceived or intended their relationship to be much more than that. Why was Mr. Vandervort so upset to learn about the Appellant’s new relationship? Because to him, her relationship with Russ Waterman signified the end of their relationship. Mr. Vandervort’s outbursts and behavior towards the Appellant more reflect the actions of a scorned lover as opposed to an “office friend.” It cannot be contended that Mr. Vandervort’s actions towards the Appellant, based on the history of their relationship, was not gender based. His response to the Appellant’s perceived rejection of his advances were inherently gender based.

B. Mr. Vandervort's Actions Inside and Outside of the Statute of Limitations Must Be Considered.

Understanding Mr. Vandervort's intentions described above further illustrate the connection between Mr. Vandervort's actions towards the Appellant both inside and outside of the applicable statute of limitations.

As stated previously, with hostile work environment claims Washington law requires courts to consider acts committed outside of the statute of limitations, if acts that are part of the same hostile practice fall within the statute of limitations. *Antonius v. King County*, 153 Wn.2d 256, 270, 103 P.3d 729 (2004).

The District again oversimplifies Mr. Vandervort's hostile acts occurring within the statute of limitation as "cold shoulder" conduct, and the acts outside of the statute of limitations as "flirtatious" conduct. Brief of Respondent 13. The Court must consider the nature and history of Mr. Vandervort's relationship with the Appellant in evaluating the connection between his actions occurring inside and outside of the statute of limitations.

As stated above, Mr. Vandervort's hostile conduct toward the Appellant occurring within the statute of limitations derived from his

perception that the Appellant would not reciprocate his unwelcome sexual advances after she started dating Russ Waterman. Mr. Vandervort had created a work environment (specifically with Appellant) in which Mr. Vandervort's communications with Appellant would either be sexual in nature or ridiculing, depending upon Mr. Vandervort's perception of Appellant's response to his sexual advances. Mr. Vandervort's overall message to the Appellant was, "If you flirt with me, I won't deride you at the office." This message is at the center of Mr. Vandervort's unwelcome acts occurring both within and outside of the statute of limitations. The nexus between all of Mr. Vandervort's actions, in addition to the continuous nature of his actions, and his role as Appellant's supervisor, require that the actions be considered part of the same actionable hostile work environment claim. See *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 120, 112 S.Ct. 2061 (2002).

Additionally, the realization that Mr. Vandervort's "pre-Russ Waterman" interactions with Appellant were more sexual in nature than Appellant initially perceived at the time, and that Appellant's refusal to reciprocate his advances caused the abrupt deterioration of her relationship with Mr. Vandervort, greatly enhances the unwelcome nature of Mr. Vandervort's acts. The mere fact that the Appellant did not realize the unwelcome nature of some of Mr. Vandervort's conduct until after Mr.

Vandervort became more hostile does not weaken the Appellant's claim. This is the exact reason why hostile work environment claims are not "parsed into component parts," but instead are considered as "a series of acts that collectively constitute one unlawful employment practice." *Antonius*, 152 Wn.2d at 266, 103 P.3d 729 (2004).

C. The School Board's Ignorance is Immaterial.

The Appellant is not required to prove that the Respondent's School Board was motivated by her workplace complaints in its decision to eliminate Appellant's position, contrary to the Respondent's claims. *See* footnote to Brief of Respondent 12. The Appellant presumes that the School Board was ignorant to Appellant's complaints to the human resources department when it eliminated Appellant's position. The Appellant is only required to show that Mr. Vandervort's involvement in the elimination of the Appellant's position was motivated by his animus towards the Appellant. *See Gilbrook v. City of Westminster*, 177 F.3d 839, 854 (9th Cir. 1999).

As explained in the Appellant's Brief, Mr. Vandervort's abusive and embarrassing treatment of the Appellant helped insure Appellant's inclusion on the list of individuals to have their positions eliminated. Appellant's Brief 35-36. Mr. Vandervort refused to offer Appellant any assistance or "friendly" support, as he had previously done regularly, and

publically berated her within the school district, in retaliation to Appellant's relationship with Russ Waterman and her report of his misconduct to the human resources department on multiple occasions. In short, he deliberately degraded Appellant in front of his fellow District decision makers, knowing that such actions would likely lead to the demise of Appellant's employment with Respondent.

Further, Mr. Vandervort was opportunistic in his efforts to eliminate Appellant's position in 2011 when the state was allegedly in the process of suggesting potential budget cuts. It is reasonable to presume that budget information disseminates from the chief financial officer on to the rest of an organization, particularly in a large organization like a school district, and especially when budgetary decisions are being made. In this case, Mr. Vandervort provided the School Board with incorrect information about the Respondent's budget situation.

The Respondent continues to claim that \$3 million in State revenues was cut from the Respondent's budget, Brief of Respondent 10, similar to claims made by the School Board, CP 206 at ¶4, and Superintendent Brian Fiones. CP 202 at ¶6. However, as explained in the next section, the Respondent's State revenues were never reduced in 2011, or in the preceding years.

Mr. Vandervort's mischaracterization of the budget to the School Board, as evidenced by his mischaracterizations of the budget to the Court, allowed him to influence the School Board to make "necessary" budget cuts, which he reasonably knew would lead to the elimination of the Appellant's position due to her program budget deficit and tarnished reputation. Mr. Vandervort's hostile treatment of the Appellant shows that in targeting her position for elimination, he was retaliating against the Appellant for her failure to respond to his sexual advances and her complaints of his unwelcome conduct to the human resources department.

Did the School Board have discretion to make budget cuts and eliminate Appellant's position? Absolutely. However, there is an issue of material fact as to whether the School Board would have eliminated the Appellant's position had Mr. Vandervort provided the School Board with accurate information about the budget. The Respondent's re-hiring of nearly all of the terminated employees from 2011, CP 278-79 at ¶18, once the School Board learned that the "budget crisis" was not as dire as originally believed, suggests that the School Board would not have eliminated those positions at that time.

D. The District's Budget Claims

In the Respondent's Motion for Summary Judgment, the Respondent claimed that in approximately 2010 the Respondent's budget was cut by \$3 million. CP 202 at ¶6; CP 192 at ¶5; CP 206 at ¶4. However, the Respondent's overall revenues between 2008 and 2011 fail to reflect any cuts:

<u>School Year</u>	<u>Total Revenues</u>	<u>Increase from Previous Year</u>	<u>Clerks Papers</u>
2008-09	\$72,062,491.64	N/A	266
2009-10	\$73,225,364.82	\$1,162,873.18	268
2010-11	\$74,018,384.57	\$793,019.75	270

Mr. Vandervort then declared that the Respondent's primary concern was not over actual budget cuts by the State, but "potential" reductions in State revenues. CP 328 at ¶5. However, Mr. Vandervort also claimed that the actual budget cuts (the alleged \$3 million) were not reflected in the overall revenue figures for the Respondent because cuts in State revenues were temporarily offset by Federal stimulus money. CP 328 at ¶6. Once again, the Respondent's own budget reports do not reflect any cuts to State revenue:

<u>School Year</u>	<u>State Revenues</u>	<u>Increase from Previous Year</u>	<u>Clerks Papers</u>
2008-09	\$48,991,890.37	N/A	338
2009-10	\$49,503,935.28	\$512,044.91	343
2010-11	\$50,260,904.54	\$756,969.26	348
2011-12	\$51,338,438.14	\$1,077,533.60	353

Despite the alleged fears of cuts to State revenues, the Respondent still received over \$1 million in additional State revenues following Respondent's elimination of Appellant's position.

The Respondent continues to falsely claim that its State revenues were reduced by \$3 million by March 2011. Brief of Respondent 10. This claim is clearly inaccurate, as shown above. Again, the above information indicates that Mr. Vandervort was providing inaccurate information to the School Board about the Respondent's budget situation. The substantial discrepancies between Mr. Vandervort's disingenuous statements and the facts create an issue of material fact as to whether Mr. Vandervort's claims about the budget were pretextual as a justification for the elimination of Appellant's position.

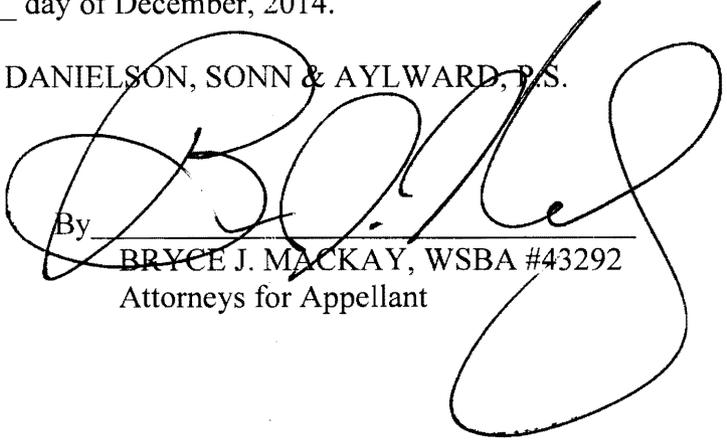
II. CONCLUSION

The trial court failed to consider Mr. Vandervort's unwelcome conduct towards Appellant outside of the statute of limitations contrary to

Washington law. Appellant's claim for hostile work environment should not have been dismissed on summary judgment. Appellant has further provided sufficient evidence to establish a prima facie case of unlawful retaliation. Genuine issues of material fact remain in regards to Appellant's claims, particularly regarding the issues of (1) whether a causal link exists between Mr. Vandervort's actions and their influence on the Respondent's adverse employment actions taken against the Appellant, and (2) whether the Respondent's budget defense was pretextual in light of Mr. Vandervort's mischaracterizations of the budget. The Appellant respectfully requests that the trial court's dismissal of Appellant's claims on summary judgment be reversed.

DATED this 5th day of December, 2014.

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By 

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