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IN THE DISTRICT COURT OF APPEAL
FOR THE FIFTH DISTRICT
STATE OF FLORIDA

ROBIN BOUEY,

Appellant,

CASE NO. 5D17-3241

EEOC CASE NO. 15D201700114

L.T. NO. FCHR 2017-00035, FCHR ORDER

NO. 17-073, DOAH 17-2652

v.

ORANGE COUNTY SERVICE UNIT,
ORANGE COUNTY CLASSROOM TEACHERS ASSOCIATION A
ND ORANGE EDUCATION SUPPORT PROFESSIONAL ASSOCIATION,

Appellees.

ON APPEAL FROM THE FLORIDA COMMISSION ON HUMAN RELATIONS

APPELLANT ROBIN BOUEY REPLY BRIEF

ROBIN BOUEY
PRO SE LITIGANT

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ISSUE

II.

WHETHER DISCRIMANATORY ACTIONS VIOLATED TITLE VII AND FLORIDA STAT. CHAPTER 760.10 IN DISPARATE IMPACT BASED ON EMPLOYMENT PRACTICES OF OCSU AND RETALIATION CAUSING INJURY HARM AND DAMAGES TO THE APPELLANT

It has been well settled on the Florida Statute sec. 120.68 in that the 120.68(1) A party who is adversely affected by final agency action is entitled to judicial review. A preliminary, procedural, or intermediate order of the agency or of an administrative law judge of the Division of Administrative Hearings is immediately reviewable if review of the final agency decision would not provide an adequate remedy. 120.68(2)(a) so properly places the review of the case by “Judicial review shall be sought in the appellate district where the agency maintains its headquarters or where a party resides...” The case being properly situated and should be reviewed in de novo, under the Title VII and Fla. Stat. 760.10.

Accordingly, the Appellees would believe this is about all other arguments made before the court except for the discriminatory elements that are presented in the violation of the Civil Rights Act of 1964, Title VII in which OSCU has used to stall the process of the law and undermine the integrity of the process with procedural maneuvers. As per the Answer Brief of Appellees Orange County Service Unit the rebuttal is merely a motion to the complaint. Bouey maintains the case is formed and propounded in the OSCU violation of the Act and retaliating against employees who exercise their Title VII rights is by itself a violation of Title VII. Cf. EEOC v. Izza Bending Tube & Wire, Inc., No. 0:13-cv-02570 (D. Minn. Sep. 19, 2014). In which failing to allow and retaliating against employee for the exercise of the right of Title VII was construed as egregious act against employee.

In the actions of the OCSU agent in retaliating for the exercise of the fundamental right the OCSU violated the rights and injured Bouey in compensation and wages by termination and continued retaliation with the acts to refuse Bouey of the opportunity to work in the field she devoted her time, education and training , in that respect the prima facie case was established as noted in the appellants brief and also established by the appellees answer - the requirement that a charging party make out a prima facie case of retaliation and that requires the Appellant to establish that (1) she engaged in statutorily protected activity, (2) she suffered a materially adverse action, and (3) there exists a causal link between the two. Howard v. Walgreen Co., 605 F.3d 1239, 1244 (11th Cir. 2010). See, Goldsmith v. Bagby Elevator Co., 513 F.3d 1261, 1277 (11th Cir. 2008). “Howard's claim fails as a matter of law, however, because he did not engage in protected conduct”, as was the case of Bouey who did engage in protected conduct. Title VII's anti-retaliation provision prohibits retaliation when an employee "oppos[es] any practice made an unlawful employment practice by [Title VII]" or "has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing." 42 U.S.C. § 2000e-3(a). Id. Howard merely, concludes that the protected conduct was not present in his actions and does not establish Bouey actions. Therefore, it enlightens the Court on the reading of Title VII retaliation claim Bouey established by prima facie case for retaliation as set forth in the Appellants Brief. Establishing in Burlington, the retaliation must cause harm is well established through-out by the actions of OCSU in the termination of Bouey’s employment. There is no greater harm than the loss of income and the loss of one’s good name in the industry they provide service. This restricts and limits one’s ability to provide for themselves and mentally the damages are significant. See, Burlington Northern and Santa Fe Railway Co. v. White, 548 U.S. 53, 68 (2006). “We conclude

that the anti-retaliation provision does not confine the actions and harms it forbids to those that are related to employment or occur at the workplace. We also conclude that the provision covers those (and only those) employer actions that would have been materially adverse, to a reasonable employee or job applicant.” Title VII’s anti-retaliation provision forbids employer actions that “discriminate against” an employee (or job applicant) because he has “opposed” a practice that Title VII forbids or has “made a charge, testified, assisted, or participated in” a Title VII “investigation, proceeding, or hearing.” §2000e–3(a). No one doubts that the term “discriminate against” refers to distinctions or differences in treatment that injure protected individuals. See, *Jackson v. Birmingham Bd. of Ed.*, 544 U. S. 167, 174 (2005); *Price Waterhouse v. Hopkins*, 490 U. S. 228, 244 (1989) (plurality opinion). See Also, at III ¶7, They did not know during that time whether or when White could return to work. Many reasonable employees would find a month without a paycheck to be a serious hardship. And White described to the jury the physical and emotional hardship that 37 days of having “no income, no money” in fact caused. 1 Tr. 154 (“That was the worst Christmas I had out of my life. No income, no money, and that made all of us feel bad. ... I got very depressed”). Indeed, she obtained medical treatment for her emotional distress. A reasonable employee facing the choice between retaining her job (and paycheck) and filing a discrimination complaint might well choose the former. That is to say, an indefinite suspension without pay could well act as a deterrent, even if the suspended employee eventually received backpay. Cf. *Mitchell*, 361 U. S., at 292 (“[I]t needs no argument to show that fear of economic retaliation might often operate to induce aggrieved employees quietly to accept substandard conditions”). Thus, the jury’s conclusion that the 37-day suspension without pay was materially adverse was a reasonable one. In retaliation the fear of loss of personal income in itself

states a claim upon which the Appellees would dismiss as not a claim for injuries or damages.

Finally, Congress amended Title VII in 1991 to permit victims of intentional discrimination to recover compensatory, and punitive damages, and so these necessary remedies are in place to make the victims whole again.

It is a continued pattern that emerges when the entirety of the Appellees brief is read in that it dismisses the claim by erroneous caselaw. Regarding the statement - *Cain v. Green*, ...the evaluation had any adverse impact... *DaCosta v. Birmingham Water Works & Sewer Bd.*, ...failure to train, were not adverse employment actions... *Gooden v. Internal Revenue Serv.*, ...holding that being “ignored,” ... *Dixon v. Palm Beach Cty. Parks & Recreation Dep't*, ...denial of Sundays off for religious purposes... provides no more insight into the case and should be devoid of the Appellees brief as immaterial. The fact that the Appellant was terminated for exercising her rights and continued actions on the part of the Appellee to punish and insure ostracizing of Bouey does lend to the discrimination by retaliation. *Webb-Edwards v. Orange Cty. Sheriff's Office*, 525 F.3d 1013, 1031 (11th Cir. 2008), “[a] tangible employment action constitut[ing] significant change in employment status such as hiring, firing, failing to promote, reassignment with significantly different responsibilities or a decision causing a significant change in benefits.” *Id.* Additionally, Applying the Burlington Northern standard to the facts of the case before it, the Crawford Court held that an unfavorable performance review “clearly might deter a reasonable employee from pursuing a pending charge of discrimination or making a new one.” *Id.* at 974; see also *Grant v. Miami-Dade Cty. Water & Sewer Dep't*, 636 F. App'x 462, 468 (11th Cir. 2015); *Barnett v. Athens Reg'l Med. Ctr.*, 550 F. App'x 711, 714 (11th Cir. 2013), cert. denied, 134 S. Ct. 2312 (2014); *Worley v. City of Lilburn*, 408 F. App'x 248, 250 (11th Cir. 2011). Bouey

sees no evidence to the contrary of any performance reviews or actions on the part of the employer to make a statement or claim as to performance of the job and in iteration of Appellants Brief finds no other conclusions in fact or in law for the untimely termination of duties, and retaliatory acts committed during employment that lead to the dismissal and therefore assert to this court the Act was violated, in which entitle Bouey to all protections of the Title VII and Florida Statute 760 et al in the disparate treatment and retaliation of the Appellees in the arbitrary termination that was unwarranted.

ARGUMENT

This is a case of a Title VII Civil Rights Violations filed by the Appellant, Robin Bouey, (“Bouey”) which warranted investigation of material facts and genuineness of the issue before the conclusory judgment of the complaint made in which the Respondent, Orange County Service Unit, et al, (“OCSU”) establishes inappropriate actions against Bouey for the purpose and process of establishing control of Bouey in the prospects of continued employment and finally termination of a disparate class, and for that reason was considered to have violated 42 U.S.C. 2000, and Title VII of the Civil Rights Act of 1964 (“Act”). Bouey also finds that Section 703(a) sets forth Title VII’s core anti-discrimination provision in the following terms: “It shall be an unlawful employment practice for an employer, “(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.” In actions of disparate impact, the individual effected cannot be barred by time of said certain filings with the state court when in the presents of the law the complaint must surface at the Florida Commission on Human Relations (“FCHR”), and so the claim made is made

said certain and is not barred but tolled as permissible, as such any opposing counsel can run out the clock on the FCHR hearing and determination claim by legal maneuvers and “time out”, the claims made by a year. Whenever a charge is filed by or on behalf of a person claiming to be aggrieved...engaged in an unlawful employment practice, the Commission shall serve a notice of the charge, SEC. 2000e-5. [Section 706] of the Act. Bouey disagrees and believes the tolling of the complaint starts with the initial complaint and not the filings themselves in state court. Finally, the statute's stated purpose and statutory construction directive are modeled after Title VII of the Civil Rights Act of 1964. In which the federal law requires the act to be follow y Federal Rules and the court must follow the Federal Statutes so as to avoid a conflict with the law of the land, by which the Act, chapter 760, is remedial and requires a liberal construction to preserve and promote access to the remedy intended by the Legislature. Also, §760.01(2) outlines the general purposes of the Act which include securing freedom from discrimination for all individuals and preserving the general welfare of all. *Woodham v. Blue Cross & Blue Shield of Fla., Inc.*, 829 So. 2d 891, 894 (Fla. 2002)

42 U.S.C. 2000(e)-2(B)

(i) With respect to demonstrating that an employment practice causes a disparate impact as described in subparagraph (A)(i), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent’s decision-making process are not capable of separation for analysis, *the decision-making process may be analyzed as one employment practice.*

CONCLUSION

For the following reasons Bouey asks to reverse and remand:

Appellant Robin Bouey submits this Reply Brief to the Appellees OCSU, et al, and asks this court to reverse and remand, in that the controlling law Title VII of the Civil Rights Act of 1964 was erroneously addressed by lower court.

The Florida Statute 760.01 was misused in the interpretation of claiming Complaint filed untimely and should be reversed. The Florida Statute 760.10 should be interpreted correctly in that the prima facie case made in the original complaint was overlooked in error of the tier of fact and therefore reverse and remand with stipulation to new hearing is required.

A new trial is warranted because the court of hearings improperly placed the valuation of the employees as outlined in the Appellant's Brief, which prejudiced Bouey of her constitution right as afford in the U.S. CONST. Amend XIV. This court should therefore reverse and remand as matter of law.

Wherefore, Bouey prays the court to grant the requests made in this Reply Brief and all other relief this Honorable Court deems just.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I Hereby Certify that this brief complies with the type-volume limitations of Fed. R. App. P. 29(d) and Fed. R. App. P. 28.1(e)(2)(B) because this brief contains under the words allowed, excluding the parts of the brief exempted, with 3,005 words, by FED. R. APP. P. 32(a)(7)(B)(iii).

I also certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using 12-point Times New Roman type or larger.

/s/Robin Bouey

CERTIFICATE OF SERVICE

I Hereby Certify, that on this 9th day of April 2018, I filed the Reply Brief of Appellant Robin Bouey foregoing electronically transmitted to the 5DCA, 300 South Beach Street, Daytona Beach, Florida 32114 and via U.S. Mail to the Appellees Counsel, Sniffen & Spellman, P.A., 123 North Monroe Street, Tallahassee, Florida 32301.

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