

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

April Brown v. Arizona Board of Regents

Brown · No. CV-24-08078-PCT-KML · Decided February 26, 2026

OPINION

Brown

PER CURIAM.

1 WO 2 3 4 5

6 IN THE UNITED STATES DISTRICT COURT

7 FOR THE DISTRICT OF ARIZONA

8 9 April Brown, No. CV-24-08078-PCT-KML 10 Plaintiff, ORDER 11 v. 12 Arizona Board of
Regents, 13 Defendant. 14 15 Plaintiff April Brown worked for Northern Arizona University
("NAU") as a non- 16 tenure track faculty member from 2016 until 2020, when her yearly
contract was not 17 renewed. She filed this suit against the Arizona Board of Regents ("ABOR")
because she 18 believes the non-renewal was due to sex discrimination. (Doc. 1.) ABOR seeks
summary 19 judgment arguing Brown has insufficient evidence supporting her claim. (Doc. 34.)
Its 20 motion is granted. 21 I. Factual Background 22 In August 2016, Brown left a 20-year career
in print, radio, and television 23 journalism to begin working for NAU as a non-tenure track
Assistant Professor in the 24 School of Communication ("SOC"). (Doc. 40 at 2.) This position
opened as a backfill for 25 a tenured professor who had been reassigned. (Doc. 40 at 2.) The SOC
(which is part of 26 the College of Behavioral Sciences) contains six programs including
journalism and 27 communication studies, and houses the Media Innovation Center ("MIC"),
where students 28 learn experientially by operating media channels. (Doc. 34 at 3.) Brown had
originally 1 applied both for the assistant professorship and a higher-paid position as MIC
director; 2 although she was one of three finalists for MIC Director, NAU ultimately hired Brian 3
Rackham for that position and Brown for the assistant professorship. (Doc. 34 at 3-4.) 4 Brown
questioned the rationale for this decision and was told by then-SOC Director Norm 5 Medoff it
was because Rackham was more technically inclined. (Doc. 40-2 at 4.) Brown 6 communicated to
Medoff her belief this choice was based on "sexist assumptions" because 7 her own technical
skillset was not considered or discussed.¹ (Docs. 34 at 4; 40-2 at 4.) 8 Medoff was later replaced
by Brant Short and at the relevant times for this suit, Karen 9 Pugliesi was dean of the College of
Behavioral Sciences. (Doc. 34 at 3.) 10 Brown's original three-year contract transitioned to a
yearly contract in 2019. (Doc. 11 40-3 at 186.) During her employment, she consistently received
positive reviews. (Doc. 12 40-2 at 116.) She was recognized multiple times for her teaching,
including winning an 13 award, and taught some over-enrolled classes. (Doc. 40-2 at 9, 68.) Her
courses were 14 primarily in the communication studies and journalism programs. (Doc. 34-2 at

92-93.) 15 Though she expected she would be assigned to teach broadcast, television, and radio 16 journalism courses and was interested in doing so, she was not assigned courses in those 17 areas. (Doc. 40-2 at 10.) In 2018, Brown was asked but declined to serve as the program 18 coordinator for the journalism program, citing the stress and workload. (Doc. 34-3 at 72- 19 73.) On February 19, 2020, Brown was promoted following a multi-tiered process which 20 included Pugliesi's and Short's official recommendations and support; her promotion was 21 set to take effect the following academic year. (Doc. 40-2 at 12.) 22 In April 2020, citing the COVID pandemic's budgetary impact, the SOC announced 23 possible staffing reductions. (Doc. 34-3 at 3.) The subsequent process to identify which 24 faculty to eliminate was primarily led by Pugliesi: Short first identified journalism and 25 photography as programs that could sustain faculty reductions due to enrollment numbers, 26 Pugliesi then chose individual faculty members, and Short ultimately "agreed with and 27 1 Brown includes the decision to hire Rackham for the higher-paid position as context for her claims and does not contend it constitutes a Title VII violation. (Doc. 40.) A claim 28 based on that event would be time-barred because Brown did not file an EEOC charge within the 300-day window (see Doc. 34 at 12-13), and Brown does not argue otherwise. 1 supported" Pugliesi's proposed selections. (Doc. 34-2 at 42.) The school alleges it used 2 three criteria to determine which non-tenure-track faculty would not be renewed: 3 performance, instructional needs, and strategic impact. (Doc. 34-3 at 16.) The parties agree 4 performance was essentially a non-issue because nearly all faculty members under 5 consideration had positive reviews. (Doc. 34-2 at 15.) 6 On May 26, 2020, Brown was informed she would not be receiving a new contract 7 for the 2020-2021 school year.² (Doc. 40-2 at 13.) Brown was one of three women and one 8 man whose contracts were not renewed. (Doc. 40-2 at 126.) ABOR provides evidence 9 showing Pugliesi selected Brown rather than two male non-tenure track journalism faculty 10 members because her loss would harm the department less due to her classes and 11 experience. (Docs. 34-2 at 32, 41-42; 34-3 at 16, 55.) Brown alleges the non-renewal 12 factors, if accurately applied, would weigh in favor of renewing her contract. (Doc. 40 at 13 5-8.) 14 Brown filed a Charge of Discrimination with the EEOC on or around March 11, 15 2021, and later received a right to sue notice. Brown's original complaint alleged gender 16 discrimination and retaliation in violation of Title VII, but the parties stipulated to the 17 dismissal of the retaliation claim. ABOR now moves for summary judgment on the sole 18 remaining claim for gender discrimination. 19

II. Legal Standard 20 A court must grant summary judgment "if the movant shows that there is no genuine 21 dispute as to any material fact and the movant is entitled to judgment as a matter of law." 22 Fed. R. Civ. P. 56(a); see also *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). The 23 movant bears the burden of presenting the basis for the motion and identifying evidence it 24 believes demonstrates the absence of a genuine issue of material fact. *Id.* at 323. A genuine 25 dispute exists if "the evidence is such that a reasonable jury could return a verdict for the 26 nonmoving party," and material facts are those "that might affect the outcome of the suit 27 2 Brown had been applying for other positions and had already accepted a tenure-track position at

California State University, which she told Pugliesi and Short during the May 28 26 meeting. (Doc. 34 at 6.) Given that Brown had accepted that offer, her non-renewal seemingly had no material impact on her career plans. 1 under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). 2 “The evidence of the non-movant is to be believed, and all justifiable inferences are 3 to be drawn in his favor.” *Id.* at 255. But a non-movant cannot rest on mere allegations or 4 denials and must instead show there is “sufficient evidence supporting the claimed factual 5 dispute . . . to require a jury or judge to resolve the parties’ differing versions of the truth 6 at trial.” *Id.* at 249 (quoting *First Nat. Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 289 7 (1968)). “In the context of employment discrimination law under Title VII, summary 8 judgment is not appropriate if, based on the evidence in the record, a reasonable jury could 9 conclude by a preponderance of the evidence that the defendant undertook the challenged 10 employment action” because of the plaintiff’s protected characteristic. *Cornwell v. Electra 11 Cent. Credit Union*, 439 F.3d 1018, 1028 (9th Cir. 2006). 12 III. Analysis 13 A. Prima Facie Case 14 A plaintiff bringing a disparate treatment claim must establish a prima facie case of 15 discrimination either through “direct or circumstantial evidence of discriminatory intent” 16 or using the McDonnell Douglas framework. *Freyd v. Univ. of Ore.*, 990 F.3d 1211, 1228- 17 29 (9th Cir. 2021) (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-04 18 (1973)); see *Gleason v. Filter Holdings, LLC*, 737 F. Supp. 3d 1033, 1066 (D. Or. 2024). 19 The McDonnell Douglas framework asks a plaintiff to first show “(1) she belongs to a 20 protected class; (2) she was qualified for the position; (3) she was subjected to an adverse 21 employment action; and (4) similarly situated men were treated more favorably, or her 22 position was filled by a man.” *Lui v. DeJoy*, 129 F.4th 770, 777 (9th Cir. 2025) (simplified). 23 The evidence required for a prima facie case is “minimal.” *White v. AKDHC, LLC*, 664 F.

24 Supp. 2d 1054, 1067 (D. Ariz. 2009). If a plaintiff makes these showings, the defendant 25 must “show a legitimate, nondiscriminatory reason for the challenged actions.” *Freyd*, 990 26 F.3d at 1228. And if a defendant makes that showing, the plaintiff must “show that the 27 proffered nondiscriminatory reason is pretextual.” *Id.* 28 ABOR does not contest the first three prongs of a prima facie case under the 1 McDonnell Douglas framework: Brown belongs to a protected class, was qualified for and 2 satisfactorily performed her job,³ and was subjected to the adverse employment action of 3 contractual nonrenewal (see Docs. 40 at 10; Doc. 43). *Reynaga*, 847 F.3d at 691. The 4 parties dispute only whether similarly-situated individuals who were not women were 5 treated more favorably, a question generally best suited for a factfinder’s resolution. *Beck 6 v. United Food & Com. Workers Union, Loc. 99*, 506 F.3d 874, 885 n.5 (9th Cir. 2007). 7 “[I]ndividuals are similarly situated when they have similar jobs and display similar 8 conduct.” *Vasquez v. Cty. of L.A.*, 349 F.3d 634, 641 (9th Cir. 2003). For instance, 9 supervisory employees are typically not similarly situated to non-supervisory employees 10 with less responsibility. *White*, 664 F. Supp. 2d at 1068 (also weighing difference in 11 employees’ behavior). Nonetheless, the jobs need not be identical, only “substantially 12 equal.” *Freyd*, 990

F.3d at 1220. 13 Brown identifies David Harpster and Rory Faust—both male faculty members 14 whose contracts were renewed—as comparators.⁴ (Doc. 40 at 8, 10.) Harpster, Faust, and 15 Brown were all non-tenure-track faculty members in the journalism program; taught 16 journalism and communication courses; had the same allocation of teaching versus service 17 responsibilities (80% to 20%); and reported to Short. (Doc. 40-2 at 13-16.) Each had some 18 under-enrolled classes and none of the three served as coordinator for the journalism 19 department during the relevant time period. (Doc. 40-2 at 13-16.) All said, Brown has likely 20 identified comparators with substantially-equal jobs who were treated more favorably than 21 she was. Vasquez, 349 F.3d at 641 (holding despite significant differences in funding, 22 research types, and organizational responsibilities, jury could conclude work was 23 substantially equal). Accordingly, the court assumes Brown has made a prima facie case 24 of discrimination under the McDonnell Douglas framework. 25 3 Though ABOR notes Brown was initially inexperienced in teaching (Doc. 34 at 4-5), it 26 does not argue she was unqualified for her job or performed unsatisfactorily, or that her performance was a reason for the nonrenewal. 27 4 There is some dispute whether Brown properly identified Faust as a comparator at the procedurally-appropriate time. (Doc. 43 at 4.) Because Brown’s claim fails on other 28 grounds, there is no need to resolve whether Brown properly disclosed Faust. For purposes of this order, Faust is treated as a proper comparator. 1 B. Pretext and Credence 2 Once the plaintiff has made a prima facie case, the burden shifts to the defendant to 3 provide a non-discriminatory reason for the adverse employment action. Reynaga, 847 4 F.3d at 691. If the defendant does so, “the plaintiff may defeat summary judgment by 5 satisfying the usual standard of proof” required by Rule 56. Cornwell, 439 F.3d at 1028. In 6 other words, the plaintiff must point to evidence in the record that would allow a reasonable 7 jury to “conclude by a preponderance of the evidence that the defendant undertook the 8 challenged employment action because of the plaintiff’s [sex].” *Id.* The plaintiff may do so 9 by offering evidence—either direct, or “specific and substantial” if circumstantial—that a 10 discriminatory reason is “more likely” or the employer’s explanation is pretextual or 11 “unworthy of credence.” *Coghlan v. Am. Seafoods Co. LLC*, 413 F.3d 1090, 1094-95 (9th Cir. 2005); see *Blair v. Shulkin*, 685 F. App’x 587, 588 (9th Cir. 2017). The plaintiff’s 12 protected characteristic “need not be the sole or primary cause of the employer’s adverse 14 action.” *Bostock v. Clayton Cnty.*, 590 U.S. 644, 665 (2020). And generally, plaintiffs 15 alleging employment discrimination need produce “very little evidence” to overcome an 16 employer’s motion for summary judgment because the inquiry is best-suited for a 17 factfinder. *Chuang v. Univ. of California Davis, Bd. of Trs.*, 225 F.3d 1115, 1124 (9th Cir. 18 2000); see *Weil v. Citizens Telecom Servs. Co., LLC*, 922 F.3d 993, 1002 (9th Cir. 2019) 19 (at summary judgment, courts must “zealously guard” employees’ rights to trial because 20 discrimination claims are “difficult to prove without a full airing of the evidence”). 21 ABOR has offered a legitimate, non-discriminatory rationale: Brown was selected 22 for non-renewal after “many meetings, extensive analysis, and agreement” that her 23 selection would cause the “least harm” to the journalism

program. (Doc. 34 at 10.) Brown 24 must therefore show this explanation is pretextual or unworthy of credence. She is unable 25 to do so. 26 Brown does not produce direct evidence such as sexist statements by decision- 27 makers which would indicate the non-discriminatory rationale is pretextual. Coghlan, 413 28 F.3d at 1094-95. And her circumstantial evidence is not “specific and substantial.” Id. She 1 alleges a general gender disparity in job assignments and pay, but she primarily cites her 2 own testimony and offers no evidence this was a pattern relevant to her program or her 3 own non-renewal. (Doc. 40 at 8 (citing own testimony and a trends report of unclear 4 origin).) She does cite a 2019 report which suggests pay gaps existed at NAU, but that 5 report does not factor in variables like academic disciplines and does not appear relevant 6 to hiring or firing decisions in any specific department. (Doc. 40-3 at 228.) Similarly, that 7 three of the four non-renewals were women does not supply specific and substantial 8 evidence of gender discrimination. Id. at 1100 (sample size of three carries little or no 9 weight in showing discrimination). Brown does cite certain past decisions like Rackham’s 10 hiring which she views as sexist (Doc. 40 at 2), but again does not provide evidence beyond 11 her own testimony suggesting sex played a role in that decision or others. 12 Brown additionally points to ABOR’s allegedly “changing explanations” for her 13 non-renewal. *Diaz v. Eagle Produce Ltd. P’ship*, 521 F.3d 1201, 1214 (9th Cir. 2008) 14 (inconsistent explanations for employment decisions can show pretext). She argues her 15 backfill position was previously discussed as a factor (Doc. 40-3 at 4) and ABOR now cites 16 the oversaturation of broadcast journalists in the program (Doc. 40 at 7, 11-13). But 17 multiple explanations were consistently offered as factors for the non-renewal; throughout, 18 NAU cited the COVID pandemic, Brown’s position as a backfill, and the program’s 19 enrollment and instructional needs (see Doc. 43-3 at 4). Brown has not shown these 20 multiple explanations were shifting or conflict with each other. Id. (declining to infer 21 pretext from employer’s multiple but consistent reasons for layoff). Ultimately, Brown’s 22 primary argument for pretext is that her own qualifications were superior to Harpster’s and 23 Faust’s such that sex-based bias must be the reason for her non-renewal. (Docs. 40-2 at 15- 24 17 (Brown compares her experience and education favorably to Harpster’s and Faust’s), 25 19 (Brown believes she was qualified to teach broader variety of courses and provide more 26 experiential learning than Harpster or Faust); 40 at 13 (in briefing, characterizing 27 Harpster’s and Faust’s professional experiences in print journalism as “limited to . . . a 28 dying field”).) This is unconvincing: “subjective personal judgments of her competence 1 alone do not raise a genuine issue of material fact” as to ABOR’s non-discriminatory 2 rationale. *Bradley v. Harcourt, Brace & Co.*, 104 F.3d 267, 270 (9th Cir. 1996). 3 There is no evidence any bias existed so as to make discrimination “more likely” 4 than not even under ordinary standards for showing pretext. Coghlan, 413 F.3d at 1094- 5 95. But here, Brown’s bar is significantly higher because the same actor—Pugliesi— 6 advocated for Brown’s promotion in 2020 (Doc. 34-3 at 43) before selecting her for non- 7 renewal a few months later (Doc. 34 at 16). 8 Where the same actor responsible for the adverse employment action was shortly 9 beforehand responsible for a positive employment

action, the court infers there was no discrimination. Coghlan, 413 F.3d at 1096; see also Bradley, 104 F.3d at 270-71 (establishing “same-actor inference”). This is a “strong inference that a court must take into account on a summary judgment motion.” *Id.* at 1098 (simplified). A plaintiff may overcome it with an “extraordinarily strong showing of discrimination.” Blair, 685 F. 14 App’x at 588. ABOR argues it is entitled to the same-actor inference because Pugliesi hired Brown and advocated for Brown’s promotion five months before selecting her for non-renewal. (Doc. 34 at 16.) The parties do not contest Pugliesi was the primary decision-maker in Brown’s non-renewal. (Docs. 34 at 9; 40 at 7.) Brown instead argues that because Pugliesi was not “the ultimate decision-maker” for the promotion and the promotion was not implemented before Brown’s non-renewal, the same-actor inference cannot apply. (Doc. 40 at 15.) Pugliesi advocated for Brown’s promotion and officially wrote a recommendation for her, though additional direct decision-makers were also involved. (Doc. 34-3; see Doc. 23 40-2 at 12 (faculty committee recommended Brown, followed by Short, another committee, Pugliesi, provost, and finally NAU president).) And recommendations constitute positive employment actions even if the actor is not the ultimate decision-maker. 5 Though Brown does not substantially argue this point, Pugliesi’s role in Brown’s hiring would not support the inference because there is no evidence she personally contributed to the hiring decision, only that her name was on Brown’s offer letter. (Doc. 34-2 at 77; see

28 Doc. 34 at 4 (then-SOC Director Medoff explaining to Brown his decision to select Rackham as MIC Director).) 1 for (or even involved in) the decision. See *Crudder v. Peoria Unified Sch. Dist. No. 11*, No. 2:09-CV-0435-HRH, 2010 WL 11523855, at *5 (D. Ariz. Dec. 21, 2010), *aff’d*, 468 F. 3 App’x 781 (9th Cir. 2012) (applying inference where actor recommended plaintiff to a 4 board); *Bois v. Levi Strauss & Co.*, No. 23-CV-02772-TLT, 2024 WL 4004980, at *11 5 (N.D. Cal. July 30, 2024) (applying inference where actor “was leading the effort to 6 promote [plaintiff]”); cf. *Curry v. Contra Costa Cnty.*, No. 12-CV-03940-WHO, 2014 WL 7 1724431, at *11 (N.D. Cal. Apr. 30, 2014) (no inference where actor “was not the decision-8 maker” and the ‘positive’ action could “easily” have been construed negatively). Whether 9 the promotion took effect is also immaterial; a prior positive action is relevant as proof of 10 the actor’s lack of bias, not because of the action’s practical effect. Bradley, 104 F.3d at 11 270-71; see *Crudder*, 2010 WL 11523855, at *5 (applying inference where 12 recommendation for promotion was rescinded before promotion took effect). The inference 13 therefore applies, requiring extraordinarily strong proof of discrimination to show pretext.

14 *Id.* at 270.

15 Brown does not present enough evidence to rebut ABOR’s explanation under the 16 normal standard, let alone when the same-actor inference applies. The motion for summary 17 judgment is granted. 18 IV. Conclusion 19 Brown made a *prima facie* case of discrimination but did not provide sufficient 20 evidence to overcome ABOR’s nondiscriminatory rationale for her non-renewal, 21 particularly given the applicability of the same-actor inference. ABOR’s motion for

22 summary judgment is granted. 23 / 24 / 25 / 26 / 27 / 28 / 1 Accordingly, 2 IT IS ORDERED
ABOR's Motion for Summary Judgment (Doc. 34) is || GRANTED. The Clerk of Court shall
enter judgment in favor of defendant and close this case. 5 Dated this 26th day of February, 2026.
6 via RA Honorable Krissa M. Lanham 9 United States District Judge 10 11 12 13 14 15 16 17 18
19 20 21 22 23 24 25 26 27 28 -10-