

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-13896
Non-Argument Calendar

AMANDA FENNEL,

Plaintiff-Appellant,

versus

ELMORE COUNTY BOARD OF EDUCATION,

Defendant- Appellee,

ROBBIE SLATER,

Principal, sued in his individual capacity, et al.,

Defendants.

Appeal from the United States District Court
for the Middle District of Alabama
D.C. Docket No. 2:23-cv-00530-RAH-SMD

Before LUCK, ANDERSON, and WILSON, Circuit Judges.

PER CURIAM:

Amanda Fennel appeals the summary judgment for the Elmore County Board of Education on her employment discrimination claims under Title VII of the Civil Rights Act of 1964. After careful review, we affirm.

FACTUAL BACKGROUND

In July 2021, Fennel, a white female, began work as an assistant principal at Wetumpka High School in Elmore County, Alabama. She was one of three assistant principals along with Raham Bell, a black male, and Benetta Eutsey, a black female.

In May 2022, the Board terminated Fennell and Bell after it concluded that they had “engaged in intimate, inappropriate behavior on school grounds during school hours.” In August 2021, teacher Kaitlyn Shumate walked into the teacher’s lounge and saw Fennel and Bell close together. They were the only ones in the lounge. When Fennel and Bell saw Shumate, they jumped away from each other and straightened their clothes. According to Shumate, “Fennel looked embarrassed,” leaving Shumate “extremely uncomfortable” because she “should not have had to be put in a situation that was so unprofessional.”

Reports of this incident made their way to the school’s principal, Robbie Slater, who reported the incident to the Board’s Human Resources Director, Susanne Darnell Goodin. Goodin told Slater to discuss the situation with Fennel and Bell. Slater drafted a memorandum dated September 1, 2021, documenting meetings he had with Fennel and Bell separately on the same day: Slater spoke to Fennel and Bell about the incident, relayed other teachers’

concerns that the two spent long periods of time together behind closed doors, and instructed them to limit their interactions to those necessary to complete their job responsibilities and to avoid spending time behind closed doors.

A few months later, in March 2022, teacher Laura Dennis was responding to a student fight in a classroom. She ran down to Bell's office to grab the nearest administrator. As she opened the door and poked her head into the office, she saw Fennel and Bell "up against each other on a desk." Fennel was leaning back on the desk facing Dennis while Bell was "very close in front of her" with his back facing the door. Bell exclaimed, "oh sh-t" when Dennis walked in. Dennis yelled, "[t]here is a fight, we need help" and stuck her head back out. As Bell ran with Dennis out of the office, Dennis heard Bell zipping up his pants. Fennel stayed behind for a few minutes before joining Dennis and Bell at the scene of the fight.

After the incident, Bell reported the encounter to Slater, telling him that he had been alone in his office talking with Fennel about his broken zipper when Dennis walked in. Slater asked why he would make that decision given the previous incident and Slater's warning. Bell admitted it "probably wasn't a good decision."

Separately, Dennis—who was "shaking" because of what she had seen—called her father, District Superintendent Richard Dennis, and told him about how "[s]he had walked in on two people in a compromised position." On his advice, she reported the situation to Principal Slater, who reported it to Goodin.

The day after the incident, the Board put Fennel and Bell on administrative leave pending an investigation by Goodin. Reviewing surveillance videos from outside Bell's office, Goodin saw Dennis opening the door, Bell running into the hallway while zipping up his pants, and Fennel staying behind in Bell's office for about one and a half minutes after Bell and Dennis left. Taking a random sample of surveillance videos from other dates, Goodin also observed that Fennel and Bell spent "extended periods" together behind closed doors—sometimes over an hour—which she believed was "entirely too much time behind closed doors together without students in there or teachers in there."

Fennel and Bell provided written statements giving their versions of the story. According to Fennel, she went to Bell's office to help him reboot his office phone and collect a coffee cup and walkie-talkie she had left behind. When Bell leaned over to grab a water bottle, Fennel saw that Bell's pants zipper was down, and he responded that it was broken. When Fennel told him she had safety pins in her office and "pointed to the proximity of where he needed to place the pins," Dennis opened the door saying, "Mr. Bell we need you." Bell ran out the door following Dennis. Bell told essentially the same story.

Fennel also met with Slater and Goodin, who asked Fennel for her recollection of events. Fennel read aloud from the written statement she gave earlier. Slater and Goodin asked Fennel why

25-13896

Opinion of the Court

5

she stayed behind in Bell's office after the incident for over a minute while the others ran to help with the fight, but Fennel said she couldn't remember.

Based on her investigation, Goodin concluded that Fennel and Bell were engaged in "inappropriate" conduct "unbecoming of a school administrator," and "might have been" involved in a physical or romantic relationship "based on the two incidents of them being close together in two separate occasions where two separate teachers saw them in those compromising situations."

After meeting with Goodin and reviewing the information she compiled during her investigation, Superintendent Dennis recommended that the Board terminate Fennel and Bell based on his conclusion that Fennel and Bell had "engaged in intimate, inappropriate behavior on school grounds during school hours on March 8, 2022[,] at Wetumpka High School," and that Fennel failed to timely respond to the fight. Fennel and Bell therefore had "compromised themselves as administrators" because "the whole thing" had created a negative climate on campus and had put the "faculty and staff in a[n] unhealthy environment." The Board terminated Fennel and Bell on Superintendent Dennis's recommendation.

PROCEDURAL HISTORY

Fennel sued the Board, alleging claims of sex discrimination and associational race discrimination under Title VII. The Board moved for summary judgment on both claims, arguing that Fennel

had not identified any evidence that established the Board intentionally discriminated against her based on her sex or her association with Bell.

Fennel—relying on a “mixed-motive” theory of discrimination—responded that she was only required to show that a protected characteristic was a “motivating factor” for her termination to defeat summary judgment on each of her claims. And, she argued, a reasonable jury could find that her sex was a motivating factor in her termination based on five categories of circumstantial evidence: (1) the Board assumed that Fennel had placed herself in a “compromised position” because she was a woman standing alone in a room with a man; (2) Slater treated Bell more favorably by not referring him for discipline despite several past reports of sexual harassment; (3) other male employees accused of sexual harassment were not fired for their conduct; (4) the Board’s tolerance of sexual harassment showed that Fennel’s gender was a motivating factor in her termination, and (5) the jury could infer pretext because Principal Slater backdated a memorandum to make it look like he had warned Fennel about spending time alone with Bell in September 2021 when he actually wrote the memorandum in March 2022. Fennel argued that the same five categories—particularly “[the Board]’s focus on [Fennel] and Bell working closely together” and “Slater’s more lenient treatment of Bell”—also supported her associational race discrimination claim, in addition to evidence that Assistant Principal Eutsey had never been disciplined despite public displays of affection with Bell.

25-13896

Opinion of the Court

7

The district court granted the Board’s motion for summary judgment, explaining that Fennel failed to produce sufficient evidence from which a reasonable jury could conclude that her sex or Bell’s race was a motivating factor in the Board’s decision to terminate her on a mixed-motive theory of discrimination.

STANDARD OF REVIEW

We review de novo a district court’s grant of summary judgment, using the same standard as the district court and drawing all reasonable inferences in favor of the non-moving party. *FCOA LLC v. Foremost Title & Escrow Servs. LLC*, 57 F.4th 939, 946 (11th Cir. 2023). Under Federal Rule of Civil Procedure 56, summary judgment is proper where there is “no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).

DISCUSSION

Fennel argues that the district court erred in granting summary judgment to the Board on her mixed-motive discrimination claims because she presented sufficient evidence for a reasonable jury to conclude that her sex or race by association was a motivating factor in her termination. We disagree.

“Title VII prohibits employers from intentionally discriminating against their employees based on ‘race, color, religion, sex, or national origin.’” *McCreight v. AuburnBank*, 117 F.4th 1322, 1326 (11th Cir. 2024) (quoting 42 U.S.C. § 2000e-2(a)(1)). “The question to be resolved” in a Title VII case “is not the wisdom or accuracy

of [the employer’s] conclusion that [the employee’s] performance was unsatisfactory, or whether the decision to fire her was prudent or fair.” *Alvarez v. Royal Atl. Devs., Inc.*, 610 F.3d 1253, 1266 (11th Cir. 2010) (citation modified). Rather, the question is “whether unlawful discriminatory animus motivated the decision.” *Id.*; *see also Nix v. WLCY Radio/Rahall Commc’ns*, 738 F.2d 1181, 1187 (11th Cir. 1984) (“[A]n employer may fire an employee for a good reason, a bad reason, a reason based on erroneous facts, or for no reason at all, as long as its action is not for a discriminatory reason.”), *abrogated on other grounds by Lewis v. City of Union City (Lewis I)*, 918 F.3d 1213 (11th Cir. 2019) (en banc).

A mixed-motive Title VII claim “allows for liability when an employment decision motivated by a *legitimate* reason—usually poor work performance—is also infected by an *illegitimate* reason—illegal discrimination.” *McCreight*, 117 F.4th at 1326. Thus, “[a]n employee can succeed on a mixed-motive claim by showing that illegal bias, such as bias based on sex or gender, ‘was a motivating factor for’ an adverse employment action, ‘even though other factors also motivated’ the action.” *Quigg v. Thomas Cnty. Sch. Dist.*, 814 F.3d 1227, 1235 (11th Cir. 2016) (quoting 42 U.S.C. § 2000e–2(m)).

On summary judgment, “*all* Title VII claims—single-motive as well as mixed-motive—are ultimately decided according to the same [r]ule 56 summary judgment standard.” *McCreight*, 117 F.4th at 1333. “And that standard asks whether the employee has offered

25-13896

Opinion of the Court

9

enough circumstantial evidence that creates a triable issue concerning the employer's discriminatory intent." *Id.* (citation modified); *see also* Fed. R. Civ. P. 56. Thus, to defeat summary judgment, the plaintiff must marshal "evidence sufficient to convince a jury that: (1) the defendant took an adverse employment action against the plaintiff; and (2) a protected characteristic was a motivating factor for the defendant's adverse employment action." *Quigg*, 814 F.3d at 1239 (citation modified).

A plaintiff may show that a protected characteristic was a motivating factor for the adverse employment action by presenting "a convincing mosaic of circumstantial evidence that would allow a jury to infer intentional discrimination by the decisionmaker," *Smith v. Lockheed-Martin Corp.*, 644 F.3d 1321, 1328 (11th Cir. 2011), which is just a "more poetic" way of saying "enough evidence to allow a jury to infer intentional discrimination" under rule 56, *McCreight*, 117 F.4th at 1335 (citation modified). "A convincing mosaic may be shown by evidence that demonstrates" (1) "suspicious timing, ambiguous statements, and other bits and pieces from which an inference of discriminatory intent might be drawn," (2) "systematically better treatment of similarly situated employees," and (3) pretext. *Lewis v. City of Union City (Lewis II)*, 934 F.3d 1169, 1185 (11th Cir. 2019) (citation modified). If the circumstantial evidence "raises a reasonable inference that the employer discriminated against the plaintiff, summary judgment is improper." *Smith*, 644 F.3d at 1328.

Sex Discrimination Claim

Here, the district court did not err in granting summary judgment to the Board on Fennel’s sex discrimination claim because Fennel’s five categories of evidence—whether alone or together—did not raise a reasonable inference that her sex was a motivating factor in her termination. First, Fennel contends that the Board’s conclusion that she had placed herself in a “compromised position” “was motivated by gender bias” simply because she was a woman standing alone in a room with Bell. Her job “required meeting behind closed doors with [Bell] to discuss confidential issues such as student discipline.” Fennel is right that she was required to work with Bell on discipline issues, sometimes behind closed doors. But the summary judgment evidence showed that the Board fired her because the incidents were not “completely professional,” as Fennel insists.

Goodin reviewed hours of surveillance footage showing that Fennel and Bell often spent “extended periods”—usually thirty minutes to an hour or more—behind closed doors, far more than Eutsey and Bell spent working on discipline issues together. Then, there were the two incidents.

In August 2020, Kaitlyn Shumate saw Fennel and Bell jumping away from each other and straightening their clothes after being spotted alone in the teachers’ lounge, making Shumate “uncomfortable” because she “should not have had to be put in a situation that was so unprofessional.” And in March 2022, Laura Dennis “saw [Fennel and Bell] up against each other on a desk in a very

uncomfortable situation for [her] to have seen in a workplace,” leaving her “shaking” after the incident. Fennel’s assertion that she was fired simply because the Board was “concern[ed] about a male and a female administrator spending time together alone behind closed doors” was not supported by the evidence.

Fennel responds that a question one of the Board members asked Bell during his termination hearing—“[c]an you explain when it would be appropriate for two administrators to be together behind closed doors, a male and a female”—showed that the Board assumed she was engaged in inappropriate behavior because she was a woman alone in a room with a man. But the question was asked at Bell’s termination hearing, more than a month after Fennel’s termination, so there was no indication that discrimination played any part in Fennel’s termination.

Next, Fennel contends that the Board treated Bell and two other male employees more favorably than her because they were not fired after receiving sexual harassment complaints. But Bell and the other male employees were not relevant comparators because they were not “similarly situated in all material respects.” *See Lewis I*, 918 F.3d at 1218. Their prior misconduct—inappropriate comments and harassing behavior in public—was not the “same basic conduct” for which Fennel was terminated—being found in an inappropriate and compromising position with another school administrator behind closed doors during school hours and failing to respond to an ongoing student emergency. *See id.* And to the extent Bell engaged in the “same basic conduct” as Fennel in the

March 2022 incident, he received the same punishment, so the Board did not treat him better than Fennel. *See id.*

Fennel also asserts that the Board’s “lenient treatment of” Bell’s sexually harassing conduct “is also independently relevant for the non-comparator purpose of showing discriminatory intent based on Slater’s tolerance of sexual harassment in the workplace.” But the Board was unaware of the previous complaints against Bell because Slater hadn’t reported the complaints to the Board. And once Goodin became aware of these accusations, she was unable to escalate them to the Board because Bell’s accusers did not want to pursue their claims and demanded that Goodin not share their statements with the Board. In short, there’s no evidence that the Board knew of (much less tolerated) Bell’s sexual harassment and therefore no discriminatory intent that can be imputed to the Board based on Slater’s failure to report it.

To get around this problem, Fennel argues, for the first time on appeal, that “Slater used Goodin and the Board as a ‘cat’s paw’ to cause [her] termination, treating her more harshly than Bell.” But there’s no evidence that the Board played paw to Principal Slater’s cat. Principal Slater made no recommendation to the Board to fire Fennel. The Board’s decision to fire Fennel was based on Superintendent Dennis’s recommendation, which was in turn based on Goodin’s independent investigation into the incident. Because the Board “independently investigated allegations of misconduct,” we cannot impute Principal Slater’s discriminatory animus (assuming there was any) to the Board. *See Crawford v. Carroll*, 529

25-13896

Opinion of the Court

13

F.3d 961, 979 n.21 (11th Cir. 2008) (“Under a ‘cat’s paw’ theory, a non-decisionmaking employee’s discriminatory animus may be imputed to a neutral decisionmaker when the decisionmaker has not independently investigated allegations of misconduct.”); *see also Stimpson v. City of Tuscaloosa*, 186 F.3d 1328, 1332 (11th Cir. 1999) (per curiam) (noting that the “cat’s paw” theory “provides that causation may be established if the plaintiff shows that the decisionmaker followed the biased recommendation” of an employee rather than “independently” reaching the same decision).

Finally, Fennel maintains that the Board’s reasons for firing her were pretextual because Principal Slater’s memorandum recounting the August 2021 incident was “a compilation of alleged ‘notes’ that d[id] not presently exist, . . . post-dated by Slater to create the false appearance that [Fennel] had been warned in 2021.” But the district court correctly concluded that the memorandum failed to raise an inference that the Board intentionally discriminated against her because of her sex.

Fennel was fired “based on evidence and results of the investigation supporting the conclusion that Fennel and [Bell] were engaged in intimate, inappropriate behavior on school grounds during school hours on March 8, 2022[,] at Wetumpka High School.” There’s no evidence that the memo had anything to do with it. Superintendent Dennis confirmed the reason for firing Fennel was because of the “compromised position [she and Bell] put themselves in on that day at Wetumpka High School.” He came to that con-

clusion after “meeting with [Goodin] and reviewing all the information that she had compiled in her investigation,” including Laura Dennis’s testimony and the video of the March 2022 incident. There was no indication that the Board’s decision relied on Slater’s memorandum. Because the memorandum was “unrelated to the decisional process at issue,” Fennel cannot show that the Board’s reasons were pretextual. *See Steger v. Gen. Elec. Co.*, 318 F.3d 1066, 1079 (11th Cir. 2003) (quotation omitted).

Fennel therefore failed to present sufficient evidence for a reasonable jury to conclude that her sex was a motivating factor in her termination.

Associational Race Discrimination Claim

The same goes for Fennel’s associational race discrimination claim. To establish an associational race discrimination claim under Title VII, a plaintiff must show that an employer took an adverse action against her because of her interracial association. *Parr v. Woodmen of the World Life Ins. Co.*, 791 F.2d 888, 892 (11th Cir. 1986) (“Where a plaintiff claims discrimination based upon an interracial marriage or association, he alleges, by definition, that he has been discriminated against because of *his* race.”). Fennel asserts that the district court erred in dismissing her associational race discrimination claim because “a reasonable jury could further infer intent to discriminate against [her] because of her race within the context of her working relationship with Bell.”

First, Fennel argues that the Board provided preferential treatment to the other assistant principal, Eutsey, a black woman,

for similar conduct with Bell. But the Board never received a complaint about (and was never aware of) Bell's interactions with Eutsey, so there's no way it could have provided preferential treatment to Eutsey on that basis. And even if the Board were aware of Bell's interactions with Eutsey, Eutsey was not "similarly situated in all material respects" to Fennel because Eutsey's alleged behavior—rubbing Bell's back and holding hands in public—was not the "same basic conduct" for which Fennel was terminated—being caught in compromised positions behind closed doors and failing to respond to a student emergency. *See Lewis I*, 918 F.3d at 1220.

Second, Fennel contends that Slater had a "clear incentive to terminate a white employee at the same time he terminated Bell" to avoid a claim of race discrimination because Bell had blamed earlier sexual harassment allegations on racism. But this contention is pure speculation. *See Cordoba v. Dillard's, Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005) ("[U]nsupported speculation does not meet a party's burden of producing some defense to a summary judgment motion. Speculation does not create a genuine issue of fact; instead, it creates a false issue, the demolition of which is a primary goal of summary judgment." (citation modified)). As the district court noted, the fact that Fennel and Bell were terminated at the same time is unsurprising "given that Fennel and Bell were both involved in the same incident the same day." And even if Principal Slater had an improper motive, he did not terminate Fennel or even recommend her termination. That was up to Goodin (who conducted an independent investigation), Superintendent Dennis

(who recommended Fennel’s termination based on that investigation), and the Board (which terminated Fennel based on Superintendent Dennis’s recommendation).¹ Fennel therefore fails to present sufficient evidence for a reasonable jury to conclude that her race by association was a motivating factor in her termination.

AFFIRMED.

¹ Fennel also maintains that the evidence she cited to support her sex discrimination claim “support[ed] an inference of race discrimination based on Slater’s more favorable treatment of Bell and his fabrication of a memo to falsely impute culpability on Plaintiff.” But this argument fails for the same reasons as her sex discrimination claim.