APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS

REHEARING ORDER

MEMORANDUM OPINION AND JUDGMENT, DISTRICT OF COLUMBIA COURT OF APPEALS (JANUARY 6, 2025)

DISTRICT OF COLUMBIA COURT OF APPEALS

HAILEMICHAEL SEYOUM & DARYAO KHATRI,

Appellants,

v.

BOARD OF TRUSTEES OF THE UNIVERSITY OF THE DISTRICT OF COLUMBIA,

Appellee.

Nos. 23-CV-0874 & 23-CV-0875

Appeals from the Superior Court of the District of Columbia (2018-CA-004939-B & 2018-CA-004941-B) (Hon. Juliet JJ. McKenna, Motions Judge)

Submitted December 18, 2024 Decided January 6, 2025

Before: BLACKBURNE-RIGSBY, Chief Judge., SHANKER, Associate Judge., and THOMPSON, Senior Judge.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM:

These consolidated appeals, arising from an employment dispute between appellants Dr. Hailemichael

Seyoum and Dr. Daryao S. Khatri and appellee the Board of Trustees of the University of the District of Columbia ("UDC"), represent the parties' third trip to this court. In 2020, the Superior Court granted summary judgment in favor of UDC based on its determination that Drs. Seyoum and Khatri had failed to demonstrate that the university's stated justification for terminating their tenured positions was a pretext for an age-discriminatory employment action in violation of the D.C. Human Rights Act ("DCHRA"). We affirmed. *Seyoum v. Board of Trustees of the University of the District of Columbia,* Nos. 20-CV-240 & 20-CV-314, Mem. Op. & J. (D.C. Feb. 7, 2023). The trial court then denied appellants' motion for reconsideration of its summary judgment order; we affirmed the court's denial of the motion under Super. Ct. Civ. R. 60(d)(2) but remanded for further consideration of the motion under Rule 60(b)(6). *Seyoum et al. v. Board of Trustees of the University of the District of Columbia,* Nos. 22-CV-0077 & 22-CV-0078, Mem. Op. & J. (D.C. Aug. 30, 2023). On remand, Drs. Seyoum and Khatri also filed in the trial court a motion to file newly discovered documents. The trial court thereafter denied both that motion and the motion for reconsideration under Rule 60(b)(6). Drs. Seyoum and Khatri, both proceeding pro se, again appeal. Seeing no error in the trial court's decisions to deny both motions, we affirm.

I. Facts and Procedural History

The factual background of this matter is set forth at length in this court's Memorandum Opinion and Judgment affirming the grant of summary judgment for UDC. *Seyoum v. Board of Trustees of the University of the District of Columbia,* Nos. 20-CV-240 & 20-CV-314, Mem. Op. & J. (D.C. Feb. 7, 2023). Briefly, Drs.

Seyoum and Khatri were tenured physics professors at the university. In 2014, following a budget act enacted by the Council of the District of Columbia, UDC decided to eliminate the degree-granting physics program, citing costs and low student demand for upper-level physics classes. The university then approved a resolution for a reduction in force ("RIF") to terminate seventeen of its faculty, including Drs. Seyoum and Khatri, who were then aged 63 and 69, respectively. Drs. Seyoum and Khatri filed age discrimination suits against UDC in Superior Court (which the court consolidated), alleging that UDC had violated the DCHRA, which prohibits employers from discharging employees "wholly or partially for a discriminatory reason based upon the[ir] actual or perceived . . . age." D.C. Code § 2-1402.11(a)(1)(A). Rejecting the professors' arguments that UDC's stated justification was pretextual, the trial court granted summary judgment in favor of UDC, and we thereafter affirmed. The trial court's grant of summary judgment is not before us here.

Twenty-one months after the summary judgment ruling (and while their appeal from that ruling was pending), Drs. Seyoum and Khatri moved in the trial court under Rules 60(b)(6) and 60(d)(2) for reconsideration of the summary judgment ruling. *See* Super. Ct. Civ. R. 60(b)(6), 60(c)(1) (court may relieve a party from a final judgment for "any other reason that justifies relief"; such a motion must be made "within a reasonable time"); *id.* R. 60(d)(2) (court may set aside a judgment for "fraud on the court"). The trial court denied relief under Rule 60(d)(2) on the ground that the professors had failed to provide evidence of fraud on the court and denied relief under Rule 60(b)(6) on the ground that the motion had not been filed within a

"reasonable time." We affirmed the Rule 60(d)(2) aspect of the denial but remanded with respect to Rule 60(b)(6) for further consideration of the professors' explanation for the delay in filing the motion.

In the order before us now, on remand the trial court accepted the professors' justification for the twenty-one-month delay in seeking reconsideration (*i.e.*, that the delay was caused by UDC's almost fifteen-month delay in responding to their post-judgment D.C. Freedom of Information Act ("FOIA") records request, which produced what they alleged was evidence of false statements by UDC and its counsel). It concluded on the merits, however, that the professors had failed to provide a sufficient "other reason" justifying relief from the grant of summary judgment for UDC. The court observed that Drs. Seyoum and Khatri had simply reiterated their fraud-on-the-court arguments and had provided no alternative grounds for relief. The court stated that the professors had "failed to provide evidence of false statements, deceit, or other misconduct" by UDC and had offered only speculation to undercut the "stark" evidence supporting UDC's justification for terminating them. The court also denied the professors' motion to file newly discovered documents allegedly revealing falsehoods in UDC's filings, concluding that the evidence in the documents was immaterial or unpersuasive.

Drs. Seyoum and Khatri timely appealed.

II. Analysis

Rules 60(b)(1)-(5) allow a trial court to relieve a party from a final judgment for certain enumerated reasons and Rule 60(b)(6) allows the court to provide such relief based on "any other reason that justifies

relief." Super. Ct. Civ. R. 60(b). "The standard under Rule 60(b)(6) is a stringent one, requiring a showing of unusual or exceptional circumstances." *Puckrein v. Jenkins*, 884 A.2d 46, 60 (D.C. 2005); *see Hudson v. Shapiro*, 917 A.2d 77, 85 (D.C. 2007) ("Rule 60(b)(6) is properly invoked in extraordinary circumstances or where a judgment may work an extreme and undue hardship. . . ." (quoting *Miranda v. Contreras*, 754 A.2d 277, 281 (D.C. 2000))). "We review the denial of a Rule 60(b) motion for abuse of discretion." *Rayner v. Yale Steam Laundry Condo. Ass'n*, 289 A.3d 387, 403 (D.C. 2023).

We perceive no abuse of discretion in the trial court's determination that Drs. Seyoum and Khatri failed to present unusual or exceptional circumstances supporting relief from the court's summary judgment ruling. As the trial court observed, the professors raised the same bases for relief under Rules 60(b)(6) and 60(d)(2)—namely, that they had new evidence of (1) the absence of FOIA records substantially supporting the testimony of two UDC officials, (2) tension between testimony describing "shallow enrollment" in the physics degree program and a "full complement of students" in physics courses, (3) incongruity between the trial court's parenthetical description of a case as involving a "budgetary reduction-in-force" and this court's prior statement that "no one [in a different case that involved these litigants] has argued that the challenged RIF was a budgetary RIF," and (4) a disagreement with UDC's interpretation of a D.C.M.R. provision. We held in our previous Memorandum Opinion and Judgment that this evidence was "entirely speculative." To be sure, we were applying the high standard for demonstrating a fraud on the court under Rule 60(d)(2) and

we do not suggest that the standards under Rules 60(d)(2) and 60(b)(6) are identical, but, at least on these facts, we fail to see how the trial court abused its discretion in finding "entirely speculative" evidence insufficient to meet the "stringent" standard for Rule 60(b)(6) relief. *See Puckrein*, 884 A.2d at 60.

We also defer to the trial court's determination that the evidence cited by Drs. Seyoum and Khatri was not material or persuasive so as to undermine the court's summary judgment ruling. *See Clemencia v. Mitchell*, 956 A.2d 76, 79 (D.C. 2008) (recognizing "that the trial judge is 'in the best position to evaluate the immediate circumstances of the case and the credibility of the parties' as they bear on the movant's entitlement to relief under Rule 60(b)" (quoting *Firestone v. Harris*, 414 A.2d 526, 528 (D.C. 1980))).

Moreover, the grounds offered by the professors for Rule 60(b)(6) relief appear to fall more appropriately under Rule 60(b)(2) ("newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)") or Rule 60(b)(3) ("fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party"). But the "catchall" Rule 60(b)(6) provision "requires asserting some 'other reason' aside from the grounds for relief provided elsewhere in Rule 60(b)." *Reshard v. Stevenson*, 270 A.3d 274, 281 n.10 (D.C. 2022).

Finally, again deferring to the trial court's determination that the documents at issue were immaterial or unpersuasive, we likewise discern no abuse of discretion in the trial court's denial of the professors' motion to file newly discovered documents.

III. Conclusion

For the foregoing reasons, we affirm the order of the trial court.

So ordered.

ENTERED BY DIRECTION OF THE COURT:

/s/ Julio A. Castillo
Clerk of the Court

Copies emailed to:

Honorable Juliet J. McKenna
Director, Civil Division
Copies e-served to:
Daryao S. Khatri
Anessa Abrams, Esquire
Bethany Patrice Clair, Esquire

MEMORANDUM OPINION AND JUDGMENT, DISTRICT OF COLUMBIA COURT OF APPEALS (AUGUST 30, 2023)

DISTRICT OF COLUMBIA COURT OF APPEALS

HAILEMICHAEL SEYOUM, ET AL.,

Appellants,

v.

BOARD OF TRUSTEES OF THE UNIVERSITY OF THE DISTRICT OF COLUMBIA,

Appellee.

Nos. 22-CV-0077 & 22-CV-0078

Appeals from the Superior Court of the District of Columbia (2018-CA-004939-B & 2018-CA-004941-B) (Hon. Jason Park, Motion Judge)

Submitted April 07, 2023 Decided August 30, 2023

Before: BLACKBURNE-RIGSBY, Chief Judge., DEAHL, Associate Judge., and STEADMAN, Senior Judge.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM:

This appeal is the latest in an employment dispute between appellants, Dr. Hailemichael Seyoum and Dr.

Daryao S. Khatri, and appellee, the Board of Trustees of the University of the District of Columbia (UDC). Appellants ask this court to reverse the Superior Court's denial of a motion for reconsideration (the Motion for Reconsideration) of a prior order granting summary judgment to appellee (the Summary Judgment Order) in the parties' underlying dispute.[1] Appellants' Motion for Reconsideration was filed under Super Ct. Civ. R. 60(b)(6) and 60(d)(2). We affirm the trial court's denial of the motion under Rule 60(d)(2) but remand the case for further trial court consideration of the motion under Rule 60(b)(6).

I. Standards and Analysis

"We review the denial of a Rule 60(b) motion for abuse of discretion." *Rayner v. Yale Steam Laundry Condo. Ass'n*, 289 A.3d 387, 403 (D.C. 2023). This standard applies to our review of a trial court's assessment of whether a movant acted within a "reasonable time." *Tribble v. Am. Mut. Ins. Co. of Boston*, 277 A.2d 659, 661 (D.C. 1971) ("see[ing] no error in the trial court's conclusion that [a Rule 60(b)(6)] motion was untimely since it was not filed within a reasonable time, having been filed more than ten months after entry of judgment" and "no basis to conclude that the trial judge abused his discretion in denying relief from . . . judg-

---

[1] We affirmed the grant of summary judgment in *Seyoum v. Board of Trustees of the University of the District of Columbia*, Nos. 20-CV-240 & 20-CV-314, Mem. Op. & J. (D.C. Feb. 7, 2023) (affirming the trial court's grant of summary judgment in favor of UDC based on its determination that appellants had failed to demonstrate that the university's stated justification for terminating their tenured positions was a pretext for an age-discriminatory employment action in violation of the D.C. Human Rights Act).

ment"). Such "appellate review is deferential and limited." *Jones v. Hersh*, 845 A.2d 541, 545 (D.C. 2004). Although Rule 60's reference to "fraud on the court" was moved from subsection (b) to subsection (d)(2), it has been "well settled" since before that time "that the grant or denial of [a motion to vacate] is within the discretion of the trial court," *Joseph v. Parekh*, 351 A.2d 204, 205 (D.C. 1976), and we have never articulated a distinct standard for claims of fraud on the court.

A. Rule 60(b)(6)

Subsections (1) through (5) of Rule 60(b) authorize a trial court to grant relief from an order, judgment, or proceeding for particular enumerated reasons and subsection (6) serves as a catch-all for "any other reason that justifies relief." D.C. Super. Ct. Civ. R. 60(b)(6). "'Rule 60(b)(6) is properly invoked in extraordinary circumstances or where a judgment may work an extreme and undue hardship,' but is 'not narrowly defined.'" *Miranda v. Contreras*, 754 A.2d 277, 280 (D.C. 2000) (quoting *Starling v. Jephunneh Lawrence & Assocs.*, 495 A.2d 1157, 1161 (D.C. 1985)). A motion under Rule 60(b)(6) "must be made within a reasonable time." D.C. Super. Ct. Civ. R. 60(c)(1). "What constitutes a reasonable time under the rule depends upon the circumstances of each case." *Puckrein v. Jenkins*, 884 A.2d 46, 57-58 (D.C. 2005) (citing *Profitt v. Smith*, 513 A.2d 216, 218 (D.C. 1986)). "[A] necessary prerequisite to relief under Rule 60(b)(6) is that 'circumstances beyond the [moving party's] control prevented timely action to protect its interests.'" *Tennille v. Tennille*, 791 A.2d 79, 83 (D.C. 2002) (quoting *Cox v. Cox*, 707 A.2d 1297, 1299 (D.C. 1998)).

Twenty-one months passed between the grant of summary judgment on February 26, 2020 and the filing of the Motion for Reconsideration on November 17, 2021, plainly an unreasonable time absent any satisfactory explanation for the delay. *See, e.g.*, *Profitt*, 513 A.2d at 218 (motion "nearly a year after the entry of summary judgment" not reasonably timely, lacking sufficient justification). Coupled with references to the COVID-19 pandemic, appellants principally argue that the delay was caused by appellee's almost fifteen-month delay in responding to their post-judgment D.C. Freedom of Information Act (FOIA) records request, which produced what they alleged was evidence of false statements by appellee and its counsel.

However, the trial court never considered this explanation in denying the motion under Rule 60(b)(6) as not filed within a "reasonable time." The issue of the motion's timeliness was first presented in appellee's opposition to the motion. In response, appellants attempted to set forth their explanation in filing a reply to the opposition. The trial court declined to consider this reply, which among other matters contained an attempted explanation. Its order cited D.C. Super. Ct. Civ. R. 12-I(g) (2021) in stating that it would not consider the reply. The version of the rule in force at the time stated that a party may file a reply in support of "only" certain types of motions, not including motions under Rule 60. (Just four months later, that rule was amended to allow replies to be filed for all motions, including those under Rule 60.)[2] Hence, the

---

[2] On April 25, 2022, D.C. Super. Ct. Civ. R. 12-I(g) was amended to permit movants to file a reply brief in support of any motion. The previous version of the rule, in force when appellants filed their trial-level reply on December 6, 2021, permitted replies

trial court in its order stated flatly that appellants "present[ed] no evidence that [their] delay was caused by circumstances beyond their control or that they could not have taken earlier action."

We do not think that matters can justly be left in such a posture. In considering whether the trial court has properly exercised its discretion, we consider, among other matters, "whether the [trial court] failed to consider a relevant factor." *Johnson v. United States*, 398 A.2d 354, 365 (D.C. 1979) (citation omitted); *see also Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1082 (D.C. 2016) (finding an abuse of discretion where trial court adopted proposed order that "on its face, fail[ed] to consider relevant evidence and fail[ed] to adequately explain its findings").

Here, as framed by the trial court, the critical issue was whether there was any explanation that might justify the delay. The timing of a Rule 60(b) motion, set by court rule, is not a jurisdictional issue and it is not apparent that the issue should be addressed in the original motion itself.[3] The timing of the motion did not become a contested issue until appellee's opposition was filed. If nothing else, the existence of the COVID-19 crisis cautioned application of the timeliness provision. Likewise, the absence of any explanation for the delay by appellants was a plain gap in the record before the trial court, warranting

---

"only" in support of "motions for summary judgment," "motions to dismiss for failure to state a claim," "motions to strike expert testimony," and "motions for judgment on the pleadings." D.C. Super. Ct. Civ. R. 12-I(g) (2021).

[3] *Cf. Deloatch v. Sessoms-Deloatch*, 229 A.3d 486, 487, 493 (D.C. 2020).

further investigation. And the attempted filing of the reply in response to the opposition specifically raising the issue was a signal that appellants, pro se, albeit not entirely inexperienced, indeed had something to say on the issue in some form or manner, if not in the barred reply. It is therefore our judgment that in the overall circumstances here, the order denying the motion under Rule 60(b)(6) should be vacated and the case remanded for further consideration by the trial court. *See* D.C. Code § 17-306 ("The District of Columbia Court of Appeals may affirm, modify, vacate, set aside or reverse any order or judgment of a court . . . and may remand the cause and direct the entry of such appropriate order, judgment, or decision, or require such further proceedings to be had, as is just in the circumstances.").

B. Rule 60(d)(2)

The trial court did not abuse its discretion in determining that appellants had failed to provide evidence of fraud on the court. As contemplated by Rule 60, the phrase "fraud on the court" is "narrowly construed and 'confined to the most egregious cases, such as bribery of a judge or juror, or improper influence exerted on the court by an attorney, in which the integrity of the court and its ability to function impartially is directly impinged.'" *P'ship Placements, Inc. v. Landmark Ins. Co.*, 722 A.2d 837, 844 (D.C. 1998) (quoting *Great Coastal Express, Inc. v. Int'l Bhd. of Teamsters*, 675 F.2d 1349, 1356 (4th Cir. 1982)). The rule contemplates "a deliberately planned and carefully executed scheme to 'defile the court,'" rather than simple perjury, for which Rule 60 separately authorizes relief. *Id.* at 845 (quoting *Transaero, Inc. v. La Fuerza Area Boliviana*, 24 F.3d 457, 460 (2d Cir.

1994)). This action "is available 'only to prevent a grave miscarriage of justice'" and so "[t]he party seeking relief must show that it would be 'manifestly unconscionable' to allow the judgment to stand." *Olivarius v. Stanley J. Sarnoff Endowment for Cardiovascular Sci., Inc.*, 858 A.2d 457, 466 (D.C. 2004) (first quoting *United States v. Beggerly*, 524 U.S. 38, 47 (1998); and then quoting *Pickford v. Talbott*, 225 U.S. 651, 657 (1912)). Appellants do not meet this standard.

Appellants take direct aim at appellee's counsel, and indeed, attorney involvement "may transform a 'garden-variety' fraud claim into a claim of fraud upon the court." *Id.* at 466 n.4. But such a "serious charge" must be made only with "substantial support." *Id.* (quoting *H.K. Porter Co. v. Goodyear Tire & Rubber Co.*, 536 F.2d 1115, 1118-19 (6th Cir. 1976)). Here, as appellants' "mere suggestion of attorney involvement . . . is neither fact-specific nor substantiated—it is really no more than hypothesis or speculation—it does not suffice to make [their] claim one of fraud upon the court." *Id.*

The evidence that appellants offer in support of their falsity claims is entirely speculative. In broad strokes, that evidence consists of: the absence of FOIA records substantially supporting the testimony of two UDC officials, tension between testimony describing "shallow enrollment" in the physics degree program and a "full complement of students" in physics courses, incongruity between the trial court's parenthetical description of a case as involving a "budgetary reduction-in-force" and this court's prior statement that "no one [in a different case that involved these litigants] has argued that the challenged RIF was a budgetary RIF,"

and a disagreement with appellee's interpretation of a D.C.M.R. provision. None of these indicates falsity or misconduct on the part of appellee or gives the court reason to conclude that any potential falsity was so egregious as to constitute a fraud on the court. The trial court's determination that these assertions did not indicate a fraud on the court was not an abuse of discretion.

II. Conclusion

For the foregoing reasons, we affirm the order of the Superior Court denying appellants' Motion for Reconsideration made under Rule 60(d)(2) and remand the case for further consideration by the trial court of the Motion for Reconsideration under Rule 60(b)(6).

So ordered.

ENTERED BY DIRECTION
OF THE COURT:

/s/ Julio A. Castillo
Clerk of the Court

Copies emailed to:

Honorable Jason Park
Director of the Civil Division QMU

Copies e-served to:

Hailemichael Seyoum
Daryao S. Khatri
Anessa Abrams, Esquire

MEMORANDUM OPINION AND JUDGMENT, DISTRICT OF COLUMBIA COURT OF APPEALS (FEBRUARY 7, 2023)

DISTRICT OF COLUMBIA COURT OF APPEALS

HAILEMICHAEL SEYOUM, ET AL.,

Appellants,

v.

BOARD OF TRUSTEES OF THE UNIVERSITY OF THE DISTRICT OF COLUMBIA,

Appellee.

Nos. 20-CV-0240 & 20-CV-0314

Appeals from the Superior Court of the District of Columbia (2018-CA-004939-B & 2018-CA-004941-B) (Hon. Jason Park, Motion Judge)

Submitted April 07, 2023 Decided August 30, 2023

Before: EASTERLY and MCLEESE, Associate Judges., and GLICKMAN, Senior Judge.*

MEMORANDUM OPINION AND JUDGMENT

* Judge Glickman was an Associate Judge of this court at the time of oral argument. He began his service as a Senior Judge on December 21, 2022.

PER CURIAM:

Drs. Hailemichael Seyoum and Daryao Khatri sued the Board of Trustees of the University of the District of Columbia for age discrimination under the D.C. Human Rights Act ("DCHRA"), D.C. Code § 2-1402.11(a)(1)(A), after they were terminated from their full-time jobs as physics professors at UDC. Their pro se opposition to UDC's summary judgment motion was unsuccessful, and in this consolidated pro se appeal they challenge the Superior Court's ruling. We affirm.[1]

I. Facts and Procedural History

Dr. Khatri became a full-time physics professor at UDC in 1981; Dr. Seyoum became a full-time physics professor at UDC in 2006. At some point thereafter, both acquired tenure. In 2012, the Council of the District of Columbia enacted the Fiscal Year 2013 Budget Support Act of 2012 ("Budget Act"), which included the University of the District of Columbia Right-Sizing Plan Act of 2012. D.C. Law 19-

---

[1] UDC moves to strike portions of the Appendix filed by Drs. Seyoum and Khatri because of their failure to comply with D.C. App. R. 10 and D.C. App. R. 30. Our review is limited to the record established in the Superior Court. *See* D.C. App. R. 10. We thus disregard any non-record materials included in the Appendix, which UDC identified as pages 3, 99-105, and 110-127. UDC also raises an objection under D.C. App. R. 30(a)(2) to the inclusion of memoranda of law that "were filed in the Superior Court but are not the subject of this appeal" in the appendix because it did not consent to their inclusion. But as D.C. App. R. 30(a)(2) goes on to provide, we may rely on all "[p]arts of the record" regardless of their inclusion in the Appendix, so these materials are properly within our consideration. *See* D.C. App. R. 10(a)(1) (providing that "the original papers and exhibits filed in the Superior Court" are part of the record on appeal).

168, 59 D.C. Reg. 8025 (Sept. 20, 2012), §§ 4031-32. The Budget Act required UDC to transmit to the Council a "right-sizing plan," approved by the Board of Trustees, to "bring the University's costs, staff, and faculty size in line with other comparable public universities." *Id.* § 4032(a). UDC was directed to "identif[y] under-enrolled and under-performing programs" and provide a "timeline and plan for improving or eliminating" them, as well as a "staff and faculty reduction strategy and timeline." *Id.* § 4032(a)(3), (7). After a series of transcribed meetings throughout 2013, the university's Board of Trustees decided in 2014 to eliminate a number of UDC's degree-granting programs, including physics. At the meetings, the physics degree program had been identified as "ripe for elimination," based in part on testimony from the Dean of the College of Arts and Sciences and the interim Provost that, even though the faculty was "very strong," physics as a major had "very weak numbers"; only a handful of students had graduated with a degree in physics in recent years.[2] In other words, the demand for physics

---

[2] Earlier in 2013, the interim Provost had briefed the Board about the need for UDC to make significant changes. As reflected in a transcript from that meeting, the interim Provost told the Board that:

> [a]t a retreat last week of the 2020 Strategic Planning Committee, both the council chair and the Deputy Secretary for Education made it clear that the University needed to delete courses that had shallow enrollment and we needed very much to live within our current budget because the likelihood of additional appropriations was not great, especially if we continued to do the same thing in the same kind of way.

majors in the job market was not reflected in student demand for the degree, and as a consequence professors were teaching upper-level classes (intended for those pursuing physics degrees) with only one or two students. Apart from being informed of the lack of a critical mass of "other students, colleagues, to actually interact with," the Board heard testimony that physics majors needed laboratory facilities and research experience that would require significant financial investment to provide. Even as the Dean and interim Provost discussed eliminating the physics degree program with the Board, they acknowledged that physics classes needed to be taught "to support the other sciences . . . and engineering" and committed to continuing to offer "foundational" physics classes.

UDC subsequently approved a resolution for a reduction in force ("RIF") to terminate 17 of its faculty per its Sixth Master Agreement with the university's faculty union. The resolution explained that, under the Master Agreement, UDC was authorized to "relieve employees of duties because of lack of work or other legitimate reasons," their tenure status notwithstanding. The resolution set forth two separate reasons for terminating the full-time jobs of certain faculty. First, the resolution relied on the elimination of a total of 17 degree-granting programs, including physics, explaining that without an academic program there was "no need for continuing full-time faculty appointments." Second, the resolution noted that "certain faculty members . . . [did] not hold the qualifying degree to teach

---

The interim Provost further stated that UDC's accreditors had similarly expressed concern about a "too-broad work plan, or a mission that wasn't well defined, and programs that weren't really targeted to the mission."

in the academic program in which they [were] assigned," and that UDC also had "no need" to continue those full-time faculty appointments. The Board unanimously approved the RIF resolution (with one abstention) after extensive discussion, during which it was again specifically acknowledged that the professors in the physics department were of the highest caliber, but the "cost savings" from eliminating two full-time positions in physics and relying instead on adjunct instructors were needed to "invest in the curriculum strengthening and the faculty strengthening in areas where [UDC would be] maintaining a strong commitment."

Drs. Seyoum and Khatri, then aged 63 and 69 respectively, were terminated in the RIF, along with 15 other faculty who were either likewise associated with eliminated degree programs or who were found to be lacking in credentials. At the time of their May 2015 termination, Drs. Seyoum and Khatri were the only full-time faculty teaching physics. A small subset of the RIF'ed faculty members were later rehired into different full-time positions at the university. Drs. Seyoum and Khatri were not part of this group and instead were rehired as adjunct faculty to teach lower-level physics courses. According to Drs. Seyoum and Khatri, at the time of their suit they were teaching approximately the same number of courses as they had when they were full-time faculty, but for a fraction of the compensation and without benefits.[3] As Drs. Seyoum and Khatri acknowledge, UDC has not hired any full-time physics faculty in the intervening years.

---

[3] At UDC, adjuncts are not required to engage in scholarship and community service as full-time faculty are.

After unsuccessfully pursuing internal and administrative remedies, Drs. Seyoum and Khatri each filed age discrimination suits against UDC in Superior Court, which the court then consolidated. The professors both alleged that UDC had violated the DCHRA,[4] which prohibits employers from discharging employees "wholly or partially for a discriminatory reason based upon the[ir] actual or perceived . . . age." D.C. Code § 2-1402.11(a)(1)(A). After the close of discovery, both the professors and UDC moved for summary judgment. In support of its summary judgment motion, UDC argued that the record compelled the conclusion that the terminations of Drs. Seyoum and Khatri were not based on their ages, but rather resulted from the university's broader right-sizing efforts. The professors raised a number of arguments in opposition, among them that the right-sizing did not require the elimination of the physics department or its associated full-time faculty positions. Rejecting the professors' arguments that UDC's stated justification was pretextual, the trial court granted summary judgment in favor of UDC. This appeal followed.

II. Analysis

We review grants of summary judgment de novo, affirming only if the moving party demonstrated that

---

[4] In their brief to this court, Drs. Seyoum and Khatri argue that they had also "claimed violations of Title VI[and the federal] ADEA," but appear to concede that they did not pursue these claims in Superior Court. This concession aligns with our understanding of the record. "In general, this court's review on appeal is limited to those issues that were properly preserved," *Pajic v. Foote Properties, LLC*, 72 A.3d 140, 145 (D.C. 2013), and we discern no reason to depart from that rule in this case.

there was no genuine issue of material fact and that it was entitled to judgment as a matter of law. *McFarland v. George Washington Univ.*, 935 A.2d 337, 345 (D.C. 2007). To defeat an adverse summary judgment motion, the nonmoving party "must [have] present[ed] evidence, via affidavit or otherwise, to demonstrate the existence of a genuine issue for trial." *Hollins v. Fed. Nat'l Mortg. Ass'n*, 760 A.2d 563, 570 (D.C. 2000) (internal quotation marks and brackets omitted). "Although we view the evidence in the light most favorable to the party opposing the motion, conclusory allegations by the nonmoving party are insufficient to establish a genuine issue of material fact or to defeat the entry of summary judgment." *McFarland*, 935 A.2d at 345 (internal quotation marks and brackets omitted).

When assessing a claim of discrimination under the DCHRA, "we employ the same three-part, burden-shifting test articulated by the Supreme Court for Title VII cases in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973)." *Id.* at 346 (parallel citations omitted). First, the employee must present evidence establishing a prima facie case of discrimination. *Blackman v. Visiting Nurses Ass'n*, 694 A.2d 865, 868 (D.C. 1997). Second, if the employee makes that showing, then "the burden shifts to the employer to articulate a legitimate basis for the employee's termination." *Id.* Third, if the employer does so, then "the burden shifts back to the employee to demonstrate that the employer's action was pretextual." *Id.* We have noted that, "[a]lthough the burden of production may shift [back and forth], the employee retains the ultimate burden of persua[sion]." *Id.*

The trial court employed this framework and concluded that Drs. Seyoum and Khatri failed at the

third step to produce evidence sufficient to create a genuine issue for trial regarding pretext. Drs. Seyoum and Khatri challenge the trial court's ruling on various substantive and procedural grounds but do not acknowledge this burden-shifting framework in their brief. Understanding they are proceeding pro se, we address their arguments in the context of our evaluation of the trial court's ruling under this well-established test.

A. Step 1: Prima Facie Case

To make a prima facie case of discrimination, Drs. Seyoum and Khatri were required to put forward some evidence that they were members of a protected class, they suffered adverse employment actions, and the circumstances of the adverse actions gave rise to an inference of discrimination. *Kumar v. D.C. Water & Sewer Auth.*, 25 A.3d 9, 17 (D.C. 2011). An inference of discrimination can arise from evidence that similarly situated employees who were not in the protected class were not similarly terminated. *Little v. D.C. Water & Sewer Auth.*, 91 A.3d 1020, 1027-28 (D.C. 2014). The trial court correctly concluded that Drs. Seyoum and Khatri established such a prima facie case. Both former professors were over 60 years old when fired,[5]

---

[5] Our case law does not clearly establish the age at which the protections of the DCHRA adhere. The statutory language suggests that anyone over the age of 18 may allege age discrimination, *see* D.C. Code § 2-1401.02(2) (defining "[a]ge" as "18 years of age or older"), while the comparable federal statute applies only to those over the age of 40, *see, e.g.*, *Hall v. Giant Food, Inc.*, 175 F.3d 1074, 1077 (D.C. Cir. 1999) (discussing the federal standard set out in the Age Discrimination in Employment Act of 1967 (ADEA)); *see also Wash. Convention Ctr. Auth. v. Johnson*, 953 A.2d 1064, 1073 n.7 (D.C. 2008) ("This court has looked to federal court decisions interpreting the federal [ADEA] when

and it is evident from the record that the RIF disproportionately affected older professors.

B. Step 2: Articulation of Legitimate Basis

The burden thus shifted to UDC to "rebut the presumption of discrimination" by producing evidence that it terminated Drs. Seyoum and Khatri for a legitimate, nondiscriminatory reason. *Atl. Richfield Co. v. D.C. Comm'n on Hum. Rts.*, 515 A.2d 1095, 1099 (D.C. 1986). To meet this burden, the employer does not have to persuade the court that it was "actually motivated by [its] proffered reasons. It is sufficient if the [employer]'s evidence raises a genuine issue of fact as to whether it discriminated against the [employee]." *Tex. Dep't of Cmty. Affs. v. Burdine*, 450 U.S. 248, 254 (1981) (internal citation omitted); *accord Hollins*, 760 A.2d at 571 (quoting *Burdine*).

UDC argued in the trial court and reiterates on appeal that Drs. Seyoum and Khatri were terminated in the RIF "due to the elimination of the B.S. degree in physics as a result of the right-sizing directive from the Council." Ample record evidence supports the university's argument. First, as set forth above, contemporaneous and uncontested evidence establishes that (1) the Council enacted legislation directing UDC to right-size by eliminating under-enrolled or underper-

---

evaluating age discrimination claims under the DCHRA."). We need not make an exact determination in this case, as the parties do not contest that both professors' ages sufficed to put them in the protected class. *See also Cain v. Reinoso*, 43 A.3d 302, 308 & n.18 (D.C. 2012) (accepting that the age of 62 met the DCHRA's prima facie requirement and declining to decide "whether age forty must always define the line distinguishing comparative age groups").

forming programs and reducing faculty; (2) in response and after extensive, transcribed discussion, UDC issued a resolution eliminating a number of degree-granting programs including the one in physics, which had one to two students in its upper-level courses, had only produced two graduates with degrees in physics between 2010 and 2014, and would have needed significant investment to bring its infrastructure up to par; (3) thereafter and again after extensive, transcribed discussion, UDC terminated the faculty affiliated with the eliminated degree-granting programs. *See supra* Part I. UDC informed the professors of this rationale in their termination letters and specifically cited to the Board resolutions that eliminated the physics degree program and the associated full-time faculty positions.

Moreover, subsequent deposition testimony from UDC officials aligns with the contemporaneous evidence of the rationale for the professors' termination from their full-time positions. In particular, the Dean explained that at least one full-time faculty member was required in degree-granting programs for accreditation purposes, so the elimination of the degree-granting program in physics allowed UDC to terminate all the full-time faculty teaching physics and realize substantial cost-savings by hiring adjuncts to teach the lower-level classes needed for other majors.[6] And, as noted above, there is no indication

---

[6] Leaving aside any potential infrastructural cost-savings from eliminating a degree-granting program in physics, it is evident that converting the full-time faculty teaching roles into ones filled by adjunct instructors alone yielded the university substantial savings: UDC's May 2014 internal fiscal impact statement estimated that the "savings from the salaries and benefits [then] being paid to the full-time faculty" that would be subject to the RIF would net the university approximately $1.6 million,

that UDC has hired any full-time physics faculty since the degree program's elimination; instead, it has relied entirely on adjuncts to teach physics classes.

Drs. Seyoum and Khatri appear to challenge the Superior Court's step-two analysis, arguing that the Superior Court incorrectly "assumed UDC's budget [w]as an issue" justifying their termination. They point to the Superior Court's observation, citing *Hill v. Board of Trustees of the University of the District of Columbia*, 245 F. Supp. 3d 214, 216 (D.D.C. 2017), that a "reduction-in-force for budgetary reasons may constitute a legitimate, non-discriminatory justification for an adverse employment action." They then assert that the District "did not claim a budgetary reason for the RIF" and also rely on a statement from this court in a different appeal discussing the same RIF that "no one has argued that the challenged RIF was a budgetary RIF." While it may be that the RIF in question was not technically a "budgetary" one, *see* 5-E D.C.M.R. § 1500.2 (2022) (listing different types of RIFs), there were obviously fiscal and budgetary concerns driving the Council's Budget Act directive to UDC to right-size, which resulted in the decision to eliminate the physics degree-granting program (among others), which in turn led to the RIF of the full-time faculty in departments that no longer had degree programs. Thus, whether or not the Superior Court correctly identified

---

and Drs. Seyoum and Khatri acknowledge their compensation as adjuncts has been dramatically less than what they were paid working full-time. Although not part of the summary judgment record, the arbitration opinion included in the larger record also notes the "significant differences in compensation and benefits between the University's full-time faculty members and its adjunct faculty members."

"budget as an issue" in UDC's specific decision to terminate the professors' full-time employment, the bottom line is that UDC proffered a sequence of non-discriminatory decision-making that led to their termination.

C. Step 3: Evidence of Pretext

Lastly, we consider whether Drs. Seyoum and Khatri produced evidence that this reason for their termination was pretextual, such that a genuine issue of material fact remained for a fact-finder to resolve at trial. An employee can demonstrate pretext "either directly by proving that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence." *Hollins*, 760 A.2d at 573 (internal quotation marks and brackets omitted). Traditionally, we have stated that the employee must provide some evidence "*both* that the [employer's stated] reason was false, *and* that discrimination was the real reason" in order to survive summary judgment. *See, e.g.*, *McFarland*, 935 A.2d at 355 (quoting *Hollins*, 760 A.2d at 571). We have more recently clarified that an employer's explanation need not be entirely false and that an employer may violate the DCHRA if it acted with just "one discriminatory motive, even if the employer had other lawful motives." *Rose v. United Gen. Contractors*, 285 A.3d 186, 197 (D.C. 2022). In the context of this case, Drs. Seyoum and Khatri therefore had the burden to put forth evidence that their ages were a "substantial factor" in their terminations, or in other words, a "significant motivating factor bringing about [UDC's] decision." *Id.* (internal quotation marks omitted).

Drs. Seyoum and Khatri marshal several arguments alleging pretext, generally aligning with the arguments they brought before the trial court. We consider each argument in turn and conclude that the professors failed to either sufficiently undermine the credibility of UDC's stated reason or produce sufficient evidence of a significant discriminatory motive.

1. "Insufficient Workload and Shallow Enrollment" as Pretext

Drs. Seyoum and Khatri argue that UDC failed to "prov[e] that there was insufficient course load and shallow enrollment in the physics program," thereby undermining its justification for the program's elimination (and therefore, their own termination). To the extent the professors assert UDC represented that an insufficient number of physics classes being taught justified termination of the physics degree program, the record does not support their argument. Rather, UDC consistently recognized there was high demand for the lower-level physics classes because they were required for other majors.[7] The university determined, however, that it could meet this demand with adjunct faculty instead of full-time professors. Specifically, if UDC no longer had a degree-granting program in physics, UDC was no longer obligated to employ any full-time faculty in the physics program. To this latter point, Drs. Seyoum and Khatri raise no dispute of fact.[8] Nor do they contest that, per the Master

[7] UDC made reference to course loads when discussing faculty members terminated for lack of credentials, which does not include Drs. Seyoum and Khatri.

[8] The professors argue that "the label 'degree-granting program in physics' was concocted by UDC during the 2014-15 RIF" and

Agreement, the university had the authority to rely on adjunct instead of full-time faculty to teach physics classes.[9]

Accordingly, we focus on the professors' challenge to UDC's characterization that the physics degree program had "shallow enrollment." This descriptor, referenced in the Superior Court's order, does not come from the discussions immediately leading up to the Board's vote to eliminate the physics degree program. It comes instead from the interim Provost's statement to the Board earlier in 2013 that District leadership had informed UDC at a strategic planning meeting that the university generally "needed to

---

argue that they "were hired to teach physics in the physics program." But UDC presented uncontested evidence that, at least for accreditation purposes, there was a material difference between offering a degree in physics and offering physics classes. And the professors do not explain why, in the absence of any accreditation requirements, UDC would be obligated to retain them full-time.

[9] The professors conclusorily refer to "[v]iolation of [p]olicies and [r]egulations," suggesting that UDC's decision to eliminate the physics degree program and terminate the full-time professors in that program was procedurally suspect. But the Superior Court acknowledged this argument in its summary judgment order and noted that the professors had not explained "how the process by which the seventeen programs were selected . . . violated governance regulations, much less how any such violations give rise to an inference of discriminatory intent." The professors do not acknowledge the Superior Court's assessment of this argument, much less explain why it is incorrect. *See Little*, 91 A.3d at 1025 ("[M]ere conclusory allegations by the non-moving party are legally insufficient to avoid the entry of summary judgment." (internal quotation marks omitted)); *see also Comford v. United States*, 947 A.2d 1181, 1188 (D.C. 2008) ("It is not enough merely to mention a possible argument in the most skeletal way, leaving the court to do counsel's work.").

delete courses that had shallow enrollment." *See supra* note 2. Moreover, UDC never represented that physics courses overall had "shallow enrollment" and instead acknowledged the student demand for foundational physics instruction. As the Board later discussed before its vote to eliminate the physics degree program, the concern was that the number of students seeking physics *degrees* was very low—with the inefficient result that full-time professors were teaching upper-level classes for the benefit of only one or two students who were pursuing physics degrees. Further, the lack of a critical mass of students pursuing physics degrees made it difficult to justify a decision to invest in necessary infrastructure to support the degree program. Again, Drs. Seyoum and Khatri do not identify a material issue of fact on this point. Indeed, they acknowledge in their reply brief that the number of students graduating with bachelor's degrees in physics was very low.

The professors' argument appears to be that this had always been the case: they assert that, "[s]ince its inception in 1968-69, the physics program of the university[] has never graduated more than 2-3 students per year." But the fact that the physics program had never produced many graduates does not call into question the university's decision in 2014 to identify the physics degree program as one that was "under-enrolled and under-performing" and thus slate it for elimination in the wake of the Council's right-sizing directive in the Budget Act.

In effect, the professors appear to argue that UDC *could have* decided to retain its full-time physics faculty even though it stopped offering upper-level physics classes and physics degrees. But the fact that

UDC potentially could have made other choices under the circumstances does not itself tend to show that the reason the university provided for eliminating the physics degree program and then terminating the associated full-time faculty was not credible. *Cf. McFarland*, 935 A.2d at 350 (stating that this court does not "sit[] as a super-personnel department that re-examines an entity's business decisions" (internal quotation marks omitted)). In short, we discern no error in the Superior Court's determination that Drs. Seyoum and Khatri failed to establish that UDC cited unsupported or demonstrably false reasons for eliminating the physics degree program and terminating its associated full-time physics professors.

2. Dissimilar Treatment of Younger Faculty

Drs. Seyoum and Khatri further argue that UDC more favorably treated younger faculty who were either included in the RIF or were hired as adjuncts to teach physics, supporting the inference that the decision to terminate them was pretextual. As a preliminary matter, the Superior Court reasoned that Drs. Seyoum and Khatri failed to meet their burden of production regarding these arguments because they did not provide documentary evidence of some of their colleagues' ages, or of the UDC Board's knowledge of their ages, preventing any inference of disparate treatment. We are inclined to think that the professors' attestations as to their colleagues' approximate ages, based on their own knowledge and observations, and as to their alleged interactions with Board members could be sufficient evidence to at least create a genuine question of material fact defeating summary judgment. But even assuming the professors sufficiently

established that the other faculty they identify as points of comparison were substantially younger and that UDC was aware of this, we see no evidence in the record indicating that similarly situated younger faculty received preferential treatment.

First, Drs. Seyoum and Khatri argue that younger faculty who were slated to be RIF'ed due to program elimination did not lose their full-time faculty status. But the record shows that the retained faculty that Drs. Seyoum and Khatri identify did not keep their appointments despite their programs' elimination. Some of the identified professors, including Professors Chatman and Jowers, were rehired as full-time faculty in other programs (for which they had qualifying degrees) that had vacancies, or into a full-time administrative role. Drs. Seyoum and Khatri do not assert that a similar full-time appointment was available to them. Another, Professor Ufland, held a full-time appointment in the social science department at the UDC Community College, which grants associate degrees. He was initially included in the RIF because he was eligible to be "bumped" out of his position by Professor Jowers, a more senior faculty member in UDC's history degree program, which was eliminated along with the physics degree program. But when Professor Jowers instead secured an administrative appointment, Professor Ufland was able retain his position at the community college. Drs. Seyoum and Khatri were therefore not similarly situated to Professor Ufland, whose position was not eliminated. And Drs. Seyoum and Khatri offer no evidence that other younger faculty who were included in the RIF were not in fact terminated. We therefore conclude the professors did not produce sufficient evidence to create a question of fact regarding

whether UDC, in deciding to terminate them from their full-time employment, treated them less favorably than younger faculty in making termination decisions.

Next, Drs. Seyoum and Khatri argue that UDC evinced its discriminatory motives "when it denied [them] employment and instead chose to hire younger employees" to teach the remaining physics classes. We note that the professors' complaints before the Superior Court raised only discriminatory termination claims, not any claims based on a failure to hire or re-hire. Still, taking this as an assertion of indirect evidence of pretext, like the Superior Court we cannot say the record supports such an inference. First, UDC has *not* denied Drs. Seyoum or Khatri employment in the physics department as adjunct instructors; the record indicates both professors worked in that capacity for UDC for several years following their termination from their full-time positions in May 2015. Second, although the professors provided some evidence that there were past semesters in which they were not assigned as many courses as requested, as the Superior Court noted they failed to supply evidence that younger adjunct faculty were consistently provided more or better teaching assignments. Drs. Seyoum and Khatri only submitted limited evidence regarding adjunct physics instructor assignments for the 2015-16 or 2016-17 academic years, and the one semester of complete data they provide regarding the spring of 2018 shows no clear age-based distinction in course assignments. Third, the professors represented in pleadings to the Superior Court that they were later "teaching on an adjunct basis a course load very close to their full load before the RIF." We therefore conclude the professors did not produce sufficient evidence to

create a question of fact regarding whether UDC, in deciding to rehire the professors as adjuncts, treated them less favorably than younger faculty in making adjunct hiring decisions.

Finally, Drs. Seyoum and Khatri assert that in the years surrounding the RIF only a small proportion of UDC's new faculty hires were over 60 years old. The Superior Court does not appear to have addressed this argument. But even accepting this assertion as true, it provides at most minimal evidence of the university's 2014 termination decision, especially given the professors provided no evidence of the applicant pool from which these new hires were made. If UDC was so motivated to terminate its older faculty members that it would eliminate entire academic programs as pretext, then one would expect it to avoid hiring any new older faculty in the following years; the fact it hired some appears to cut against the professors' argument. And, as noted above, none of the new full-time faculty hires were in the physics department, meaning Drs. Seyoum and Khatri were not directly replaced by younger employees. We therefore conclude that Drs. Seyoum and Khatri did not produce sufficient evidence of disparate treatment giving rise to an inference of significant discriminatory motive that would defeat summary judgment.

3. Statements Demonstrating Age-Based Animus

Drs. Seyoum and Khatri point to several statements made by representatives of the university that they allege directly show the university's discriminatory motives. When an employee aims to present direct evidence of discriminatory motive, they face the

"heavy burden" of proving a causal link between the statements and the adverse employment action; generally, "statements by nondecisionmakers . . . [and] statements by decisionmakers unrelated to the decisional process itself are not direct evidence of discrimination and thus cannot satisfy the [employee's] burden" because they are too remote or attenuated from the challenged adverse action. *Hollins*, 760 A.2d at 575 (internal quotation marks omitted).

Drs. Seyoum and Khatri point to three different statements as evidence of discriminatory motive. Like the Superior Court, we are unpersuaded that these statements give rise to an inference of discriminatory animus. The professors highlight a 2014 publication wherein UDC announced its intent to fill "faculty vacancies with junior-level faculty as opposed to senior-level faculty." But deposition testimony by UDC's then-provost, to which both parties cite, provided that the terms "junior" and "senior" faculty do not refer to age groups, but rather career experience. The professors also point to a 2012 newspaper article in which then-President of the University Allen Sessoms referred to UDC's faculty as "old," as well as a 2009 report on the creation of the community college, prepared by consultants for UDC, that noted that the university's faculty was "older and at the higher end of the salary scale compared with other colleges." But both of these statements are "too remote in time or too attenuated" from the professors' termination. *See Hollins*, 760 A.2d at 575 (quoting *Ross v. Rhodes Furniture, Inc.*, 146 F.3d 1286, 1291 (11th Cir. 1998)). Without more, we agree with the Superior Court's determination that the professors failed to produce enough direct evidence of discriminatory intent such that there

was a genuine issue of fact as to whether UDC's stated reason for the terminations was pretextual.

D. Discovery Issues

As a coda to this analysis, we briefly address Drs. Seyoum and Khatri's arguments that they were precluded from obtaining in discovery the information they needed to litigate their case. First, Drs. Seyoum and Khatri argue that they were precluded from deposing "key witness[es] Dean Hamilton and Division Chair[] Fleming" because the Superior Court granted UDC's motion for a protective order. But the professors develop no argument explaining why the Superior Court abused its discretion in granting UDC's motion. *Mampe v. Ayerst Lab'ys*, 548 A.2d 798, 803-04 (D.C. 1988) ("A court has substantial discretion in deciding to grant a protective order, and its decision to do so will not ordinarily be disturbed on appeal unless that discretion has been abused."). In the absence of any such explanation, we consider this argument waived. *Comford v. United States*, 947 A.2d 1181, 1188 (D.C. 2008) ("[I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived. It is not enough merely to mention a possible argument in the most skeletal way, leaving the court to do [the litigant's] work. . . . " (internal quotation marks omitted)).

Second, Drs. Seyoum and Khatri allege that the Superior Court erred in failing to rule on their motion to compel further discovery after the discovery period closed. But the professors never sought a ruling on their motion from the trial court; rather, they filed a motion for summary judgment, indicating to the court that they believed the existing record to be sufficient

not only to proceed, but to support judgment in their favor as a matter of law. The result is that the professors' challenge to the Superior Court's failure to rule on their discovery request is unpreserved. *See Thorne v. United States*, 582 A.2d 964, 965 (D.C. 1990) ("A party who neglects to seek a ruling on [their] motion fails to preserve the issue for appeal."). Although we acknowledge that the professors were proceeding pro se, we do not deem that fact sufficient justification for us to review this unpreserved argument. *Pajic v. Foote Props., LLC*, 72 A.3d 140, 145 (D.C. 2013) (explaining that "this court's review on appeal is limited to those issues that were properly preserved," but "in exceptional situations and when necessary to prevent a clear miscarriage of justice apparent from the record, we may deviate from the usual rule" (internal quotation marks omitted)).

For the reasons set forth above, we agree with the Superior Court's determination that UDC was entitled to summary judgment.[10] The judgment of the Superior Court is thus

Affirmed.

ENTERED BY DIRECTION OF THE COURT:

/s/ Julio A. Castillo
Clerk of the Court

---

[10] The parties also briefed the issue of costs, but in the absence of an appealable final judgment from the Superior Court regarding costs these arguments are premature. Once the Superior Court issues a final judgment on costs following disposition of this appeal, the parties may notice a separate appeal. *See, e.g., Bennett v. Kiggins*, 391 A.2d 236, 237-38 (D.C. 1978) (per curiam) (considering an appeal of order to pay costs in a separate, subsequent appeal to the appeal of a summary judgment order).

Copies emailed to:

Honorable Jason Park
Director of the Civil Division QMU

Copies e-served to:

Hailemichael Seyoum
Daryao S. Khatri
Anessa Abrams, Esquire

ORDER, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA CIVIL DIVISION (FEBRUARY 26, 2020)

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA CIVIL DIVISION

HAILEMICHAEL SEYOUM,

Plaintiff,

v.

BOARD OF TRUSTEES OF THE UNIVERSITY OF THE DISTRICT OF COLUMBIA,

Defendant.

DARYAO KHATRI,

Plaintiff,

v.

BOARD OF TRUSTEES OF THE UNIVERSITY OF THE DISTRICT OF COLUMBIA,

Defendant.

Consolidated Cases:

Case No.: 2018 CA 004939 B
Case No.: 2018 CA 004941 B

Mediation Session: 3/10/2020

Before: JASON PARK, Judge,
Superior Court of the District of Columbia.

ORDER

This matter is before the Court on (1) the defendant's motion for summary judgment, filed November 20, 2019 and (2) the plaintiffs' motion for summary judgment, filed November 21, 2019. Upon consideration of the motions, the respective opposition and reply memoranda, and the entire record, and for the reasons discussed below, the Court grants the defendant's motion, denies the plaintiffs' motion, and enters summary judgment in favor of the defendant.

FACTUAL BACKGROUND

This case arises from an employment dispute between the plaintiffs, Hailemichael Seyoum, Ph.D. and Daryao Khatri, Ph.D., and the defendant, the Board of Trustees of the University of the District of Columbia ("the Board"). The University of the District of Columbia ("the University") is a public university located in the District of Columbia. Def.'s Mot. for Summ. J., Aff. of April Massey ("Massey Aff") ¶ 4.[1] Dr.

[1] To their opposition to the defendant's motion for summary judgment, the *pro se* plaintiffs append an "Answer and Defenses to Defendant's Statement of Material Facts" consisting of four statements with no citations to the record. This submission does not comply with Rule 56, which requires the party opposing summary judgment to submit a statement of disputed material facts "that correspond[s] to the extent possible with the numbering of the paragraphs in the movant's statement," and moreover, includes "cit[ations] to particular parts of materials in the record. *See* D.C. Super. Ct. R. 56(a)(2)(B), (c)(1)(A). The plaintiffs' failure to comply with Rule 56(c) permits the Court to consider the facts asserted in the defendant's statement of facts undisputed. *See id.*

Seyoum has a doctorate in physics, Pls.' Mot. for Summ. J., Ex. 2, and was employed by the University as a temporary adjunct professor of physics from 1988 to 2000; he returned to the University in 2006 as a full-time physics professor. Def.'s Mot. for Summ. J., Ex. B (Dep. of Hailemichael Seyoum.) ("Seyoum Dep.") at 22-23. Dr. Khatri also holds a doctorate in physics, Pls.' Mot. for Summ. J., Ex. 3, and began working at the University as an assistant professor of physics at Federal City College, a predecessor to the University, in 1973. Der s Mot. for Summ. J., Ex. B (Dep. of Daryao Khatri) ("Khatri Dep.") at 20. in 1977, Dr. Khatri was promoted to associate professor of physics at Federal City College, and in 1981, he was promoted to professor of physics at the University. *Id.* at 21. As full-time physics professors, both plaintiffs held faculty appointments in the University's degree-granting program in physics. Massey Aff. ¶ 6.

During their last year of employment at the University, both plaintiffs were members of a collective bargaining agreement known as the "Sixth Master Agreement" between the University and the University of the District of Columbia Faculty Association/National Education Association ("UDCFA/NEA"). Def.'s Mot. for Summ. J., Aff. of Patricia Cornwell Johnson ("Johnson Aff.") at 3; Seyoum Dep. at 23-24; Khatri Dep. at 21-22. The Sixth Master Agreement gives the University the sole right to assign and retain faculty, "relieve faculty members of duties because of lack of

---

56(e); *Dilbeck v. Murphy,* 502 A.2d 466, 469 (D.C. 1985). Rather than granting the defendant's motion as conceded, however, the Court has reviewed the plaintiffs' *pro se* pleadings, including the dozens of exhibits submitted in connection therewith, in an effort to address the merits of the underlying dispute.

work or other legitimate reasons," and determine the "number, types, and grades of positions of faculty members assigned to an organization unit, work project, or tour of duty." Def.'s Mot. for Summ. J., Ex. A, Art. X, at 11. The Sixth Master Agreement also contains a reduction-in-force provision giving the University the sole right to relieve employees of duties "because of lack of work or other legitimate reasons." *Id,* Ex. A., Art. XXI.A., at 57.

In 2012, the Council of the District of Columbia ("the Council") enacted the Fiscal Year 2013 Budget Support Act of 2012 ("the Budget Act"), which included the "University of the District of Columbia Right-Sizing Plan Act of 2012." D.C. Law 19-168, §§ 4031-32. The Budget Act required the University to transmit to the Council "a tight-sizing plan" approved by the Board that included "[a]n analysis of all academic programs identify[ing] under-enrolled and under-performing programs and an associated timeline and plan for improving or eliminating these programs," as well as "[al staff and faculty reduction strategy and timeline." *Id.* §§ 4032(a)(3), (7). Further, the Council instructed the University to "delete" programs with "shallow enrollment." Del's Mot. for Summ. J., Aff. of Beverly Franklin ("Franklin Aff.")

At a November 19, 2013 meeting, the Board voted to eliminate several degree-granting academic programs, including the Bachelor of Science degree in physics. Franklin Aff., Ex. A (Nov. 19, 2013 Tr,) at 78. By Board resolutions approved February 18, 2014 and March 27, 2014, the University eliminated seventeen degree-granting programs, including the degree-

granting program in physics.[2] *Id.*, Ex. D (Resolution 2014-06), Ex. E (Resolution 2014-10). On June 10, 2014. the Board approved a reduction-in-force resolution for the faculty associated with the eliminated degree-granting programs, which identified seventeen impacted faculty positions. *Id.*, Ex. H (Resolution 2014-18). As the only two full-time faculty members in the physics degree-granting program, both plaintiffs' positions were identified in the resolution. Khatri Dep. at 29-30; Seyoum Dep. at 30-31. The plaintiffs were informed by letters dated August 12, 2014 that their positions would be eliminated effective May 15, 2015. Johnson Aff. ¶ 4.

Since the elimination of the degree-granting program in physics in May 2015, the University has not employed anyone as a full-time professor in physics, as that position has been eliminated. Def.'s Mot. for Summ. J., Ex. G (Dep. of Rachel Petty) ("Petty Dep.") at 83; Khatri Dep. at 35-36; Seyoum Dep. at 41. The University subsequently rehired the plaintiffs as adjunct faculty teaching physics courses. Khatri Dep. at 52; Seyoum Dep. at 57-58, 119-20.

The *pro se* plaintiffs brought separate age discrimination actions on July 11, 2018, alleging that the University terminated their employment in violation of the D.C. Human Rights Act, D.C. Code § 2-1402.11

---

[2] The other degree-granting programs eliminated were: Economics; Math/Statistics; Sociology, Graphic Design; History; Graphic Communications Technology; Mass Media; Masters Degree in Special Education; Marketing; Finance; Procurement and Public Contracting; Management Information Systems; Nutrition; Environmental Science (General); Environmental Science (Water Resources); and Environmental Science (Urban Sustainability). Franklin Aff. ¶ 3 & Ex. A.

(a)(1) ("the DCHRA").[3] The cases were consolidated on August 12, 2019. The defendant filed its motion for summary judgment on November 20, 2019 and the plaintiffs filed a joint motion for summary judgment on November 21, 2019.

LEGAL STANDARD

I. Legal Standard for Summary Judgment

A party moving for summary judgment must demonstrate that there are no material facts in dispute and that the party is entitled to judgment as a matter of law. Once the moving party meets its burden, the non-moving party must present specific facts demonstrating that there is a material factual dispute. *See, e.g., Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986). A genuine issue of material fact exists if the record contains "some significant probative evidence . . . so that a reasonable fact-finder would return a verdict for the non-moving party." *Brown v. 1301 K St. Ltd. P'ship*, 31 A.3d 902, 908 (D.C. 2011) (quoting *1836 S Street Tenants Ass'n v. Estate of Battle*, 965 A.2d 832, 836 (D.C. 2009)). A motion for summary judgment must be granted if, taking all

---

[3] In their motion for summary judgment, the plaintiffs invoke the federal Age Discrimination Act of 1967, 29 U.S.C. §§ 621 *et seq.*, and Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*, in addition to the DCHRA. *See* Pls.' Mot. for Summ. J. at 7. Because the plaintiffs' complaints allege a sole count of discrimination under the DCHRA, and contain no federal claims, the Court declines to address the federal statutes here. *See District of Columbia v. Barrie*, 741 F. Supp. 2d 250, 263 (D.D.C. 2010) ("It is well established that a party may not amend its complaint or broaden its claims through summary judgment briefing.").

inferences in the light most favorable to the nonmoving party, a reasonable juror could not properly find for the nonmoving party under the appropriate burden of proof. *See, e.g., Woodfield v. Providence Hosp.*, 779 A.2d 933, 936-37 (D.C. 2001).

II. Age Discrimination Under the DCHRA

The DCHRA makes it an "unlawful discriminatory practice" for an employer to "discharge" any individual "wholly or partially for a discriminatory reason based upon the actual or perceived . . . age" of the individual. D.C. Code § 2-1402,11(a). District of Columbia courts and their federal counterparts have repeatedly held that claims brought under the DCHRA are analyzed in the same manner as claims under the federal Age Discrimination in Employment Act ("ADEA"). *See, e.g., Musgrove v. Dist. of Columbia,* 775 F. Supp. 2d 158, 171-72. Thus, when considering age discrimination claims under the DCHRA, District of Columbia courts apply the familiar burden-shifting framework established by the Supreme Court for federal discrimination cases in *McDonnell Douglas Corp. v. Green,* 411 U.S. 792, 802 (1973). *See Hollins v. Fannie Mae,* 760 A.2d 563, 571 (D.C. 2000).

Under the *McDonnell .Douglas* framework, a plaintiff initially has the burden to make a prima facie showing of discrimination by a preponderance of the evidence. *Id.* (citing *Arthur Young & Co. v. Sutherland,* 631 A.2d 354, 361 (D.C. 1993)). If the employee can make a prima facie case, this "[raises] a presumption that the employer violated the DCHRA." *Little v. D.C. Water & Sewer Auth.*, 91 A.3d 1020, 1027 (D.C. 2014) (quoting *Furline v. Morrison,* 953 A.2d 344,)52 (D.C. 2008)).

Once the presumption is raised, the burden shifts to the employer to rebut it by articulating a legitimate, nondiscriminatory reason for the employment action. *Hollins,* 760 A.2d at 563 (citing *Atlantic Richfield Co. v. District of Columbia Com. on Human Rights,* 515 A.2d 1095, 1099 (D.C. 1986)). The employer can "satisfy its burden by producing admissible evidence from which the trier of fact [can] rationally conclude that the employment action [was not] motivated by discriminatory animus." *Id.* (citing *Atlantic Richfield,* 515 A.2d at 1099-1100).

Once the employer articulates a legitimate, nondiscriminatory reason, the burden shifts back to the employee to prove, again by a preponderance of the evidence, that the employer's stated justification for its action was not its true reason but was in fact merely a pretext to disguise discriminatory practice. *Id.* (citing *Arthur Young,* 631 A.2d at 361 (citation omitted). "This burden merges with the ultimate burden of persuasion on the question of intentional discrimination." *Id.* (quoting *Atlantic Richfield,* 515 A.2d at 1100).

ANALYSIS

On the record before it, the Court finds that there is no genuine issue of material fact as to whether the plaintiffs' terminations resulted from unlawful age-based discrimination. Though the plaintiffs have established a prima facie case of age discrimination under the DCHRA, the defendant has offered substantial evidence that the reduction-in-force that resulted in the plaintiffs' termination was non-discriminatory. Moreover, the plaintiffs have failed to demonstrate the existence of an issue of material fact as to whether the reduction-in-force was a pretext to terminate older

faculty members. Accordingly, the Court grants summary judgment to the defendant.

A. The Plaintiffs Have Established a Prima Facie Case of Age Discrimination

The plaintiffs maintain that they have established a prima facie case of age discrimination based on their membership in a protected class, their termination, and their subsequent rehiring in lower positions. *See* Pls.' Mot. for Summ, J. at 8-11. The defendant does not meaningfully contest that the plaintiffs have met their initial burden. *See* Def.'s Mot. for Summ. J. at 5; Def.'s Opp'n to Pls.' Mot. for Summ. J. ("Def.'s Opp'n") at 6-19.

To establish a prima facie case of discrimination under the DCHRA, the plaintiff must show that (1) he is a member of a protected class, (2) he suffered an adverse employment action, and (3) the employment action gives rise to an inference of discrimination. *See Kumar v. D.C. Water & Sewer Auth.,* 25 A.3d 9, 17 (D.C. 2011) (citing *Stella v. Mineta,* 284 F.3d 135, 145 (D.C. Cir. 2002)), *aff'd,* 2018 U.S. App. LEXIS22580 (D.C. Cir., Aug. 14, 2018). To warrant this inference, "in the absence of an allegation that someone has replaced him in the same job," the plaintiff must show that one or more employees who had jobs similar to his and were not members of the protected class were not terminated. *See Little,* 91 A.3d at 1027-28 (quoting *McFarland v. George Washington Univ.,* 935 A.2d 337, 352 (D.C. 2007)). Other employees are "similarly situated" to the plaintiff where "they have similar jobs and display similar conduct." *Id.* at 1028 (quoting *Vasquez v. County of Los Angeles,* 349 F.3d 634, 631 (9th Cir. 2003)).

There is no dispute that Dr. Khatri and Dr. Seyoum, who were sixty-nine and sixty-three years old, respectively, at the time of the reduction-in-force, are members of a protected class due to their age. *See Little,* 91 A.3d at 1029 (finding that the plaintiff, who was seventy-three at the time of his termination, is a member of a protected class); *see also Moeller v. Kane,* 2018 D.C. Super. LEXIS 10, No. 2018 CA 004172 B. at *9 n.2 (D.C. Super. Ct. Oct. 18, 2018) (noting that though the protections of the ADEA are "limited to persons forty years old and older," the DCHRA "appears to afford protections against age discrimination to anyone over the age of eighteen"). Further, both plaintiffs suffered adverse employment actions for purposes of the DCHRA when they were terminated. D.C. Code § 2-1402. 11(a).

Finally, an inference of discrimination can be drawn from the plaintiffs' inclusion in the reduction-in-force. In Academic Year 2014-2015, the last academic year before the effective date of the reduction-in-force, the University employed 198 full-time faculty members, twenty-four of whom were under the age of forty as of October 30 2014. Abrams Aff. ¶ 11. Further, twelve of the seventeen faculty members terminated in the reduction-in-force were over the age of sixty. Pls.' Mot., Ex. 20. Plainly, at least some similarly situated full-time faculty members under the age of forty were not included in the seventeen full-time faculty positions eliminated in the reduction-in-force. Accordingly, the plaintiffs have demonstrated a prima facie case of age discrimination in connection with their inclusion in the reduction-in-force.

B. The Defendant Has Articulated a Legitimate Non-Discriminatory Reason for the Plaintiffs' Terminations

Because the plaintiffs established a prima facie case of discrimination, the burden therefore shifts to the defendant to articulate a legitimate, non-discriminatory reason for their termination. The defendant contends that the plaintiffs' positions were terminated as part of the reduction-in-force that resulted from the elimination of seventeen degree-granting programs in compliance with the Council's directive. This, the defendant argues, represents a legitimate, nondiscriminatory reason for the adverse employment actions at issue. Del's Mot. for Summ. J. at 5-8. Although the plaintiffs challenge this justification as pretextual, *see* Pls.' Opp'n to Del's Mot. for Summ. J. ("Pls.' Opp'n") at 6-17, they do not dispute that this proffered reason —if true—would satisfy the second prong of the *McDonnell Douglas* framework, *see id.*

Courts have repeatedly recognized that a reduction-in-force for budgetary reasons may constitute a legitimate, non-discriminatory justification for an adverse employment action. *See, e.g., Hill v. Bd. of Trustees of the Univ. of the Dist. of Columbia,* 245 F. Supp. 3d 214, 216 (D.D.C. 2017) (finding that a budgetary reduction-in-force resulting in the elimination of plaintiff's position at the University of the District of Columbia constituted a legitimate, nondiscriminatory reason); *Edmonds v. Engility Corp.,* 82 F. Supp. 3d 337, 342 (D.D.C. 2015), *aff'd,* 2016 U.S. App. LEXIS 1084 (D.C. Cir. Jan. 21, 2016) (finding that elimination of plaintiff's position as part of company reorganization represented a legitimate, non-discriminatory reason for termination); *AFSCME Local 2401 v. District of*

Columbia, 31 F. Supp. 3d 149, 154 (D.D.C. 2014) (noting that defendant's realignment and reduction-in-force is a legitimate, nondiscriminatory reason for adverse employment actions).

Here, the defendant has offered evidence that pursuant to the Council's instructions, the University voted to eliminate seventeen degree-granting programs, including the degree-granting program in physics. Franklin Aff., ¶¶ 4, 6-7. The physics degree-granting program was eliminated due to systemic under-enrollment; between 2011 and 2015, the University conferred only three Bachelor of Science degrees in physics. Massey Aff. ¶¶ 7-9. Further, as part of the reduction-in-force, the University terminated faculty associated with the eliminated degree-granting programs, including the plaintiffs, the only two full-time faculty members in the eliminated physics degree-granting program. Franklin Aff. ¶ 9. The defendant has therefore presented evidence of a legitimate, non-discriminatory reason for the plaintiffs' terminations namely, a reduction-in-force resulting from the elimination of the physics degree-granting program pursuant to the Budget Act.

C. The Plaintiffs Have Not Raised a Question of Material Fact as to Whether the Defendant's Proffered Justification Was Pretext for Age-Based Discrimination

Because the defendant has articulated a legitimate, non-discriminatory reason for the adverse employment action, the plaintiffs must demonstrate that the defendant's asserted reason for the adverse action was mere pretext for discrimination. *Kumar,* 25 A.3d at 17. At this stage of the *McDonnell Douglas*

framework, "liability depends on whether [age] actually motivated the employer's decision." *Wash Convention Cir. Auth. v. Johnson,* 953 A.2d 1064, 1073 (D.C. 2008) (quoting *Reeves v. Sanderson Plumbing Prods.,* 530 U.S. 133, 141 (2000)). The plaintiff must demonstrate that his age "actually played a role in [the employer's decision-making] process and had a determinative influence on the outcome."[4] *Id.* It is not enough for the plaintiff to simply show that the employer's proffered justification for the adverse action is false; the plaintiff must also present evidence of discrimination. *See Carter v. George Wash. Univ.,* 180 F. Supp. 2.d 97, 105 (D.D.C. 2001).

The plaintiffs offer a host of disparate arguments in support of their assertion that the reduction-in-force was pretext for discrimination. These arguments are discussed in turn below.

1. Challenging Shallow Enrollment in Physics Program

The plaintiffs challenge the contention that the physics department had "shallow enrollment," citing the number of students enrolled in 100-and 200-level physics courses, the number of majors that require physics courses, the comparative lack of enrollment in chemistry (which was not eliminated as a degree-granting program), and the overall quality of the University's physics program. *See* Pls.' Opp'n at 6-7, 10-11.

As an initial matter, the plaintiffs offer no evidence substantiating their assertions regarding enrollment

---

[4] The Court declines to apply the federal "but-for" causation standard used to analyze claims under the ADEA. *Gross v. FBL Fin. Servs., Inc.,* 557 U.S. 167, 176 (2009).

in physics and chemistry courses, or the number of majors requiring the completion of physics courses.[5] Moreover, the question here is not whether there was and remains a need for the University to offer physics courses; indeed, there is no dispute that University continues to offer physics courses, some of which are taught by the plaintiffs as adjunct faculty. *See, e.g.*, Pls.' Opp'n at 11-12.

Rather, the issue before the Court is whether, on this record, the University's decision to include physics as one of the seventeen eliminated degree-granting programs was so unfounded that it gives rise to an inference of discrimination. The evidence on this score is stark. It is undisputed that between 2011 and 2015 —the four years preceding the reduction-in-force—the University conferred only three Bachelor of Science degrees in physics, Massey Aff. ¶¶ 7-9, a rate of less than one per year. By comparison, the plaintiffs acknowledge that "sociology graduated about 8-10 students per year; history was graduating 5-7 students, and chemistry only granted 1-2 students per year," Pls.' Opp'n at 7. Each of these degree-conferring rates outstrips that of the physics program, which conferred

---

[5] Exhibits 4 and 5 to the plaintiff's opposition, which they cite as support for their enrollment figures, contain lists of course offerings but provide no enrollment information. The URL provided by the plaintiffs, *see* Pls.' Opp'n at 6, was inaccessible. Exhibit 8, cited as support for the number of major requiring physics courses, was not appended to the plaintiff's submission. Exhibit 29, an October 2013 memorandum prepared by Dr. Seyoum to University administrators, references the number of students enrolled in introductory physics courses, though it provides no substantiation for those numbers and does not address the other contentions raised by the plaintiffs, including their assertions regarding the chemistry program.

only one degree every two years. Two of these programs sociology and history were among the programs eliminated at the same time as the physics program.

Indeed, even among the seventeen programs identified for elimination, the physics program was in the bottom half in terms of average number of majors from. 2009-2012, had among the lowest number of degrees awarded from 2010-2012, and had among the lowest headcount of majors as of Fall of 2013. *See* Pls.' Opp'n, Ex. 21. Programs with significantly higher numbers of majoring students and degrees awarded were selected for elimination. *Id.* Although the plaintiffs point out that physics offers foundational coursework, the physics program was just one of five different programs offering foundational coursework subject to elimination. *Id.*

There is no dispute that the Budget Act required the University to identify under-enrolled programs and that the University was required to delete underperforming programs. D.C. Law 19-168, §§ 4032(a)(3), (7); Franklin Aff. ¶ 4. As discussed above, there is ample record support for the Board's decision to identify physics as one of those programs. This record does not support the inference that the decision to eliminate physics as a degree-granting program was pretext for discrimination.

2. Shifting Rationales for Elimination of the Physics Program

The plaintiffs contend that the University has offered "shifting explanations" for the elimination of the physics degree-granting program. Pls.' Mot. for Summ. J. at 15-17; Pls.' Opp'n at 11. While it is true that "an employer's changing rationale for making an

adverse employment decision can be evidence of pretext," *Thurman v. Yellow Freight Sys.*, 90 F.3d 1160, 1167 (6th Cir. 1996), the plaintiffs have offered no such evidence here. The plaintiffs cite different explanations given by Provost Petty for the retention of Professor Ufland, as well as Provost Petty's statement at a November 2013 Board meeting indicating that physics faculty "would continue teaching," followed by her statement in June 2014 proposing the elimination of the physics faculty positions. Pls.' Mot. for Summ. J. at 16-17.

The former statements (concerning Professor Ufland) plainly are not rationales for the elimination of the physics program or the plaintiffs' positions. The latter statements, starting with Provost Petty's statements at the November 2013 Board meeting, likewise do not evidence shifting rationales for the elimination of the plaintiffs' positions. The transcript of the November 2013 meeting indicates that the Board undertook a lengthy discussion about the potential elimination of the physics degree-granting program, during which Board members discussed enrollment in the physics program, the demand for physics majors in the job market, the quality of the professors in the physics department, and the fact that only one student had received a physics degree in the prior three years. Franklin Aff., Ex. A at 57-66. *Id.* During that discussion, Provost Petty stated to the Board that:

> [P]hysics has very weak numbers. We have two faculty there now. They are very strong faculty, but we don't feel that we have the strength in that area to continue as a major. We have to offer physics to support the other sciences and to support engineering, and so

> we will continue to offer foundational courses, perhaps even a minor.

Id. at 66-67.

Thus, contrary to the plaintiffs' assertions, the record indicates that Provost Petty had, since at least November 2013, consistently maintained that the shallow enrollment in the physics program warranted its elimination as a major. The record does not support plaintiffs' claim of "shifting explanations" giving rise to an inference of discrimination,

3. Inconsistent Application of Reduction-in-Force

The plaintiffs also argue that the University "inconsistently" terminated younger faculty members who were included in the reduction-in-force. *See* Pl.'s Mot. for Summ. J. at 17-18; Pls.' Opp'n for Summ. J. at 12-14. The plaintiffs identify a number of professors (Professors Chatman, Jowers,-Lifland, Huron, Shrinivasan, Bejleri) whom they claim were subject to the May 2015 reduction-in-force but, rather than being terminated, were retained. Pls.' Mot. for Summ. J. at 17-18; Pls.' Opp'n at 4.

The record, however, does not support the plaintiffs' assertions, Professor Chatman, a professor within the eliminated sociology program., appears to have been in included in the May 2015 reduction-in-force, but then applied for and was selected for a position as an assistant professor in criminal justice.[6] Def.'s Reply,

---

[6] Although the plaintiffs argue that Dr. Chatman does not possess a qualifying degree for such a position, they offer no support for that position. *See* Pls.' Mot. for Summ. J. at 18, *see also* Massey Dep. at 31-34 (testifying that Dr. Chatman was hired

Ex. A (Dep. of April Massey) ("Massey Dep.") at 27-28, Similarly, Professor Jowers, a history faculty member whose position was identified for elimination in the reduction-in-force, applied for and was hired into an administrative position before May 2015. Petty Dep. at 78. The plaintiffs provide no evidence to contradict the above, no evidence concerning the ages of Professors Jowers, Ufland, Huron, Shrinivasan, or Bejleri, and no evidence that Professors Shrinivasan or. Bejleri were subject to the reduction-in-force but nonetheless retained. This record does not raise a material question of fact concerning the defendant's legitimate, non-discriminatory rationale for the adverse employment actions.

4. Preferential Course Loads for Younger Adjunct Faculty

The plaintiffs also argue that pretext can be inferred from the manner in which the University assigned more teaching duties to younger and less-qualified adjunct faculty members than to the plaintiffs, who were re-hired as adjunct faculty. *See* Pls.' Mot. for Summ. J. at 14-15, 17 & Ex. 23. These younger adjuncts, the plaintiffs argue, were given preference by the University and allowed to teach more courses despite lacking the appropriate qualifications. *See id* at 14-15. For example, the plaintiffs argue, Professor Pyakuryal, who was 42 years old, taught between six and eight classes in Spring 2015, and Professor Ghannouchi, who the plaintiffs state is "around fifty," also taught

---

into the University's program in Crime, Justice and Security Studies, an integrated interdisciplinary social science program, including concentrations having anthropological and sociological bases).

between six and eight classes in Spring 2018, exceeding the teaching load of a full-time faculty member. *See* PIs.' Mot. for Summ. J., Exs. 25, 29, 30. The plaintiffs also compare their course loads to that of thirty-nine-year-old Professor Amir, who purportedly "was allowed to teach 8 to 11 classes." *See* Pl.'s Mot. for Summ. J. at 20. Meanwhile, until Spring 2018, the plaintiffs were both assigned to teach only three courses. *See* Pls.' Mot. for Summ. J., Ex. 28. Further, the plaintiffs allege that neither Professor Pyakuryal nor Professor Ghannouchi possesses the appropriate qualifications to teach in their disciplines, despite the fact that University Provost Rachel Petty stated that the rationale for the reduction-in-force was to terminate "faculty members teaching in disciplines that lack the academic credentials to teach a sufficient number of courses." Pls.' Mot. for Summ. J. at 12-13.

Although an employer's decision to terminate older employers and hire younger workers to take their place can support an inference of age discrimination, *see, e.g., Stratton v. Dep't for the Aging,* 132 F.3d 869, 880 (2d. Cir. 1997), the record here provides scant support for such an inference. First, the plaintiffs' positions were terminated during the reduction-in-force and, as a result, no one has been hired to fill those positions, which no longer exist. Petty Dep. at 83; Khatri Dep. at 35-36; Seyoum Dep. at 41; *cf. Leibowitz v. Cornell Univ.,* 584 F.3d 487, 504-505 (2d Cir. 2009) (finding pretext where defendant cited budget concerns as reason for terminating female employees, yet continued to hire new employees). Moreover, the plaintiffs' comparisons of their course loads to those of other adjunct professors do not reveal any stark disparity. For example, in the spring semester 2018,

Dr. Seyoum taught either two or four physics courses,[7] Dr. Khatri taught two physics courses, Professor Gharmouchi taught six physics courses, Professor Pyakuryal taught three physics courses, and Professor Amir taught one physics course, *See* Pls.' Mot. for Summ, J., Ex. 26. These disparities hardly give rise to an inference of pretext age-based discrimination.

While Professor Pyakuryal taught between six and eight courses in the 2015 spring semester, that period predates the reduction-in-force, which did not take effect until May 15, 2015. *See* Pls.' Mot, for Summ. J., Ex. 29. Although the plaintiffs present evidence of their reduced course loads in 2016 and 2017, they provide no evidence about the other adjuncts' course loads for the same semesters. *See* Pls.' Mot. for Summ. J., Ex. 28. Finally, the plaintiffs have failed to produce any evidence of the ages of most of these adjunct professors, weakening any inference that the University gave preferential treatment to "younger" faculty.[8] Similarly, the plaintiffs offer no evidence in support of their assertion that Professors Pyakuryal and Ghannouchi lack appropriate qualifications in their

---

[7] The plaintiffs state in their "Statement of Undisputed Material Facts" that Dr. Seyoum taught four physics courses in Spring 2018, Pls.' Stmt. of Undisputed Material Facts ¶ 28 (citing Ex. 25), but the exhibit cited indicates that he taught two physics courses, *see* Pls.' Mot. for Summ. J., Ex. 25.

[8] The plaintiffs list the ages of the adjunct faculty members in their Statement of Undisputed Material Facts, and cite Exhibit 24 of their motion as support. Exhibit 24, however, lists the ages of the faculty members terminated in the reduction-in-force, but does not provide the ages of the adjunct faculty members teaching physics. *See* Pls.' Mot. for Summ. J., Ex. 24.

discipline. In sum, this evidence does not give rise to an inference of age-based discrimination,

5. Statements Evidencing Age-Based Animus

The plaintiffs argue that University officials have made statements evidencing a preference for younger faculty members and discrimination against older faculty members. The plaintiffs cite a May 201.2 *Washington City Paper* article reporting that former University President Allen Sessoms "called the faculty old." Pls.' Mot. for Summ. J., Ex. 9 at 73. Beyond the fact that the statement constitutes hearsay whose reliability is unknown, Professor Sessoms, was no longer the University President in 2014 when the Board voted on the reduction-in-force, or in 201.5, when the reduction-in-force took effect. *See* Khatri Dep. at 40.

The plaintiffs also cite the University's stated plan to hire "junior" faculty in its Vision 2020 Strategic Policy and statements about hiring "junior" faculty in a 2015 University magazine article as evidence of age bias. *See* Pls.' Mot. for Summ. J. at 18 & Exs. 12-13. The statements in the Vision 2020 Strategic Plan arose in the context of a discussion concerning the fact that the University has far more full professors per student than peer institutions; the University stated that it intended to address that imbalance by filling vacancies with "junior-level faculty" as opposed to senior-level faculty. Pls.' Mot. for Summ. J., Ex. 12 at 26. These references to junior-and senior-level faculty refer not principally to the age of faculty, but rather, to academic rank, as Provost Petty discussed in her deposition. *See* Petty Dep. at 256-67. Though academic rank and age may broadly correspond, in context, the statement in the Strategic Plan does not suggest age-

based animus. The 2015 Legacy article remarked on the hiring of twenty-seven "junior" faculty members, but likewise contained no statements reflecting age-based animus. These isolated statements do not raise an issue of material fact as to whether the University's proffered justification was pretext for discrimination.

6. Procedural Errors

The plaintiffs also raise a number of procedural arguments, challenging the manner in which the seventeen degree-granting programs were selected, the fact that Board eliminated the physics program over the recommendation of the Faculty Senate, and the manner in which the Board approved the resolutions implementing the reduction-in-force. *See* Pls.' Opp'n at 7-10; Pls.' Mot. for Summ. J. at 7; Pls.' Stmt. of Undisputed Material Facts ¶¶ 70-74. The plaintiffs, however, do not explain how the process by which the seventeen programs were selected or the Board's decision not to adopt the Faculty Senate's recommendation violated governance regulations, much less how any such violations give rise to an inference of discriminatory intent. *See* Pls.' Opp'n at 7-9.

7. Conclusion

The Court concludes that the plaintiff's arguments, taken both individually and in their totality, do not raise a genuine issue of material fact, especially when viewed in light of the defendant's evidence that the reduction-in-force was legitimate and non-discriminatory. The plaintiffs have presented little compelling evidence casting doubt on the legitimacy of the University's decision to eliminate underperforming academ-

ic programs, including the degree-granting program in physics, and to terminate the faculty members associated with those programs. *See Smith v. Jackson,* 539 F. Supp. 2d 116, (D.D.C. 2008) (quoting *Fischbach v. District of Columbia Dep't of Corrections,* 86 F.3d 1180, 1183 (D.D.C. 1.996)) (citation omitted) ("[T]he Court is without authority to 'second guess an employer's personnel decision absent demonstrably discriminatory motive."). The record evidence shows that the Council instructed the Board to eliminate underperforming degree-granting programs, and that the physics program consistently suffered from shallow enrollment. Franklin Aff., Ex. A; Massey Aff. ¶¶ 7-9.

In fact, there is no record evidence showing that the Board even knew, let alone considered, the ages of the professors holding the positions eliminated in the reduction-in-force. Franklin Aff. ¶ 10. *See Gonda v. Donahoe,* 79 F. Supp. 3d 284, 300 (D.D.C. 2015) (granting summary judgment for defendant where plaintiff's age was not considered in her termination). At the June 10, 2014 meeting when the Board discussed eliminating the plaintiffs' positions, the names and ages of the plaintiffs and the other terminated faculty members were never mentioned. Franklin Aff, Ex. G (June 10, 2014 Tr.). Though the plaintiffs argue that the Board must have known their ages because they have attended and testified at Board meetings, the plaintiffs fail to present any concrete evidence to support this claim. *See* Pls.' Opp'n at 11.

Viewed in totality, the evidence does not raise a question of material fact as to whether the plaintiffs were terminated because of their ages. Accordingly, it is this 26th day of February, 2020, hereby

ORDERED that the plaintiff's motion for summary judgment is DENIED; and it is further

ORDERED that the defendant's motion for summary judgment is GRANTED; and it is further

ORDERED that summary judgment is entered for the defendant and against the plaintiffs on all counts of the Complaint.

SO ORDERED.

/s/ Jason Park
Judge, Superior Court of the
District of Columbia

Copies to:

Anessa Abrams, Esq.
Bethany Patrice Clair, Esq.

Via CaseFile Xpress

Hailemichael Seyoum
911 Florida Avenue, NW
Washington, DC 20001

Daryao Khatri
8252 Roseland Drive
Fairfax, VA 22039

Via LISPS

ORDER DENYING PETITION FOR REHEARING EN BANC, DISTRICT OF COLUMBIA COURT OF APPEALS (JANUARY 31, 2025)

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 23-CV-0874
2018-CA-004939-B

HAILEMICHAEL SEYOUM,

Appellant,

and

No. 23-CV-0875
2018-CA-004941-B

DARYAO KHATRI,

Appellant,

v.

BOARD OF TRUSTEES OF THE UNIVERSITY OF THE DISTRICT OF COLUMBIA,

Appellee.

Before: BLACKBURNE-RIGSBY,* Chief Judge., and BECKWITH, EASTERLY, McLEESE, DEAHL, HOWARD, and SHANKER,* Associate Judges., and THOMPSON, Senior Judge.

ORDER

On consideration of appellants' petition for rehearing or rehearing en banc, and it appearing that no judge of this court has called for a vote on the petition for rehearing en banc, it is

ORDERED by the merits division* that appellants' petition for rehearing is denied. It is

FURTHER ORDERED that appellants' petition for rehearing en banc is denied.

PERCURIAM

Nos. 23-CV-0874 & 23-CV-0875

Copies e-mailed to:

Honorable Juliet J. McKenna
Director, Civil Division

Copies e-served to:

Daryao S. Khatri
Hailemichael Seyoum
Anessa Abrams, Esquire
Bethany Patrice Clair, Esquire

BLANK PAGE

SUPREME COURT
PRESS