APPENDIX A

Order DN 111 from the District Court Which Granted Scott's Summary DN 91 and Denied Qiu's Summary DN 88

Filed: 05/26/23 by Judge Gregory F. Van Tatenhove

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION LEXINGTON

WEI QIU, Plaintiff,
v.
BOARD OF EDUCATION OF SCOTT COUNTY, KENTUCKY, Defendant.

Civil No. 5:21-cv-00197-GFVT
MEMORANDUM OPINION & ORDER
*** *** *** ***

This matter is before the Court on multiple pending motions. Ms. Qiu, a Chinese woman, brought this action alleging that the principal of Great Crossing High School engaged in national origin and other forms of discrimination by not hiring her for two chemistry teacher positions. [R. 35.] The parties filed cross-motions for summary judgment. [R. 88; R. 91.] Ms. Qiu also filed a motion seeking leave to amend her motion for summary judgment. [R. 101.] Finally, Scott County filed a Motion in Limine. [R. 92.] Ms. Qiu does not create a genuine issue of material fact on pretext, so Scott County's Motion for Summary Judgment [R. 91] is GRANTED and Ms. Qiu's Motion for Summary Judgment [R. 88] is DENIED. The Court also DENIES Ms. Qiu's Motion to

Amend [R. 101] because it is futile and DENIES AS MOOT Scott County's Motion in Limine [R. 92].

I

This action is one of nine cases Ms. Qiu currently has pending against Kentucky school districts in federal court. [See R. 82 at 11 n.3.] The instant case is premised on Ms. Qiu's applications for two chemistry teacher positions, Job Postings 69 and 146, at Great Crossing High School. [R. 35; R. 91 at 4-9.] Ms. Qiu applied for the first in Spring 2020 and the second in July 2020. [R. 35 at 5; R. 91 at 4.] She did not get an interview for the first application. [R. 35 at 5.] Scott County hired Rhonda Cosgrove for the position. [R. 91 at 4.]

After submitting her second application, she "emailed the Principal Joy Lusby for her attention to [Ms. Qiu's] application multiple times." Id. at 5. Principal Lusby called her with a "question about [her] resume" on July 14. Id. Scott County frames these calls as a "precursor to formal interviews . . . to confirm [the candidates] were still interested in the position. [R. 91 at 7.] Ms. Qiu claims that Principal Lusby "heard [her] accent in the call" and "excluded [her] from the job." [R. 35 at 5.] Principal Lusby "hired someone else [Dylan Perraut] on the day she called [Ms. Qiu.]" [Id.; see also R. 91 at 7.] Ms. Qiu claims that she was "highly qualified for the two

chemistry teaching jobs." Id. She believes that Scott County hired less-qualified white candidates over her. [See generally R. 88.]

II

A

Summary judgment is appropriate when the pleadings, discovery materials, and other documents in the record show "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); Celotex Corp. v. Catrett, 477 U.S. 317, 323-25 (1986). A genuine dispute exists "if the evidence shows 'that a reasonable jury could return a verdict for the nonmoving party.'" Olinger v. Corp. of the Pres. of the Church, 521 F. Supp. 2d 577, 582 (E.D. Ky. 2007) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986)). The moving party has the initial burden of demonstrating the basis for their motion and identifying the parts of the record that establish the absence of a genuine issue of material fact. Chao v. Hall Holding Co., Inc., 285 F.3d 415, 424 (6th Cir. 2002). The movant may satisfy their burden by showing "that there is an absence of evidence to support the non-moving party's case." Celotex Corp., 477 U.S. at 325. Once the movant satisfies this burden, the non-moving party must go beyond the pleadings and come forward with specific facts demonstrating there is a genuine issue in dispute.

Hall Holding, 285 F.3d at 424 (citing Celotex Corp., 477 U.S. at 324).

The Court must then determine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Booker v. Brown & Williamson Tobacco Co., 879 F.2d 1304, 1310 (6th Cir. 1989) (quoting Anderson, 477 U.S. at 251-52). In doing so, the Court must review the facts and draw all reasonable inferences in favor of the non-moving party. Logan v. Denny's, Inc., 259 F.3d 558, 566 (6th Cir. 2001).

Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating "against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e–2(a)(1). A plaintiff can prove her claims under Title VII by either direct or circumstantial evidence of intentional discrimination. Ondricko v. MGM Grand Detroit, LLC, 689 F.3d 642, 648–49 (6th Cir. 2012). "Direct evidence of discrimination is that evidence which, if believed, requires the conclusion that unlawful discrimination was at least a motivating factor in the employer's actions." Id. (quoting Wexler v. White's Fine Furniture, Inc., 317 F.3d 564, 570 (6th Cir. 2003));

see also Rowan v. Lockheed Martin Energy Sys., Inc., 360 F.3d 544, 548 (6th Cir. 2004) (direct evidence "proves the existence of a fact without requiring any inferences"). On the other hand, circumstantial evidence "is proof that does not on its face establish discriminatory animus, but does allow a fact finder to draw a reasonable inference that discrimination occurred." Wexler, 317 F.3d at 570.

Ms. Qiu only offers circumstantial evidence of discrimination. She claims that Scott County did not hire her for either job posting because of her race, color, or national origin. [R. 35 at 5.] She specifically claims that she did not get Job Posting 146 because Principal Lusby called her and heard her accent. Id. Scott County hired white candidates for both positions, both of whom Ms. Qiu alleges were less qualified. [See R. 95 at 4.] Neither allegation is direct evidence of discrimination. Rather, they are circumstantial because one must infer from the fact that Scott County knew that Ms. Qiu was Chinese and that she has an accent that she was not hired because of her race, color, or national origin.

The McDonnell Douglas burden shifting framework applies to employment discrimination claims based on circumstantial evidence. Geiger v. Tower Automotive, 579 F.3d 614, 621 (6th Cir. 2009). The plaintiff must first establish a prime facie case of

discrimination. Schoonmaker v. Spartan Graphics Leasing, LLC, 595 F.3d 261, 264 (6th Cir. 2010) (quoting Reeves v. Sanderson Plumbing Products, Inc ., 530 U.S. 133, 148 (2000)). If successful, the burden then shifts to the defendant employer to "articulate a legitimate nondiscriminatory reason for the adverse employment action." Id. (citation omitted). Once this showing has been made, the burden of production shifts back to the plaintiff who must show that the employer's explanation was merely pretext for intentional discrimination. Id. (citation omitted). Although the burden of production shifts throughout the analysis, the burden of persuasion remains on the plaintiff to "demonstrate that [the protected characteristic] was the 'but-for' cause of their employer's adverse action." Id. (quoting Geiger, 579 F.3d at 620) (internal quotations marks omitted).

1

Under the McDonnell-Douglas framework, Ms. Qiu must first establish a prima facie case of gender discrimination by showing that: "(1) she is a member of a protected class, (2) she was subjected to an adverse employment action, (3) she was qualified [for the position at issue], and (4) she was treated differently than similarly-situated male and/or nonminority employees for the same or similar conduct." McClain v. NorthWest Community Corrections Center Judicial Corrections Bd., 440 F.3d

320, 332 (6th Cir. 2006); see also Lewis v. Norfolk S. Ry. Co., 590 F. App'x 467, 469 (6th Cir. 2014) (quoting White v. Baxter Healthcare Corp., 533 F.3d 381, 391 (6th Cir. 2008)).

Scott County assumed for the purpose of its motion that Ms. Qiu can establish a prima facie case and does not present an argument on any of the four factors. [R. 91 at 15.] Because there is no argument on the first step, the Court will also assume for the sake of its analysis that Ms. Qiu can establish a prima facie case. Accordingly, the burden shifts to Scott County to produce a legitimate non-discriminatory reason for not hiring Ms. Qiu. Schoonmaker, 595 F.3d at 264. Scott County's proffered reason is that more qualified candidates applied. [R. 91 at 15- 16.]

The defendant only bears a burden of producing a legitimate non-discriminatory reason. Schoonmaker, 595 F.3d at 264. "The defendant need not persuade the court that it was actually motivated by the proffered reasons." Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 254 (1981). It need only set forth "through the introduction of admissible evidence, the reasons for the plaintiff's rejection." Id. Scott County satisfies this burden. It submitted affidavits from Principal Lusby and Ms. Willis explaining their reasoning in not selecting Ms. Qiu. [See R. 91- 7; R. 91-8.] They state that the selected

candidates had better qualifications for the role. See id. This satisfies the burden of producing a legitimate non-discriminatory reason for not hiring Ms. Qiu. See White v. Metro. Housing Auth., 429 F.3d 232, 245 (6th Cir. 2005). Accordingly, the burden shifts to Ms. Qiu to show that Scott County's non-discriminatory reason was mere pretext. Id.

2

Ms. Qiu disputes Scott County's proffered reason by arguing that neither individual hired for the chemistry teacher positions was qualified. [R. 88 at 5-9.] She first disputes Ms. Cosgrove's qualifications, who was hired for Job Posting 69. [R. 95 at 4-6.] Ms. Qiu emphasizes that the posting did not state that it was only open to current Scott County employees, so Ms. Cosgrove should not have been "privileged" for the position because she was currently working for the district. Id. at 4. She also argues that Ms. Cosgrove "does not have any shining spot in her application," thought Ms. Qiu recognizes that Ms. Cosgrove taught AP Chemistry for the preceding ten years. Id. She also alleges that Ms. Cosgrove caused that AP class to "wither" because it was not offered for two years after she taught it in 2020-2021. Id. at 5. In contrast to Ms. Cosgrove, Ms. Qiu claims that she "was strong to teach both AP chemistry and chemistry," citing her high rate of 5 scores on AP exams, an "ETS Recognition of Excellence," a job evaluation from her

time working in research labs at UK, and a letter of reference. Id.

Scott County explains that Ms. Cosgrove had "impeccable qualifications" for the position. [R. 91 at 5.] It emphasizes her "multiple subject area certifications," ten-year experience teaching AP chemistry, and that she was working on her dual-credit chemistry qualification. Id. The school also appreciated that she had worked in the district and could teach multiple subjects. Id. It believed that Ms. Cosgrove's application was superior to Ms. Qiu's because Ms. Qiu had much less experience teaching and was only certified in one subject.

Ms. Qiu also explains her belief that she was more qualified than Mr. Perraut for Job Posting 146. [R. 95 at 7-8.] She states that he did not have any references, did not include his chemistry Praxis exam report in his application, and had previously applied for positions with Scott County twice before. Id. at 7. Ms. Qiu again relies on her AP 5 score rate, ETS Recognition of Excellence, job evaluation, and reference to argue that she was more qualified. Id.

Scott County explains why it selected Mr. Perraut over Ms. Qiu for Job Posting 146. [R. 91 at 7.] First, it emphasizes that Ms. Qiu indicated on her call with Principal Lusby that she was especially interested in

teaching AP chemistry. Id. at 7-8 (citing R. 1 at 68). The position was to teach general chemistry. Id. Further, Scott County states that Mr. Perraut was "notably qualified" and that it had attempted to hire him in the past. Id. at 8. He graduated from UK's science education program and one of his professors stated that he is one of the "brightest individuals" in the program. Id. at 9 (quoting R. 91-7 at 20). He also had "high school and graduate level chemistry qualifications" and was willing to serve "an array of potential needs" at the school. Id.

A plaintiff can show pretext: "(1) by showing that the proffered reason had no basis in fact; (2) by showing that the proffered reason did not actually motivate the employer's conduct, or (3) by showing that the proffered reason was insufficient to warrant the challenged conduct." White, 429 F.3d at 245 (citing Wexler, 317 F.3d at 576). Ms. Qiu shows none of the three.

Ms. Qiu's motion primarily explains her disagreement with Scott County's assessment of the applications it received. [R. 88-1 at 5-9.] This disagreement is insufficient without some evidence of discriminatory intent. Wrenn v. Gould, 808 F.2d 808 F.2d 493, 502 (6th Cir. 1987). "Title VII does not diminish lawful traditional management prerogatives in choosing among qualified candidates." Id. (citing

United Steelworkers of America v. Weber, 443 U.S. 193, 207 (1979)). "So long as its reasons are not discriminatory, an employer is free to choose among qualified candidates." Id. (citations omitted). The employer's motivation is the focus of the inquiry, not "not the applicant's perceptions, or even an objective assessment, of what qualifications are required for a particular position." Id.

Scott County provides reasonable explanations for its choices to hire Ms. Cosgrove and Mr. Perraut over Ms. Qiu. [R. 91 at 4-9.] Ms. Qiu may disagree with that choice, but she has no evidence that Scott County's conclusion that those individuals were more qualified is untrue, not its true motivation, or insufficient to not hire her. White, 429 F.3d at 245.

Ms. Qiu's only allegation of discriminatory intent is that her first application was not chosen because her Chinese origin was evident from her resume and that her second application was rejected after Principal Lusby heard her Chinese accent. [R. 88-1 at 5.] But she presents nothing beyond her own suspicion to support her belief that her national origin was the actual reason that Scott County rejected her applications. "Mere conjecture that [the] employer's explanation is a pretext for intentional discrimination is an insufficient basis for denial of summary judgment." Peters v. Lincoln. Elec. Co., 285 F.3d 456,

470 (6th Cir. 2002) (quoting Carney v. Cleveland Heights-Univ. Heights Sch. Dist., 758 N.E.2d 234, 245 (Ohio Ct. App. 2001)). Ms. Qiu's suspicion is insufficient without "evidence that the employer's proffered reasons were factually untrue." Peters, 285 F.3d at 470 (citing Carney, 758 N.E.2d at 245).1 1 The Sixth Circuit was considering Ohio's employment discrimination statute. Peters, 285 F.3d at 469. The analysis is applicable to the instant claim because, as the Circuit noted, "Ohio courts have adopted the framework established in federal case law concerning Title VII and the Age Discrimination in Employment act ("ADEA")." Id. That Scott County knew that Ms. Qiu is Chinese and has an accent, then hired someone else for the two positions, is not evidence that its proffered reason—the hired candidates having better qualifications—was factually untrue.

Ms. Qiu's position can be summed up by her statement that "it is not about the quality of the applicants for the position – it is about discrimination against Chinese." [R. 95 at 4.] In contrast, it is about the quality of the candidates. Scott County claims that it hired Mr. Perraut and Ms. Cosgrove because they were more qualified. [R. 91 at 6-9.] It provides reasonable explanations for that perspective. Id. at 15-16. The mere fact that Ms. Qiu is Chinese and has an accent does not establish that Scott County's explanations are pretext. Peters, 285 F.3d at 470. If

her position was correct, any individual who is a member of a protected class could bring a successful employment discrimination claim so long as the employer was aware of that protected class. Title VII does not require as such. Ultimately, Scott County is entitled to summary judgment.

B

Having determined that Scott County is entitled to summary judgment, the Court will deny Ms. Qiu's motion to amend her summary judgment motion as moot. The Court first turns to Ms. Qiu's motions to amend her motion for summary judgment. [R. 101.] She asks to "add her lost wages and benefits of three years" and includes Scott County's salary schedule. [R. 101.] Scott County opposes the motions. [R. 102.] It emphasizes that the motions were made "more than three months after the dispositive motion deadline," do not have sufficient justification, and would be futile. Id. at 1.

The Court agrees that the amendment would be futile. Ms. Qiu's proposed amendment goes to damages, which she is not entitled to given that judgment in the Defendant's favor is forthcoming. Therefore, amending the motion to include her alleged lost damages is futile and amendment is not warranted. See Riverview Health Inst. v. Medical Mut.

of Ohio, 601 F.3d 505, 520 (6th Cir. 2010). In fact, Ms. Qiu's reply recognizes that her lost wages and benefits only become relevant "once [her] Motion for Summary Judgment is granted." [R. 103-1.] The Court denies her Motion to Amend her Motion for Summary Judgment. [R. 101.]

III

Accordingly, and the Court being sufficiently advised, it is hereby ORDERED as follows:

1. The Defendant's Motion for Summary Judgment [R. 91] is GRANTED;
2. The Plaintiff's Motion for Summary Judgment [R. 88] is DENIED;
3. The Plaintiff's Motion to Amend [R. 101] is DENIED;
4. The Defendant's Motion in Limine [R. 92] is DENIED AS MOOT; and,
5. An appropriate judgment will be entered contemporaneously herewith.

This the 24th day of May, 2023.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
Gregory F. Van Tatenhove
United States District Judge

APPENDIX B

Order D 19 from the 6th Circuit Court Which Affirmed Order DN 111

Filed on April 8, 2024
NOT RECOMMENDED FOR PUBLICATION
No. 23-5842

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WEI QIU,
Plaintiff-Appellant,
v.
SCOTT COUNTY, KY BOARD OF EDUCATION,
Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY

ORDER

Before: McKEAGUE, MURPHY, and BLOOMEKATZ, Circuit Judges.

Wei Qiu, proceeding pro se, appeals the district court9s judgment in favor of the Scott County, Kentucky Board of Education (SCBOE) on her employment-discrimination claims. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument

is not needed. See Fed. R. App. P. 34(a). For the following reasons, we affirm.

In 2020, Qiu, a Chinese woman, applied for two different chemistry teacher positions at Great Crossing High School. The school hired Rhonda Cosgrove, a white woman, to the first position without interviewing Qiu. Qiu emailed the principal regarding the status of her second application. The principal spoke on the phone with Qiu but ultimately hired Dylan Perraut, a white man, to the position.

Qiu filed an initial charge of discrimination with the Equal Employment Opportunity Commission, which granted her a right to sue in May 2021. Qiu then sued SCBOE1 for violating Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000 to 2000e-17, alleging that SCBOE [1 Qiu originally sued Great Crossing High School but amended the complaint to name SCBOE as the only defendant.] discriminated against her based on her race and national origin. During discovery, Qiu filed nine motions seeking sanctions against SCBOE and judgment in her favor. The magistrate judge recommended denying those motions and barring Qiu from future filings without receiving permission. The district court adopted the recommendation over Qiu9s objections. Then, in considering the parties's cross-motions for summary judgment, the district court granted SCBOE's motion

and denied Qiu's. The court reasoned that SCBOE stated that it did not hire Qiu because more qualified candidates applied, and Qiu failed to show a genuine issue of fact about whether SCBOE's reason was pretextual. The magistrate judge then denied Qiu permission to file a Federal Rule of Civil Procedure 59(e) motion and another motion for sanctions.

On appeal, Qiu argues that her claims should have survived summary judgment because SCBOE hired two unqualified candidates. She also argues that the district court should have issued sanctions against SCBOE because it lied in its filings and that the district court was corrupt. Finally, she moves for a stay under Federal Rule of Appellate Procedure 8.

We review de novo the district court's order granting summary judgment. See Smith v. City of Troy, 874 F.3d 938, 943 (6th Cir. 2017) (per curiam). Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A court reviewing a summary-judgment motion must draw all reasonable inferences in favor of the nonmoving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

Under Title VII, it is unlawful "for an employer . . . to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." § 2000e-2(a)(1). Where an employment-discrimination claim relies on circumstantial evidence, the complainant has the initial burden of establishing a prima facie case of discrimination. See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 800-03 (1973). Once the plaintiff establishes a prima facie case, the burden shifts to the employer to articulate a legitimate, non-discriminatory reason for the adverse action taken against the employee. Id. at 802. Thereafter, the burden shifts to the plaintiff to establish that the employer9s stated reason was a pretext for discrimination. Id. at 804.

The parties do not dispute whether Qiu has made a prima facie case for discrimination. Thus, we ask whether SCBOE "articulate[d] a legitimate, non-discriminatory reason" for not hiring Qiu. Lefevers v. GAF Fiberglass Corp., 667 F.3d 721, 725 (6th Cir. 2012). SCBOE met its burden by stating that it hired Cosgrove and Perraut because their qualifications and flexibility to fill SCBOE's teaching needs set them apart from the other candidates. Accordingly, the burden shifted to Qiu to "prove by a preponderance of the evidence that the legitimate

reasons offered by the defendant were not its true reasons, but were a pretext for discrimination." Levine v. DeJoy, 64 F.4th 789, 798 (6th Cir. 2023) (quoting Texas Dep't of Cmty. Affs. v. Burdine, 450 U.S. 248, 253 (1981)). "A plaintiff will usually demonstrate pretext by showing that the employer's stated reason for the adverse employment action either (1) has no basis in fact, (2) was not the actual reason, or (3) is insufficient to explain the employer9s action." Id. (quoting White v. Baxter Healthcare Corp., 533 F.3d 381, 393 (6th Cir. 2008)). Where, as here, " 'qualifications evidence is all (or nearly all) that a plaintiff proffers to show pretext, the evidence must be of sufficient significance itself to call into question the honesty of the employer's explanation' for its hiring decision." Id. (quoting Bender v. Hecht's Dep't Stores, 455 F.3d 612, 627 (6th Cir. 2006)).

Qiu failed to meet her burden to produce evidence of pretext. The record shows that Cosgrove and Perraut were well qualified for the job. Cosgrove was certified in multiple subjects, had taught AP Chemistry for 10 years, and had already been working for the school district. And Perraut, unlike any other candidate, had a graduate degree in chemistry. In addition, he had a graduate degree in education, strong recommendations, and prior teaching experience. Qiu acknowledges that Cosgrove possessed 10 years of experience teaching chemistry

in the school district and that Perraut had a graduate degree in chemistry. Qiu's conclusory allegations that SCBOE lied about these qualifications and her "subjective view of her qualifications in relation to those of the other applicants, without more, cannot sustain a claim of discrimination." Hedrick v. W. Rsrv. Care Sys., 355 F.3d 444, 462 (6th Cir. 2004). Simply put, Qiu9s allegations and evidence regarding her qualifications and those of Cosgrove and Perraut are insufficient to call into question the honesty of SCBOE's explanation. See Levine, 64 F.4th at 798.

To the extent that Qiu's appeal can be liberally construed as challenging the district court's filing injunction, courts have the authority to impose pre-filing restraints on litigants with a history of filing repetitive, frivolous, or vexatious pleadings and to require those litigants to obtain court approval before filing further pleadings. Futernick v. Sumpter Twp., 207 F.3d 305, 314 (6th Cir. 2000); Feathers v. Chevron U.S.A., Inc., 141 F.3d 264, 269 (6th Cir. 1998). We review a district court's order enforcing pre-filing restrictions for an abuse of discretion. See Feathers, 141 F.3d at 269-70. In recommending the injunction, the magistrate judge relied on Qiu's nine pending motions, which contained lengthy allegations, including "unrestrained attacks on defense counsel's integrity and professionalism," and the fact that Qiu "consistently failed to cite with

particularity the legal foundation for her motions." The magistrate judge also noted that Qiu had multiple other pending actions against various school districts throughout Kentucky. Based on these facts, the district court did not abuse its discretion in adopting the recommendation to require Qiu to receive leave of the court before filing additional motions or pleadings. See id.

And because Qiu did not present any meritorious arguments in her requests for leave to file a Rule 59(e) or Federal Rule of Civil Procedure 11 motion, the magistrate judge did not err in denying her permission to do so. See id. First, her request to file a Rule 59(e) motion did not contain any arguments about why she was entitled to relief under Rule 59 but rather sought to relitigate issues already considered. Second, her request to file a motion for Rule 11 sanctions reiterated many of the same allegations that the district court previously considered. The magistrate judge determined that this motion was in the "same character" as the previous motions and that it was equally "abusive, frivolous, and brought for an improper purpose."

To the extent that Qiu argues that the district court impermissibly ruled in SCBOE's favor because it was corrupt and biased against her, she presents no evidence to support these allegations except the

court's rulings. But "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." Liteky v. United States, 510 U.S. 540, 555 (1994).

Finally, we deny as moot Qiu's motion for a stay of the district court's judgment. See Fed. R. App. P. 8(a)(2)(A)(i) (explaining that a party may move a court of appeals for a stay where "moving first in the district court would be impracticable").

For these reasons, we AFFIRM the district court's judgment. Qiu's Rule 8 motion is DENIED as moot.

ENTERED BY ORDER OF THE COURT
Kelly L. Stephens, Clerk s/

APPENDIX C

Order DN 128 from the District Court Which Denied Qiu's 59(e) and Sanction Motions to be Filed into the Docket

Doc#:128
Filed: 08/23/23 by Judge Gregory F. Van Tatenhove

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION LEXINGTON

WEI QIU, Plaintiff,
V.
BOARD OF EDUCATION OF SCOTT COUNTY, KENTUCKY, Defendant

Civil No. 5:21-cv-00197-GFVT

MEMORANDUM OPINION & ORDER

****

This matter is before the Court on Ms. Qiu's objections to two orders filed by Magistrate Judge Atkins denying her permission to file motions. [R. 118; R. 127.] For the reasons that follow,the Court OVERRULES her objections [R. 118; R. 127] and ADOPTS Judge Atkins's orders [R.115;R.120].

I

Ms. Qiu brought this action alleging that Scott County engaged in race,color,and national origin discrimination by not hiring her for two teaching positions. [R.35.] Since January of 2023, the Court has required Ms. Qiu to obtain permission from the

Magistrate Judge before submitting new filings. [R. 97.] This followed a protracted history of filing frivolous motions. See id. at 2. The Court granted Scott County summary judgment and entered judgment in its favor in May. [R.111;R.112.]

Shortly after the Court entered judgment, Ms. Qiu sought permission to file a motion to alter or amend judgment under Rule 59(e). [R.113.] Judge Atkins denied her request to file this motion because it "is frivolous and brought for an improper purpose"; [R. 115 at 2.] Ms. Qiu then asked to file an objection to that order, which Judge Atkins permitted. [R. 116;R.117.] Next, Ms. Qiu asked for permission to file a motion seeking sanctions against defense counsel.[R. 119.] Judge Atkins denied that request as well, to which Ms. Qiu objected. [R. 120;R.122.] Judge Atkins granted her request to file that objection. [R. 126.] Accordingly,two objections are before the Court: (1) Ms. Qiu's objection to Judge Atkins's denial of permission to file a motion to amend judgment and (2) Ms. Qiu's objection to Judge Atkins's denial of permission to file a motion for sanctions. [R.118;127.]

A

The Court agrees with Judge Atkins that Ms. Qiu's motion to amend judgment is frivolous. [R. 115.] Her objection claims that Judge Atkins failed to review the facts or arguments presented in her

motion. [R. 118 at 2.] Judge Atkins denied permission to file the motion because it "seeks to litigate issues that the Court has grappled with throughout the duration of this action: that Defendant, Defendant's employees, and Defendant's attorneys have 'lied.'" [R. 115 at 2.] Ms. Qiu states that this reasoning "comes from nowhere." [R. 118 at 2.] Judge Atkins correctly observed that the issues presented in Ms. Qiu's motion have been resolved.

Motions to amend are reserved for correcting a clear error of law,addressing newly discovered evidence or an intervening change in the law, or preventing manifest injustice. *See,e.g., GenCorp, Inc. v. Am. Int'l Underwriters,*178 F.3d 804,833 (6th Cir. 1999). The Court recognizes that it is to liberally construe Ms. Qiu's pleadings because she is proceeding pro se. See *Luis v. Zang,* 833 F.3d 619,626 (6th Cir. 2016). Her motion to amend argues that(1)she presented direct, not circumstantial evidence of discrimination, (2) Lusby and Willis's affidavits are lies, and (3) the court's summary judgment order adopted a "lie" by defense counsel. [R. 113 at 3-13.] Even liberally construing these allegations, Ms. Qiu is not entitled to file her motion to amend because each of the insufficiencies it alleges are unfounded.

First, the Court explained why Ms. Qiu's evidence is circumstantial, not direct. [R.111 at 4.] This is legal analysis which, though Ms. Qiu may disagree, does not constitute clear error. Qiu's second argument in favor of amendment is internally inconsistent. She claims that Principal Lusby did not interview her, but "admits it is true" that Principal Lusby held precursor phone interviews. [R. 113 at 5.] When Scott County references her "interview," it is referring to the preliminary phone call between Principal Lusby and Ms. Qiu. [See R. 127-3 at 2 (defining this call as a "phone interview).] Ms. Qiu agrees that this call occurred, so the affidavits referencing this interview are not lies. Finally, the Court's order did not "adopt defendant's lie."[See R. 113 at 7-8.] Ms. Qiu insists that Scott County lied by claiming that Ms. Qiu discussed her success teaching AP students. *Id.* She explains that AP results were issued after her phone call, so she could not have discussed those results on the call. *Id.* Even assuming that this is true,the Court did not adopt this statement in its order. Rather, it stated that Ms. Qiu "was especially interested in teaching AP chemistry," which Ms. Qiu admitted in her deposition. [R.111 at 7; R.91-1 at 9,11.] Accordingly, the Court did not adopt the statement which Ms. Qiu believes is a lie.

All of Ms. Qiu's claims about the weaknesses in the Court's order are unsubstantiated. She does not identify any clear error, newly discovered evidence, changed law, or manifest injustice. *GenCorp*,178 F.3d at 833. Accordingly, Judge Atkins correctly determined that she should not be permitted to file a motion to amend. *Id.* It is evident that Ms. Qiu disagrees with the Court's conclusions. [See R. 113 at 9 (arguing that the Order "takes Defendant's side").] But a motion under Rule 59(e) is "not an opportunity to re-argue a case" *Sault Ste. Marie Tribe of Chippewa Indians v. Engler,* 146 F.3d 367,374 (6th Cir. 1998). Further, a "manifest error is not demonstrated by the disappointment of the losing party. It is the wholesale disregard, misapplication, or failure to recognize controlling precedent." *Oto v. Metro. Life Ins. Co.*,224F.3d 601, 606 (7th Cir. 2000). Ms. Qiu does not allege, let alone establish, grounds for amending the judgment. Accordingly, the Court overrules her objection to Judge Atkins's order denying her request to file her motion. [R. 118.] It adopts that order as the opinion of the Court.[R.115.]

B

The Court also agrees with Judge Atkins that Ms. Qiu has no grounds to file a motion for sanctions. She claims that counsel for the defendant "lied" in affidavits and filings submitted to the Court. [R. 119.] Judge Atkins denied her request to file that motion

because it "is of the same character as [filings] previously identified by the Court as being abusive, frivolous, and brought for an improper purpose." [R. 120.] The Court adopts this finding because all of Ms.Qiu alleged grounds for sanctions are unfounded.

First,she again cites her application materials for Scott County's teacher positions and argues that they are superior to the other candidates' [R. 127 at 2-4.] The Court has resolved this issue. Scott County is entitled to choose the candidate whom it believes is best qualified, as long as its reasons are not discriminatory. *Wrenn v. Gould,* 808 F.2d 808 F.2d 493, 502 (6th Cir.1987) ("Title VII does not diminish lawful traditional management prerogatives in choosing among qualified candidates. "). The Court explained by prior order that Ms. Qiu does not establish any discriminatory intent by Scott County. [R. 111 at 6-9.] Her disagreement with the school's view of her qualifications is not grounds for sanctions.

Second, Ms. Qiu's objection again references Scott County's statement that she discussed her success teaching AP students on the call with Principal Lusby. [R. 127 at 4-5.] She claims that this must be a lie because she received AP exams the day after the call, so she coud not have known the results. *Id.* Counsel for the defendant indicated that Ms. Qiu "discussed her success with teaching AP

students" in its response to her complaint with the EEOC. [See R.127-2 at 2.] However, Ms. Qiu admitted that she sent her students' AP scores days after the call. [R.127-1 at 8;R.91-1 at 10.] Counsel for the defendant may have misunderstood the timing of this representation when it responded to MIs. Qiu's complaint to the EEOC. But Scott County has not made this claim since filing that response and there is no indication it was originally made in bad faith. Having the timing of a statement incorrect in a filing before the case was before this Court does not violate Rule 11.

Finally,Ms. Qiu's objection takes issue with Lusby's. [R. 127 at 6-12.] As the Court explained above, Ms. Lusby's affidavit is not false for indicating that an interview with Ms. Qiu occurred. It is evident that the Defendant considers the phone call, which Ms. Qiu admits occurred, to be a "precursor interview." [See R. 127-3 at 2 (defining the phone call as an "interview").] Accordingly, the affidavit is not a lie for stating that Ms. Qiu was interviewed. Ms. Qiu's second claim–that Ms. Willis is a "created figure by Lusby"--is unfounded. See *id.* at 7. She believes that Ms. Willis is not real because the affidavits reference interviews conducted by Ms. Willis and Ms. Lusby but Ms. Qiu only ever communicated with Ms. Lusby. *Id.* Ms. Lusby's affidavit does not claim that Ms. Willis participated in Ms. Qiu's interview, just

that she was involved in interviews for the position. [See R. 127-3 at 4.] It is likely that Ms.Lusby and Ms. Willis divided the interviews between them, rather than both interviewing all candidates. *Id.* Ms. Qiu does not establish that Ms. Lusby's affidavits included any "lies," let alone that counsel for the Defendant violated Rule 11 by submitting them. She certainly does not show that Ms. Willis is not a real person "created... to mislead the Court." [R. 127 at 9.] Accordingly, there are no grounds for sanctions and the Court agrees with Judge Atkins that Ms.Qiu should not be permitted to file her motion. [R.120.]

III

Accordingly, and the Court being sufficiently advised, it is hereby ORDERED as follows:

1. Judge Atkins's Orders [R. 115; R. 120] are ADOPTED as and for the opinions of the Court;and,
2. Ms. Qiu's Objections [R. 118; R. 127] are OVERRULED.

This the 23rd day of August, 2023.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
Gregory F. Van Tatenhove
United States District Judge

APPENDIX D

Order D 22 of the appeal court denied Qiu's petition to rehear.

Case: 23-5842 Document: 22-2 Filed: 04/22/2024

No. 23-5842

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WEI QIU, Plaintiff-Appellant,
v.
SCOTT COUNTY, KY BOARD OF EDUCATION,
Defendant-Appellee.

ORDER

Before: McKEAGUE, MURPHY, and BLOOMEKATZ, Circuit Judges.

Wei Qiu, a pro se litigant, has filed a petition for rehearing of this court's order of April 8, 2024, affirming the district court's dismissal of her complaint.

Upon consideration, this panel concludes that it did not misapprehend or overlook any point of law or fact when it issued its order. See Fed. R. App. P. 40(a)(2).

We therefore DENY the petition for rehearing.

ENTERED BY ORDER OF THE COURT
/s/*Kelly L. Stephens, Clerk*
Kelly L. Stephens, Clerk