

**IN THE COMMON PLEAS COURT OF
OTTAWA COUNTY, OHIO**

John Farris,	:	Case No. 03-CVH-014
	:	
	:	
Plaintiff,	:	Judge Paul C. Moon
	:	
	:	
v.	:	<u>FINDINGS OF FACT &</u>
	:	<u>CONCLUSIONS OF LAW; ORDER</u>
	:	
Port Clinton City School Dist., et. al.	:	
	:	
	:	
Defendants.	:	

* * * * *

{¶1} This cause is before this Court following a bench trial that spanned several days during the period from March 7, 2005, to March 17, 2005.¹ This Court, *sua sponte*, requested that the parties submit proposed findings of fact and conclusions of law.² Defendant’s and Plaintiff’s Proposed Findings of Fact and Conclusions of Law were filed May 27, 2005.³ Plaintiff’s Brief on Mitigation and Disability was filed May 27, 2005.⁴ Plaintiff’s Brief on

¹ Testimony was presented all day on March 7 and for a half day on March 8, 9, and 14. A full day of testimony took place on March 15 and 16. On March 17, 2005, the Court heard a rebuttal witness and then final arguments.

² See Civ. R. 52 which states: “* * * [T]he court shall state in writing the conclusions of fact found separately from the conclusions of law. * * * the court, in its discretion, may require any or all of the parties to submit proposed findings of fact and conclusions of law; however, only those findings of fact and conclusions of law made by the court shall form part of the record.”

³ This Court had directed that the parties file their briefs simultaneously on March 11, 2005. See Transcript dated February 1, 2005, at 310.

⁴ At the conclusion of the bench trial, the Court invited counsel to submit briefs on any issue they may wish to raise. Counsel specifically indicated that they wished to respond to rulings made by the Court with respect to the admissibility of Plaintiff’s rebuttal witness, Rebecca Royster, and post-trial set off.

COMMON PLEAS COURT OF OTTAWA COUNTY

Inclusion of the Testimony of Rebecca Royster was filed May 27, 2005.⁵ Defendant's Motion for Post-Trial Set-Off was filed May 31, 2003.⁶

{¶2} This Court has reviewed the record, all pleadings, exhibits and the relevant case law, including 1,193 pages of trial testimony,⁷ the trial depositions of Dennis Rectenwald, James Radloff, and Clara Dracka, and 47 trial exhibits, most consisting of multiple pages. For the following reasons, this Court finds that Plaintiff has failed to establish the essential elements of a hostile work environment created by racial harassment or has failed to establish the essential elements of racial discrimination.

I. BACKGROUND

{¶3} John Farris, Jr. ("Plaintiff") was a teacher with Port Clinton Public Schools beginning in 1981 as a substitute teacher. He was later employed as a part-time teacher for the 1984-1985 school year and then as a full-time teacher for the 1985-1986 school year.⁸ In addition to teaching math, health and gym from 1981 through 1998, Plaintiff participated in Saturday Sessions⁹ and had various supplemental contracts to coach boys football, boys and girls

⁵ At the conclusion of the bench trial, the Court invited counsel to submit briefs on any issue they may wish to raise. Counsel specifically indicated that they wished to respond to rulings made by the Court with respect to the admissibility of Plaintiff's rebuttal witness, Rebecca Royster, and post-trial set off.

⁶ It appears that this document was submitted to the Court on May 27, 2005, but was not filed until May 31, 2005. As consideration of this document has no influence over the outcome of this matter, any issue of whether it was timely submitted is irrelevant.

⁷ The Plaintiff presented nine witnesses at trial: Verina Farris, Victoria Greer, Mary Jody Gagnon, Robert Polacheck, Steven Smith, Velissa Farris, Priscilla Farris, Dale VanLerberghe, and John Farris, Jr. The Defendants presented two witnesses at trial: Carey Clum and Dale VanLerberghe.

⁸ Plaintiff's Memorandum in Support of His Motion Against Summary Judgment, at 2 (unpaginated).

⁹ Saturday Sessions is additional detention assigned to students as an alternative to missing classes. "Recognizing that as a general rule it is more beneficial from an educational standpoint to have students in classes, the building principal or Dean of Students may offer Saturday Sessions as an alternative to a student's suspension." Exhibit 3, at 9. Saturday Sessions were held at the junior high school from 8:00 a.m. to 12:30 p.m. on Saturdays. Exhibit 3, at 9.

COMMON PLEAS COURT OF OTTAWA COUNTY

basketball and track, and girls softball.¹⁰ From 1981-1998 as a coach, and from 1985-1998 as a full-time teacher, Plaintiff was the only African-American employed by the school district.¹¹

{¶4} Plaintiff asserts that he received satisfactory evaluations during his tenure at Port Clinton City Schools, and occasionally received compliments.¹² However, he alleges that “on numerous occasions” he was passed over for promotions.¹³ According to Plaintiff, he applied “whenever job opportunities arose in the coaching department,” but was “turned down many times for varsity, junior varsity, and head coaching positions with the exception of coaching junior varsity girls’ basketball and co-coaching 8th grade football.”¹⁴

{¶5} Plaintiff asserts that “at times more often than not, persons awarded coaching positions were white,” and that those individuals were “not on the coaching staff and sometimes, not even on the teaching staff.”¹⁵ Plaintiff asserts that he was entitled to the opportunity to coach, pursuant to “union contracts” which provided that “the first choice for supplemental contracts is supposed to go to people who are already on staff.”¹⁶ Plaintiff also asserts that he was “overlooked for others with less coaching experience,”¹⁷ and that he consistently brought his concerns to the attention of the administration.¹⁸ But as result of numerous rejections, Plaintiff resigned from supervising Saturday Sessions and from coaching.

{¶6} In the “1990’s” Plaintiff resumed coaching when he was awarded the head coach position for the girls softball team.¹⁹ However, he alleges that as a result of animosity between the parents, the former coach, and players, he was soon forced to resign. During this period of

¹⁰ Plaintiff’s Memorandum in Support of His Motion Against Summary Judgment, at 2 (unpaginated).

¹¹ Plaintiff’s Memorandum in Support of His Motion Against Summary Judgment, at 2 (unpaginated).

¹² Plaintiff’s Memorandum in Support of His Motion Against Summary Judgment, at 2-3 (unpaginated).

¹³ Plaintiff’s Memorandum in Support of His Motion Against Summary Judgment, at 3 (unpaginated).

¹⁴ Plaintiff’s Memorandum in Support of His Motion Against Summary Judgment, at 3 (unpaginated).

¹⁵ Plaintiff’s Memorandum in Support of His Motion Against Summary Judgment, at 3 (unpaginated).

¹⁶ Plaintiff’s Memorandum in Support of His Motion Against Summary Judgment, at 3 (unpaginated).

¹⁷ Plaintiff’s Memorandum in Support of His Motion Against Summary Judgment, at 3 (unpaginated).

¹⁸ Plaintiff’s Memorandum in Support of His Motion Against Summary Judgment, at 4 (unpaginated).

COMMON PLEAS COURT OF OTTAWA COUNTY

time, he was also passed over for junior varsity and varsity basketball coaching positions, despite “having won the S.B.C. Championship for the girls’ freshmen basketball team.”²⁰

{¶7} As well, Plaintiff alleges that he was not informed of, nor given the opportunity to apply for various other positions, including Dean of Students, SADD and Pride positions. Plaintiff asserts that these positions were awarded to lesser qualified individuals.²¹

{¶8} Plaintiff, in his Complaint,²² asserts that during the time he was employed by Port Clinton City schools, he was “subjected to harassment and discrimination because of [his] race.” Plaintiff alleges that he was referred to as “nigger,” “jungle bunny,” “spics,” and that other slurs were used.²³ Plaintiff also asserts he “endured years * * * of in-school racial slurs and KKK threats,” including stalking by students outside of school.²⁴ Plaintiff asserts that the school administration and the Dean of Students did not take appropriate disciplinary action against students making racial slurs to resolve this abuse.²⁵

{¶9} Plaintiff alleges that “in 1994-1995” he was assaulted by a student in the locker room while the Principal and Dean of Students stood outside the door and did not intervene.²⁶ Plaintiff also asserts that school administrators did not take appropriate action to discipline the student who assaulted him.

{¶10} At some point in time, Plaintiff alleges that several Port Clinton teachers “banned [sic] together and signed a report” placing him in the “intervention program.”²⁷ The intervention program “was designed to help teachers who suffered problems and received poor

¹⁹ Plaintiff’s Memorandum in Support of His Motion Against Summary Judgment, at 4 (unpaginated).

²⁰ Plaintiff’s Memorandum in Support of His Motion Against Summary Judgment, at 4 (unpaginated).

²¹ Plaintiff’s Memorandum in Support of His Motion Against Summary Judgment, at 4 (unpaginated).

²² This Complaint is very poorly drafted and should have been subject to a Motion to Dismiss, testing the sufficiency of the Complaint.

²³ Plaintiff’s Memorandum in Support of His Motion Against Summary Judgment, at 5 (unpaginated).

²⁴ Plaintiff’s Memorandum in Support of His Motion Against Summary Judgment, at 7 (unpaginated).

²⁵ Plaintiff’s Memorandum in Support of His Motion Against Summary Judgment, at 4 (unpaginated).

²⁶ Plaintiff’s Memorandum in Support of His Motion Against Summary Judgment, at 5 (unpaginated).

COMMON PLEAS COURT OF OTTAWA COUNTY

evaluations.”²⁸ Plaintiff requested arbitration and the arbitrator ruled in favor of the school, holding that there “was insufficient evidence and testimony” to “conclude that the intervention program was an inappropriate approach to Mr. Farris’ alleged deficiency.”²⁹

{¶11} On or about May or June, 1997, Plaintiff “went on disability leave for mental problems he was having at school.”³⁰

II. FINDINGS OF FACT

{¶12} In making its findings of fact, this Court has considered the evidence presented, including the testimony received from the witnesses, exhibits admitted during the trial and facts agreed to by counsel. The considered evidence includes both direct and circumstantial. In weighing the evidence, this Court has also considered the credibility of the witnesses. Where differences or conflicts in the testimony arose, this Court resolved them and decided where the actual truth is.

{¶13} Civ. R. 52 states that “* * * only those findings of fact and conclusions of law made by the court shall form part of the record.”³¹ And Civ. R. 52 rule permits a court, in its discretion, to adopt the proposed findings of fact and conclusions of law. Although various courts have recognized that “[a] trial court may adopt verbatim a party’s proposed findings of fact and conclusions of law as its own if it has thoroughly read the document to ensure that it is

²⁷ Plaintiff’s Memorandum in Support of His Motion Against Summary Judgment, at 6 (unpaginated).

²⁸ Plaintiff’s Memorandum in Support of His Motion Against Summary Judgment, at 7 (unpaginated).

²⁹ Plaintiff’s Memorandum in Support of His Motion Against Summary Judgment, Exhibit 4 - Affidavit, Decision of Arbitrator.

³⁰ Motion for Summary Judgment of Defendant Port Clinton City Schools, at 2 (unpaginated).

³¹ Civ. R. 52 also states in relevant part: “When questions of fact are tried by the court without a jury, judgment may be general for the prevailing party unless one of the parties in writing or orally in open court requests otherwise before the journal entry of a final order * * * in which case, the court shall state in writing the conclusions of fact found separately from the conclusions of law. * * *”

COMMON PLEAS COURT OF OTTAWA COUNTY

completely accurate in fact and law,”³² this Court declines to do so because of the intrinsic and complex factual allegations of this matter.

{¶14} Accordingly, this Court finds:

{¶15} • That Plaintiff is an African-American.³³

{¶16} • That Plaintiff graduated from Sandusky High School, where he was a stellar basketball player. Plaintiff obtained his bachelors degree in health and physical education from Morehead State while on a basketball scholarship.³⁴ Plaintiff also later obtained his masters degree in secondary education from Morehead State.³⁵

{¶17} • That Plaintiff was employed as the head women’s basketball coach and assistant men’s basketball coach at Lorain Community College for one year before the program was “cut.”³⁶

{¶18} • That Plaintiff was employed as a substitute teacher with the Port Clinton City School District from the Fall of 1981 through the Spring of 1984.³⁷

{¶19} • That Plaintiff was employed as a part-time teacher with the Port Clinton City School District for the 1984-1985 school year.³⁸

{¶20} • That Plaintiff was employed as a full-time teacher with the Port Clinton City School District from 1985-1986 through 1997-1998.³⁹

{¶21} • That Plaintiff participated in Saturday Sessions from 1981 through 1989.⁴⁰

³² *Hinkston v. The Finance Company*, 1st Dist. No C-980972, 2000 Ohio App. LEXIS 2010, *6, citing *State v. Combs* (1994), 100 Ohio App. 3d 90, 110, 652 N.E.2d 205; *Adkins v. Adkins* (1988), 43 Ohio App. 3d 95, 539 N.E.2d 686; *In Re Spears*, 4th Dist. No. CA 1718, 1996 Ohio App. LEXIS 4682.

³³ Transcript, Volume I, at 185:9-25.

³⁴ Transcript, Volume III, at 424-425.

³⁵ Transcript, Volume III, at 425:16-21.

³⁶ Transcript, Volume III, at 427:2.

³⁷ Transcript, Volume III, at 431:16-18; Exhibit 10, at 1.

³⁸ Exhibit. 10, at 2.

COMMON PLEAS COURT OF OTTAWA COUNTY

{¶22} • That Plaintiff was employed with the Port Clinton City School District starting in the 1981-1982 school year, through teacher's supplemental contracts as a coach for junior high track, 8th grade football coach, and 8th grade boys' basketball coach.⁴¹

{¶23} • That Plaintiff was employed with the Port Clinton City School District in the 1982-1983 and 1983-1984 school years, through teacher's supplemental contracts, as a coach for the junior high boys' track, 8th grade football coach, and 9th grade boys' basketball coach.⁴²

{¶24} • That Plaintiff was employed with the Port Clinton City School District in the 1984-1985 school year, through teacher's supplemental contracts, as a coach for the junior high boys' track, and reserve girls' basketball coach.⁴³

{¶25} • That there is insufficient evidence to show that Plaintiff made an appropriate application for the position of head girl's basketball coach when it first opened in 1985. In a letter dated April 8, 1985, Plaintiff states "I want to apply for the head women's position, with not myself, but the students in mind."⁴⁴ Plaintiff asserts "Because of the closeness I have with the students, there have been many parents, as well as junior high, and the high school students that have asked me to apply, because right now there is a great interest in girls basketball in the junior high and high school."⁴⁵ He also states that he wanted to apply "because I have some ideas that could help our girls program, and with encouragement more school and community togetherness will be developed."⁴⁶ But he also states that "I won't be offended in any kind of way, by the decision of who receives the position, as you, and the board of education have

³⁹ Transcript, Volume IV, at 600:10-12; Exhibit 10, at 4-20.

⁴⁰ Transcript, Volume I, 238:7-13; Exhibit 13, at 1-6.

⁴¹ Exhibit 15, at 1-3.

⁴² Exhibit 15, at

⁴³ Exhibit 15, at

⁴⁴ Exhibit 35.

⁴⁵ Exhibit 35.

⁴⁶ Exhibit 35.

COMMON PLEAS COURT OF OTTAWA COUNTY

always been fair with me.”⁴⁷ In the same letter, Plaintiff acknowledges that “Mr Gale * * * and Mr. Walters would want me to stay in the program,” but asserts “Personally, Mr. Rectenwald, I could never work again under Mr. Walters again.”⁴⁸

{¶26} The evidence offered by Plaintiff in support of his assertion that he applied for this position include that of his daughter, Velissa Farris, who asserted on cross that “I seen the application,”⁴⁹ but conceded that there was no documentation and that it was her memory from 15 years ago. Priscilla Farris, Plaintiff’s wife, asserted that Plaintiff applied for “certain coach jobs,” in late ’90 – well, like ’94, maybe ’93 * * * I’m not real sure, but I know he applied for it.”⁵⁰ When asked what sport, she stated “I believe basketball”⁵¹ and conceded that “He wanted to be the boys’ head basketball coach for the entire high school program.”⁵² Asked whether there was “any documentation to support that he * * * put in writing that he was applying for any of these jobs that you claim that he applied for,” Priscilla Farris stated “I helped him fill out the application, so that’s my knowledge of it.”

{¶27} Plaintiff offers no other evidence to show that this position was actually vacant at this time or whether he was expressing a desire to be considered if and when the position became available. Nor does the evidence show that Port Clinton City School’s decision not to hire Plaintiff for the allegedly vacant position of head girls’ basketball coach in 1985 was motivated by racism.

{¶28} • That there is insufficient evidence to show that Port Clinton City School’s decision not to hire Plaintiff for the position of head girls’ basketball coach was motivated by

⁴⁷ Exhibit 35.

⁴⁸ Exhibit 35.

⁴⁹ Transcript, Volume I, 231:21.

⁵⁰ Transcript, Volume I, 270:9-10.

⁵¹ Transcript, Volume I, 270:14.

⁵² Transcript, Volume I, 270:17-18.

COMMON PLEAS COURT OF OTTAWA COUNTY

racism. Plaintiff applied to be head girls' basketball coach in a letter dated December 16, 1985, in which he said "I am applying for the Girls Varsity Basketball position, I have talked to Dennis Rectenwald about the position, he stated that the position has not been filled, and there was still time to apply. I would like to talk about me as coach, and my concerns, not only for the girls position, but for our young people in our school district."⁵³

{¶29} But in his letter, Plaintiff recounts an incident in which he was "tossed" out of a game, asserting that "I felt humiliated, I did not scream, holler, or raise my voice. I stayed in my seat on the bench, and I questioned a call – professionally as a coach."⁵⁴ Plaintiff complained that "Mr. Webb – who was the official, humiliated me in front of my family, team, and fans. He did this with the Perkins fans last year, when he stated in a game that I didn't have any class – again because I questioned a call, and this was also questioned professionally."⁵⁵

{¶30} Plaintiff testified that he never interviewed for the position and did not request an interview because "I thought I had the job."⁵⁶ Plaintiff asserts that "Because the way they was setting up everything, they always took the next in line, and I figured I was the only coach in the girls basketball position then, so I figured I was next in line to be the next varsity girls coach because there was no other coach involved in the program but me."⁵⁷ Plaintiff asserted in his letter that "If chosen for the position, I will continue to show professionalism that our athletic programs have, as I feel we can start a great girls' basketball program with hard work, determination, and fundamentals."⁵⁸ But the Court sustained Defendant's objection as to lack of foundation concerning the procedure "whereby the person next in line automatically got the

⁵³ Exhibit 36, at 1.

⁵⁴ Exhibit 36, at 1.

⁵⁵ Exhibit 36, at 1.

⁵⁶ Transcript, Volume IV, 636:10.

⁵⁷ Transcript, Volume IV, 636:12-17.

⁵⁸ Exhibit 36, at 2.

COMMON PLEAS COURT OF OTTAWA COUNTY

job.”⁵⁹ Plaintiff did not offer any evidence as to the whether this process was the normal and accepted practice, and failed to demonstrate Port Clinton City School District’s deviation from this practice demonstrated racial discrimination. As such, there is insufficient evidence to show that Port Clinton City School’s decision not to hire Plaintiff for this position was motivated by racism.

{¶31} • That Plaintiff was employed in the 1985-1986 school year, through teacher’s supplemental contracts, as a coach for the junior high boys track, 8th grade football coach, and 8th grade girls’ basketball coach with the Port Clinton City School District.⁶⁰

{¶32} • That Plaintiff was employed in the 1986-1987 school year, through teacher’s supplemental contracts, as a coach for the junior high boys track, 9th grade football coach, and 8th grade girls’ basketball coach with the Port Clinton City School District.⁶¹

{¶33} • That Plaintiff was employed in the 1987-1988 school year, through teacher’s supplemental contracts, as a coach for the junior high boys track, 8th grade football coach, and 8th grade girls’ basketball coach with the Port Clinton City School District.⁶²

{¶34} • That there is insufficient evidence to show that Plaintiff’s resignation as 8th grade football coach was the result of racial discrimination or harassment. Following the 1987-1988 school year, Plaintiff and Mr. Anderson resigned as 8th grade coaches “because Coach Drusbacky had on the record, WLEC, that it was the 8th grade coach’s fault because the varsity program was not – was not – we wouldn’t [sic] doing the right thing to make the varsity program better.”⁶³ But Plaintiff conceded that he never talked to Coach Drusbacky about this, or to the athletic director. Plaintiff stated “The main concern me and Paul Anderson did was we talked

⁵⁹ Transcript, Volume IV, 636:18-20.

⁶⁰ Exhibit 15, at

⁶¹ Exhibit 15, at

⁶² Exhibit 15, at

COMMON PLEAS COURT OF OTTAWA COUNTY

amongst ourselves. I know Paul didn't go to anybody and I didn't go to anybody. We talked amongst ourselves because we were hurt about that.”⁶⁴ But Plaintiff never alleged racial harassment or discrimination as a factor in his decision to resign.

{¶35} • That Plaintiff did not coach during the 1989-1990 school year. In his resignation letter of March 25, 1988, Plaintiff emphasized that “Not being recommended for higher positions in sports in 7 years, seeing students with lots of problems and unable to help, coaching three sports for 7 years and handling unique personalities and discipline problems for 6 years at Saturday Sessions has given me a feeling of failure as a coach and leader of students with major problems. Seeing others and new people promoted has made me perceive after 7 years that others don't have leadership deficiency as I seem to have.”⁶⁵ Further, Plaintiff states “I would like to thank you Deny, our very fine Board of Education, Dale VanLerberghe, Athletic Directors, and especially the coaches for giving me an opportunity to work with so many student-athletes and meeting so many beautiful parents.”⁶⁶

{¶36} • That Plaintiff was employed in the 1990-1991 school year, through teacher's supplemental contracts, as the head girls' softball coach, 9th grade football coach, and 9th grade boys' basketball coach with the Port Clinton City School District.⁶⁷

{¶37} • That there is insufficient evidence to show that Plaintiff's resignation on April 4, 1991, as head girls' softball coach was a result of racism. In his letter, Plaintiff stated, “In my regret to resign and in the best interest of the school systems, I will not be applying for any other supplemental contracts to start immediately. In leaving, I leave a lot of fond memories of all of the athletes that I have coached and all the good coaches that also taught me a lot. A special

⁶³ Transcript, Volume III, 449: 18-22.

⁶⁴ Transcript, Volume III, 450: 8-11.

⁶⁵ Exhibit 14.

⁶⁶ Exhibit 14.

COMMON PLEAS COURT OF OTTAWA COUNTY

thank you go out to all you fine people of the board of education. You have always been fair with me and I honestly appreciate the contracts in football, basketball, football and also saturday sessions. There can never be a group of professional people who works along aside each other and can call themselves a team.”⁶⁸

{¶38} When asked why he did not indicate his reasons for resigning, Plaintiff asserted that “the board already knew about what had occurred,”⁶⁹ emphasizing “When I applied for the job, the former coach went to the board meeting with a group of kids, and the kids had stated that they didn’t want me for the coach, were persuaded by the other coach who had brought them there.”⁷⁰

{¶39} But Plaintiff acknowledged on direct that “despite all the people going to the board with respect to this particular position, [he] was still awarded the contract.” Mr. Polacheck testified that he had initially attempted to retain Vicki Gresh as head girls softball coach “Because she had been the head coach for the softball team for the last five or six years, and she had experience coaching that particular position with the girls.”⁷¹ Mr. Polacheck testified that “The recommendation by Mr. Rectenwald was that John be hired as head coach,”⁷² and that preference was given to the certified teacher, Mr. Farris.

{¶40} Plaintiff also claims that his authority was undermined and that “I had the right to fill the JV position, which wasn’t filled at the time when I first got the coaching job.”⁷³ Plaintiff asserted that he and Mr. Polacheck, the athletic director, “had agreed that [Tracy Redding] was

⁶⁷ Exhibit 15, at

⁶⁸ Exhibit 16.

⁶⁹ Transcript, Volume IV, 679: 13-14.

⁷⁰ Transcript, Volume IV, 679: 8-12.

⁷¹ Transcript, Volume I, 158: 7-10.

⁷² Transcript, Volume I, 158: 20-21.

⁷³ Transcript, Volume IV, 681: 12-14.

COMMON PLEAS COURT OF OTTAWA COUNTY

going to be JV coach, and he was going to take it to the Board of Education for their approval.”⁷⁴ But instead, when the previous head girl’s softball coach (Vicki Gresh) expressed her interest in the JV position, it was awarded to her. Mr. Polacheck testified “we had two people in that position that were applying, both of them laycoaches, not certified staff members of Port Clinton staff * * * I think from having the experience as head coach, it was felt that she (Vicki Gresh) would do a good job as the JV coach.”⁷⁵

{¶41} • That Plaintiff was employed in the 1991-1992 school year, through a teacher’s supplemental contract, as 9th grade boys’ basketball coach with the Port Clinton City School District.⁷⁶

{¶42} • That Plaintiff did not coach during the 1992-1993 school year.

{¶43} • That Plaintiff was employed in the 1993-1994 school year, through a teacher’s supplemental contract, as 9th grade boys’ basketball coach with the Port Clinton City School District.⁷⁷ And that Plaintiff coached the 9th grade boys’ basketball team to the SBC Championship.⁷⁸

{¶44} • That Plaintiff did not coach during the 1994-1995, 1995-1996, and 1996-1997 school years.

{¶45} • That Plaintiff’s allegations that racism played a role in the lack of support from school administrators following an allegation of abuse against Scott Holmes during the 1994-1995 school year, is unsupported by the evidence. Plaintiff alleged that he was assaulted in the locker room by Scott Holmes and that Dale VanLerberghe and others stood in the hall listening to the commotion. Mr. VanLerberghe testified that “Typically, he will not go in and make it

⁷⁴ Transcript, Volume IV, 681: 23-25. See Exhibit 38.

⁷⁵ Transcript, Volume I, 160: 1-10.

⁷⁶ Exhibit 15, at

⁷⁷ Exhibit 15, at

COMMON PLEAS COURT OF OTTAWA COUNTY

appear that a teacher cannot handle a situation,”⁷⁹ but that he “will certainly evaluate on what I hear whether I need to step in.”⁸⁰ He asserted that at that time he “didn’t see the need to step into the locker room to assist or provide any type of assistance.”⁸¹

{¶46} Mr. VanLerberghe also testified that because of a scratch on Scott Holmes’ neck, there was an indication of physical abuse and the school district was required to contact Children’s Services. Although Mr. VanLerberghe acknowledged that “John Farris could have scratched his [Scott Holmes’] neck trying to keep him from falling,” or that “the student [Scott Holmes] could have been scratched, as John alleges, during the aggressive basketball game,” he asserted that when discussing this incident with Mr. Rectenwald, the superintendent, he was told that “it doesn’t matter what your opinion is, the law is you report it and then the investigators make the determination of there’s abuse or not.”⁸²

{¶47} And as a result of this incident, the parents of Scott Holmes contacted the police and filed an assault charge against Plaintiff. The filing of assault charges was reported in the Sandusky Register.⁸³ Because of the publicity, Plaintiff asserts that his 13 year reputation has been “tarnished”⁸⁴ and that “It really hurt my reputation. It hurt my reputation because I still hear comments from people about this, and it’s been since 1995.”⁸⁵ Further, Plaintiff implied that credence was given to the student’s allegations when [because] the school did not discipline the student. However, as Mr. VanLerberghe noted, Plaintiff was never suspended or punished as

⁷⁸ Transcript, Volume III, 476: 23-25.

⁷⁹ Transcript, Volume II, 349:8-9.

⁸⁰ Transcript, Volume II, 349:11-12.

⁸¹ Transcript, Volume II, 349:19-20.

⁸² Transcript, Volume II, 356:11-14.

⁸³ See Exhibit 20.

⁸⁴ Plaintiff’s Suggested Findings of Fact and Conclusions of Law, at 10.

⁸⁵ Transcript, Volume III, 557: 19-22.

COMMON PLEAS COURT OF OTTAWA COUNTY

a result of this incident, opining that it was “a learning experience” for both Plaintiff and Mr. Holmes and was the result of “a series of unfortunate happenings.”⁸⁶

{¶48} Mr. VanLerberghe noted that at the time of the incident, Plaintiff did not allege racism, but only later claimed that the allegations of assault were motivated by racism. According to Mr. VanLerberghe, Plaintiff asserted that he had “discussed this with some friends in Sandusky and that they agree this is racial.”⁸⁷ As Mr. VanLerberghe emphasized, “that’s the first I had heard of anything about that, not from what took place in school.” Plaintiff did not rebut the accuracy of Mr. VanLerberghe’s notes or recollection of Plaintiff’s claims that this incident was motivated by “prejudice or because of racism.”⁸⁸ But Plaintiff asserts that “it got pushed through the system ‘cause they just didn’t care about what had happened to me as far as that and they let him go off scot-free so it got pushed through the system.”⁸⁹ As such, this Court finds there to be insufficient evidence that the Holmes incident or the manner it was handled by school administrators was motivated by race.

{¶49} • That on February 8, 1995, the Dean of Students position was advertised and in a letter dated July 12, 1995, Dennis Rectenwald informed Carla Dracka that she was assigned to be the “Junior High School Dean of Students, * * * and Health [at] the Junior High” for the 1995-1996 school year.⁹⁰ This Court also finds that Plaintiff did not apply for the Junior High Dean of Students position. Plaintiff testified that he was “made aware of the opening because the former Dean of Students, Gary Rasmussen, informed Mr. Farris about his resignation from the position.” Plaintiff alleges that he “scheduled an appointment”⁹¹ with Mr. VanLerberghe to

⁸⁶ Transcript, Volume II, 406:2.

⁸⁷ Transcript, Volume II, 358:6-7.

⁸⁸ Transcript, Volume III, 553:17-18.

⁸⁹ Transcript, Volume III, 553:12-15.

⁹⁰ Exhibit C.

⁹¹ Transcript, Volume IV, 619:3-5.

COMMON PLEAS COURT OF OTTAWA COUNTY

discuss this position, but acknowledged that he did not apply for the position because he “did not see any posting for that at the junior high for it.”⁹² And he conceded that he did not inform Mr. VanLerberghe of the purpose of this meeting.

{¶50} • That there is insufficient evidence to show that Plaintiff was discriminated against when he was not offered the position of boys’ reserve basketball coach for the 1995-1996 school year. Plaintiff claims that “It came open because Gregg Hedden went to Margareta for a head basketball job, and reserve came open, and I called Coach Bodager and told him I would like to apply for that job, and he told me to set up an interview with Coach Clum and we had an interview.”⁹³ Mr. Clum testified, however, that Plaintiff did not apply for the JV boys’ basketball position, emphasizing that Plaintiff’s May 2, 1995, letter of intent dealt with the head girls’ basketball position.⁹⁴ Relying on his notes, he asserted “That is not what that letter is dealing with.”⁹⁵

{¶51} • That there is insufficient evidence to show that Port Clinton City School’s decision not to hire Plaintiff for the position of head girls’ basketball coach (when Mr. Armstrong retired from this position) in 1995 was motivated by racism. Mr. Clum, the Athletic Director, testified that Plaintiff “applied for the Head Girls’ Basketball position on May 2, 1995, with a letter of intent.”⁹⁶ On June 1, when informed that he was to be interviewed for the position, Plaintiff “said he was withdrawing his name.”⁹⁷ Yet, later the same day, Mr. Clum testified, Plaintiff “called back saying he had been confused earlier, and that he did want the

⁹² Transcript, Volume III, 532:16-17.

⁹³ Transcript, Volume V, 590: 8-12.

⁹⁴ See Transcript, Volume VI, 975: 17-25.

⁹⁵ Transcript, Volume VI, 975: 24.

⁹⁶ Transcript, Volume V, 902:4-5.

⁹⁷ Exhibit J.

COMMON PLEAS COURT OF OTTAWA COUNTY

interview and still wanted the job.”⁹⁸ But Mr. Clum alleged that Plaintiff later “talked with Mrs. Cole and said he was once again withdrawing his name for the job.”⁹⁹ Plaintiff did not rebut Mr. Clum’s assertions that he had withdrawn his name for the job, but asserted only on direct that he had “put in a formal application for this position.”¹⁰⁰

{¶52} • That there is insufficient evidence to show that Plaintiff made a timely application for the head girls’ basketball position vacated by Ms. Mesnard in 1997.¹⁰¹ And there is insufficient evidence to show that Port Clinton City School’s decision not to hire Plaintiff for the position of head girls’ basketball coach when Ms. Mesnard retired was motivated by racism.

{¶53} Plaintiff in a letter dated May 16, 1997, applied for the position of head girls’ basketball coach. In his letter, Plaintiff asserts that he “would like the selection committee to please review my credentials, basketball accomplishments and working background, because I am very interested in this position.”¹⁰² But in a letter dated May 20, 1997, Mr. Clum informed Plaintiff that “We received your resume and letter of application for the Head Girls’ Basketball position. However, Friday, May 16, was the last day for accepting applications. As of Monday, May 19, we interviewed candidates and named our new Head Coach.”¹⁰³ Under questioning, Plaintiff’s counsel asked Mr. Clum what his recollection would be if told that Plaintiff testified that “he handed it to you personally on May 16th.” Mr. Clum testified that he did not recall Plaintiff personally handing to him the application, and stated that “if I wanted to keep my job,”¹⁰⁴ he would not have sent the letter of May 20th.

⁹⁸ Exhibit J.

⁹⁹ Exhibit J.

¹⁰⁰ Transcript, Volume IV, 631:23-24.

¹⁰¹ Ms. Mesnard was hired to replace Mr. Walters in 1995. See Transcript, Volume VI, 976.

¹⁰² Exhibit 44, at 2.

¹⁰³ Exhibit 44, at 3.

¹⁰⁴ Transcript, Volume V, 905:3.

COMMON PLEAS COURT OF OTTAWA COUNTY

{¶54} • That there is insufficient evidence to show that Plaintiff was discriminated against when he was not offered the position of boys' freshman basketball coach for the 1996-1997 school year. Plaintiff alleges that he was "supposed to coach freshman basketball that year,"¹⁰⁵ but did not do so because of the incident involving Scott Holmes. Plaintiff complains "I thought Coach Bodager would tell me that he was going to move Scott up to reserve or move me back to eighth grade," but alleged that Scott went to Mike Schifer and hold him that "he did not want me for a coach."¹⁰⁶ Because no change was made, Plaintiff asserted that he "had to resign that position, and he had already signed a contract."¹⁰⁷ Acknowledging that he resigned because "Scott was going to be freshman and I was the freshman basketball coach,"¹⁰⁸ Plaintiff complained "I never got my pay for that year."¹⁰⁹ But without more evidence or testimony from others, this Court cannot ascertain whether assurances were made to enable Plaintiff to continue coaching in light of the incident with Scott Holmes.

{¶55} • That Plaintiff did not apply for the head boys' basketball position in 1997-1998, after Mr. Bodager passed away. Athletic Director Carey Clum testified that Plaintiff's "application never crossed my desk."¹¹⁰ Mr. Clum testified that even if Plaintiff had applied, Mr. Hadden was better qualified and had served as a long time assistant under Mr. Bodager and also had success during his two years as head coach at Margareta.¹¹¹

{¶56} • That under the 2000-2003, 2004-2006 and 1997-2000 Master Agreement all state "Supplemental contracts shall first be offered to teachers deemed qualified for the position by the Board who are regularly employed by the Board. If no regular employed teacher accepts

¹⁰⁵ Transcript, Volume IV; 585: 21-22.

¹⁰⁶ Transcript, Volume IV; 586: 2-6.

¹⁰⁷ Transcript, Volume IV; 586: 12-13.

¹⁰⁸ Transcript, Volume IV; 586: 20-21.

¹⁰⁹ Transcript, Volume IV; 586: 17.

¹¹⁰ Transcript, Volume V, 906:1.

COMMON PLEAS COURT OF OTTAWA COUNTY

the contract, the Board may offer the position to a person not employed as a regular teacher, and in accordance with State rules and regulations.”¹¹² Moreover, testimony by various individuals, including Athletic Director Bob Polachek, Dale Vanlerberghe, shows that the positions for coaches were posted. Applications for any posted positions were submitted by interested teachers or lay persons. If applying for an assistant position, the head coach would make a recommendation to the Athletic Director, which was then forwarded to the Superintendent for presentation to the Board of Education. If applying for a head coaching position, the Athletic Director would make a recommendation to the Board of Education. Plaintiff’s allegations that positions were not properly posted is unsupported by the evidence before the Court.

{¶57} • That there is insufficient evidence for this Court to conclude that Plaintiff’s referral to the Port Clinton City School District’s Intervention Program on May 14, 1998, was motivated by racism.¹¹³ Plaintiff alleged that “some of the Port Clinton school teachers who wanted Plaintiff to be quiet [about the alleged racial slurs and threats] banned [sic] together and signed a referral to place him in this program.”¹¹⁴ Plaintiff acknowledges that the Intervention Program was “designed to help teachers who suffered problems and received poor evaluations,” but asserted that “Participation in the program resulted in either termination from employment or resignation.”¹¹⁵

{¶58} The Intervention Referral Form includes four pages of comments concerning Plaintiff’s alleged deficiencies in the classroom. It was noted that Plaintiff “permits students to salvage a failing grade by handing in an extra credit project.”¹¹⁶ The teachers noted that “If the

¹¹¹ See Transcript, Volume V, 906.

¹¹² Exhibit 23, at 40; Exhibit 24, at 40; Exhibit 11, at 44.

¹¹³ See Exhibit 27, at 5.

¹¹⁴ Plaintiff’s Suggested Findings of Facts and Conclusions of Law, at 12.

¹¹⁵ Plaintiff’s Suggested Findings of Facts and Conclusions of Law, at 12.

¹¹⁶ Exhibit 27, at 1.

COMMON PLEAS COURT OF OTTAWA COUNTY

requirements for the course are not completed, extra credit should not be an option. More importantly, extra credit should not be used to raise a failing grade to an A.”¹¹⁷ It was also noted that “Mr. Farris has often issued detentions to students and failed to turn in the bottom portion to the office so that there is no record of the detention and students are unsure as to what to do.”¹¹⁸ As well, concern was expressed as to the fact that “Port Clinton Junior High School has adopted a middle school philosophy and all teachers agreed to participate in the teaming experience” and that “Both the South and West teams have encountered uncomfortable situations when Mr. Farris has not followed team policy or planned activities.”¹¹⁹ Emphasizing that “Mr. Farris did not follow the discipline code of the West Team and consequently caused confusion for the team, parents and students,” the teachers alleged that “These actions caused the lack of team effort and cohesiveness to occur.”¹²⁰ Based on the concerns reflected in the Intervention Referral Form, all six teachers agreed that Plaintiff needed to be referred to the Intervention Program. The referral was not initiated by school administrators.

{¶59} Plaintiff asserts that “his referral was unjustified because Mr. VanLerberghe and Mr. Rectenwald testified that the majority of Mr. Farris’s teaching and coaching evaluations were satisfactory, so they saw no need for him to be placed in the intervention program.”¹²¹ But Plaintiff has misconstrued the testimony of Mr. VanLerberghe and Mr. Rectenwald. Mr. VanLerberghe testified that “The intervention program was established for teachers who has [sic] been found – are doing unsatisfactory work in one or more areas in two successive evaluations done by the principal, * * * or if the principal doesn’t do that, a group of teachers, I believe it

¹¹⁷ Exhibit 27, at 2.

¹¹⁸ Exhibit 27, at 3.

¹¹⁹ Exhibit 27, at 3.

¹²⁰ Exhibit 27, at 3.

¹²¹ Plaintiff’s Suggested Findings of Facts and Conclusions of Law, at 12.

COMMON PLEAS COURT OF OTTAWA COUNTY

was six, in the same building had to do a recommendation for intervention.”¹²² He also testified that he did not recommend Plaintiff for the intervention program, stating that he “did not know about the intervention taking place until the morning it took place because it does not involve the building principal.”¹²³ Concurring with Plaintiff’s counsel, Mr. Rectenwald stated that “towards * * * 1996-’97, and ’97-’98, Mr. Farris’s teaching evaluations became more critical and more negative and that more concerns were being raised.”¹²⁴ That Mr. VanLerberghe did not refer Plaintiff to the intervention program does not demonstrate that the teachers who did refer Plaintiff were unjustified in doing so and that their actions were racially motivated. Moreover, Mr. Rectenwald asserted that the teachers were justified in their identification of Plaintiff as a “teacher who is experiencing difficulty in classroom performance” and “for whom intervention has been determined to be an appropriate means to improve the quality of the teaching situation and maintain excellence in Port Clinton City schools.”¹²⁵

{¶60} • That Plaintiff’s allegation that Mr. Rectenwald made light of the racial slurs that Plaintiff complained of is unsupported by the evidence. Plaintiff alleges that “superintendent Dennis Rectenwald, tried to compare being called a nigger to being called a Catholic” and complained, “Somehow, I fail to see the similarities.”¹²⁶ In his deposition, Plaintiff’s counsel asked Mr. Rectenwald if he recalled any such conversation with Mr. Farris about this accusation. Mr. Rectenwald testified that “Mr. Farris and I had several conversations * * * I can remember talking to John a bit about how he felt, what I would call prejudice against me because of my Roman Catholic faith. Its [sic] certainly probably paled in comparison to what John had felt growing up in Sandusky, of being of the African-American race, but I can remember having

¹²² Transcript, Volume II, 316:12-19.

¹²³ Transcript, Volume II, 321:6-12.

¹²⁴ Rectenwald Deposition, 132:5-10.

¹²⁵ Exhibit 27, at 1.

COMMON PLEAS COURT OF OTTAWA COUNTY

conversations with John, for instance, one of the big things in my life, and I know I told John this, is that as a kid in the Catholic high school, we were often told we were going to be second class citizens in this country until a man of our faith was elected president of the United States. And more than likely that wasn't going to happen in our lifetimes. And when John Kennedy was elected president of the United States in 1960, somehow we felt a vindication of sorts as a religion and we no longer felt like we were second class citizens in this country, but that we could participate fully as American citizens because of his election. And even though, * * * I think there are certain parallels here, * * * I think it maybe pales in comparison. There is certainly a feeling that I could empathize with John knowing how I felt as a kid growing up and knowing that that was something I truly felt was held against me because of my religious persuasion.”¹²⁷ But asked again whether he did “ever play down that he had been called the ‘N’ word and play it down and say ‘Well, I have been called a Catholic,’ did you ever say it in that context,”¹²⁸ Mr. Rectenwald replied, “Absolutely not.”¹²⁹

{¶61} • That Plaintiff’s allegation that Clara Dracka made light of the racial slurs that Plaintiff complained of is unsupported by the evidence. Plaintiff alleges that Ms. Dracka “said that being called nigger is trash talking. To me and any other black person, it was as if she had just called me nigger and didn’t care that she insulted me. Someone in her position should’ve never made a statement like that.”¹³⁰ In his testimony, Plaintiff stated “I know we had a meeting at the end of that ’98 school year concerning what she had said, but it was said. We had discussed that before.”¹³¹ Asserting that Ms. Dracka’s comment was made in the South Team

¹²⁶ Affidavit of John Farris, at ¶ 31. (Filed May 11, 2005).

¹²⁷ Rectenwald Deposition, at 12:21-25; 13:1-24.

¹²⁸ Rectenwald Deposition, 14:2-5.

¹²⁹ Rectenwald Deposition, 14:6.

¹³⁰ Affidavit of John Farris, at ¶ 30. (Filed May 11, 2005).

¹³¹ Transcript, Volume IV, 601:1-3.

COMMON PLEAS COURT OF OTTAWA COUNTY

meeting, Plaintiff claims that several people heard Ms. Dracka's comment. Plaintiff asserts, "Jeff Halsey, he was the team leader. Bill Phillips, was in that group. Ron Shelton was in that group. Vicki Greer. I am sorry Vicki Greer doesn't remember she was there. She testified she wasn't there, but I know that she was not on the absent list. I know she was there because I remember looking at her pretty face * * *."¹³² Plaintiff also claims that several other people were present when this comment was alleged to have been made, but failed to produce at trial any witnesses who may have heard this alleged comment except for Vicki Greer, who was not asked whether she had heard this specific comment. When questioned whether she "ever heard any fellow teachers make any racial slurs,"¹³³ Ms. Greer responded "No."¹³⁴ Nor did Plaintiff question Ms. Greer or Ms. Dracka on this particular issue during their testimony or deposition.

{¶62} • That a student named Trevor Boss used a racial slur, but that this was an isolated incident which was properly handled by school administrators. It was alleged that Trevor Boss did not do what Plaintiff had instructed him to do, and told Plaintiff to "get of his fucking back."¹³⁵ As a result of his conduct, Trevor Boss was sent to the office for disciplinary action. Mr. VanLerberghe testified that Trevor was given a 10 day suspension from school by the Dean of Students for the vulgar language. But Mr. VanLerberghe testified that Plaintiff later informed him that he had been told by several students or teachers that the student "had referred to Mr. Farris as nigger." As a result, a Title VII investigation was initiated. However, no further discipline was imposed upon the student because "he was in ALEC for another offense"¹³⁶ and then he was "committed to the psychiatric facility at M.C.O."¹³⁷

¹³² Transcript, Volume IV, 601:16-22.

¹³³ Transcript, Volume I, 52:25; 53:1.

¹³⁴ Transcript, Volume I, 53:2.

¹³⁵ Transcript, Volume II, 373:7.

¹³⁶ Exhibit 48, at 2.

¹³⁷ Exhibit 48, at 2.

COMMON PLEAS COURT OF OTTAWA COUNTY

{¶63} In an interview with Mr. Farris on December 10, 1997, Mr. Linkous, the Title VII Coordinator noted that “John knows Trevor said ‘fucking’ but he wasn’t sure what else he said,” and that he was told by other kids that “Trevor said the ‘N’ word in the hall.”¹³⁸ But during trial, Plaintiff asserted that he “did hear it” and that Mr. VanLerberghe and Mr. Rectenwald tried to persuade him that he “didn’t actually hear this.”¹³⁹ Mr. VanLerberghe testified that “No additional punishment was given because there were conflicting reports * * * no adults heard this, some students who were standing there said they heard it, some students who were standing there said they didn’t hear it.”¹⁴⁰ Moreover, Mr. VanLerberghe emphasized that they could not impose any further punishment “until he steps in the school again,” but acknowledged that Trevor “didn’t do that.”¹⁴¹

{¶64} • That there is insufficient evidence to show that Plaintiff was threatened by Rusty Arnold, a student at Port Clinton Junior High School. Plaintiff alleged that Rusty Arnold said “I will shoot that nigger’s wife, kids and coach.”¹⁴² Plaintiff asserted, “I was mad and scared and I took him to Dale.”¹⁴³ Plaintiff emphasized that he “took the threat pretty seriously,”¹⁴⁴ but that “he waited for the school to take responsibility.”¹⁴⁵ Even though he learned his family was in danger, he conceded that he “did nothing.”¹⁴⁶

{¶65} Mr. VanLerberghe testified that he had notes pertaining to the alleged incident and recalled that “the student came to me because he was upset with what had taken place in

¹³⁸ Exhibit 48, at 2.

¹³⁹ Transcript, Volume III, 527: 19-21.

¹⁴⁰ Transcript, Volume III, 396: 23-25; 397:1.

¹⁴¹ Transcript, Volume III, 397: 7-10.

¹⁴² Transcript, Volume III, 473: 16-18.

¹⁴³ Transcript, Volume III, 473: 16-18.

¹⁴⁴ Transcript, Volume III, 473: 25.

¹⁴⁵ Transcript, Volume V, 782: 19-20.

¹⁴⁶ Transcript, Volume V, 783: 9.

COMMON PLEAS COURT OF OTTAWA COUNTY

phys.ed.”¹⁴⁷ The student related to Mr. VanLerberghe that he had received an “F” on a report because it “did not have a cover.”¹⁴⁸ And later that day, during study hall, Rusty Arnold went to Mr. Farris’ gym class “because Mr. Farris would permit students to come down from study hall to do some physical activities instead of just sitting down in study hall,” but was told by Plaintiff, “You did not finish your paper today, so get your tail back to study hall. You are not going to be in here.”¹⁴⁹ As Rusty Arnold left he admitted that, “he made the comment to the effect of, that he wished ‘Coach was dead.’”¹⁵⁰ Another student overheard Rusty’s comment and informed Plaintiff who summoned Rusty into his office and berated him.¹⁵¹ Mr. VanLerberghe further testified that Rusty related that, after an open house, Plaintiff “took a paddle out and showed kids” threatening to use it on them if “they don’t straighten out.” Rusty told Mr. VanLerberghe “I don’t understand this because Mr. Farris says he loves us kids.”¹⁵² And Mr. VanLerberghe testified that Rusty told him that “If Mr. Farris sees him around his house, around his street in Sandusky, I would kill Rusty, that the last guy who threatened his family would get the same thing.”¹⁵³ Plaintiff then “gave Rusty his address and said, ‘Come and look me up if you want.’”¹⁵⁴ In his letter of October 16, 1996, to Mr. VanLerberghe, Plaintiff questioned why he was cautioned “not to threaten any other students with its use,” when Clara was not disciplined about her handling of this situation.”¹⁵⁵ Under questioning by Defendant’s counsel about Michael L. Plaintiff acknowledged that a paddle was lying on his desk, but denied that he had a paddle in his hand and talked with them about paddling. Defendant later alleged that Michael L.

¹⁴⁷ Transcript, Volume VI, 980: 23-24.

¹⁴⁸ Transcript, Volume VI, 981: 4.

¹⁴⁹ Transcript, Volume VI, 981: 8-13.

¹⁵⁰ Transcript, Volume VI, 981: 14-16.

¹⁵¹ See Transcript, Volume VI, 981 – 982.

¹⁵² Transcript, Volume VI, 982: 11-12.

¹⁵³ Transcript, Volume VI, 982: 8-16.

¹⁵⁴ Transcript, Volume VI, 981: 16-17.

¹⁵⁵ Exhibit 21, at 1.

COMMON PLEAS COURT OF OTTAWA COUNTY

slurred him, but conceded under questioning that this incident was not documented because “it happened afterwards.”¹⁵⁶

{¶66} But in Court, Plaintiff alleged that Rusty Arnold had threatened him with a gun. Mr. VanLerberghe asserted that he first became aware of this particular threat “in Court this week,”¹⁵⁷ testifying that “a threat of killing someone, I take seriously,” and that “I would think that you would go directly to the police.”¹⁵⁸ But Mr. VanLerberghe stressed that if Rusty Arnold had threatened Plaintiff with a gun, that he would “at the very least [have] kept something in [his] file, some notes of Mr. Farris’s comments about that.”¹⁵⁹ That Plaintiff did not document this alleged threat or report this matter to the police raises substantial question as to the veracity of Plaintiff’s testimony on this matter.

{¶67} • That there is insufficient evidence to show that Plaintiff was threatened by J.R., a student at Port Clinton Junior High School. Plaintiff alleged that “this boy named J.R., he told me that he – he would shoot that nigger because he’s got something to say, bang, bang and being that Dale didn’t do anything with that situation with [Rusty Arnold].”¹⁶⁰ Plaintiff testified that he spoke with J.R.’s grandmother and that “the racial slurs stopped, but the threats didn’t.”¹⁶¹ But when asked whether he ever took up his concerns “with Mr. VanLerberghe or the superintendent,”¹⁶² Plaintiff asserted that he didn’t because * * * I expected him and Dale to get together and all of us could have a conference * * * on ways and methods for me to try and have this kid in class * * *.” Although Plaintiff testified that “it was terrifying in class, those boys

¹⁵⁶ Transcript, Volume V, 732: 21.

¹⁵⁷ Transcript, Volume VI, 984: 17.

¹⁵⁸ Transcript, Volume VI, 985: 1-3.

¹⁵⁹ Transcript, Volume VI, 984: 1-2.

¹⁶⁰ Transcript, Volume III, 475, 2-6.

¹⁶¹ Transcript, Volume III, 475: 16.

¹⁶² Transcript, Volume III, 475: 17-18.

COMMON PLEAS COURT OF OTTAWA COUNTY

were in class two years and it was terrifying,”¹⁶³ he did not pursue his concerns any further. That Plaintiff did not document this alleged threat or report this matter to the police again raises substantial question as to the veracity of Plaintiff’s testimony on this matter.

{¶68} • That there is insufficient evidence to show that Plaintiff was the target of a “KKK” contract on him from Randy Miller. Plaintiff alleges that he found a piece of paper on the front of the stage and it had a “KKK” contract on it and it said “You better watch yourself.”¹⁶⁴ Plaintiff asserts that it “had the boy’s name on it, R.M.”¹⁶⁵ Plaintiff further alleges that he “took the KKK contract to Dale in his office. And Dale called the boy down to his office. And I don’t know what happened in that office because I was angry, and his mother worked in the cafeteria.”¹⁶⁶ Plaintiff asserts that “When Dale asked him why, why he did that, and he said because he didn’t like niggers.”¹⁶⁷ Plaintiff argues that the lack of disciplinary action against Randy Miller reflects the school’s apathy towards acts of racism. But Defendant argues that Plaintiff’s allegations are not credible because he did not save a copy of it. And Mr. VanLerberghe denies any knowledge of this incident. Nor does Mr. VanLerberghe or Plaintiff have any other documentation referring to this incident. As well, Plaintiff offered no witnesses to support this allegation.

{¶69} • That there is insufficient evidence to support Plaintiff’s allegation that he was racially slurred by Burt Spry during the 1996-1997 school year. Plaintiff alleged that Burt Spry used the “N” word when he had to hold him down on the floor “because he was getting ready to attack two boys and a girl that sit behind him.”¹⁶⁸ Plaintiff further alleged that Clara Dracka

¹⁶³ Transcript, Volume III; 475: 22-24.

¹⁶⁴ Transcript, Volume IV; 583: 19-20.

¹⁶⁵ Transcript, Volume IV; 583: 19-20.

¹⁶⁶ Transcript, Volume IV; 584: 21-24.

¹⁶⁷ Transcript, Volume IV; 584: 3-5.

¹⁶⁸ Transcript, Volume V, 799: 6-7.

COMMON PLEAS COURT OF OTTAWA COUNTY

came and got him and “I don’t remember a punishment.”¹⁶⁹ Mr. VanLerberghe testified that he did not “recall anything specific”¹⁷⁰ concerning Burt Spry and that he did not have any notes in his file concerning anything that Plaintiff might have brought to him about racial comments made by Burt Spry. Although Plaintiff’s counsel did not specifically question Ms. Dracka during her trial deposition as to whether she recalled “any situations where John Farris sent any students to [her] where he had a complaint in writing to [her] that this student had committed a racial slur against him,” she responded “Never.”¹⁷¹ She stated “It was my impression that John took care of his own discipline. He would issue detentions and he would have, um, them serve the detentions with him.”¹⁷²

{¶70} • That there is insufficient evidence to support Plaintiff’s allegation that the school’s alleged failure to discipline Rosco Neff for pushing him during the 1996-1997 school year was racially motivated. Plaintiff alleged that Neff “was getting ready to attack another kid and he was coming at me,”¹⁷³ so he grabbed him to keep him from hurting someone else, “and me.”¹⁷⁴ As a result, Plaintiff asserted, “the kids had to go to the principal’s office, and they bring Dale into the room, and when Dale came into the room I was laying on Neff.”¹⁷⁵ Plaintiff asserts that Neff did not punch him, but that Neff “said I spitted in his face.”¹⁷⁶

{¶71} Referring to his notes, Mr. VanLerberghe testified that “T.J. Jennings and Rosco Neff were running in the hallway on their way to lunch. Mr. Farris stopped them and kept telling them to go back to the auditorium. Rosco told Mr. Farris ‘I heard you the first time.’ Rosco

¹⁶⁹ Transcript, Volume V, 799: 17-18.

¹⁷⁰ Transcript, Volume VI, 1013: 9.

¹⁷¹ Deposition of Clara Dracka, 24: 15-20.

¹⁷² Deposition of Clara Dracka, 25: 1-4.

¹⁷³ Transcript, Volume V, 798: 18-19.

¹⁷⁴ Transcript, Volume V, 798: 25.

¹⁷⁵ Transcript, Volume V, 798: 10-13.

¹⁷⁶ Transcript, Volume V, 798: 16.

COMMON PLEAS COURT OF OTTAWA COUNTY

went to the back of the auditorium, along with T.J. Mr. Farris asked Rosco, ‘Did I hear what I thought I just heard?’ Rosco said, ‘All I said was I heard you the first time because you keep repeating yourself.’ Mr. Farris then said, “ I can repeat myself as many times as I want and as far as I am concerned, I will send you to lunch when I damn well please.’ Rosco said, ‘Mr. Farris got up in my face and he started yelling at me again.’ Rosco just went off and started pushing him, and told him to get the hell out of his face. Rosco started walking out. And Mr. Farris said, ‘I am taking your ass to the office.’ And Rosco said ‘Fuck you.’ And Rosco came to the office anyway.” Mr. VanLerberghe also testified that Plaintiff stated to Rosco “You got in my face and pushed me and struck me four times with your hand.”¹⁷⁷ But when questioned by Mr. VanLerberghe, Plaintiff testified “‘I tried to defend myself,’ and Rosco said, ‘I really do not see how. I already pushed three times. You grabbed my hands and threw me.’”¹⁷⁸

{¶72} Contrary to Plaintiffs assertion that Rosco Neff was not punished, Mr. VanLerberghe testified that Rosco Neff admitted to pushing Plaintiff.¹⁷⁹ As a result, Rosco Neff was punished because “You can’t talk to a teacher like that, to begin with, that can’t be tolerated.”¹⁸⁰ Yet Plaintiff continued to assert that Rosco Neff was not punished because “Clara Dracka came and got him and I don’t remember a punishment.”¹⁸¹ Under questioning by Defendant’s counsel, Plaintiff conceded that it was his testimony that Rosco Neff “came back to class one week later * * * so he got some kind of out-of-school situation.”¹⁸²

¹⁷⁷ Transcript, Volume VI, 996: 23-24.

¹⁷⁸ Transcript, Volume VI, 997: 14-16.

¹⁷⁹ See Transcript, Volume VI, 998: 23-25.

¹⁸⁰ Transcript, Volume VI, 998: 15-16

¹⁸¹ Transcript, Volume V, 799: 17-18.

¹⁸² Transcript, Volume V, 799: 24-25.

COMMON PLEAS COURT OF OTTAWA COUNTY

{¶73} • That there is insufficient evidence to show that Mr. Clum referred to Plaintiff's wife as "Aunt Jemima" as alleged.¹⁸³ On cross, Velissa Farris testified that Mr. Clum used the phrase "Aunt Jemima" not to her mother, "but in earshot."¹⁸⁴ And she asserted that her mother was "the only black person in there so it's obvious he must have been saying it to her."¹⁸⁵ But on cross, Velissa Farris conceded that she "never told [her] dad about that."¹⁸⁶ Yet, she agreed that she and her mother "never told [her] dad what Coach Clum said about her."¹⁸⁷ Plaintiff's wife, Priscilla Farris, who was present with her daughter at the time the alleged remark did not testify at trial that she heard this alleged remark.¹⁸⁸ Defendant asserts that Velissa Farris's testimony is not credible because she "was a child when she believes she heard it."¹⁸⁹ Mr. Clum testified that he never made such a comment, asserting "that is almost comical," because "Anybody that would know me, that is as far out of character as it could be."¹⁹⁰

{¶74} • That there is insufficient evidence to show that Plaintiff was subjected to pervasive racial slurs, epithets, or comments. Plaintiff asserts that the racial slurs started as soon as he "entered school,"¹⁹¹ and that "it was over 200 times"¹⁹² during his tenure at Port Clinton City Schools. Asked by counsel how many times he "made the *accusation* that racial slurs had been used in the school," Plaintiff responded "it's over 200 times, I know it's over 200 times, and that's not counting Saturday sessions."¹⁹³

¹⁸³ Transcript, Volume I; 228: 6.

¹⁸⁴ Transcript, Volume I; 228: 19.

¹⁸⁵ Transcript, Volume I; 228: 23-24.

¹⁸⁶ Transcript, Volume I; 230: 19.

¹⁸⁷ Transcript, Volume I; 229: 20-23.

¹⁸⁸ See Transcript, Volume I; 233: 27.

¹⁸⁹ Defendant's Findings of Fact and Conclusions of Law, at 6.

¹⁹⁰ Transcript, Volume V; 895: 20-23.

¹⁹¹ Transcript, Volume V; 722: 20.

¹⁹² Transcript, Volume V; 519: 21.

¹⁹³ Transcript, Volume III; 519: 7-8.

COMMON PLEAS COURT OF OTTAWA COUNTY

{¶75} When asked whether these slurs were directed “face to face” or in passing, Plaintiff responded that “things would be going on in the hall. You couldn’t tell everybody, but normally you could tell who was using racial slurs. Like I said, my kids in school would come and tell me about it. They would be right there because they know that that’s something that I don’t tolerate.”¹⁹⁴ Admitting that he did not hear the comments, he asserted that he “would normally bring the student in and he would say he said that.”¹⁹⁵ Plaintiff stated “there were times when [he] actually heard the racial slurs targeted towards [him],” but acknowledged that “it wasn’t very often, but when it did occur in front of me, the kid would say oops, and I would correct them.”¹⁹⁶

{¶76} Plaintiff testified that in the 1988-1989 the working environment was starting to change, and that “Students were starting to use the word nigger in school.”¹⁹⁷ When asked “how often would this happen,” Plaintiff responded “It was only – I can recall it was only four students that year that did it consistently * * * and I know that they were 7th graders * * * there was no 8th graders that did it that year.”¹⁹⁸ Plaintiff testified that once, “I took a student to Dale that said that all niggers belong in Africa, and when I took him to Dale, I could tell when Dale would get mad because the top of his head would get red, and Dale yelled at him and * * * told him it better stop.” But when the student used the word “nigger” again, Plaintiff testified “I brought him in and I talked to him about it, I asked him, I said, why are you still doing it after talking to Mr. Vanlerberghe, and he said – he said, well, coach, I’m just tired of you always talking to me about things. I said, well, I’m only talking to you about your homework, which you don’t have, and he said, well, I will get my dad to come in here and kick your ass, and I told him – I pointed my

¹⁹⁴ Transcript, Volume III; 517: 9-16.

¹⁹⁵ Transcript, Volume III; 517: 22-24.

¹⁹⁶ Transcript, Volume III; 518: 16-18.

¹⁹⁷ Transcript, Volume III; 456: 8-9.

COMMON PLEAS COURT OF OTTAWA COUNTY

hand at him and told him, I said if your dad come in here and mess with me, he's going to have major problems.”¹⁹⁹ Plaintiff testified that he did not report this incident to Mr. VanLerberghe, but instead wrote a letter to the student's mother.²⁰⁰

{¶77} Plaintiff testified that another student, L.R., used racial slurs and that he took him to Dale, “and when I took him to Dale, Dale screamed and yelled at him because nobody is ever going to say Dale VanLeberghe is prejudiced to me, because he is not.”²⁰¹ Plaintiff further testified that “Dale screamed and yelled at him, and Dale asked him, said, why did you say that. He said, that's what my father be saying at home.”²⁰²

{¶78} In another incident, Plaintiff alleged that a student, B.N., “attacked me, and I took him and put him on the floor * * * when Mr. VanLerberghe came into the gym, I was laying on top of the boy, and he said that I had – * * * spit in his face and the kids said – the kids told Mr. VanLerberghe right there, they said Coach Farris never spit in his face.”²⁰³ Plaintiff asserts that B.N. was not punished for his actions. As well, Plaintiff never claimed that the incident with B.N. was racial. Neither Plaintiff's nor Defendants' counsel questioned Mr. VanLerberghe as to his recollection of this incident. Nor was any other evidence offered by Plaintiff.

{¶79} Plaintiff complained that “more students started using the word nigger,” but when asked how he would discipline them, he said “Anything they did with the nigger word, I had to take to Dale. He was the principal – the principal had to be in that situation to handle that. He was the top person in there, so I always took them to the principal.”²⁰⁴

¹⁹⁸ Transcript, Volume III; 456: 13-18.

¹⁹⁹ Transcript, Volume III; 457: 9-20.

²⁰⁰ See Transcript, Volume III; 458.

²⁰¹ Transcript, Volume III; 460: 2-4.

²⁰² Transcript, Volume III; 460: 4-6.

²⁰³ Transcript, Volume III; 462: 16-25; 463: 1-2.

²⁰⁴ Transcript, Volume III; 468: 17-21.

COMMON PLEAS COURT OF OTTAWA COUNTY

{¶80} Plaintiff presented several witnesses in support of his allegations that he was subjected to pervasive racial slurs, epithets, or comments. Jody Gagnon testified that she saw Plaintiff everyday but concluded that he expressed no concerns to her of racial discrimination.²⁰⁵ When asked whether she had “ever heard any students making racial slurs towards any teachers,”²⁰⁶ she responded “I don’t think I would have been privileged to that * * * unless it was in the hallway or cafeteria.”²⁰⁷ Asked whether she had “ever heard any teachers making racial slurs,” she responded “Yes,” and testified that it was “probably” less than five times.²⁰⁸ Asserting that “since he was the only black teacher in the building, * * * I would assume that they were referring to him,”²⁰⁹ she acknowledged that none were directed towards Plaintiff. But in her deposition transcript, Ms. Gagnon testified that she “never heard any of the faculty members call African-Americans a nigger or any of that kind of thing.”²¹⁰ When informed that her testimony was inconsistent, she conceded that it must be so “If you have that in the deposition.”²¹¹

{¶81} Mr. Polacheck, a former athletic director at Port Clinton City Schools testified that he has heard students use racial slurs, but not teachers. When asked “if you heard a student use a racial slur, what, if anything, would you do?”²¹² Mr. Polacheck responded “I’d tell them that it wasn’t the right thing to say,” and that he never asserted that he had to do anything beyond that.²¹³

²⁰⁵ See Transcript, Volume I; 91.

²⁰⁶ Transcript, Volume I; 83: 7-8.

²⁰⁷ Transcript, Volume I; 83: 9-11.

²⁰⁸ Transcript, Volume I; 83: 12-21.

²⁰⁹ Transcript, Volume I; 83: 22-25; 83: 2-3.

²¹⁰ Transcript, Volume I; 102: 1-20.

²¹¹ Transcript, Volume I; 102: 20.

²¹² Transcript, Volume I; 152: 25; 153: 1.

²¹³ Transcript, Volume I; 152: 2-7.

COMMON PLEAS COURT OF OTTAWA COUNTY

{¶82} Steven Smith, a former student and an African-American, testified that Plaintiff is “a teacher because that’s what he does well, that’s what he does better than I think actually playing basketball to tell you the truth.”²¹⁴ Mr. Smith asserted that students would use derogatory remarks against him “pretty much every day.”²¹⁵ And he testified “just, you know, like racial, I’m always getting racial slurs, especially back then. You know, nowadays still.”²¹⁶ But when asked if the students ever used these remarks in front of any teachers, he asserted, “No, no, no, they’re not going to do that.”²¹⁷ Mr. Smith further testified that opposing teams and schools would use racial slurs, but added that “A game slur is not supposed to be personal.”²¹⁸

{¶83} Velissa Farris testified that she heard racial slurs at a game that she and her brother attended against Perkins. She testified that students there began to “call like Mexican kids spics and the black kids niggers.”²¹⁹ She also asserted that some of these slurs were directed her family.²²⁰ But she testified that racial slurs occurred only at away games.²²¹

{¶84} Testifying that a derogatory comment or slur is treated more severely by the teacher Mr. VanLerberghe asserted that “when it’s something severe, we usually find out about it right away,” because the teacher would “escort the student down, that would not be uncommon.”²²² But he emphasized that Plaintiff never brought down “a student who had directed a racial slur to him.”²²³ When asked what action would be taken against a student who directed a racial slur against an African-American student or African-American teacher, Mr. VanLerberghe testified “as far as an investigation, I would find out what the student said, I

²¹⁴ Transcript, Volume I; 186: 12-15.

²¹⁵ Transcript, Volume I; 193: 21.

²¹⁶ Transcript, Volume I; 193: 23-25.

²¹⁷ Transcript, Volume I; 193: 4.

²¹⁸ Transcript, Volume I; 209: 1-2.

²¹⁹ Transcript, Volume I; 217: 23-25.

²²⁰ See Transcript, Volume I; 218.

²²¹ Transcript, Volume I; 246: 24.

²²² Transcript, Volume II; 393: 1-2.

COMMON PLEAS COURT OF OTTAWA COUNTY

would hear what the teacher said. It's always good to have a statement.”²²⁴ More importantly, Mr. VanLerberghe stressed that “The student would be removed from school immediately.”²²⁵

{¶85} But other than the incident involving Trevor Boss, Port Clinton City Schools has not requested a Title VII investigation into the alleged use of racial slurs by students, teachers, coaches or administrators.²²⁶ Nor has Mr. Farris requested any Title VII investigations of other alleged racial incidents.

{¶86} • That there is insufficient credible evidence to show that Plaintiff was subjected to pervasive racial slurs, epithets, or comments at athletic events, including events at other schools. While there is evidence that Plaintiff and others were the target of racial slurs, it does not appear to be pervasive pursuant to the standard utilized by this Court. Moreover, the veracity of Plaintiff's testimony is suspect. Plaintiff asserts that he was racially harassed at Perkins, Oak Harbor and Huron High Schools.

{¶87} Plaintiff alleged that in 1985, at Oak Harbor, “their people in there, I'm not going to say their fans, but whatever, they were using racial slurs around me and my wife * * * and I got into it with the official as far as why he wouldn't correct them and he told me to go to the locker room * * *.”²²⁷ Plaintiff alleges that he came back the next day and told Bob Polacheck, but testified “I was real hurt because Bob Polacheck did not call me. He called the 7th grade coach, Amy Drummer, and I was mad at him, 'cause I asked him, Bob, why didn't you call me, I'm the coach. * * * I don't know if she told him her conversation before mine, and he didn't call

²²³ See Transcript, Volume II: 393: 21-22.

²²⁴ Transcript, Volume II; 394: 10-13.

²²⁵ Transcript, Volume II; 394: 13-14.

²²⁶ See Transcript, Volume II; 394: 15-20.

²²⁷ Transcript, Volume III; 481: 15-21.

COMMON PLEAS COURT OF OTTAWA COUNTY

me, but he called her, and I told him about the racial slurs, I got kicked out of the game, and I told Bob something had to be done.”²²⁸

{¶88} However, under questioning, Mr. Polacheck denied that Plaintiff had ever expressed to him either in his role as athletic director or otherwise, that he was being subjected to racism from any members of the Port Clinton staff, coaches from opposing teams or students. When asked whether he “ever had an occasion where a student used a derogatory, a racial slur toward another student and directed the insult toward them?”²²⁹ Mr. Polacheck responded, “No.”²³⁰ And when asked whether Plaintiff ever raised “the issue that he felt that racism was a problem at school or teachers being subjected to racial slurs or students being subjected to it?”²³¹ Mr. Polacheck again responded “No.”²³²

{¶89} Concerning the alleged incident at Perkins High School, Plaintiff testified that “Perkins played our freshman team at Port Clinton, and they was [sic] undefeated and we beat them * * * I can recall as I come out of the gym that night, there was a couple of Perkins players that gave me the finger * * * So we went over to their school and they beat us, and it was a group of kids that was sitting around calling our – kids spics, niggers, which I was the only – I’m pretty sure I was the only black – and poor white trash * * *.”²³³ Plaintiff further testified that “this wrestler, came up to me and acted like he wanted to fight me because I was like, you’re wrong for saying these things * * *.”²³⁴ Plaintiff asserts that he spoke with the “Perkins principal, and that might have been the assistant principal, I can’t remember, I wasn’t looking at faces that day.

²²⁸ Transcript, Volume III; 482: 1-10.

²²⁹ Transcript, Volume I; 172: 5-7.

²³⁰ Transcript, Volume I; 172: 8.

²³¹ Transcript, Volume I; 173: 20-24.

²³² Transcript, Volume I; 173: 25.

²³³ Transcript, Volume III; 477: 2-13.

²³⁴ Transcript, Volume III; 477: 16-19.

COMMON PLEAS COURT OF OTTAWA COUNTY

I was more angry about the racial slurs.”²³⁵ Plaintiff also asserts that he spoke with Mr. Clum, the athletic director, and “told him exactly what had happened over there.”²³⁶

{¶90} Mr. Clum confirmed that Plaintiff did relate to him what allegedly took place at Perkins High School, and that he called George Scheckelhoff, the Principal at Perkins at that time and informed him of Plaintiff’s allegations.²³⁷ He further related that “the two principals pretty much handled that, Mr. Nitz and Mr. Scheckelhoff, but from the best I can gather from what has been written here, is that Mr. Scheckelhoff went investigating and got another side of the story.”²³⁸ Mr. Clum testified that it was shared with them that “possibly Mr. Farris helped initiate the situation as much as anything, but at that point * * * Mr. Scheckelhoff says * * * it is not worth pursuing because all it is based on student’s hearsay * * *.”²³⁹

{¶91} As a consequence, Mr. Clum testified that “At some point in the 93-94 year, the directive came through either Mr. Rectenwald or Mr. Nitz that he felt it was important that we attend Mr. Farris’ freshman games away.”²⁴⁰ Following this directive, Mr. Clum testified that Mr. Schifer, the assistant principal, expressed concerns about Plaintiff’s behavior at a game at Huron High School on February 17, 1994. In a memorandum, Mr. Schifer wrote, “After the loss of the championship game, the Port Clinton boys line up to shake hands with Huron. John did not leave the bench, remaining seated. The Huron Coach walked all the way to John, but he turned his back to their coach. The Huron Coach tapped John on the back, but John refused to turn and acknowledge Huron’s Coach.”²⁴¹ Mr. Schifer further wrote that “Tom [Bodager] went with me as we approached John in the stands. I asked John why he did not shake their coach’s

²³⁵ Transcript, Volume III; 478: 6-9.

²³⁶ Transcript, Volume III; 480: 4.

²³⁷ See, Transcript, Volume V; 910.

²³⁸ Transcript, Volume V; 910: 13-17.

²³⁹ Transcript, Volume V; 910: 20-24.

²⁴⁰ Transcript, Volume V; 911: 17-20.

COMMON PLEAS COURT OF OTTAWA COUNTY

[sic] hand. He repeated several times, that their coach had said after their game earlier this season, that John had used the term MF several times. John continued to say to Tom and me that Huron and Perkins had made things up about him. He told us he would not have shaken hands even if he had won and would never shake their hands.”²⁴² Concluding that “Coach Farris’ behavior was an embarrassment to our high school and basketball program,” Mr. Schifer stated “It is also my belief that Coach Farris’ lack of supervision [of the players] is a huge liability risk.”²⁴³

{¶92} Plaintiff claims he never received Mr. Schifer’s letter and in his rebuttal to Boys Head Basketball Coach Tom Bodager’s evaluation, directed several comments to Mr. Schifer:

{¶93} • “Were you aware that I was called nigger?”²⁴⁴

{¶94} • “Were you aware of that coach saying I called him a mother fucker in front of my team and his very nice female manager?”²⁴⁵

{¶95} • “Are you aware of this coach dirty background of how he teach dirty play?”²⁴⁶

{¶96} • Are you aware that that coach has never shaken my hand? Only because he won.”²⁴⁷

{¶97} • Are you aware that I tried to call their principal and tried to get this nigger m.f. thing solved the next day and he never called back – NEVER!!!!”²⁴⁸

{¶98} Despite the testimony of Mr. Clum and the written documentation of Mr. Schifer, Plaintiff asserted at trial that “there was no administrator at my games.”²⁴⁹ When asked “did you

²⁴¹ Exhibit B, at 1.

²⁴² Exhibit B, at 1.

²⁴³ Exhibit B, at 2.

²⁴⁴ Exhibit 52, Rebuttle 7b, at 12.

²⁴⁵ Exhibit 52, Rebuttle 7b, at 12.

²⁴⁶ Exhibit 52, Rebuttle 7b, at 12.

²⁴⁷ Exhibit 52, Rebuttle 7b, at 12.

²⁴⁸ Exhibit 52, Rebuttle 7b, at 12.

²⁴⁹ Transcript, Volume V; 755: 19.

COMMON PLEAS COURT OF OTTAWA COUNTY

witness any racial slurring against Mr. Farris at any of these away games?” Mr. Clum testified “No.”²⁵⁰ As well, Mr. Clum testified that he never heard Mr. Farris being slurred at any home games.²⁵¹

{¶99} But Plaintiff claims that he brought his claims of racial harassment to Bob Polacheck, the athletic director, and told him about the racial slurs. Acknowledging that he had a meeting to discuss his concerns, Plaintiff testified that the “superintendent of schools, Dennis Rectenwald, was there; the principal at the high school was there, Jack Nitz was there; the athletic director, Carey Clum, was there; my wife, I’m pretty sure, I think she was there; Dale Vanlerberghe was there, because I asked Dale to come on my behalf, he was there, and one person who didn’t show up and he got sick that day, he was not there, that was Stu Williams, a sheriff over in Erie County, but he did not attend.”²⁵² Asked why Stu Williams would have been attending, Plaintiff stated “Because I wanted him – he was my cousin, and I wanted him to see what was going on as far as – and a sheriff as far as just – I wanted somebody else from my town to hear what was going on also as far as what the situation was going to be.”²⁵³ During this meeting, Mr. Bodager’s evaluation of Plaintiff and Plaintiff’s rebuttal was discussed. That a meeting took place is not proof that racial comments were made at athletic events.

{¶100} • That there is insufficient evidence to show that Port Clinton City Schools failed to properly discipline students accused of making racial slurs or that those students were referred to the Dean of Students or Mr. VanLerberghe for appropriate disciplinary action.

{¶101} The record reflects that all known incidents involving Plaintiff and which were supported by credible evidence, Port Clinton City Schools disciplined the students involved. The

²⁵⁰ Transcript, Volume V; 912: 4-6.

²⁵¹ See Transcript, Volume V; 911.

²⁵² Transcript, Volume III, 482: 25; 483: 1-9.

²⁵³ Transcript, Volume III, 483: 12-16.

COMMON PLEAS COURT OF OTTAWA COUNTY

sole exception was Scott Holmes. As Mr. VanLerberghe reasoned, the Holmes incident occurred as a result of a lack of judgment by both Mr. Holmes and Plaintiff and as such, he determined it would be inappropriate to discipline either. More importantly, this Court found that the student's actions or the handling of the Holmes incident by Port Clinton City schools was not racially motivated. And this Court earlier found the alleged racial incidents involving Trevor Boss, Rusty Arnold, J.R., and the "KKK" contract to be unsupported by the evidence presented by Plaintiff.

{¶102} This Court also finds there to be exhaustive testimony relating to the disciplinary policy and procedures outlined in the various Student-Parent Handbooks as well as substantial testimony by various individuals detailing their understanding of, and implementation of the policy as it relates to discipline of students for alleged racial slurs.

{¶103} Plaintiff testified that the Dean of Students and the Principal "wanted everything in writing so that is what I did."²⁵⁴ He also asserted that he personally went in to talk with them in addition to giving them something in writing.²⁵⁵ In his letter of October 18, 1996, Plaintiff claimed, "For the last year [1] I have sent kids to Clara about racial slurs, (me being called nigger), running in the halls, degrading acts, bomb talk, and about kids not having their gym clothes. And I have never seen any results on our Confidential Disciplinary Sheet."²⁵⁶

{¶104} But when asked whether Plaintiff sent students to her for discipline, Ms. Dracka, the Dean of Students testified that she "never saw students from Mr. Farris"²⁵⁷ and that "he never sent them to me."²⁵⁸ She also stated that "As far as I know he only sent them to the time-out

²⁵⁴ Transcript, Volume V, 717: 13-14.

²⁵⁵ Transcript, Volume V, 717.

²⁵⁶ Exhibit 21, at 5. See also Transcript, Volume V, 733.

²⁵⁷ Dracka Deposition, 22: 15.

²⁵⁸ Dracka Deposition, 23: 17-18.

COMMON PLEAS COURT OF OTTAWA COUNTY

table.”²⁵⁹ And when asked whether Plaintiff sent documentation to her, she responded “I do not recall any documentation.”²⁶⁰ And she said “Never”²⁶¹ when asked whether “John Farris sent any students to you where he had a complaint in writing to you that this student had committed a racial slur against him. Do you recall that ever happening?”²⁶² She indicated that it was her impression that Plaintiff “took care of his own discipline * * * He would issue detentions and he would have [] them serve the detentions with him.”²⁶³

{¶105} When asked “how did it make you feel when the students who committed slurs against you went unpunished?”²⁶⁴ Plaintiff responded “It was very hurting and saddening.”²⁶⁵ But Plaintiff acknowledged that if he wasn’t satisfied with how the students were being disciplined, “I could give detention.”²⁶⁶

{¶106} • That there is insufficient evidence to show that Plaintiff was “subjected to harassment and discrimination because of [his] race and insufficient evidence to show that Port Clinton City Schools “knew or should have known of the harassment* * *.”²⁶⁷

{¶107} In addition to taking up his concerns with the Superintendent, the Principal, the Dean of Students, coaches and others, Plaintiff also alleged that he took up his concerns with the Union, and that he “took it up with Jim Radloff.”²⁶⁸ Asked “if Mr. Farris had a problem with his conditions of employment, for example, he felt the school was tolerating a racially hostile environment * * * could he file a grievance against the building administrator or other

²⁵⁹ Dracka Deposition, 22: 20-21.

²⁶⁰ Dracka Deposition, 23: 25.

²⁶¹ Dracka Deposition, 24: 20.

²⁶² Dracka Deposition, 24: 16-19.

²⁶³ Dracka Deposition, 25: 1-4.

²⁶⁴ Transcript, Volume V, 716: 14-16.

²⁶⁵ Transcript, Volume V, 716: 17.

²⁶⁶ Transcript, Volume V, 717: 4.

²⁶⁷ Complaint, at ¶¶ 9-10

²⁶⁸ Transcript, Volume V, 717: 25.

COMMON PLEAS COURT OF OTTAWA COUNTY

individuals?”²⁶⁹ Mr. Radloff responded “oh, yeah, he could. Yeah, he could. Yeah.”²⁷⁰ But when asked if Plaintiff had “ever indicat[ed] to you he wanted to do that?”²⁷¹ Mr. Radloff said “No. No. No.”²⁷² Mr. Radloff also denied that during his time at the High School, there existed a “culture of racism in the Port Clinton Schools, where racism between students or by students against teachers were tolerated by the school”²⁷³ asserting that “one of my teaching partners in the department was African-American and she is also on my executive counsel.”²⁷⁴ Further, Mr. Radloff stated that “if it ever did happen, which it didn’t, I can guarantee you Iresa [Thompson] would have been on my phone, in my classroom, whatever it happened to be * * * because “Iresa was extremely sensitive to any discrimination.”²⁷⁵

{¶108} Similarly, Clara Dracka testified that she never attend[ed] any faculty meetings where John brought up any issues regarding racial slurs that he was enduring or that he was observing students doing directly to other students in a faculty meeting.”²⁷⁶ Asked whether Plaintiff had “ever express[ed] to [her] his concerns about how [she was] disciplining students he was sending [her] for whatever reason.”²⁷⁷ She responded “No.”²⁷⁸

{¶109} Plaintiff testified that he would document racial slurs as degrading acts.²⁷⁹ Conceding that his testimony was that “white teachers did punish kids for racial slurs,”²⁸⁰ Plaintiff asserted that degrading acts is “normally what teachers put down on, the white teachers

²⁶⁹ Radloff Deposition, 26: 3-7.

²⁷⁰ Radloff Deposition, 26: 8.

²⁷¹ Radloff Deposition, 26: 9.

²⁷² Radloff Deposition, 26: 10.

²⁷³ Radloff Deposition, 30: 3-5.

²⁷⁴ Radloff Deposition, 30: 6-7.

²⁷⁵ Radloff Deposition, 26: 15-16.

²⁷⁶ Dracka Deposition, 22: 12-17.

²⁷⁷ Dracka Deposition, 22: 21-23.

²⁷⁸ Dracka Deposition, 22: 24.

²⁷⁹ See Transcript, Volume V, 736: 5-6; Transcript, Volume V, 882: 16-21.

²⁸⁰ Transcript, Volume V, 736: 5-6.

COMMON PLEAS COURT OF OTTAWA COUNTY

put down on the disciplinary card for degrading acts.”²⁸¹ Likewise, Plaintiff testified that he “put it down for racial slur.”²⁸² But Plaintiff acknowledged that he presumed that the white teachers attributed student behavior this way, but that he didn’t have any knowledge of it.²⁸³

{¶110} Asked whether Plaintiff “ever put in any notice to you that he is sustaining racial slurs that aren’t being dealt with or [that] his teaching environment is anything less than ideal,” Mr. VanLeberghe testified “No.”²⁸⁴ And when asked “Did Mr. Farris ever say anything to you during your tenure with him that when he is using the word degrading acts, what he really means is racial slur, did he ever say that?” Mr. VanLeberghe emphasized “No.” Mr. VanLeberghe further testified that the first time he heard Plaintiff say that when he is using the word degrading acts, what he really means is racial slur, was “In Court this week.”²⁸⁵ Nor has he ever heard any teacher say, “Well, the term degrading act is code for racial slur.”²⁸⁶ Plaintiff asserted however, that the student handbook had no category for racial slurs and that he used degrading acts “because I did not want the word on there,” referring to the word “Nigger.”²⁸⁷

{¶111} Although Plaintiff testified that he put everything in writing, and his wife, Priscilla Farris asserts that “Everything John did he put it in writing to make sure that someone knew,”²⁸⁸ this Court finds the lack of documentation informing Port Clinton City Schools of the alleged racial harassment and discrimination to be fatal to Plaintiff’s case.

²⁸¹ Transcript, Volume V, 736: 2-4.

²⁸² Transcript, Volume V, 736: 9.

²⁸³ Transcript, Volume V, 736.

²⁸⁴ Transcript, Volume VI, 990: 15.

²⁸⁵ Transcript, Volume VI, 991: 4.

²⁸⁶ Transcript, Volume VI, 991: 5-6.

²⁸⁷ Transcript, Volume V, 736: 17-21.

²⁸⁸ Transcript, Volume I, 266: 4-5.

COMMON PLEAS COURT OF OTTAWA COUNTY

{¶112} • That there is insufficient evidence to show racial discrimination toward Plaintiff in Port Clinton City School’s employment decisions for coaching, teaching and administrative positions.

{¶113} The record reflects that all coaching, teaching, or administrative positions which were filled during the time that Plaintiff was employed by Port Clinton City Schools as a teacher or coach were properly posted. There is insufficient evidence to demonstrate otherwise. Defendant contends that a number of positions were not posted, but fails to provide evidence demonstrating (1) the existence of a vacant position, (2) the failure to properly post the vacant position, and (3) if the position was posted, that others conspired to prevent him from receiving notice of these postings.

{¶114} Various individuals testified that vacant teaching or coaching positions were posted by notices in mailboxes or mailed with paychecks in the summer.²⁸⁹ Ms. Greer and Mr. Clum noted that they are now posted by e-mail.²⁹⁰ Others testified that teaching or coaching vacancies were also posted in the teacher’s lounge. Mr. VanLerberhge testified that “Positions were advertised internally to see if there were any interests as well as it would not be unusual to advertise it outside as well.”²⁹¹ As well, Mr. VanLerberghe noted that the Master Agreements for certified teachers provided instructions on how vacancies were to be posted.²⁹²

{¶115} When asked “If Mr. Farris says that he never got any notices of supplemental contracts being offered for teaching vacancies or coaching vacancies, would that be the first time you ever heard such an allegation.?”²⁹³ Mr. Radloff responded, “That would be unusual. That

²⁸⁹ See, Transcript, Volume I, 55; Transcript, Volume II; 299; Transcript, Volume V, 913.

²⁹⁰ See, Transcript, Volume I, 56; Transcript, Volume V, 913.

²⁹¹ Transcript, Volume I, 298: 15-17.

²⁹² See Transcript, Volume I, 300.

²⁹³ Radloff Deposition, 75:12-15.

COMMON PLEAS COURT OF OTTAWA COUNTY

would be the first time I would have – that I would have heard it.”²⁹⁴ Mr. Radloff also testified that “98 percent of the time they did it correctly and I didn’t have to call them on it.”²⁹⁵ But the other two percent, “It would just be a clerical error – and the secretary would apologize up and down, backwards and forwards for screwing up.”²⁹⁶

{¶116} • That there is insufficient evidence to show that the negative coaching evaluations of Plaintiff were motivated by racism because there were genuine concerns about Plaintiff’s coaching skills and habits. Mr. Polacheck, the middle school athletic director testified that “there were some concerns on some of the evaluations,”²⁹⁷ and that those concerns included “Attendance at practice,” and “organization at practice.”²⁹⁸ Mr. Clum, the high school athletic director testified that “Mr. Farris was a source of frustration for Mr. Bodager, I would say from ‘93 on. Tom [Bodager] would say ‘Carey, I can’t get John to do what I would like to see John do.’ Both Mr. Nitz and myself said to Tom, ‘You have to write things down.’”²⁹⁹ Mr. Clum noted that in 1993-1994, Mr. Bodager “made an elaborate evaluation of John, pointing out things that he felt that John could do better or that he wanted John to do period.”³⁰⁰ Mr. Clum testified that at the big June meeting, “it becomes a huge rebuttal that he felt Tom was wrong, that Tom didn’t have the right to ask him to do those things, and that floored me.”³⁰¹ Mr. Clum emphasized that “John should have been working hard to please the head coach.”³⁰²

²⁹⁴ Radloff Deposition, 75:16-19.

²⁹⁵ Radloff Deposition, 75: 25; 76: 1.

²⁹⁶ Radloff Deposition, 76: 4-8.

²⁹⁷ Transcript, Volume I, 147: 24-25.

²⁹⁸ Transcript, Volume I, 149: 3.

²⁹⁹ Transcript, Volume V, 897: 2-4.

³⁰⁰ Transcript, Volume V, 897: 5-8.

³⁰¹ Transcript, Volume V, 897: 23-25; Transcript, Volume V, 898: 1.

³⁰² Transcript, Volume V, 897: 3-4.

COMMON PLEAS COURT OF OTTAWA COUNTY

{¶117} Acknowledging that Plaintiff “has a grasp of the game and a vast amount of knowledge about playing the game and the X’s and O’s,”³⁰³ Mr. Clum noted that although he only saw Plaintiff on game day, “that became a very negative item.”³⁰⁴ Mr. Clum asserted “I didn’t feel that John provided all the time any type of role model situation. I thought at times John left his kids in harm’s way, leaving them in the locker room with kids in them, unattended.”³⁰⁵ Mr. Clum also expressed concerns with Plaintiff leaving “his team in the lurch in terms of transportation, * * * hoping it would be covered,” or “covering it with a dad without letting Coach Bodager or myself even be aware that * * * there was going to be a gentleman in charge that wasn’t board approved and on and on.”³⁰⁶

{¶118} As a result of concerns shared by coaches, administrators and others, it was determined that school administrators would attend Plaintiff’s away games. Assistant school principal Mike Schifer submitted a memorandum to Mr. Clum expressing concerns with Plaintiff’s actions at a Boy’s Freshman Basketball game against Huron High School. Mr. Schifer emphasized that “Coach Farris’ lack of supervision is a huge liability risk.”³⁰⁷

{¶119} Mr. Clum also noted that there were several “run-ins with referees,” for infractions as simple as turning in his lineup card,³⁰⁸ and a report from Chuck Turner, an official at a freshman game who alleged that Plaintiff told him “if you try to throw me out of this game, I will go to the NAACP and sue you.”³⁰⁹ Mr. Clum testified that the school has received “written complaints from Perkins and Huron, St. Mary’s.”³¹⁰

³⁰³ Transcript, Volume V, 898: 12-14.

³⁰⁴ Transcript, Volume V, 898: 18-19.

³⁰⁵ Transcript, Volume V, 897: 19-23.

³⁰⁶ Transcript, Volume V, 899: 11-17.

³⁰⁷ Exhibit B, at 2.

³⁰⁸ Transcript, Volume V, 897: 16-17.

³⁰⁹ Transcript, Volume V, 909: 5-7.

³¹⁰ Transcript, Volume V, 909: 21-22.

COMMON PLEAS COURT OF OTTAWA COUNTY

{¶120} Mr. Clum also testified that his first experience with Mr. Farris as coach, “would have been when I met him in 1990, and we hired him as a freshman coach and two weeks into the season, he quit, so that wasn’t a good first experience.”³¹¹ He noted that “by ’97, I had lost all respect for Mr. Farris’ coaching and his dealings with kids.”³¹² When asked by Plaintiff’s attorney, “what happened between the championship victory in the end of the ’93 year and this ’94 year where the bad evaluation came, what changed?” Mr. Clum responded, “Again, don’t confuse the issues,” emphasizing that “Winning ball games and winning championships still doesn’t mean that there is items that a coach is not doing correctly or incorrectly.”³¹³

{¶121} • That there is insufficient evidence to support Plaintiff’s assertion that he was called “jungle bunny” during the 1994-1995, 1995-1996 school year, or at any other time.³¹⁴ Questioned as to whether he had ever approached Mr. VanLerberghe to ask why “over the last 15 years have you never punished a student I sent you for a racial slur?”³¹⁵ Plaintiff asserted that “I busted in his room when the kids called me a jungle bunny. I busted in Dale’s room past Carole and I said, ‘They were calling me jungle bunny and I was sick of it.’”³¹⁶ But when asked if he had asked “why [Mr. VanLerberghe] doesn’t punish people,”³¹⁷ he conceded that he had not.

{¶122} Mr. VanLerberghe testified that no such incident ever occurred.³¹⁸ Asked how he would have handled such a situation had it actually occurred, Mr. VanLerberghe asserted “Students would be suspended, Parents would be called in. My concern, as building principal, is

³¹¹ Transcript, Volume V, 897: 2-8.

³¹² Transcript, Volume V, 919: 10-11.

³¹³ Transcript, Volume V, 947: 11-14.

³¹⁴ See Transcript, Volume IV, 581:2-14.; Transcript, Volume V, 797: 11.

³¹⁵ Transcript, Volume V, 797: 3-4.

³¹⁶ Transcript, Volume V, 797: 6-9.

³¹⁷ Transcript, Volume V, 797: 12-16.

³¹⁸ See Transcript, Volume VI, 1001: 22-25; 1002: 1-3.

COMMON PLEAS COURT OF OTTAWA COUNTY

not only punish, but to correct and change behavior.”³¹⁹ When asked generally whether he believed that students that Plaintiff complained of were brought to him “for the purpose that they had made racial slurs against him,” Mr. VanLerberghe testified, “No. I would have records of that as I have kept other things.”³²⁰ Mr. VanLerberghe also testified “Never was there anything documented that, “This is a racial slur, the N word, or this was said against me.” And Mr. VanLerberghe asserted that he would have remembered if Plaintiff had done something like that.³²¹

{¶123} • That the new team teaching approach instituted at the Junior High School affected Plaintiff’s evaluations and exacerbated existing concerns regarding Plaintiff’s teaching abilities. Mr. VanLerberghe testified that from 1985 to 1996, Plaintiff’s evaluations “overall” were satisfactory.³²² Plaintiff concedes that on occasion, he received some unsatisfactory or needs improvement marks.³²³ Plaintiff asserts that the last evaluation for the 1997-1998 school year was “not completed according to policy,” and that he “was supposed to be judged according to the activities of his class.”³²⁴ Plaintiff asserts that Mr. VanLerberghe observed him on a test day.³²⁵ But Mr. VanLerberghe testified “I always put the dates and times that I am in a class right at the top where it says dates observed,” and the evaluation shows “April 16, 1998,” and “April 29th, 1998.”³²⁶ Mr. VanLerberghe also testified “Normally, I would do two observations to make one evaluation.”³²⁷

³¹⁹ Transcript, Volume VI, 1002: 13-15.

³²⁰ Transcript, Volume VI, 1060: 5-8.

³²¹ Transcript, Volume VI, 1060.

³²² Transcript, Volume VI, 1048: 6.

³²³ Exhibit 12, at 13, 42-43, 62-62; Exhibit 17, at 1-7, 24, 26, 34.

³²⁴ Plaintiff’s Proposed Findings of Facts and Conclusions of Law, at 4.

³²⁵ Transcript, Volume IV, 672: 1-5.

³²⁶ Transcript, Volume VI, 1015: 18-23; Exhibit 12.

³²⁷ Transcript, Volume VI, 1016: 7-8.

COMMON PLEAS COURT OF OTTAWA COUNTY

{¶124} • That Plaintiff’s rebuttal witness, Rebecca Royster, is not a credible witness and as such, her testimony was highly suspect. Ms. Royster testified “I would not be here if it was not for Coach Farris literally. I went through a time where I became addicted to narcotics, and had it not been for Coach finding those narcotics and getting me some help, they said I would not have made it another six months.”³²⁸ She further testified that she did drugs before and after school, but denied that she was still under the effects of drugs while in school.³²⁹ She acknowledged, however, that she was “not coherent”³³⁰ in some of her eighth grade classes and thus, could not give specifics of racial slurs made by Mike Mau and Pat Sullivan.³³¹ And she admitted “I would love to see [Mr. Farris] win this lawsuit.”³³²

{¶125} While Ms. Royster testified to several instances of racial slurs by students at Port Clinton City Schools, she specially alluded to an incident in which other adults were present other than Mr. Farris. She testified that more than twelve to fifteen times, there would be teachers in the back of the room, and that “Pretty much, it was the same individuals that were there,” and that Ms. Bodie was present in the gymnasium class when racial slurs were committed.³³³ But Ms. Bodie testified in rebuttal that she never had occasion to hear a student use a racial slur against Mr. Farris.³³⁴ Asked “if something like that occurred, would that be the type of thing that you would remember after this many years?” She responded “I think I would.”³³⁵

³²⁸ Transcript, Volume VI, 1076: 1-6.

³²⁹ Transcript, Volume VI, 1091: 25; Transcript, Volume VI, 1092: 1-4.

³³⁰ Transcript, Volume VI, 1105: 25.

³³¹ See Transcript, Volume VI, 1105.

³³² Transcript, Volume VI, 1092: 23.

³³³ Transcript, Volume VI, 1084: 10-16.

³³⁴ See Transcript, Volume VI, 1106: 20-24.

³³⁵ Transcript, Volume VI, 1116:25; Transcript, Volume VI, 1117: 1-3.

COMMON PLEAS COURT OF OTTAWA COUNTY

{¶126} • That Plaintiff’s testimony, inconsistencies in his testimony, his perception of certain events, lack of documentation of racial incidents, lack of supporting testimony, and his testimony that degrading comments meant racial slurs, strains Plaintiff’s credibility to such an extent that there is serious concern whether Plaintiff is testifying to events as they actually occurred, or as he perceives them to have occurred. Because Plaintiff’s perception does not always mirror reality, there is substantial question as to whether his testimony actually reflects reality.

III. CONCLUSIONS OF LAW

{¶127} This Court finds that:

{¶128} • Ohio courts have looked to federal case law interpreting Title VII of the Civil Rights Act of 1964 in determining the essential elements of a hostile work environment claim brought under R.C. 4112.02(A).³³⁶

{¶129} • To establish a claim against an employer for hostile work environment harassment, a plaintiff must establish: (1) the employee was a member of the protected class; (2) the employee was subjected to unwelcome harassment; (3) the harassment complained of was based upon sex or race; (4) the harassment had the purpose or effect of unreasonably interfering with the employee’s work performance or creating an intimidating, hostile, or offensive work environment; and (5) the existence of respondeat superior liability.³³⁷

³³⁶ Title VII of the Civil Rights Act of 1964, Section 2000e, et seq., Title 42, U.S. Code. See, *Delaney v. Skyline Lodge, Inc.* (1994), 95 Ohio App. 3d 264, 270, 642 N.E.2d 395; *Little Forest Medical Ctr. of Akron v. Ohio Civ. Rights Comm.* (1991), 61 Ohio St. 3d 607, 609-610, 575 N.E.2d 1164.

³³⁷ R.C. Chapter 4112; *Delaney v. Skyline Lodge, Inc.* (1994), 95 Ohio App. 3d 264, 270, 642 N.E.2d 395, citing *Harris v. Forklift System, Inc.* (1993), 510 U.S. 17, 114 S. Ct. 367, 126 L. Ed. 2d 295. See *Smith v. Greater Cleveland Regional Transit Auth.*, 8th Dist. No. 78274, 2001 Ohio App. LEXIS 2328.

COMMON PLEAS COURT OF OTTAWA COUNTY

{¶130} • In order to be actionable, a hostile work environment “must be both objectively and subjectively offensive, one that a reasonable person would find hostile or abusive, and one that the victim in fact did perceive to be so.”³³⁸

{¶131} • To determine whether an environment is sufficiently hostile and abusive, courts “look[] at all the circumstances, including the ‘frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee’s work performance.’”³³⁹

{¶132} • “Conduct must be extreme to amount to a change in the terms and conditions of employment.”³⁴⁰

{¶133} • Conduct that is merely offensive is not actionable as a hostile work environment.³⁴¹

{¶134} • Conduct must be “sufficiently severe or pervasive to alter the conditions of the victim’s employment.”³⁴²

{¶135} • “‘simple teasing,’ offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the ‘terms and conditions of employment.’”³⁴³

{¶136} • To establish that one should have known of the offensive comments, plaintiff must show that the act was so pervasive that it raised an inference of constructive knowledge.³⁴⁴

³³⁸ *Bell v. Cuyahoga Community College*, 129 Ohio App. 3d 461, 717 N.E.2d 1189(1998), citing *Faragher v. City of Boca Raton* (1998), 524 U.S. 775, 118 S. Ct. 2275, 141 L. Ed. 2d 662.

³³⁹ *Harris v. Forklift System, Inc.* (1993), 510 U.S. 17, 114 S. Ct. 367, 126 L. Ed. 2d 295; See *Faragher v. City of Boca Raton* (1998), 524 U.S. 775, 786, 118 S. Ct. 2275, 2283-2289, 141 L. Ed. 2d 662.

³⁴⁰ *Harris v. Forklift System, Inc.* (1993), 510 U.S. 17, 114 S. Ct. 367, 126 L. Ed. 2d 295; See *Faragher v. City of Boca Raton* (1998), 524 U.S. 775, 786, 118 S. Ct. 2275, 2283-2289, 141 L. Ed. 2d 662.

³⁴¹ *Harris v. Forklift System, Inc.* (1993), 510 U.S. 17, 21, 114 S. Ct. 367, 126 L. Ed. 2d 295.

³⁴² *Harris v. Forklift System, Inc.* (1993), 510 U.S. 17, 21, 114 S. Ct. 367, 126 L. Ed. 2d 295.

COMMON PLEAS COURT OF OTTAWA COUNTY

{¶137} • “It shall be an unlawful discriminatory practice: For any employer, because of the race, color, religion, sex, national origin, handicap, age, or ancestry of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment.”³⁴⁵

{¶138} • R.C. Chapter 4112, is Ohio’s counterpart to Section 2000e, Title 42, U.S. Code.³⁴⁶

{¶139} • In general, a prima facie case of racial discrimination requires a plaintiff to establish that he or she: (1) is a member of a protected class; (2) suffered an adverse employment action; (3) was qualified for the position either lost or not gained; and (4) that the position remained open or was filled by a person not of the protected class.³⁴⁷

{¶140} • The establishment of a prima facie case of discrimination creates a presumption that the employer unlawfully discriminated against the employee.³⁴⁸

{¶141} • Once a plaintiff establishes a prima facie case of discrimination, the burden shifts to the defendant to rebut the presumption of discrimination by producing evidence that its actions regarding the plaintiff were taken based on legitimate nondiscriminatory reasons.³⁴⁹

³⁴³ *Faragher v. City of Boca Raton* (1998), 524 U.S. 775, 786, 118 S. Ct. 2275, 2283-2289, 141 L. Ed. 2d 662.

³⁴⁴ See *Brewer v. Cleveland City Schools, Bd. of Educ.* (1997), 122 Ohio App. 3d 378, 701 N.E.2d 1023, 1997 Ohio App. LEXIS 3008.

³⁴⁵ R.C. 4112.02(A).

³⁴⁶ See, *Genaro v. Cent. Transport, Inc.* (1999), 84 Ohio St. 3d 293, 295, 1999 Ohio 352, 703 N.E.2d 782; *Plumbers & Steamfitters Comm. v. Ohio Civil Rights Comm.* (1981), 66 Ohio St. 2d 192, 196, 421 N.E.2d 128.

³⁴⁷ *McDonnell Douglas Corp. v. Green* (1973), 411 U.S. 792, 802, 36 L. Ed. 2d 668, 93 S. Ct. 1817. See *Plumbers & Steamfitters Comm. v. Ohio Civil Rights Comm.* (1981), 66 Ohio St. 2d 192, 196, 421 N.E.2d 128. See also *Texas Dep't of Community Affairs v. Burdine* (1981), 450 U.S. 248, 254, 67 L. Ed. 2d 207, 101 S. Ct. 1089.

³⁴⁸ *Texas Dep't of Community Affairs v. Burdine* (1981), 450 U.S. 248, 254, 67 L. Ed. 2d 207, 101 S. Ct. 1089.

³⁴⁹ *Texas Dep't of Community Affairs v. Burdine* (1981), 450 U.S. 248, 254, 67 L. Ed. 2d 207, 101 S. Ct. 1089.

COMMON PLEAS COURT OF OTTAWA COUNTY

{¶142} • Thereafter, the burden again switches to the plaintiff, who must show that defendant's stated justification is in fact merely a pretext for unlawful discrimination. The ultimate burden of persuasion remains at all times with the plaintiff.³⁵⁰

The establishment of a prima facie case of discrimination creates a presumption that the employer unlawfully discriminated against the employee.³⁵¹

{¶143} • In general, adverse employment actions must materially affect the plaintiff's terms and conditions of employment resulting in a job-related detriment.³⁵²

{¶144} • Differential treatment in the promotion of similarly situated employees constitutes an adverse employment action.³⁵³

{¶145} • In order to demonstrate qualification for a position, a plaintiff must show he has the capability of performing the work and that he is meeting the employer's legitimate expectations.³⁵⁴

{¶146} • Pretext is established by a direct showing that a discriminatory reason more likely motivated the employer or by an indirect showing that the employer's explanation is not credible.³⁵⁵

³⁵⁰ *Texas Dep't of Community Affairs v. Burdine* (1981), 450 U.S. 248, 254, 67 L. Ed. 2d 207, 101 S. Ct. 1089.

³⁵¹ *Texas Dep't of Community Affairs v. Burdine* (1981), 450 U.S. 248, 254, 67 L. Ed. 2d 207, 101 S. Ct. 1089.

³⁵² *Peterson v. Buckeye Steel Casings* (1999), 133 Ohio App. 3d 715, 727, 729 N.E.2d 813.

³⁵³ *McDonnell Douglas Corp. v. Green* (1973), 411 U.S. 792, 802, 36 L. Ed. 2d 668, 93 S. Ct. 1817.

³⁵⁴ *Landon v. ABB Automation, Inc.*, 2002 Ohio 3376; *Ebright v. Video News Super Stores* (July 6, 2001), Lucas App. No. L-00-1369, 2001 Ohio App. LEXIS 3049; *Smith v. Greater Cleveland Regional Transit Auth.* (May 24, 2001), Cuyahoga App. No. 78274, 2001 Ohio App. LEXIS 2328.

IV. ANALYSIS

{¶147} The sole issues presented to this Court are whether Plaintiff has established the essential elements of (1) a hostile work environment created by racial harassment or (2) racial discrimination. In his complaint, Plaintiff who is African American claimed that Port Clinton City Schools permitted students and teachers to make racist remarks towards him, that he was improperly given poor coaching and teaching evaluations and denied promotions to higher paying coaching positions and denied the opportunity to apply for the position of Dean of Students.

A. Hostile Work Environment

{¶148} Here, Plaintiff has alleged that he was “subjected to harassment and discrimination because of [his] race” and that Defendants “knew or should have known of the harassment that the Plaintiff was being subjected to.”³⁵⁶

{¶149} In determining the essential elements of a hostile work environment claim brought under R.C. 4112.02(A), Ohio courts have looked to federal case law interpreting Title VII of the Civil Rights Act of 1964.³⁵⁷

{¶150} To establish a claim brought under R.C. Chapter 4112 against an employer for hostile work environment harassment, a plaintiff must establish: (1) the employee was a member of the protected class; (2) the employee was subjected to unwelcome harassment; (3) the harassment complained of was based upon sex or race; (4) the harassment had the purpose or effect of unreasonably interfering with the employee’s work performance or creating an

³⁵⁵ Texas Dept. of Community Affairs v. Burdine (1981), 450 U.S. 248, 256, 67 L. Ed. 2d 207, 101 S. Ct. 1089. See *Detzel v. Brush Wellman, Inc.* (2001), 141 Ohio App. 3d 474, 483, 751 N.E.2d 1067.

³⁵⁶ Complaint, at ¶¶ 9-10.

COMMON PLEAS COURT OF OTTAWA COUNTY

intimidating, hostile, or offensive work environment; and (5) the existence of respondeat superior liability.³⁵⁸

{¶151} In order to be actionable, a hostile work environment “must be both objectively and subjectively offensive, one that a reasonable person would find hostile or abusive, and one that the victim in fact did perceive to be so.”³⁵⁹ In *Harris v. Forklift System, Inc.*,³⁶⁰ the United States Supreme Court directed courts “to determine whether an environment is sufficiently hostile and abusive by ‘looking at all the circumstances,’ including the ‘frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee’s work performance.’” Further, it made clear that “conduct must be extreme to amount to a change in the terms and conditions of employment.”³⁶¹

{¶152} Plaintiff has alleged that students used racial slurs and epithets more than 200 times when referring to him. But Defendant argues that the racial comments were sporadic, rather than pervasive, having occurred over the course of the 16 years Plaintiff was employed at Port Clinton City Schools.

³⁵⁷ Title VII of the Civil Rights Act of 1964, Section 2000e, et seq., Title 42, U.S. Code. See, *Delaney v. Skyline Lodge, Inc.* (1994), 95 Ohio App. 3d 264, 270, 642 N.E.2d 395; *Little Forest Medical Ctr. of Akron v. Ohio Civ. Rights Comm.* (1991), 61 Ohio St. 3d 607, 609-610, 575 N.E.2d 1164.

³⁵⁸ *Delaney v. Skyline Lodge, Inc.* (1994), 95 Ohio App. 3d 264, 270, 642 N.E.2d 395, citing *Harris v. Forklift System, Inc.* (1993), 510 U.S. 17, 114 S. Ct. 367, 126 L. Ed. 2d 295. See *Smith v. Greater Cleveland Regional Transit Auth.*, 8th Dist. No. 78274, 2001 Ohio App. LEXIS 2328.

³⁵⁹ *Bell v. Cuyahoga Community College*, 129 Ohio App. 3d 461, 717 N.E.2d 1189(1998), citing *Faragher v. City of Boca Raton* (1998), 524 U.S. 775, 118 S. Ct. 2275, 141 L. Ed. 2d 662.

³⁶⁰ *Harris v. Forklift System, Inc.* (1993), 510 U.S. 17, 114 S. Ct. 367, 126 L. Ed. 2d 295; See *Faragher v. City of Boca Raton* (1998), 524 U.S. 775, 786, 118 S. Ct. 2275, 2283-2289, 141 L. Ed. 2d 662.

³⁶¹ *Harris v. Forklift System, Inc.* (1993), 510 U.S. 17, 114 S. Ct. 367, 126 L. Ed. 2d 295; See *Faragher v. City of Boca Raton* (1998), 524 U.S. 775, 786, 118 S. Ct. 2275, 2283-2289, 141 L. Ed. 2d 662.

COMMON PLEAS COURT OF OTTAWA COUNTY

{¶153} This Court finds that Plaintiff was not subjected to a hostile work environment. Conduct that is merely offensive is not actionable as a hostile work environment.³⁶² The conduct must be “sufficiently severe or pervasive to alter the conditions of the victim’s employment.”³⁶³ The evidence presented by Plaintiff does not meet this standard. Although Plaintiff testified that students used racial slurs and epithets more than 200 times during his 16 year tenure, this Court has found Plaintiff’s testimony not to be credible, and that the evidence reflects that such incidents can be characterized as “infrequent.” Further, a review of each alleged incident shows that with the exception of one, and possibly two instances, no racial slurs were made in the presence of the Plaintiff at Port Clinton City Schools or its home athletic events.

{¶154} Although Plaintiff may have been subjected to offensive comments, such as “motherfucker,” and other derogatory comments, Plaintiff failed to show that the harassment complained of was based on race. Plaintiff asserts that he was referred to as “nigger,” “jungle bunny,” “spics,” and that other slurs were used. Plaintiff also asserts that he was the target of a “KKK” threat, and that he was stalked. But vague, unsupported, and uncorroborated allegations do not, by itself, demonstrate to this Court that the complained harassment was based on race. Moreover, this Court found the Plaintiff’s testimony not to be credible. Similarly, Plaintiff’s assertion that he was physically assaulted by students does not demonstrate that the alleged harassment was racial because these allegations were also found not to be credible or not to be motivated by race.

{¶155} In finding that a reasonable person would *not* find Plaintiff’s work environment to be hostile or abusive, this Court applied the standard set forth above by the U.S. Supreme Court

³⁶² *Harris v. Forklift System, Inc.* (1993), 510 U.S. 17, 21, 114 S. Ct. 367, 126 L. Ed. 2d 295.

³⁶³ *Harris v. Forklift System, Inc.* (1993), 510 U.S. 17, 21, 114 S. Ct. 367, 126 L. Ed. 2d 295.

COMMON PLEAS COURT OF OTTAWA COUNTY

in *Harris v. Forklift System, Inc.*,³⁶⁴ to the evidence before it. While offensive utterances may have been made, the evidence does not reflect that they existed at the level necessary for an actionable claim of a hostile work environment created by racial harassment. But this Court concedes that Plaintiff was subjected to isolated racist comments while at Port Clinton City Schools and that he may have also been subjected to racial harassment at away athletic events.

{¶156} In *Faragher v. City of Boca Raton*,³⁶⁵ the U.S. Supreme Court noted “A recurring point * * * is that ‘simple teasing,’ offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the ‘terms and conditions of employment.’” Emphasizing that “These standards for judging hostility are sufficiently demanding to ensure that Title VII does not become a ‘general civility code,’”³⁶⁶ the Court noted that “Properly applied, they will filter out complaints attacking ‘the ordinary tribulations of the workplace, such as the sporadic use of abusive language, gender-related jokes, and occasional teasing.’”³⁶⁷ Thus, the Court in *Faragher* “made it clear that conduct must be extreme to amount to a change in the terms and conditions of employment, and the Courts of Appeals have heeded this view.”³⁶⁸

{¶157} Regardless of whether students or others may have recited another person’s comments, Plaintiff presented no credible evidence that the alleged racial comments unreasonably interfered with his work performance. Thus, based on the foregoing evidence, Plaintiff has failed to establish that the alleged harassment “unreasonably interfered with his

³⁶⁴ *Harris v. Forklift System, Inc.* (1993), 510 U.S. 17, 114 S. Ct. 367, 126 L. Ed. 2d 295; See *Faragher v. City of Boca Raton* (1998), 524 U.S. 775, 786, 118 S. Ct. 2275, 2283-2289, 141 L. Ed. 2d 662.

³⁶⁵ *Faragher v. City of Boca Raton* (1998), 524 U.S. 775, 786, 118 S. Ct. 2275, 2283-2289, 141 L. Ed. 2d 662.

³⁶⁶ *Faragher v. City of Boca Raton* (1998), 524 U.S. 775, 786, 118 S. Ct. 2275, 2283-2289, 141 L. Ed. 2d 662.

³⁶⁷ *Faragher v. City of Boca Raton* (1998), 524 U.S. 775, 786, 118 S. Ct. 2275, 2283-2289, 141 L. Ed. 2d 662. See B. Lindemann & D. Kadue, *Sexual Harassment in Employment Law* 175 (1992).

³⁶⁸ See, e.g., *Carrero v. New York City Housing Auth.*, 890 F.2d 569, 577-578 (CA2 1989); *Moylan v. Maries County*, 792 F.2d 746, 749-750 (CA8 1986); See also B. Lindemann & Grossman 805-807, n. 290.

COMMON PLEAS COURT OF OTTAWA COUNTY

work performance.”³⁶⁹ There was no credible evidence produced to show that the conduct was so extreme as to amount to a change in the conditions of his employment. Nor has Plaintiff shown that the alleged harassment created an intimidating, hostile or offensive work environment.

{¶158} Further, this Court finds that no credible evidence was produced to show that the alleged hostile work environment interfered with Plaintiff’s work and ability to effectively teach in the classroom or coach athletic teams. Specifically, this Court finds Plaintiff’s allegations that the cumulative effect of the racial slurs, which Plaintiff asserts resulted in his being placed on disability leave, to be unsupported by the evidence

{¶159} Rather, the evidence appears to show that Plaintiff’s resignation was triggered in large part by the increasingly difficult standards imposed in the classroom by Port Clinton City School’s implementation of a middle school team philosophy, and an increasing concern and criticism of his coaching abilities, including the deterioration of personal and professional relationships with teachers, administrators, coaches, players and students. The record further reflects that Plaintiff has suffered from depression and/or other forms of mental illnesses, which appear to have been compounded or aggravated by his teaching and coaching difficulties rather than the perceived racial harassment.³⁷⁰ When asked on direct whether her husband had ever shared with her “some of his reasons for going on disability,”³⁷¹ Priscilla Farris stated “Yes, he did, yes, he did. He was stating that, you know, he was having a lot of problems where he didn’t

³⁶⁹ Transcript, Volume I, 257: 9-10.

³⁷⁰ In the case *sub judice*, both the emotional stress of the alleged harassment and its consequence, Plaintiff’s disability leave, are psychological issues that required medical testimony to demonstrate an injury and would have been addressed in this case only if Count V (negligent or intentional infliction of emotional distress) had survived Defendant’s Motion for Summary Judgment, or, if Plaintiff, during trial had presented sufficient evidence to warrant a finding that an intentional tort occurred.

³⁷¹ Transcript, Volume I, 257: 8-10.

COMMON PLEAS COURT OF OTTAWA COUNTY

understand why the problems – why, and he said that, you know, he knew what he wanted to be, you know, he – he knew how he wanted to teach and all, but it was more or less he couldn't teach because he was being directed one way or another as to say as if – as if saying, well, you can't teach like this and with all this mixed emotion, that's what we talked about.”³⁷²

{¶160} Finally, there is no credible evidence demonstrating that Port Clinton City Schools knew or should have known of the offensive comments. To establish that they should have known, Plaintiff has to show that the act was so pervasive that it raised an inference of constructive knowledge.³⁷³ Plaintiff has demonstrated one and possibly two, racial comments during his 16 year tenure at Port Clinton City Schools. This Court found Plaintiff's testimony and that of Ms. Royster to be less than credible and failing to support Plaintiff's assertion that he was subjected to pervasive unwelcome harassment. This Court also found the testimony of Mr. Polacheck, Mr. Clum, Ms. Dracka, Mr. Radloff, Mr. VanLeberghe, and Mr. Rectenwald to be more credible, reflecting that a hostile work environment did *not* exist at Port Clinton Junior High School. Plaintiff testified that he used the term “derogatory acts” to mean “racial slurs,” but did not offer any evidence to show that Port Clinton City Schools was aware of this. And Mr. VanLeberghe testified that Plaintiff had never sent him a student for using racial slurs. Likewise, Ms. Dracka testified that Plaintiff had never sent a student to her because of racial slurs.

³⁷² Transcript, Volume I, 257: 11-21.

³⁷³ See *Brewer v. Cleveland City Schools, Bd. of Educ.* (1997), 122 Ohio App. 3d. 378, 701 N.E.2d 1023, 1997 Ohio App. LEXIS 3008.

COMMON PLEAS COURT OF OTTAWA COUNTY

{¶161} Thus, based on the application of all of the prongs set forth in *Harris v. Forklift System, Inc.*,³⁷⁴ this Court finds the evidence presented by Plaintiff to be insufficient to sustain a claim for racial harassment pursuant to R.C. 4112.

B. Racial Discrimination

{¶162} Plaintiff has alleged “racial discrimination in employment” and asserts that he was “discharged without just cause by the Defendant.”³⁷⁵ Defendant asserts, however, that Plaintiff “voluntarily went on disability and was not discharged.”³⁷⁶

{¶163} R.C. 4112.02(A) provides: “It shall be an unlawful discriminatory practice: For any employer, because of the race, color, religion, sex, national origin, handicap, age, or ancestry of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment.”

{¶164} R.C. Chapter 4112, is Ohio’s counterpart to Section 2000e, Title 42, U.S. Code (“Title VII”). Therefore, federal case law interpreting Title VII is generally applicable to cases brought under Chapter 4112.³⁷⁷

{¶165} In *Plumbers & Steamfitters Joint Apprenticeship Comm.*,³⁷⁸ the Ohio Supreme Court recognized that *McDonnell Douglas Corp. v. Green*,³⁷⁹ sets forth the formula that courts should apply “to ferret out impermissible discrimination in the hiring, firing, promoting, and

³⁷⁴ *Harris v. Forklift System, Inc.* (1993), 510 U.S. 17, 114 S. Ct. 367, 126 L. Ed. 2d 295; See *Faragher v. City of Boca Raton* (1998), 524 U.S. 775, 786, 118 S. Ct. 2275, 2283-2289, 141 L. Ed. 2d 662.

³⁷⁵ Complaint, at ¶¶ 14-15.

³⁷⁶ Defendant’s Motion for Summary Judgment, at 5 (unpaginated).

³⁷⁷ See, *Genaro v. Cent. Transport, Inc.* (1999), 84 Ohio St. 3d 293, 295, 1999 Ohio 352, 703 N.E.2d 782; *Plumbers & Steamfitters Comm. v. Ohio Civil Rights Comm.* (1981), 66 Ohio St. 2d 192, 196, 421 N.E.2d 128.

³⁷⁸ *Plumbers & Steamfitters Comm. v. Ohio Civil Rights Comm.* (1981), 66 Ohio St. 2d 192, 196, 421 N.E.2d 128.

³⁷⁹ *McDonnell Douglas Corp. v. Green* (1973), 411 U.S. 792, 36 L. Ed. 2d 668, 93 S. Ct. 1817.

COMMON PLEAS COURT OF OTTAWA COUNTY

demoting of employees.” In general, a prima facie case of racial discrimination under the *McDonnell Douglas* framework requires a plaintiff to establish that he or she: (1) is a member of a protected class; (2) suffered an adverse employment action; (3) was qualified for the position either lost or not gained; and (4) that the position remained open or was filled by a person not of the protected class.³⁸⁰

{¶166} The establishment of a prima facie case of discrimination under *McDonnell Douglas* creates a presumption that the employer unlawfully discriminated against the employee.³⁸¹ Once a plaintiff establishes a prima facie case of discrimination, the burden shifts to the defendant to rebut the presumption of discrimination by producing evidence that its actions regarding the plaintiff were taken based on legitimate nondiscriminatory reasons.³⁸² Thereafter, the burden again switches to the plaintiff, who must show that defendant’s stated justification is in fact merely a pretext for unlawful discrimination. The ultimate burden of persuasion remains at all times with the plaintiff.³⁸³

{¶167} In general, adverse employment actions must materially affect the plaintiff’s terms and conditions of employment resulting in a job-related detriment.³⁸⁴ Examples of such actions include “termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, [or] significantly diminished material responsibilities[.]”³⁸⁵ Thus, differential treatment in the promotion of similarly situated

³⁸⁰ *McDonnell Douglas Corp. v. Green* (1973), 411 U.S. 792, 802, 36 L. Ed. 2d 668, 93 S. Ct. 1817. See *Plumbers & Steamfitters Comm. v. Ohio Civil Rights Comm.* (1981), 66 Ohio St. 2d 192, 196, 421 N.E.2d 128. See also *Texas Dep’t of Community Affairs v. Burdine* (1981), 450 U.S. 248, 254, 67 L. Ed. 2d 207, 101 S. Ct. 1089.

³⁸¹ *Texas Dep’t of Community Affairs v. Burdine* (1981), 450 U.S. 248, 254, 67 L. Ed. 2d 207, 101 S. Ct. 1089.

³⁸² *Texas Dep’t of Community Affairs v. Burdine* (1981), 450 U.S. 248, 254, 67 L. Ed. 2d 207, 101 S. Ct. 1089.

³⁸³ *Texas Dep’t of Community Affairs v. Burdine* (1981), 450 U.S. 248, 254, 67 L. Ed. 2d 207, 101 S. Ct. 1089.

³⁸⁴ *Peterson v. Buckeye Steel Casings* (1999), 133 Ohio App. 3d 715, 727, 729 N.E.2d 813.

³⁸⁵ *Peterson v. Buckeye Steel Casings* (1999), 133 Ohio App. 3d 715, 727, 729 N.E.2d 813, citing *Crady v. Liberty Nat’l Bank & Trust Co.* (C.A.7, 1993), 993 F.2d 132, 136.

COMMON PLEAS COURT OF OTTAWA COUNTY

employees constitutes an adverse employment action, the proof of which would satisfy all of the prongs of the *McDonnell Douglas* test.

{¶168} Following an exhaustive review of the record and testimony in this matter, this Court first found that Plaintiff is an African American and is a member of the protected class. Second, this Court found that Plaintiff has presented evidence of an adverse employment action. Third, Plaintiff's degrees, experience and certifications do show that he is at least minimally qualified for the positions he held and aspired to. Fourth, it is undisputed that in each case where a coaching or teaching position was open and for which the Plaintiff applied, those positions were filled by a person not of the protected class. Thus, Plaintiff is able to demonstrate a prima facie case of racial discrimination. The establishment of a prima facie case of discrimination under *McDonald Douglas* creates a presumption that the employer unlawfully discriminated against the employee.³⁸⁶

{¶169} Responsibility then falls to the Defendant to articulate some legitimate, nondiscriminatory reason for its actions. In this case, Defendant has demonstrated clearly that any adverse employment actions, whether real or perceived, were not the result of racial discrimination.

{¶170} At trial, Defendant denied that Plaintiff suffered an adverse employment action as a result of the school district's failure to promote Plaintiff to higher paying coaching positions and also denied that it failed to inform Plaintiff of all available coaching and teaching positions. As well, Defendants denied the pervasive existence of racial harassment that Plaintiff claims made working conditions and his emotional state so intolerable that it was necessary for him to go on disability leave. As such, Defendants have suggested that disability leave should not be

COMMON PLEAS COURT OF OTTAWA COUNTY

considered an adverse employment action because it was not the result of racial harassment or discrimination.³⁸⁷ And Defendant has suggested that Plaintiff was not qualified for various positions.

{¶171} This Court has found that Plaintiff was provided the opportunity to coach various middle school and high school athletic teams despite increasing concern as to his reliability, leadership skills, and rapport with other coaches, head coaches and administrators. This Court's findings of fact reflect in part, that Plaintiff quit freshman football two weeks into the season, there was a concern regarding Plaintiff's attendance at practices in other sports, he did not interact with coaching staff, he disregarded instruction from head coaches, he lacked organizational skills, he often left players unsupervised, and he did not conduct himself in a manner befitting a role model or to the standard expected of coaches by Port Clinton City Schools.

{¶172} This Court found that Port Clinton City Schools properly posted all open coaching and teaching positions, including all varsity and head coaching positions as well as the position of Dean of Students. This Court found Plaintiff's assertions that many positions were not properly posted not to be credible. And Plaintiff fails to even claim that Defendant's actions were racially motivated. Plaintiff testified that Mr. VanLerberghe "is not prejudiced,"³⁸⁸ and acknowledged that Mr. VanLerberghe "got on the kid's tail"³⁸⁹ every time he took a kid to the office. Plaintiff also conceded that Mr. VanLerberghe was "supportive."³⁹⁰

³⁸⁶ *Texas Dep't of Community Affairs v. Burdine* (1981), 450 U.S. 248, 254, 67 L. Ed. 2d 207, 101 S. Ct. 1089.

³⁸⁷ See *Hann v. Perkins Twp.*, 6th Dist. No. E-03-025, 2004 Ohio 3445; 2004 Ohio App. LEXIS 3059, ("Constructive discharge does qualify as an adverse employment action").

³⁸⁸ Transcript, Volume V, 868: 23.

³⁸⁹ Transcript, Volume V, 868: 24-25.

³⁹⁰ Transcript, Volume V, 869: 3.

COMMON PLEAS COURT OF OTTAWA COUNTY

{¶173} Moreover, this Court found that Plaintiff did not apply for many of the positions he complains he was passed over for, and that on other occasions, he withdrew his application or applied after the deadline had passed. As such, he cannot complain that he was denied these positions because of race. Nor did Port Clinton City Schools deviate from the hiring procedures outlined in the Master Agreement. Plaintiff was awarded the position of head girls' softball coach despite strong opposition from parents and players to retain an experienced but non-certified coach.

{¶174} An exhaustive review of the record and the testimony in this matter reflects that Plaintiff has failed to show that he was qualified for the positions either lost or not gained. Plaintiff has argued that Port Clinton City Schools neglected to consider his years of coaching various sports within the school district, his experience as a college coach, and his success with various teams, including track, football and most significantly, the SBC title in boys' freshman basketball. However, testimony of the both athletic directors demonstrate that the other individuals hired into those positions for which Plaintiff actually applied were highly qualified, and for each position, were better qualified than Plaintiff. Thus, Plaintiff has either misconstrued the experience, skill or abilities of others or placed too much weight on the apparent successes of his teams and the significance of his years as middle school, high school or collegiate coach. As Mr. Clum so succinctly noted, the winning record of a coach is not, and should not be the sole basis upon which a coach is hired, but that one must also look to the character of the coach, his ability to serve as a role model, interact with students, coaches, referees, opposing teams, coaches and community members, and to provide for the safety of his players.

{¶175} And simply being certified to teach is insufficient, in and of itself, to demonstrate that Plaintiff was qualified to teach at Port Clinton City Schools. In order to demonstrate

COMMON PLEAS COURT OF OTTAWA COUNTY

qualification for a position, a plaintiff must show he has the capability of performing the work and that he is meeting the employer's legitimate expectations.³⁹¹ Here, Plaintiff was expected to meet the expectations of Port Clinton City Schools, adhere to the teaching standards, policies and procedures and to embrace the middle school philosophy. While Plaintiff did offer evidence to verify that he was capable of performing his required duties as a teacher, he did not present specific facts to show that he was meeting Port Clinton City School's legitimate expectations for performance of those duties.

{¶176} Having articulated some legitimate, nondiscriminatory reasons for placing Plaintiff in the Intervention Program, declining to promote or award various coaching promotions, and not providing Plaintiff an opportunity to apply for the position of Dean of Students, the burden again switches to the Plaintiff, who must show that Defendant's stated justification is in fact merely a pretext for unlawful discrimination.³⁹² Pretext is established by a direct showing that a discriminatory reason more likely motivated the employer or by an indirect showing that the employer's explanation is not credible.³⁹³

{¶177} In the case *sub judice*, Defendant set forth specific facts showing that Plaintiff's performance as a teacher did not meet standards set for all teachers at Port Clinton City Schools. Thus, they articulated a legitimate, nondiscriminatory reason for Plaintiff's placement in the Intervention Program. Plaintiff then failed to offer any facts showing that Port Clinton City School teachers were motivated by a discriminatory reason for placing him in the Intervention Program.

³⁹¹ *Landon v. ABB Automation, Inc.*, 11th Dist. No. 2001-L-154, 2002 Ohio 3376, 2002 Ohio App. LEXIS 3428; *Ebright v. Video News Super Stores*, 6th Dist. No. L-00-1369, 2001 Ohio App. LEXIS 3049; *Smith v. Greater Cleveland Regional Transit Auth.*, 8th Dist. No. 787274, 2001 Ohio App. LEXIS 2328.

³⁹² *Texas Dept. of Community Affairs v. Burdine* (1981), 450 U.S. 248, 254, 67 L. Ed. 2d 207, 101 S. Ct. 1089.

COMMON PLEAS COURT OF OTTAWA COUNTY

{¶178} As well, Defendant set forth specific facts showing that Plaintiff's performance as a coach did not meet the standards set for all coaches at Port Clinton City Schools, and that others were more qualified. Thus, they articulated a legitimate, nondiscriminatory reason for denying Plaintiff promotions for various coaching positions. Plaintiff then failed to offer any evidence showing that Port Clinton City Schools was motivated by a discriminatory reason for not promoting him.

{¶179} And Defendant set forth specific facts showing that Plaintiff did not apply for some of those coaching positions for which he was passed over for promotions. Thus, Defendant articulated a legitimate, nondiscriminatory reason for not promoting Plaintiff. Plaintiff then failed to provide evidence that he did, in fact, apply for these positions, and that Defendant's refusal to promote him was motivated by a discriminatory reason.

{¶180} Moreover, Defendant set forth specific facts showing that it was not aware that Plaintiff had presumed "degrading acts" to mean acts of racial harassment. Thus, they articulated a legitimate, nondiscriminatory reason for not acting on plaintiff's claims/complaints of racial harassment that were documented as "degrading acts." Plaintiff offers no counter-argument to show that the school administrator's claim was actually only a pretext. Plaintiff also loses credibility because school administrators did in fact punish students who were reported for "degrading acts" by the Plaintiff.

{¶181} In order to satisfy its claim of racial discrimination, Plaintiff would need to demonstrate that Defendant's justifications were merely a pretext. However, nothing in the

³⁹³ Texas Dept. of Community Affairs v. Burdine (1981), 450 U.S. 248, 256, 67 L. Ed. 2d 207, 101 S. Ct. 1089. See *Detzel v. Brush Wellman, Inc.* (2001), 141 Ohio App. 3d 474, 483, 751 N.E.2d 1067.

COMMON PLEAS COURT OF OTTAWA COUNTY

record suggests that Defendant's actions were a pretext for racial discrimination, nor does the Plaintiff make an effort to claim such.

V. CONCLUSION

{¶182} This Court finds that Plaintiff has failed to establish the essential elements of a hostile work environment or racial discrimination. This Court found (1) Plaintiff was not subjected to unwelcome harassment "sufficiently severe or pervasive to alter the conditions of employment;" (2) Plaintiff failed to show that the harassment complained of was based on race; (3) Plaintiff has failed to show that a reasonable person would find his work environment to be hostile or abusive; (4) Plaintiff has failed to show that the alleged harassment "unreasonably interfered with his work performance;" and (5) Plaintiff has failed to show that Port Clinton City Schools knew or should have known of the offensive comments. Significantly, this Court found the testimony of Plaintiff was not credible, casting doubt on all allegations of racial harassment.

{¶183} Although Court found that Plaintiff established a prima facie case of racial discrimination in employment, and that Plaintiff was not hired, not promoted to various coaching positions nor provided an opportunity to apply for the position of Dean of Students because of his race. This Court found that Plaintiff failed to offer any evidence showing that Defendant was actually motivated by a discriminatory reason. Based on Plaintiff's failure to satisfy the shifting burden set forth in *McDonnell Douglas*, this Court found that Plaintiff has failed to demonstrate that Port Clinton City Schools was motivated by racial discrimination. Accordingly,

COMMON PLEAS COURT OF OTTAWA COUNTY

{¶184} IT IS ORDERED, ADJUDGED, and DECREED that Plaintiff has failed to establish the essential elements of (1) a hostile work environment created by racial harassment, or (2) racial discrimination.

{¶185} IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Defendant's Objection as to the rebuttal testimony of Ms. Royster is rendered MOOT as a result of this Court's finding.

{¶186} IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Defendant's Motion for Post-Trial Set-Off is rendered MOOT as a result of this Court's finding.

{¶187} IT IS FURTHER ORDERED, ADJUDGED, and DECREED that this cause is DISMISSED as to all Defendants. Costs to be paid by Plaintiff.

{¶188} Clerk of Courts shall send copies of this Decision and Order to all parties of record or their counsel by regular U.S. Mail.

JULY 1, 2005

PAUL C. MOON, JUDGE

COMMON PLEAS COURT OF OTTAWA COUNTY

CERTIFICATE OF SERVICE

A copy of the foregoing "Decision and Order" was delivered by regular Mail, this 1st day of July, 2005, to the following:

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JULY 1, 2005

JOAN MONNETT, CLERK OF COURTS
/DEPUTY CLERK

Note: If there is a party and/or attorney not listed above, but is reflected on the Clerk's Docket as not excused, the Clerk's Office will add them to this page.