

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

TERESA R. WAGNER,

Plaintiff,

No. 3-09-cv-10-CRW-TJS

vs.

CAROLYN JONES, Dean Iowa College
of Law (in her official and individual capacities),

ORDER GRANTING SUMMARY
JUDGMENT IN FAVOR OF
DEFENDANT

Defendant.

Plaintiff Teresa R. Wagner brought this civil rights action against defendant Carolyn Jones, former Dean¹ of the Iowa University College of Law, alleging Jones violated Wagner's First Amendment free speech and association rights, and Fourteenth Amendment equal protection and due process rights, when she was not hired for a faculty position. Wagner applied for but was not hired as instructor of a class entitled Legal Analysis, Writing and Research (LAWR) and was not thereafter interviewed for part-time adjunct faculty positions. Plaintiff alleges she was not hired for the teaching positions because Dean Jones and the faculty members who interviewed her discriminated against her because they were almost all registered Democrats who held liberal political views and she is a registered Republican who holds conservative political views.

Dean Jones responds that Wagner was not hired to teach because the Iowa University College of Law faculty members, acting as a Faculty Appointments Committee, recommended other persons for the positions based on legitimate, nondiscriminatory reasons. The Committee thought Wagner did not provide solid responses to interview questions

¹Carolyn Jones was Dean of the Law School when the events in this case occurred; she is no longer in that position for reasons unrelated to this lawsuit.

concerning the scope of the LAWR course, in particular the need for the instructor to teach legal analysis as well as basic writing skills. Jones seeks summary judgment on the grounds that (1) the claims against her in her official capacity are barred under 42 U.S.C. section 1983, and (2) she has qualified immunity for conduct performed in her individual capacity.

The court held by telephone conference call a summary judgment hearing on February 8, 2010, then allowed the parties to file additional briefs and other papers to support their positions. With the summary judgment record now complete, the court concludes Jones has demonstrated in this large summary judgment record that she is not liable to Wagner. The claims brought against her in her official capacity are barred. Moreover, in her official capacity and individual capacity, Jones is entitled to qualified immunity. The court grants Jones summary judgment, dismissing all claims against her with prejudice.

I. Legal Principles. Summary judgment is appropriate only when a party has demonstrated that it is entitled to judgment as a matter of law, with no genuine issues of material fact remaining for trial. Fed. R. Civ. P. 56. See Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-51 (1986); Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 587-88 (1986). Once the defendant has demonstrated that no genuine factual dispute stands in the way of a judgment entry, the burden shifts to the resisting plaintiff to “set forth affirmative evidence, specific facts, showing that there is a genuine dispute on that issue.” City of Mount Pleasant v. Associated Electrical Cooperative, 838 F.2d 268, 273-74 (8th Cir. 1988) (citing Celotex and Anderson). If the plaintiff fails to bear this burden, summary judgment should be granted.

When, as here, the motion for summary judgment concerns an official’s qualified immunity, the defendant, here Dean Jones, is obligated to present facts showing she violated no clearly established right of the plaintiff and acted in conformity with what a reasonable official in her position would believe was constitutionally permissible. See

Wallingford v. Olson, 592 F.3d 888, 892 (8th Cir. 2010). The plaintiff Wagner in response to that showing must then demonstrate that the defendant Dean Jones violated a statutory or constitutional right, that the right was clearly established at the time of the violation, and that a reasonable law school dean would have known her conduct violated that right. See Technical Ordnance, Inc. v. U.S., 244 F.3d 641, 646 (8th Cir. 2001). Given these principles governing Wagner's First and Fourteenth Amendment claims against Dean Jones, the court finds defendant Jones entitled to summary judgment. A reasonable person in Dean Jones' position would have accepted the faculty recommendation to hire other applicants, not Wagner, for the full time and adjunct positions, believing that in doing so she was not violating any person's constitutional rights. Jones is entitled to qualified immunity on all the constitutional claims.

II. Facts. A. Some facts are not in dispute. During the 2006-2007 academic year, the Iowa College of Law Faculty Appointments Committee selected three finalists from a group of twenty-five applicants for the full-time LAWR teaching position. As a finalist, plaintiff was interviewed by and gave an oral presentation to the faculty members. The faculty did not recommend that plaintiff be hired for a teaching position, and Jones hired the person the faculty recommended. Thereafter, the faculty also recommended that other persons, not Wagner, be selected for part-time positions. Again Jones hired the persons the faculty recommended, not Wagner.

B. Wagner disputes other evidence presented by Jones, but the record on those matters does not generate genuine material issues of fact for trial. The record makes crystal clear that Jones acted in strict conformity with long-standing hiring policy and practices of the Iowa University College of Law. Since 1966, Iowa University law college deans routinely and consistently exercised no independent personal judgment in making hiring decisions but acted entirely on the advice and recommendations of a Faculty Appointments Committee. The record also shows that the Faculty Appointments Committee members gave Jones legitimate non-

political reasons for recommending that Wagner not be hired. Faculty members reported to Dean Jones that Wagner did not perform well in her interview, quite a subjective non-discriminatory reason. More specifically, they reported that Wagner believed a person teaching the LAWR course need teach only legal writing and legal research without teaching legal analysis. The Faculty Committee strongly disagreed with her expressed view that legal analysis should be left to other faculty members in the teaching of other curriculum courses.

No faculty members involved in the LAWR faculty appointment have said or written that they took into consideration Wagner's conservative political views and associations when deciding not to recommend her to Dean Jones for the open faculty positions. So Wagner presents no direct evidence that the faculty recommendation and Dean Jones's hiring of others was politically motivated.

Wagner contends she should receive a favorable inference from the recycling of a video recording of her interview with the faculty committee. But the video tape was not destroyed by Jones herself. In accord with standard practice, the tape was erased and reused. Moreover, the tape had been erased before Wagner complained and filed her lawsuit. That recycling of tapes raises no adverse inference against Jones.

In support of her allegation of pretext, Wagner argues a post-interview e-mail message sent to Dean Jones by Associate Dean Jon Carlson stated that "some people may be opposed to Teresa serving in any role in part at least because they so despise her politics." That expressed opinion, really at best Carlson's speculation, was worded in the conditional and identified no specific faculty member. The e-mail continued with, in essence, a retraction: "I hate to think that's the case, and I don't actually think it is, but I'm worried I may be missing something." This e-mail to defendant Jones falls far short of generating a fact question on whether or not defendant's proffered reason for failing to hire Wagner was pretextual.

III. Analysis. A. Wagner provides no legal or factual response contradicting

Jones' contention that the 42 U.S.C. section 1983 claim against Dean Jones in her official capacity as Dean is, in essence, a suit against the State of Iowa and barred. That claim against Jones as Dean is indeed barred because it is asserted against the office of Dean and thus the State itself. The State of Iowa is not a "person" within the meaning of section 1983. See Will v. Michigan Dept. of State Police, 491 U.S. 58, 71 (1989); Kentucky v. Graham, 473 U.S. 159 (1985).

B. The due process and equal protection claims against Jones in her individual capacity are equally without merit. Wagner's extensive discovery materials, affidavits, and briefs on the law give no sound factual or legal support for either claim. Vague references to due process and to equal protection give no context to how Dean Jones violated those Fourteenth Amendment guarantees. Whether the due process claim be procedural or substantive due process, it is without merit because Wagner was allowed to apply, was interviewed, was given reasons for not being hired, and receives procedural justice in this lawsuit. The result of Jones' actions is not shocking to the conscience. And no equal protection right is implicated because her application, interview by the faculty, and decision of the faculty committee based on these factors rejection based on the interview were the same as were afforded all other applicants. See Terrell v. Larson, 396 F.3d 975, 981 (8th Cir. 2005); Moran v. Clarke, 296 F.3d 638, 651 (8th Cir. 2002).

C. Wagner's principal and only remaining legal theory in this university hiring case is that Jones violated Wagner's First Amendment right to have her application for employment considered in a politics-neutral manner. Here qualified immunity is the issue on which that First Amendment claim now rises or falls.

In her deposition testimony Dean Jones conceded that Wagner had the First Amendment right to have no hiring decision conditioned on her political beliefs and associations. The Court has declared that government officials ordinarily may not prescribe what is orthodox

in politics. West Va. State Board of Educ. v. Barnette, 319 U.S. 624, 642 (1943); see Ruton v. Republican Party of Illinois, 497 U.S. 62, 69 (1990).

The fighting issue here is whether a reasonably objective person viewing the circumstances before Dean Jones would have known that the faculty committee did actually condition its hiring recommendation on Wagner's political beliefs. The court concludes Wagner has not supported that contention, while Jones has proved the contrary by her testimony, the affidavits of former deans and present faculty members, and the entire summary judgment record. Jones did not allow Wagner's beliefs to influence her decision, the faculty committee did not base its recommendation on Wagner's beliefs, and Wagner's contrary view is not supported by admissible, competent, material evidence concerning what the faculty and Jones considered in not hiring Wagner for the LAWR position.

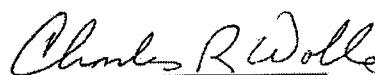
Finally, the court is troubled by Wagner's contention that she alone, and not the persons Jones hired, was entitled to be selected for the faulty LAWR position.. She seeks not only damages but also to be placed in that law school teaching position. That requested relief would elevate political views over competence and deem this court, after a jury trial, the "super personnel council" to make academic hiring decisions. Brousard -Norcross v. Augustana College Ass'n, 935 F.2d 974, 976 (8th Cir. 1991). Courts must "accord a high degree of deference to the judgment of university decision-makers regarding candidates' qualifications for academic positions." Kobrin, 121 F.3d at 414. Notwithstanding that Wagner contends she was more qualified than the persons hired, she has not demonstrated she was the only applicant qualified to teach the LAWR courses.

IV. Conclusion. There is no evidence whatsoever that Jones, in accepting the faculty recommendation, was motivated by animus against Wagner's politics and her association with conservative organizations. A reasonable college dean in receipt of this faculty recommendation and the vague message from Assistant Dean Carlson would surely not have

believed that a First Amendment due process or equal protection right had been implicated, let alone violated. Moreover, evidence that Wagner's political affiliations may have been apparent from her resume is not persuasive evidence of pretext. Neither Jones nor the College of Law required that Wagner set forth that information in her resume nor refer to it in her interview.

The court grants defendant's motion for summary judgment. The clerk of court shall enter judgment in favor of defendant and against plaintiff, dismissing this lawsuit with prejudice and with costs assessed to plaintiff.

Dated this 30th day of March, 2010.


CHARLES R. WOLLE, JUDGE
U.S. DISTRICT COURT