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Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-000242-MR

JOHN CHARALAMBAKIS APPELLANT

v.

APPEAL FROM JESSAMINE CIRCUIT COURT
HONORABLE C. HUNTER DAUGHERTY, JUDGE
ACTION NO. 10-CI-00880

ASBURY COLLEGE, D/B/A ASBURY
UNIVERSITY; JON S. KULAGA;
SANDRA GRAY; DON ZENT;
C. E. CROUSE; AND GREGORY SWANSON APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, MAZE AND THOMPSON, JUDGES.

THOMPSON, JUDGE: John Charalambakis, a former professor at Asbury College, sued for employment discrimination, breach of contract and defamation. Charalambakis appeals from summary judgment on his discrimination and

retaliation claims, dismissal of his defamation claim, the jury verdict on breach of contract claim and the final judgment awarding costs.

Charalambakis is a United States citizen originally from Greece. Asbury is a Christian college, which holds its faculty to specific standards of conduct as enumerated in its faculty handbook. In 1991, Charalambakis was hired by Asbury as an assistant professor in economics. In 1996, he was promoted to associate professor and concurrently received tenure. In 2003, he was promoted to full professor. As a tenured professor, Charalambakis could only be terminated for cause.

Charalambakis alleges in 2007, Provost Jon Kulaga called his accent "funny" and later questioned whether students could understand him. Charalambakis also claims Kulaga responded negatively to his interest in being considered for appointment as chair of the department saying, "But John, you have an accent" and passed him over when he requested to be approved as a student group's advisor, instead appointing a professor without an accent. Charalambakis made no contemporaneous complaints about these statements and actions.

Two years later, in June 2009, Charalambakis was informed by Kulaga he was being investigated for alleged professional misconduct and, depending upon the results of this investigation, his employment with Asbury could be terminated. The misconduct related to Charalambakis's actions in running his outside business ventures. Former students Adam Wood, Jessica Blackburn and Laurence Coppedge complained to Asbury administrators about

Charalambakis's failure to compensate them as agreed, verbally abusive conduct, misconduct toward investors, misuse of foundation funds for his personal expenses and violation of Asbury's alcohol policy.

Charalambakis and Kulaga exchanged a series of letters in which Charalambakis denied the allegations and provided explanations why they were without merit. Kulaga determined Charalambakis's explanations were insufficient and sought additional information. Charalambakis responded that his previous explanations were sufficient. The exchanges became more heated when Charalambakis sought review of Kulaga's investigation through the grievance procedure provided by the Faculty Personnel Committee (FPC) and demanded to only meet with Kulaga in the presence of the chair of the FPC. Kulaga determined involving the FPC was an inappropriate attempt to circumvent an ongoing investigation because if adverse action were taken, Charalambakis would have an opportunity to seek review before the Faculty Appeals Committee (FAC).

In a letter dated September 28, 2009, Charalambakis accused Kulaga of misconduct in the manner he was conducting and pursuing the investigation:

> [you] push false allegations while completely disregarding the evidence, for the purpose of an agenda, which is well understood by those who know the history behind this urge to terminate me. Over your tenure at the College, I have consistently received from you poison, double standards, threats, and discrimination.

Charalambakis claimed the investigatory process was inconsistent with Asbury's response to other allegations of misconduct:

> The only difference between these colleagues and me . . . is that they are native-born Americans and I am not. I consider this unlawful discrimination. Your unlawful discrimination is evidenced in part by your mocking of my accent, which you have done in the past.

On November 24, 2009, Kulaga issued a decision addressing the allegations of misconduct. Kulaga determined Charalambakis's actions demonstrated he was not properly accountable to Asbury and his use of other colleagues and the FPC to challenge this process demonstrated a lack of cooperation and respect, bordering on insubordination. Further, Charalambakis's responses contained baseless accusations intended to intimidate the administration.

Kulaga found there was sufficient cause to terminate Charalambakis based upon the following violations of the faculty manual:

> A. Failure to accept and model the college Statement of Faith and the moral principles that guide the standard of community life.
>
> B. Gross personal misconduct, particularly flagrant disregard for the standards of campus life as outlined in Section 600 of the Faculty Manual.
>
> C. Failure to cooperate in carrying out college policies and insubordination.

Despite Charalambakis's violations, Kulaga decided to forego terminating Charalambakis because the original violations related to outside employment. Instead, he placed Charalambakis on probation for two years and required him to abide by certain conditions during the term of the probation: (1) Charalambakis was prohibited from engaging in any outside business ventures for two years and

had to "immediately take steps to disassociate [himself] from any involvement with any organization and where appropriate, provide the college copies of minutes or resolutions confirming [his] disassociation[;]" (2) Charalambakis was required to "meet the relational, community and collegiality expectations articulated throughout the Faculty Manual[;]" (3) Charalambakis was required to:

> immediately cease [his] efforts to challenge this process through any other venue and not discuss this further with others; if this matter continues to be a source of disruption to the administration of the college and building of professional relationships it will be deemed a violation of this probationary period and probation will be revoked[;]

and (4) Charalambakis agreed "[f]ailure to fully comply with the letter and spirit of the above decision will result in immediate termination for the reasons set out in this letter."

In late October or early November 2009, Charalambakis made inquiries with the Kentucky Commission on Human Rights (KCHR) about filing a complaint for discrimination. Although, on November 11, 2009, Kulaga was informed Charalambakis registered a complaint, no formal written charges were submitted to the KCHR until January 13, 2010.

In December, Charalambakis filed an internal appeal with the FAC. While the appeal was pending, Charalambakis submitted his formal written charge to the KCHR, claiming his two-year probation was the result of discrimination based upon his national origin. This charge was filed on February 2, 2010.

Charalambakis informed Don Zent, his colleague and chair of the FAC, he was filing this charge. In response, Zent stated he did not believe Kulaga discriminated against Charalambakis, and he believed bringing this charge would hurt the college and make Charalambakis's defense of his case weaker.

On February 15, 2010, the FAC recommended Charalambakis's appeal be denied. Asbury President Sandra Gray followed this recommendation. Charalambakis claims he was told his KCHR complaint hurt his appeal and was the reason or a factor for the FAC's recommendation to uphold probation.

On March 1, 2010, Charalambakis agreed to the terms of probation. He then amended his KCHR complaint to add a retaliation charge. Asbury received the amended complaint on March 22, 2011. Charalambakis then demanded an employment contract from Asbury by April 8, 2010, indicating his willingness to drop his KCHR complaint if given a contract.

On April 14, 2010, Kulaga terminated Charalambakis for continuing violations of faculty standards and violations of the terms of his probation. Kulaga explained in Charalambakis's most recent letter to Kulaga, Charalambakis continued to show an unwillingness to cooperate with the administration and continued to fabricate an environment of discrimination and retaliation. Charalambakis resisted full disclosure of how he was divesting his outside business interests.

Kulaga detailed additional incidents that were troubling: Charalambakis made accusations against Judge Tim Philpot to the Kentucky

Judicial Conduct Committee claiming a rent dispute caused Philpot to interfere in Asbury's discipline process, Charalambakis's wife and son made numerous false accusations and Charalambakis offered to drop his KCHR complaint in exchange for renewal of his contract.

Kulaga found Charalambakis's actions were continuing violations of his failure to accept and model the college's statement of faith, gross personal misconduct and failure to cooperate. Kulaga also found Charalambakis violated three probationary requirements he agreed to meet to continue employment. Kulaga concluded Charalambakis did not intend to comply with the conditions of probation but was "seek[ing] to foster and stimulate a hostile working environment, and promote a relationship of antagonism." He therefore terminated Charalambakis.

Charalambakis filed an internal appeal. On the day of the FAC hearing, Charalambakis sent an email notifying Zent that he was dropping all charges filed with the KCHR. After the hearing, the FAC recommended denying Charalambakis's appeal. In its minutes, the FAC agreed Charalambakis failed to fully comply with the letter and spirit of the terms of probation and there was a sufficient violation of the terms of the probation to deny his appeal. The FAC determined Charalambakis: (1) failed to fully disclose how he was disassociating himself from his business interests; (2) wrote letters to Kulaga and Gray which had a willful and aggressive tone and contained inflammatory, disrespectful and

insubordinate language; (3) continued to discuss this process with others after having agreed not to do so; and (4)

> continued to challenge the process after having agreed not to do so. On March 5, 2010, he filed amended charges with the Kentucky Commission on Human Rights, adding the charge of retaliation. Even though his original intent to amend the charges dates back to an email exchange in late February, he followed through by signing and activating the amended complaint in March, after having agreed in writing to the terms of probation.

President Gray denied the appeal, making Charalambakis's termination final. Charalambakis's employment with Asbury ended at the end of the academic year, on June 30, 2010.

Charalambakis filed a complaint against Asbury, Kulaga, Gray, C.E. Crouse (a member of Asbury's board of trustees), Zent and Gregory Swanson (an employee of Asbury). Charalambakis's claims were for discrimination and retaliation in violation of the Kentucky Civil Rights Act (KCRA), defamation and breach of contract. Summary judgment was granted to the defendants on the discrimination and retaliation claims. The defamation claims were dismissed on the eve of trial after Charalambakis failed to provide any proof of special damages. The case proceeded to trial on the breach of contract claim. The jury found no breach occurred, and judgment was entered for the defendants and costs awarded. Charalambakis appealed.

Summary judgment should be granted "if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the

affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Kentucky Rules of Civil Procedure (CR) 56.03. "The standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law." *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky.App. 1996); CR 56.03. Granting of a summary judgment motion "should only be used 'to terminate litigation when, as a matter of law, it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor and against the movant.'" *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476, 483 (Ky. 1991) (quoting *Paintsville Hospital Co. v. Rose*, 683 S.W.2d 255, 256 (Ky. 1985)).

Charalambakis's first claim is the trial court erred in granting summary judgment on his claim of discrimination on the basis of national origin. Under the KCRA it is unlawful for an employer to discharge, discriminate against or adversely affect an individual's status as an employee because of that individual's national origin. KRS 344.040(1)(a), (b). Kentucky interprets the KCRA consistently with Title VII of the Federal Civil Rights Act. *American General Life & Acc. Ins. Co. v. Hall*, 74 S.W.3d 688, 691 (Ky. 2002). To establish a *prima facie* case of discrimination, "[a] plaintiff must show that: (1) he is a member of a protected class; (2) he was terminated; (3) he was qualified for the position; and (4) he was replaced by a person outside a protected class or was

treated differently than a similarly situated, non-protected employee." *Abdulnour v. Campbell Soup Supply Co., LLC*, 502 F.3d 496, 501 (6th Cir. 2007). A *prima facie* case of national origin discrimination can be established through direct evidence of discrimination or by establishing a circumstantial case raising an inference of discrimination pursuant to the burden-shifting framework set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973).

Charalambakis argues Kulaga's comments about his accent are direct evidence Kulaga was predisposed to discriminate against him based on his national origin and acted on this predisposition when he placed Charalambakis on probation and terminated his employment.

We agree comments regarding Charalambakis's accent relate to his national origin. *In re Rodriguez*, 487 F.3d 1001, 1008-1009 (6th Cir. 2007). However, offhanded and isolated comments about a person's accent are insufficient to show discriminatory changes in the terms and conditions of employment. *Clark Cnty. Sch. Dist. v. Breeden*, 532 U.S. 268, 271, 121 S. Ct. 1508, 1510, 149 L. Ed. 2d 509 (2001).

> [D]irect evidence is that evidence which, if believed, requires the conclusion that unlawful discrimination was at least a motivating factor in the employer's actions. Consistent with this definition, direct evidence of discrimination does not require a factfinder to draw any inferences in order to conclude that the challenged employment action was motivated at least in part by prejudice against members of the protected group. [T]he evidence must establish not only that the plaintiff's

> employer was predisposed to discriminate on the basis of [national origin], but also that the employer acted on that predisposition.

DiCarlo v. Potter, 358 F.3d 408, 415 (6th Cir. 2004) (internal quotations and citations omitted).

Statements temporally separated and unrelated to the employment decisions being challenged cannot constitute direct evidence of discrimination. *See Alexander v. Univ. of Kentucky*, 2012 WL 1068764, 14 (E.D. Ky. 2012) (citing relevant cases). An inference is needed to establish Kulaga's alleged predisposition against individuals with accents is connected to his decision to place Charalambakis on probation and then terminate his employment. *See Hein v. All America Plywood Co.,* 232 F.3d 482, 488-489 (6th Cir. 2000).

Because Charalambakis cannot establish he was discriminated against through direct evidence, he must establish his claim of discrimination under the *McDonnell Douglas* burden-shifting test. Once a plaintiff has met the burden of establishing a *prima facie* case, the burden shifts to the employer to articulate a legitimate, nondiscriminatory reason for the termination. *Abdulnour*, 502 F.3d at 502. The plaintiff must then establish the employer's stated reason was pretext. *Id.*

Charalambakis met his initial burden in establishing a *prima facie* case of discrimination under the *McDonnell Douglas* test. Charalambakis is a member of a protected class, was terminated, was qualified to be a professor at Asbury and was replaced by a person outside the protected class. Asbury also met

its burden of countering the *prima facie* case by showing a legitimate, nondiscriminatory reason for these actions, the violation of its policies. The disputed issue is whether Charalambakis was able to show evidence of pretext to avoid summary judgment.

Pretext may be established by three methods: "(1) the proffered reasons are false; (2) the proffered reasons did not actually motivate the decision; and (3) the plaintiff could show that the reasons given were insufficient to motivate the decision." *Williams v. Wal-Mart Stores*, Inc., 184 S.W.3d 492, 497 (Ky. 2005).

A plaintiff's subjective belief he was discriminated against is insufficient to establish pretext. *Kentucky Center for the Arts v. Handley*, 827 S.W.2d 697, 701 (Ky.App. 1991). "A plaintiff must present 'cold hard facts creating an inference showing [the plaintiff's protected status] was a determining factor' in his discharge." *Flock v. Brown Forman Corp.*, 344 S.W.3d 111, 116 (Ky.App. 2010) (quoting *Harker v. Federal Land Bank of Louisville*, 679 S.W.2d 226, 229 (Ky. 1984)). "The appropriate inquiry . . . [is] whether there was sufficient evidence to permit a rational trier of fact to conclude [the employer] unlawfully discriminated against [the plaintiff][.]" *Williams*, 184 S.W.3d at 500.

Questioning the soundness of an employer's business judgment or practices is insufficient; "[e]ven if [the employer] rushed to judgment about [the plaintiff's] culpability or if his punishment was unfair, [the plaintiff] must show that his [protected status] was a motivating factor in the [action the employer took]." *Flock*, 344 S.W.3d at 117.

> [T]he issue is not "the correctness or desirability of [the] reasons offered . . . [but] whether the employer honestly believes in the reasons it offers." *McCoy v. WGN Continental Broadcasting Co.,* 957 F.2d 368, 373 (7th Cir.1992). *See also Pignato v. American Trans Air, Inc.,* 14 F.3d 342, 349 (7th Cir.1994) ("It is not enough for the plaintiff to show that a reason given for a job action is not just, or fair, or sensible. He must show that the explanation given is a phony reason").

Fischbach v. D.C. Dep't of Corr., 86 F.3d 1180, 1183 (D.C. Cir. 1996). "[A]n employer may make employment decisions 'for a good reason, a bad reason, a reason based on erroneous facts, or for no reason at all, as long as its action is not for a discriminatory reason.'" *Davis v. Ermco Mfg.*, 215 F.3d 1325, *5 (6th Cir. 2000) (unpublished) (quoting *Nix v. WLCY Radio/Rahall Communications,* 738 F.2d 1181, 1187 (11th Cir. 1984)).

Charalambakis's evidence was insufficient to establish the evidence of misconduct provided by outside sources was fabricated, did not motivate Asbury's actions or was insufficient to support the actions taken. The claims of misconduct were thoroughly investigated. Charalambakis was allowed to respond to them and his disagreement with their merit is insufficient to show they were pretextual. Summary judgment was appropriately granted on Charalambakis's discrimination claim.

Charalambakis's second claim is the trial court erred by granting the appellees' motion for summary judgment on his retaliation claim. Charalambakis argues he was retaliated against for filing complaints with the KCHR by being placed on probation, the probation being affirmed, being terminated and having the

termination affirmed. He argues regardless of whether he could prove the underlying discrimination claim, he provided sufficient evidence to make a *prima facie* claim of retaliation.

> Under the KCRA
>
> It shall be an unlawful practice for a person, or for two (2) or more persons to conspire:
>
>> (1) To retaliate or discriminate in any manner against a person because he has opposed a practice declared unlawful by this chapter, or because he has made a charge, filed a complaint, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under this chapter[.]

KRS 344.280. To establish a *prima facie* case of retaliation under KCRA, the plaintiff must show: (1) the plaintiff engaged in a protected activity; (2) the exercise of the plaintiff's civil rights was known by the defendant; (3) the defendant subsequently took an employment action adverse to the plaintiff; and (4) there was a causal connection between the plaintiff's protected activity and the defendant's adverse employment action. *Brooks v. Lexington-Fayette Urban Cnty. Hous. Auth.*, 132 S.W.3d 790, 803 (Ky. 2004).

The record establishes the first three prongs of the *prima facie* case. The parties dispute whether Charalambakis can meet the fourth prong, establishing a causal link between the protected activity and the adverse employment determination, through either direct evidence of retaliatory animus or through

circumstantial evidence. *Nguyen v. City of Cleveland*, 229 F.3d 559, 566 (6th Cir. 2000); *Cobb v. Pozzi*, 363 F.3d 89, 108 (2nd Cir. 2004).

We first consider whether Charalambakis has provided direct evidence of causation before considering whether he can alternatively establish retaliation through circumstantial evidence under the *McDonnell Douglas* framework. "Direct evidence is that evidence which, if believed, *requires* the conclusion that unlawful retaliation was a motivating factor in the employer's action." *Abbott v. Crown Motor Co., Inc.*, 348 F.3d 537, 542 (6th Cir. 2003). Although this type of direct evidence is rare, when it does exist, it will typically consist of written or oral statements by the decision-maker who was responsible for the adverse action. *Kentucky Dept. of Corrections v. McCullough*, 123 S.W.3d 130, 135 (Ky. 2003). Direct evidence of retaliation "would 'entail something akin to an admission' by [the decision maker] that she had a retaliatory motive." *Smith v. Bray*, 681 F.3d 888, 900 (7th Cir. 2012). *See*, *e.g.*, *DiCarlo*, 358 F.3d at 415-416 (direct evidence of discriminatory termination by decision maker who "called him a 'dirty wop' and complained there were too many 'dirty wops' working at the postal facility"); *Birch v. Cuyahoga Cnty. Probate Court*, 392 F.3d 151, 165 (6th Cir. 2004); *Taylor v. Bd. of Educ. of Memphis City Sch.*, 240 F. App'x 717, 719-720 (6th Cir. 2007).

None of the statements Charalambakis provides are direct evidence of retaliation because they are subject to a variety of interpretations and require an inference to show a retaliatory motivation. Zent's statement that Charalambakis's KCHR complaint would hurt his appeal is not equivalent to a direct statement the

FAC would retaliate against Charalambakis for filing a complaint. This statement could also mean the FAC believed Charalambakis was attempting to circumvent Asbury's disciplinary process by making baseless accusations rather than taking responsibility for his previous poor judgment regarding his outside business interests.

Kulaga's statement justifying Charalambakis's termination based upon his failure to refrain from challenging the process through any other forum is not direct evidence of retaliation because it is taken out of context and subject to multiple meanings. Kugala fully quoted each probationary condition which Charalambakis violated. The particular condition which contains the above language prohibited several activities, and Kulaga's termination letter gives examples of conduct which violate other portions of this condition. Accordingly, fact-finders would have to infer that Kulaga was referring to a violation of a specific subpart by Charalambakis filing his complaint before the KCHR despite the termination letter making no reference to this specific action violating the terms of probation. *See Weigel v. Baptist Hosp. of E. Tennessee*, 302 F.3d 367, 381-382 (6th Cir. 2002).

The statement in the minutes of the FAC indicates one of the four reasons for termination was Charalambakis's amendment of his discrimination complaint *after agreeing to the terms of the probation*. This statement connects the action taken to Charalambakis's violation of the terms of the probation, rather than for the specific action of filing an amended complaint. Once Charalambakis agreed to the probation, he agreed to its terms requiring him to "immediately cease any efforts to

challenge this process through any other venue." Adverse actions resulting from Charalambakis being placed on probation, rather than from filing and amending his complaint, cannot be considered retaliatory. *See Flock*, 344 S.W.3d at 118.

Additionally, statutory discrimination claims can be affirmatively waived by agreement, so long as the agreement is valid.[1] *Humana, Inc. v. Blose*, 247 S.W.3d 892, 895-896 (Ky. 2008). Waivers are valid to prohibit suit on any continuing effect of prior discrimination. *Adams v. Philip Morris, Inc*., 67 F.3d 580, 584-585 (6th Cir. 1995). Charalambakis agreed to the terms of the probation and does not challenge the validity of this agreement. Therefore, because Charalambakis had already filed a complaint regarding his dismissal when he agreed to the terms of probation, he waived his right to pursue this claim along with the related retaliation claim based on this ongoing disciplinary process. Because Asbury was enforcing its rights, even terminating Charalambakis for filing actions before the KCHR cannot be direct evidence of retaliation because it would require an inference the action resulted not from an effort to enforce the terms of the probation, but from a retaliatory animus.

Because Charalambakis failed to show direct evidence of retaliatory animus, we consider whether he can establish the fourth prong of the *prima facie* case, a causal link between the protected activity and the adverse employment determination, through circumstantial evidence. Establishing this prong through

[1] The only exception to the enforceability of an otherwise valid waiver is when it is applied to prospective rights to be free from new, non-related discrimination prohibited by the KCRA based on conduct which has not yet occurred. *Hamilton v. General Elec. Co*., 556 F.3d 428, 433-435 (6th Cir. 2009); *Adams v. Philip Morris, Inc*., 67 F.3d 580, 583-585 (6th Cir. 1995).

circumstantial evidence usually "requires proof that (1) the decision maker responsible for making the adverse decision was aware of the protected activity at the time that the adverse decision was made, and (2) there is a close temporal relationship between the protected activity and the adverse action." *Brooks*, 132 S.W.3d at 804.

However, close temporal proximity between filing a discrimination claim and an adverse employment action is immaterial if the employer was contemplating the adverse action before it learned of the protected activity. *Breeden*, 532 U.S. at 272, 121 S. Ct. at 1510-1511; *Reynolds v. Extendicare Health Servs., Inc.*, 257 F. App'x 914, 920 (6th Cir. 2007). "[A]n adverse employment decision that predates a protected activity cannot be caused by that activity." *Muñoz v. Sociedad Española De Auxilio Mutuo y Beneficiencia De Puerto Rico*, 671 F.3d 49, 56 (1st Cir. 2012). "Employers need not suspend previously planned [actions] upon discovering that a [discrimination] suit has been filed, and their proceeding along lines previously contemplated, though not yet definitively determined, is no evidence whatever of causality." *Breeden*, 532 U.S. at 272, 121 S. Ct. at 1511. Employees whose previous actions provide a valid basis for termination cannot insulate themselves from termination by subsequently engaging in protected opposition or participation activities. *Curay-Cramer v. Ursuline Acad. of Wilmington, Delaware, Inc.*, 450 F.3d 130, 137 (3d Cir. 2006); *Wharton v. Gorman-Rupp Co.*, 309 F. App'x 990, 998 (6th Cir. 2009).

While the probation and termination decisions closely followed Charalambakis's protected activities, no causal relationship can be established. Kulaga was contemplating Charalambakis's possible termination at the inception of the investigation into complaints by former students. Charalambakis's protected activities occurred after the alleged misconduct and after the investigation was already underway. Under these circumstances, the close temporal proximity of Charalambakis's actions to the adverse employment decisions cannot raise an inference of causation. Therefore, summary judgment was appropriately granted for Charalambakis's claims of retaliation.

Charalambakis's third argument is he did not receive appropriate due process because he did not have adequate notice and a meaningful opportunity to be heard before his claims were summarily dismissed or limited. The record establishes Charalambakis was provided more than adequate process and several opportunities to respond to the defendants' challenges to the adequacy of his claims.

Charalambakis's fourth argument is the jury instructions were fatally flawed because they rely on the wrong version of the faculty manual, provide no guidance on obligations and restrictions with respect to probation and no definite construction about termination provisions. He also argues Interrogatory A fails to provide guidance as to which of the provisions mentioned in instructions two and three should be considered a "sufficient cause to terminate John Charalambakis's tenured faculty position." We determine these complaints of errors to be fully

without merit. Charalambakis's specific objections were not adequately preserved. Additionally, we determine there is no merit to his claim that another version of the faculty manual governed his contractual rights.

The jury instructions given were appropriate. "The Kentucky practice of 'bare bones' instructions applies to all litigation including civil rights cases." *Lumpkins ex rel. Lumpkins v. City of Louisville*, 157 S.W.3d 601, 605 (Ky. 2005). Charalambakis had the opportunity to flesh out these instructions during his closing argument, and his failure to do so is not an appropriate ground for reversal. Accordingly, we uphold the jury's verdict.

Charalambakis's fifth argument is that he was not required to prove special damages in order to proceed to trial on his defamation claims. Charalambakis does not explain what his defamation claims were, but he argues they were defamatory *per se* because they impinged on his integrity or fitness to perform his job, and resulting in his loss of employment.

The appellees explain Charalambakis asserted he was defamed when Gray and Kulaga falsely told the FAC that Charalambakis sued Laurence Coppedge and Gray falsely stated Charalambakis owed her a small sum of money. They argue these claims were properly dismissed because they are not slanderous *per se*.

"[S]poken words are slanderous per se only if they impute crime, infectious disease, or unfitness to perform duties of office, or tend to disinherit him[.]" *Stringer v. Wal-Mart Stores, Inc.*, 151 S.W.3d 781, 795 (Ky. 2004) (quoting

Courier Journal Co. v. Noble, 251 Ky. 527, 65 S.W.2d 703, 703 (1933)). All other spoken words are slanderous per quod and require affirmative proof of special damages, such as actual injury to reputation. *Id.* The types of claims raised are not slanderous *per se,* and no causal connection was shown between these statements and Charalambakis's termination. In the absence of any proof of special damages, they were properly dismissed.

Charalambakis's sixth and final argument is awarded costs were excessive. He argues the costs the appellees were awarded were erroneous as a matter of law because they included more than $3,000 in charges for copies of deposition transcripts and excessive travel expenses. Under CR 54.04(2), a party must file exceptions to a bill of costs within five days. Charalambakis did not file his exceptions for fourteen days. Because he failed to timely file his exceptions, they are waived.

Accordingly, we affirm the Jessamine Circuit Court's judgment.

ALL CONCUR.

BRIEFS FOR APPELLANT:	BRIEF FOR APPELLEES:
Katherine K. Yunker Lexington, Kentucky	Leila G. O'Carra Debra H. Dawahare Lexington, Kentucky