SIXTH DIVISION
May 29, 2015

Nos. 1-13-2501 and 1-13-3614, consolidated

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SARA MEEGAN,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 09 L 009898
	)	
FLORENCE GONZALEZ,	)	Honorable
	)	Vanessa Hopkins,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: We affirmed the denial of defendant's motion for judgment notwithstanding the verdict or a new trial, where there was evidence at trial supporting plaintiff's theory that defendant had defamed her. We reversed the award of attorney fees to plaintiff pursuant to section 30 of the Whistleblower Act, where plaintiff failed to prove the applicability of that section.

¶ 2 Plaintiff, Sara Meegan, brought an action against defendant, Florence Gonzalez, for defamation, republication of defamation, tortious interference with a prospective contractual relationship, and violation of the Whistleblower Act (740 ILCS 174/15 (West 2010)). The jury ruled in favor of plaintiff and awarded her $225,000 in damages. Defendant filed a motion for judgment notwithstanding the verdict (JNOV) or a new trial, which the trial court denied. The trial court also awarded plaintiff attorney fees in the total amount of $165,552. Defendant

appeals the denial of the JNOV/new trial motion and the award of attorney fees. We affirm the denial of the JNOV/new trial motion and reverse the award of attorney fees.

¶ 3 In her second-amended complaint, plaintiff alleged that in August 2006, she was hired as an English teacher at George Washington High School in Chicago. Defendant was hired as principal of George Washington High School in January 2008.

¶ 4 In February 2008, defendant terminated plaintiff's employment, effective at the end of May 2008. When plaintiff asked for an explanation, defendant stated that her termination was due to a predicted decrease in enrollment.

¶ 5 In April 2008, the Chicago Teachers Union (CTU) called a meeting regarding events occurring at George Washington High School, including increased gang activity, fights, and racially motivated confrontations between African-American and Latino students. At the meeting, defendant suggested that the rise in school violence was due to disgruntled teachers instigating the students to violence. Plaintiff stated at the meeting that much of the violence was brought on due to the dismissal of former administrators who were in charge of student discipline; African-American students were intentionally being treated in a discriminatory manner by defendant and her administrative staff; and discipline measures were meted out inconsistently, with African-American students receiving much harsher punishments for the same infractions committed by non-African-American students. Plaintiff also voiced concerns over the repeated suspensions of several developmentally disabled students.

¶ 6 Plaintiff also met and spoke with CTU representatives regarding what plaintiff believed to be violations of law with respect to the disparate treatment of African-American and Latino students, and the possibly discriminatory treatment of some African-American teachers at the school.

¶ 7 In August 2008, plaintiff received an interview at Amundsen High School with the school's principal, Carlos Munoz. On August 19, 2008, plaintiff was officially offered a position, which she accepted.

¶ 8 Two days later, Mr. Munoz met with plaintiff and told her that since their interview, he had spoken with defendant. Defendant told him that plaintiff was dishonest, habitually tardy, often absent, failed to complete work in a timely manner, and "made up excuses for such problems." As a result of his conversation with defendant, Mr. Munoz now believed that plaintiff was not an honest person, and he rescinded the job offer.

¶ 9 Plaintiff called the area instructional officer (AIO), Jerrilyn Jones, who told her that defendant had stated plaintiff "was consistently tardy, with over 15 tardies on the year, consistently absent, and failed to turn in necessary materials for review by administration."

¶ 10 Plaintiff alleged that defendant's statements regarding her chronic tardiness, absenteeism and failure to turn in work were untrue, and that defendant made those statements to Mr. Munoz and republished them to AIO Jones knowing they were false when made or with reckless disregard for their truth or falsity. As a direct result of defendant's false statements about her, plaintiff has been unable to obtain work as a Chicago Public School teacher or with the Chicago Board of Education (Board) in any capacity for which she is qualified.

¶ 11 In September 2008, plaintiff applied for unemployment insurance with the Illinois Department of Employment Security (IDES). IDES sent plaintiff a letter stating that defendant was challenging her unemployment claim. During a phone interview with IDES, plaintiff was asked a series of questions regarding whether she had engaged in misconduct and received any warnings while teaching at George Washington High School. Plaintiff stated she had not

received any such warnings. Shortly thereafter, IDES found plaintiff eligible for unemployment compensation.

¶ 12 The following week, plaintiff received a call from IDES stating that her claim for unemployment was again being challenged. Plaintiff subsequently learned that defendant had opened "two dispute files with different falsified claims of misconduct she attributed to [plaintiff]." Plaintiff contacted IDES, who rectified the situation and lifted the hold on the unemployment funds.

¶ 13 In count I of her second-amended complaint, plaintiff pleaded that defendant's statements to Mr. Munoz and AIO Jones regarding plaintiff's alleged dishonesty, tardiness, absenteeism, and poor job performance constituted defamation *per se*. In count II, plaintiff pleaded that defendant's statements to IDES regarding plaintiff's alleged dishonesty and failure to perform her job duties constituted republication of defamation.[1] In count III, plaintiff pleaded that by knowingly and consciously making false statements to Mr. Munoz about plaintiff's alleged dishonesty, tardiness, absenteeism, and poor job performance, defendant tortiously interfered with plaintiff's prospective contractual relationship. In count IV, plaintiff pleaded that defendant violated the Whistleblower Act (740 ILCS 174/15 (West 2010)), by making the defamatory statements to Mr. Munoz in retaliation for plaintiff's comments at the CTU meeting and to CTU officials regarding defendant's allegedly discriminatory treatment of African-American students and teachers and developmentally disabled students.

¶ 14 The cause proceeded to a jury trial. At trial, plaintiff testified she graduated from the University of California, Los Angeles, and taught in Los Angeles inner-city schools for seven years. In 2006, plaintiff came to Chicago and taught English as a probationary teacher at George

[1] At trial, plaintiff argued that defendant's statement to Mr. Munoz was defamatory, and that her statement to AIO Jones constituted republication of defamation.

Washington High School. The principal that year was a woman named Juana Rivera-Vidal. The student body was approximately 60% Latino, 20% to 25% African-American, and the rest were Caucasian.

¶ 15 Plaintiff described her first year (2006-2007) at George Washington High School as being "good." She received "positive feedback" and did not receive any warnings or discipline that year.

¶ 16 Plaintiff returned to the high school for the 2007-2008 year. Ms. Rivera-Vidal was still the principal at the beginning of that year, but she left "at some point" and was temporarily replaced by Martin Klimesh. In January 2008, defendant replaced Mr. Klimesh as principal. Plaintiff explained that candidates for principal are initially vetted by the local school council (LSC), which selects the person it feels is most qualified for the job, and then the Board gives final approval.

¶ 17 Around the time defendant was hired, plaintiff heard from LSC representative Timothy Byer that defendant was hired to "get rid of the black population at our school." Several students also told plaintiff that defendant's presence meant there would be fewer African-American students.

¶ 18 In the months after defendant became principal, plaintiff observed the student population "spiral[] completely out of control." Student fights pitted African-Americans against Latinos. Officers were called in and they had released tear gas into the school. Latin King graffiti greeted visitors at the school's entrance. Instead of being immediately scrubbed as was customary, the graffiti (which threatened death for African-American students found on 95th Street) stayed for five days under defendant's watch.

¶ 19 Defendant meted out race-based punishment to students who engaged in fights, disciplining only the African-American students but not the Latino students. Defendant was quick to expel African-American students. Further, defendant required plaintiff to fill out weekly grade reports for the school's mainly African-American basketball team, but did not require her to fill out reports for other sports teams (with non-African-Americans).

¶ 20 Defendant also suspended special education students for behaviors that, plaintiff believed, did not warrant such discipline. Plaintiff believed that suspending the special education students was illegal.

¶ 21 As a probationary teacher, plaintiff was required to be evaluated twice each year. Defendant performed an in-class evaluation of plaintiff in the first week of February 2008. Defendant observed plaintiff for about 20 minutes and made "several positive comments" about plaintiff, specifically with reference to her "great rapport with the students." Defendant did not criticize plaintiff's teaching abilities. Defendant noted, though, that plaintiff had been tardy to class on six occasions. Plaintiff actually had been tardy only twice, but she did not challenge the miscalculation due to the overall positive tenor of the evaluation.

¶ 22 Assistant principal, Jeanine Gorny, performed an in-class evaluation of plaintiff in the second week of February 2008. Ms. Gorny observed plaintiff for about 20 minutes and made no criticism other than to note that the overhead projector should be placed on a cart instead of a desk.

¶ 23 On March 5, 2008, plaintiff received a written "final evaluation review" from defendant and Ms. Gorny, which stated she had a satisfactory overall rating. Plaintiff reviewed the document with defendant, who did not express, in any way, her performance as a teacher was lacking.

¶ 24 Later that day, plaintiff received a nonrenewal notice informing her that she was not being asked to return the next year. Defendant explained that she was being let go at the end of the school year due to an anticipated drop in student enrollment. Defendant offered to write her a letter of recommendation.

¶ 25 In April 2008, plaintiff attended an LSC meeting intended to address the "crisis" atmosphere at George Washington High School. Defendant and AIO Jones (defendant's direct supervisor) also were in attendance. At the meeting, defendant stated her belief that "the teachers were instigating children to violence." Plaintiff responded at the meeting that it was "absurd" to blame the teachers for the violence at the school, and that the violence actually resulted when defendant "let all the administrators go as well as security." Plaintiff further asserted that defendant discriminated against African-American and special education students by disciplining them more harshly than other students.

¶ 26 Following the April meeting, plaintiff saw no improvement in the school for the remainder of the school year. The atmosphere at the school left plaintiff dismayed. She could not sleep, began smoking, was regularly sick, and cried often. Her anxiety made her nauseous and she would vomit due to the "overwhelmingly ugly experience." After the school year ended, plaintiff began to look for a new job and applied to hundreds of schools.

¶ 27 Plaintiff interviewed with Carlos Munoz, the principal of Amundsen High School, on August 18, 2008. Plaintiff told Mr. Munoz that her nonrenewal at George Washington High School was due to an enrollment decline. The next day, plaintiff was offered a job at Amundsen High School, which she accepted.

¶ 28 On August 21, plaintiff went to Amundsen High School to pick up a form. Mr. Munoz met plaintiff in the front office and told her that he was withdrawing her job offer as defendant

had recently informed him that plaintiff was dishonest, had been tardy to class over 25 times, and had failed to turn in her lesson plans. Plaintiff testified that defendant's statements to Mr. Munoz were false, as she had been tardy to class only twice, she was never absent without an excuse, and that she had turned in her lesson plans.

¶ 29 After Mr. Munoz withdrew her job offer based on his conversation with defendant, plaintiff emailed AIO Jones in the hope that she could help "correct the situation." AIO Jones spoke with defendant and then called plaintiff. AIO Jones told plaintiff that defendant had said she was always tardy, always absent, never turned in her lesson plans, and always made excuses for herself.

¶ 30 Plaintiff subsequently applied for unemployment insurance. IDES emailed her a letter stating her "employer" accused her of misconduct and that she was terminated for cause. IDES informed her that she would have to attend a hearing to "answer questions about the events around [her] separation" from George Washington High School. After the hearing, IDES found that plaintiff engaged in no misconduct while employed at George Washington High School; however, plaintiff still did not receive any unemployment insurance. Plaintiff went to the IDES office to find out why she still was not receiving her unemployment insurance. A woman at the IDES office told her that a second file had been opened "disputing [her] eligibility for unemployment." The IDES worker "said it shouldn't have been filed, and she handled it and closed it immediately."

¶ 31 No one from IDES ever told plaintiff that defendant was the person who was disputing her unemployment claim.

¶ 32 Plaintiff subsequently reviewed her personnel file at the Board of Education. The front of the file contained a page in bold print warning that plaintiff could not be hired in any capacity by CPS except as a day-to-day substitute teacher.

¶ 33 Plaintiff went without a full-time job for four years until she secured a position as an English teacher at Proviso West High School.

¶ 34 Philip Corich, a retired George Washington High School teacher who shared a classroom with plaintiff, testified that he did not recall plaintiff being excessively tardy to her classes or habitually absent from school. Mr. Corich learned from an LSC member that defendant was hired with the intent that she reduce the African-American student population.

¶ 35 Patricia Banks, a retired George Washington High School teacher, testified that after defendant became principal, the school discontinued its involvement with the Options for Knowledge Program, which had allowed African-American students from outside the school's neighborhood to apply and enroll in the school. As a result, the percentage of African-American students at George Washington High School decreased.

¶ 36 Prior to defendant becoming principal of George Washington High School in January 2008, the relationship among the different racial groups within the student population was "fine." After defendant became principal, Ms. Banks noticed more hostility and "a lot of racial, violent fights" among the students. Defendant responded to these fights by suspending African-American students at a much higher rate than Hispanic students. Defendant required Ms. Banks to sign grade sheets for the members of the basketball team, which was all African-American, in order to show their eligibility to play, but did not require similar grade sheets to be signed for other teams.

¶ 37 Ms. Banks attended the April 2008 LSC meeting which was called to discuss the increase in violence at George Washington High School. Plaintiff spoke out at the meeting about the high suspension and expulsion rate of African-American and special-needs students, as well as the high disciplinary rate of African-American teachers. Ms. Banks similarly spoke out about her belief that defendant's administration was "engaging in racial discrimination against the black teachers and the African-American students."

¶ 38 After speaking at the April 2008 LSC meeting, Ms. Banks was removed from her 23-year position as a physical education teacher and reassigned to teach a special-needs class, despite having never taught such a class before.

¶ 39 Nancy Kusler, a biology teacher at George Washington High School, testified that shortly after defendant became principal, she noticed an increase in fights between African-American and Hispanic students. African-American students were punished more harshly for those fights than the Hispanic students. Ms. Kusler reported her concerns to Rachel Resnick at the Board. About four days later, defendant gave Ms. Kusler a disciplinary notice for misstating information about student incidents.

¶ 40 Ms. Kusler attended the April 2008 LSC meeting at which plaintiff spoke out against the disproportionate amount of discipline for African-American and special education students. Ms. Kusler voiced those same concerns at the meeting.

¶ 41 Since defendant became principal, George Washington High School has seen a significant drop in the number of African-American students and teachers.

¶ 42 James Archambeau, a teacher at George Washington High School, testified that in the weeks and months after defendant became principal, he noticed an increase of racial tension and

violence between African-American students and Hispanics. The African-American students received harsher discipline than the Hispanic students.

¶ 43 Mr. Archambeau heard defendant making racist statements about African-American students and teachers.

¶ 44 Thomas Stibich, a teacher and the former dean of students at George Washington High School, testified that as dean of students, he documented all student discipline. Defendant had the "final say" in whether a student would be expelled. Of the students expelled during defendant's first semester at the school, 90% of them were African-American. The next year, 70% to 75% of students who had been expelled were African-American.

¶ 45 Defendant forced Mr. Stibich to falsify records by adding Hispanic names to the expulsion list to show more of a balance between the expulsion of African-American and Hispanic students. Mr. Stibich once heard defendant make a racist comment about Patricia Banks.

¶ 46 Defendant testified as an adverse witness. Defendant remembered the April 2008 LSC meeting, but she did not recall that either plaintiff or Ms. Kusler spoke at the meeting. Defendant also did not recall any discussion at the meeting regarding race, or of the increase in violence at the school.

¶ 47 At the close of plaintiff's case-in-chief, defendant moved for a directed verdict on all counts. In her motion, defendant argued that she was entitled to immunity under section 2-210 of the Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act) (745 ILCS 10/2-210 (West 2010)), for the allegedly defamatory statement to Mr. Munoz and for the republication of the statement to AIO Jones. Defendant also alleged that the statement to Mr. Munoz was subject to common-law absolute privilege. Defendant asked for a

directed verdict on the tortious interference count because plaintiff was alleging that defendant had tortiously interfered with her obtaining a job at another Board school, but defendant was employed by the Board and the Board could not interfere with its own contract. Defendant asked for a directed verdict on the retaliation claim under the Whistleblower Act, arguing that the alleged "retaliation" was the allegedly defamatory statement defendant made to Mr. Munoz, but that defendant was immune from that claim under section 2-210 of the Tort Immunity Act and was, also, absolutely privileged for making the statement.

¶ 48 After a brief oral argument, the trial court entered and continued its ruling on the directed verdict motion. The cause proceeded to defendant's case-in-chief.

¶ 49 Carlos Munoz testified he was the former principal at Amundsen High School. He interviewed plaintiff for a teaching position in 2008. During the interview, plaintiff told Mr. Munoz that she was not returning to George Washington High School due to declining student enrollment there. Mr. Munoz subsequently called defendant and told her he was interviewing plaintiff, and that plaintiff had told him she had been "let go" from George Washington High School because of "lack of enrollment." Defendant told Mr. Munoz that plaintiff had not been let go because of lack of enrollment. With respect to plaintiff's job performance while at George Washington High School, Mr. Munoz remembered defendant had mentioned something "to do with punctuality," but could not recall other details of his conversation with defendant. Mr. Munoz subsequently met with plaintiff, told her she had been untruthful with him during the interview regarding her reason for leaving George Washington High School, and rescinded any job offer to her.

¶ 50 Jeannine Gorny testified she formerly worked as defendant's assistant principal at George Washington High School. Ms. Gorny observed plaintiff teaching a class in February 2008.

Plaintiff was doing a vocabulary lesson, and she made "some content errors in pronouncing some of the words that were part of the lesson, which made it difficult then to associate a definition with the word that was mispronounced." Plaintiff misused the overhead projector, projecting the assignment onto her torso instead of onto the wall. Plaintiff's teaching that day demonstrated "very little planning and preparation."

¶ 51 Ms. Gorny gave plaintiff her nonrenewal notice on March 5, 2008. In notifying plaintiff of her nonrenewal, Ms. Gorny read from a "script" provided by the Board, but gave no reason for her nonrenewal. Ms. Gorny never told plaintiff that she was not being renewed due to lower student enrollment.

¶ 52 Ms. Gorny remembered the April 2008 LSC meeting, but she did not recall plaintiff speaking at that meeting. Ms. Gorny never observed any racist behavior by defendant, nor did she ever observe defendant act in a discriminatory way toward African-American teachers, or African-American students, or students with special needs.

¶ 53 Defendant testified she was principal at George Washington High School for 4½ years before retiring in June 2012. When she first became principal in January 2008, defendant was shocked at the chaotic environment at George Washington High School. Defendant noticed that teachers were tardy to classes or not showing up at all, and some teachers were not allowing students into class for "frivolous reasons," such as not having a pen. In particular, defendant recalled that when she once went to observe plaintiff's class in February 2008, plaintiff was 20 minutes late in arriving. When plaintiff did finally arrive to class, she simply picked up a novel and read to the students for the duration of the class (about 26 minutes). Plaintiff did not interact with the students; in defendant's view, there was "no teaching and learning going on."

¶ 54 Defendant filled out a classroom visitation form following her February 2008 observation of plaintiff. Defendant noted in the form that plaintiff had not been turning in her lesson plans even though teachers were supposed to submit weekly lesson plans to defendant. Defendant told plaintiff she needed to turn in the lesson plans, and plaintiff said she had emailed defendant the plan for that day and that it "must be [lost] in cyberspace." Defendant asked for a hard copy of the lesson plan, but she never received any lesson plans from plaintiff for the entire 2007-2008 school year.

¶ 55 The visitation form also noted that plaintiff had been tardy to class on six occasions. Defendant asked plaintiff about her tardiness, and plaintiff explained she was sometimes late "because of the bridge."

¶ 56 Defendant subsequently "popped in" to plaintiff's classroom on occasion, but saw no improvement in her performance. Defendant also noted that plaintiff was not involved in any after-school activities with any of the students.

¶ 57 Based on plaintiff's lack of punctuality, her failure to provide lesson plans, and her poor teaching skills, defendant decided not to renew her employment for the following school year. Ms. Gorny met with plaintiff and informed her of the nonrenewal. Defendant never met with plaintiff about the nonrenewal, never told her that the nonrenewal was due to low student enrollment, and never offered to write her a letter of recommendation.

¶ 58 In the summer of 2008, Mr. Munoz called defendant at George Washington High School and asked her about plaintiff. Defendant told Mr. Munoz about plaintiff's tardiness, absenteeism, and her failure to turn in lesson plans.

¶ 59 Defendant never communicated with IDES regarding plaintiff. Defendant never engaged in racial discrimination against any teachers or students. The Options for Knowledge Program,

whereby many African-American students from outside the school's neighborhood were able to enroll at George Washington High School, was discontinued *prior* to defendant's arrival there.

¶ 60 At the close of defendant's case, the trial court again continued its ruling on defendant's motion for a directed verdict until after the jury rendered its verdict.

¶ 61 On February 4, 2013, the jury returned a verdict in favor of plaintiff, awarded her $225,000 in damages on a general verdict form, and gave answers to three special interrogatories: (1) defendant was not acting within the scope of her employment when she made statements about plaintiff to Mr. Munoz; (2) defendant was not acting within the scope of her employment when she made statements about plaintiff to AIO Jones; and (3) defendant's statements to Mr. Munoz and AIO Jones about plaintiff were false.

¶ 62 On March 5, 2013, plaintiff filed a motion for attorney fees pursuant to section 30 of the Whistleblower Act (740 ILCS 174/30 (West 2010)).

¶ 63 On March 6, 2013, defendant filed a motion renewing her directed verdict motion and seeking a JNOV verdict or, in the alternative, a new trial.

¶ 64 In her JNOV motion, defendant argued that her conversations with Mr. Munoz and AIO Jones were absolutely privileged under common law, and were also protected under section 2-210 of the Tort Immunity Act. Defendant argued that section 2-210 provided her with immunity for all plaintiff's claims (defamation, republication of defamation, tortious interference, and the whistleblower claim). In her motion for a new trial, defendant argued that the trial court improperly admitted "inflammatory, hearsay, irrelevant and highly prejudicial evidence [that] tainted the verdict," and erred by refusing to allow defendant to introduce certain other evidence, specifically, the minutes from an LSC meeting showing that the Options for Knowledge Program was discontinued *before* she became principal.

¶ 65 On June 10, 2013, the trial court granted plaintiff's request for attorney fees in the amount of $144,258 and ordered the parties to submit proposed orders on defendant's motion seeking a JNOV or, a new trial. On July 24, 2013, the trial court adopted plaintiff's proposed order denying defendant's JNOV motion. The trial court first ruled that defendant was not entitled to a JNOV because she violated section 2-1201(d) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1201(d) (West 2010)), by failing to request that any count be withdrawn from consideration by the jury due to lack of evidence. The trial court further denied defendant's JNOV motion on the basis that she was not entitled to an absolute or conditional privilege for her defamatory statements. The trial court made no mention of defendant's tort immunity argument. The trial court denied defendant's motion for a new trial, finding she had waived her claim that the trial court had admitted "inflammatory, hearsay, irrelevant, or prejudicial evidence tainting any verdict." The trial court also found that it had not erred in refusing to allow defendant to introduce the minutes from the LSC meeting.

¶ 66 The June 10, 2013, order did not explicitly rule on defendant's motion for a directed verdict, which the trial court had earlier entered and continued after the close of plaintiff's case-in-chief, nor did it explicitly rule on defendant's renewed motion for a directed verdict.

¶ 67 On August 5, 2013, defendant filed a notice of appeal from the February 4, 2013, order entering judgment against defendant, the June 10, 2013, order granting plaintiff's motion for attorney fees, and the July 24, 2013, order denying defendant's JNOV motion, or a new trial.

¶ 68 On August 12, 2013, the trial court entered an order denying defendant's motion for a stay of judgment pending appeal and denying defendant's motion for a directed verdict and her renewed motion for a directed verdict.

¶ 69 On August 13, 2013, defendant filed an amended notice of appeal from the February 4, 2013, June 10, 2013, and July 24, 2013 orders, as well as from the August 12, 2013 order which denied defendant's motion for a directed verdict, her renewed motion for a directed verdict, and a stay of judgment.

¶ 70 On October 21, 2013, the trial court granted plaintiff additional attorney fees of $21,294.

¶ 71 On November 19, 2013, defendant filed a notice of appeal from the October 21, 2013, order.

¶ 72 On appeal, defendant first contends the trial court erred in denying her motions for directed verdict and for JNOV. However, the denial of the directed verdict motion merged into the final judgment; consequently, our review is confined to the denial of defendant's JNOV motion. See *Taylor v. Board of Education of the City of Chicago*, 2014 IL App (1st) 123744, ¶ 32.

¶ 73 A JNOV motion should be entered only where "all of the evidence, viewed in the light most favorable to the nonmoving party, so overwhelmingly favors the movant that no contrary verdict based on that evidence could stand." *Addis v. Exelon Generation Co.*, 378 Ill. App. 3d 781, 786 (2007). We review *de novo* the trial court's decision to deny the JNOV motion. *Young v. Alden Gardens of Waterford, LLC*, 2015 IL App (1st) 131887, ¶ 44.

¶ 74 Defendant initially argues that the trial court erred in finding she was barred under section 2-1201(d) from an award of a JNOV as she never requested that any count be withdrawn from consideration by the jury due to lack of evidence. Section 2-1201(d) states:

> "If several grounds of recovery are pleaded in support of the same claim, whether in the same or different counts, an entire verdict rendered for that claim shall not be set aside or reversed for the reason that any ground is defective, if one or more of the

> grounds is sufficient to sustain the verdict; nor shall the verdict be set aside or reversed for the reason that the evidence in support of any ground is insufficient to sustain a recovery thereon, unless before the case was submitted to the jury a motion was made to withdraw that ground from the jury *on account of insufficient evidence* and it appears that the denial of the motion was prejudicial." (Emphasis added.) 735 ILCS 5/2-1201(d) (West 2010).

¶ 75 In the present case, defendant filed a motion for directed verdict, before the case was submitted to the jury, in which she sought to withdraw all four grounds (defamation, republication of defamation, tortious interference with a prospective contractual relationship, and violation of the Whistleblower Act) from the jury. Plaintiff argues, though, that defendant's directed verdict motion asked that the counts be withdrawn based on tort immunity and common-law privilege as opposed to insufficient evidence and, as such, that she is barred under section 2-1201(d) from having the verdict set aside pursuant to a JNOV motion.

¶ 76 We find that defendant sufficiently sought to remove all four counts from the jury on account of insufficient evidence and, as such, that the trial court erred in denying her JNOV motion based on her failure to comply with section 2-1201(d). In so finding, we first note that in her directed verdict motion with respect to the defamation count, defendant cited *Pandya v. Hoerchler*, 256 Ill. App. 3d 669 (1993), which held: "To prove defamation, plaintiff must show that defendant made a false statement concerning him, that there was an *unprivileged* publication to a third party with fault by defendant, and that the publication damaged plaintiff." (Emphasis added.) *Id*. at 673. After citing *Pandya*, defendant then argued that the statements at issue here were privileged, *i.e.*, that plaintiff had provided insufficient evidence of one of the required elements of her defamation claim.

¶ 77 With respect to the republication of defamation claim, defendant argued in her directed verdict motion that "[t]he same elements for defamation must be proved for republication with the addition of the proof of repeating the statement." Defendant again noted that the statements at issue here were privileged, *i.e.*, that plaintiff had provided insufficient evidence of one of the required elements of her republication of defamation claim.

¶ 78 With respect to the intentional interference with a prospective contractual relationship claim, defendant noted that plaintiff must prove: a reasonable expectancy of entering into a valid business relationship; defendant's knowledge of the expectancy; an intentional and unjustified interference by defendant that induced or caused a breach or termination of the expectancy; and damage to plaintiff resulting from defendant's interference. See *Myers v. Levy*, 348 Ill. App. 3d 906, 921 (2004). Defendant argued in her directed verdict motion that plaintiff had failed to prove a reasonable expectancy of entering into a valid business relationship, *i.e.*, that she had provided insufficient evidence of one of the required elements of her intentional interference with a prospective contractual relationship claim.

¶ 79 With respect to the retaliation claim under the Whistleblower Act, defendant noted in her directed verdict motion that such a claim requires proof that an employer retaliated against an employee for disclosing information to a government or law enforcement agency, or in a court, administrative hearing, or before a legislative commission or committee, where the employee has reasonable cause to believe that the information disclosed a violation of a State or federal law, rule, or regulation. See 740 ILCS 174/15 (West 2010). Defendant argued that plaintiff had failed to prove she was plaintiff's employer, *i.e.*, that plaintiff had provided insufficient evidence of one of the required elements of her retaliation claim.

¶ 80 As defendant sought to remove all four counts from the jury on account of insufficient evidence, the trial court erred in denying her JNOV motion based on her failure to comply with section 2-1201(d). We proceed to examine defendant's JNOV motion on the merits.

¶ 81 Preliminarily, we note that plaintiff presented four theories of recovery to the jury, which returned a general verdict in favor of plaintiff. The general verdict must be upheld (*i.e.*, the JNOV motion must be denied) if there was sufficient evidence to sustain any of the four theories. *Hansen v. Baxter Healthcare Corp.*, 309 Ill. App. 3d 869, 883 (1999). For the reasons that follow, there was sufficient evidence supporting plaintiff's defamation theory and, therefore, we affirm the denial of defendant's JNOV motion.

¶ 82 "To state a defamation claim, a plaintiff must present facts showing that the defendant made a false statement about the plaintiff, the defendant made an unprivileged publication of that statement to a third party, and that this publication caused damages. A defamatory statement is a statement that harms a person's reputation to the extent it lowers the person in the eyes of the community or deters the community from associating with her or him. A statement is defamatory *per se* if its harm is obvious and apparent on its face. In Illinois, there are five categories of statements that are considered defamatory *per se*: (1) words that impute a person has committed a crime; (2) words that impute a person is infected with a loathsome communicable disease; (3) words that impute a person is unable to perform or lacks integrity in performing her or his employment duties; (4) words that impute a person lacks ability or otherwise prejudices that person in her or his profession; and (5) words that impute a person has engaged in adultery or fornication." (Internal citations omitted.) *Solaia Technology, LLC, v. Specialty Publishing Co.*, 221 Ill. 2d 558, 579-80 (2006).

¶ 83 Plaintiff here alleged that defendant committed defamation *per se* by telling Mr. Munoz that plaintiff's employment was not renewed because she was habitually tardy and absent and failed to turn in lesson plans. At trial, plaintiff refuted the reasons given by defendant for the nonrenewal of her employment, testifying that defendant's statement to Mr. Munoz was false, as she had been tardy to class only twice, she was never absent without an excuse, and that she turned in her lesson plans. Plaintiff's testimony was supported by Philip Corich, the retired teacher who shared a classroom with plaintiff, and who testified that he did not recall plaintiff being excessively tardy to her classes or habitually absent from school. Plaintiff testified that, as a result of defendant's false statement which impugns her ability to perform her employment duties and falls within the third and fourth defamation *per se* categories, Mr. Munoz rescinded her job offer at Amundsen High School. The jury obviously found plaintiff credible, as it stated in its answer to a special interrogatory that defendant's statement to Mr. Munoz was false. The trial court may not enter a JNOV where the assessment of credibility of the witnesses or the determination regarding conflicting evidence is decisive to the outcome. *Maple v. Gustafson*, 151 Ill. 2d 445, 454 (1992).

¶ 84 Defendant argues, though, that her statement was subject to the common-law absolute privilege and, thus, that plaintiff failed to prove her defamation claim. "Absolute privilege provides complete immunity from [a] civil action, even when the statements at issue are made with malice. The defense of absolute privilege is based on the notion that conduct which would otherwise be actionable is shielded from liability because the defendant is acting in furtherance of an interest of social importance, which is entitled to protection even at the expense of uncompensated harm to a plaintiff's reputation. Because it provides complete immunity, the defense of absolute privilege is necessarily narrow and generally limited to situations which

involve legislative, judicial, and quasi-judicial proceedings." (Internal citations omitted.) *Belluomini v. Zaryczny*, 2014 IL App (1st) 122664, ¶ 21. A communication is absolutely privileged when it is "made in the discharge of a duty under express authority of law." *Weber v. Cueto*, 209 Ill. App. 3d 936, 942 (1991).

¶ 85 Defendant's defamatory statement to Mr. Munoz was not made during legislative, judicial, or quasi-judicial proceedings, nor was it made in the discharge of a duty under express authority of law and, therefore, no absolute privilege exists.

¶ 86 Defendant contends that *McLaughlin v. Tilendis*, 115 Ill. App. 2d 148 (1969), compels a different result. In *McLaughlin*, the plaintiffs, John Steele and James McLaughlin, were school teachers who each brought a complaint for slander and malicious interference with contract against the defendant, Albert Tilendis, Superintendent of Schools, School District Number 149. *Id*. at 149. Both complaints alleged that the plaintiffs were engaged in the organization of a local union of school teachers, which the defendant opposed. *Id*. at 150. To prevent the formation of the union, the defendant allegedly embarked on a course of action designed to defame and discredit plaintiffs. *Id*. In pertinent part, the plaintiffs alleged that the defendant made the following false and malicious accusations against the plaintiffs to the Board of Education: their teaching was poor; they left their rooms unattended; and they lacked ability as teachers. *Id*. at 150-51. As to the plaintiff McLaughlin, the defendant also allegedly told the Board that he had done poorly in certain courses at Chicago Teacher's College during the fall of 1964. *Id*. at 150.

¶ 87 The trial court dismissed the plaintiffs' actions, finding the defendant enjoyed an absolute privilege to make the statements in question. *Id*. 149. The plaintiffs appealed. *Id*. On appeal, the defendant argued his statements were absolutely privileged, as they were made at a regularly scheduled Board meeting and they were directly related to statutory action required of him;

specifically, the defendant pointed to section 10-21.4 of the School Code, which stated: "In addition to the administrative duties, the superintendent shall make recommendations to the board concerning *** the selection of teachers." Ill. Rev. Stat., ch. 122 § 10-21.4 (1967).

¶ 88 The appellate court agreed, finding that "the statements made by the defendant to the Board of Education concerning plaintiffs were communications within the duty of the defendant as Superintendent of Schools of School District No. 149, and were absolutely privileged." *McLaughlin*, 115 Ill. App. 2d at 155.

¶ 89 Unlike in *McLaughlin*, defendant's allegedly defamatory statement in the present case was not made to the Board pursuant to her statutory duty under the School Code but, rather, was made of her own volition in response to a telephone call from Mr. Munoz. As defendant's statement to Mr. Munoz was not made in the discharge of a duty under express authority of law, nor otherwise made during legislative, judicial, or quasi-judicial proceedings, no absolute privilege exists.

¶ 90 Defendant next argues she was immunized from liability for plaintiff's defamation claim pursuant to section 2-210 of the Tort Immunity Act.

¶ 91 Section 2-210 states:

> "A public employee acting in the scope of his employment is not liable for an injury caused by his negligent misrepresentation or the provision of information either orally, in writing, by computer or any other electronic transmission, or in a book or other form of library material." 745 ILCS 10/2-210 (West 2010).

¶ 92 Defendant contends she was a public employee acting within the scope of her employment as the principal of George Washington High School when she responded to Mr. Munoz's request for information about plaintiff and told him about plaintiff's chronic tardiness,

absenteeism, and failure to submit lesson plans. Accordingly, defendant argues that section 2-210 immunizes her from liability for plaintiff's defamation claim.

¶ 93 We disagree. For section 2-210 immunity to apply here, defendant must have been acting within the scope of her employment at the time she made the allegedly defamatory statement to Mr. Munoz. Section 2-210 does not define the criteria to be used in determining whether defendant was acting within the scope of her employment; however, the Second Restatement of Agency (the Restatement) has identified three general criteria, which our supreme court has adopted:

> " '(1) Conduct of a servant is within the scope of employment if, but only if,:
>
> (a) it is of the kind he is employed to perform;
>
> (b) it occurs substantially within the authorized time and space limits;
>
> (c) it is actuated, at least in part, by a purpose to serve the master ***[.]' " *Adames v. Sheahan*, 233 Ill. 2d 276, 298-99 (2009) (quoting Restatement (Second) of Agency § 228 (1958)).

¶ 94 All three criteria must be met to conclude that an employee was acting within the scope of employment. *Adames*, 233 Ill. 2d at 299.

¶ 95 The trial court instructed the jury on the Restatement criteria, and the jury subsequently answered a special interrogatory by stating that defendant was *not* acting within the scope of her employment when she made the statement about plaintiff to Mr. Munoz. A jury's answer to a special interrogatory will not be reversed unless it is against the manifest weight of the evidence. *Blakey v. Gilbane Building Corp*., 303 Ill. App. 3d 872, 882 (1999).

¶ 96 Here, the trial testimony supported the jury's answer. Specifically, plaintiff, Patricia Banks, Nancy Kusler, James Archambeau, and Thomas Stibich testified to defendant's

discriminatory treatment of African-American students during the 2007-2008 school year. During that same year, plaintiff was reviewed on two occasions in February 2008: once by defendant, and once by Ms. Gorny. Plaintiff testified that on March 5, 2008, she received a "satisfactory" overall rating from defendant in her final evaluation review. Plaintiff reviewed the evaluation with defendant, who did not express that her performance as a teacher was lacking in any way. However, defendant told her later that day that she was being let go due to a decrease in student enrollment and defendant offered to write a recommendation letter for her; defendant made no mention that plaintiff was being let go due to her excess tardiness, absenteeism, and failure to turn in lesson plans.

¶ 97 Plaintiff, Ms. Banks, and Ms. Kusler testified that plaintiff later spoke at the April 2008 LSC meeting about defendant's discriminatory treatment of African-American and special needs students. Plaintiff subsequently interviewed with and was offered a job by Mr. Munoz of Amundsen High School on August 19, 2008, after which Mr. Munoz called defendant to speak with her about plaintiff. Defendant told Mr. Munoz that plaintiff had been let go from George Washington High School due to her chronic tardiness, absenteeism, and failure to turn in her lesson plans. Plaintiff testified that defendant's statement to Mr. Munoz was false, as she was never chronically tardy or absent and she had turned in her lesson plans. Philip Corich also testified to the falsity of defendant's statement to Mr. Munoz, stating that he shared a classroom with plaintiff, and that she was not excessively tardy, nor habitually absent. Mr. Munoz rescinded his job offer to plaintiff after talking with defendant.

¶ 98 The jury could find from such testimony that defendant lied to Mr. Munoz about the reason she let plaintiff go, and that her statement to Mr. Munoz was *not*, as argued by defendant, to serve the master (*i.e.*, the Board of Education) by ensuring that another Board school was

staffed with diligent and competent teachers but, rather, to punish plaintiff for speaking out against her at the April 2008 LSC meeting.

¶ 99 We recognize that defendant and Ms. Gorny provided testimony which conflicted with that of plaintiff and the other witnesses. Specifically, defendant and Ms. Gorny testified that defendant did not engage in discriminatory treatment of African-Americans; that plaintiff was never told that her nonrenewal was due to low student enrollment; and that they could not recall plaintiff speaking at the April 2008 LSC meeting. Defendant testified to plaintiff's tardiness and failure to turn in her lesson plans, which were the reasons for her nonrenewal, and she stated that she never offered to write plaintiff a recommendation letter.

¶ 100 As discussed, though, the trial court may not enter a JNOV where the assessment of credibility of the witnesses or the determination regarding conflicting evidence is decisive to the outcome. *Maple*, 151 Ill. 2d at 454. As there was testimony at trial which, if believed by the jury, supported its special interrogatory answer that defendant was not acting within the scope of her employment when she made the defamatory statement to Mr. Munoz, defendant is not entitled to JNOV based on section 2-210 tort immunity.

¶ 101 Defendant contends *Wozniak v. Conry*, 288 Ill. App. 3d 129 (1997), compels a different result. In *Wozniak*, an associate professor in the Department of General Engineering at the University of Illinois alleged that the acting Department head had tortiously interfered with his employment contract by making false accusations against him. *Id*. at 130-31. The issue on appeal was whether the professor's action was one against the State, such that sovereign immunity applied to bar his claims. *Id*. at 132.

¶ 102 The appellate court noted that a suit against a State employee, in his individual capacity, constitutes a claim against the State when a judgment for the plaintiff could control the State's

actions or subject it to liability. *Id*. at 133. A suit against a State employee controls the State's actions when the relief sought would limit the ability of the employee to engage in lawful activity on behalf of the State. *Id*.

¶ 103 The appellate court held:

> "The threat of private suits against supervisors for work-related statements about those under their authority clearly would affect the way supervisors communicate, allocate tasks, and make employment decisions. Accordingly, when a supervisor for a state department or entity is sued by an employee for statements regarding the employee's work-related conduct and pending personnel decisions, the suit necessarily threatens to control the actions of the state. It does not matter if, as here, the plaintiff alleges the statements were knowingly false. [Citation.] Instead, the relevant inquiry is whether the supervisor would be acting within the scope of his duties by making truthful statements of the general type alleged." *Id*. at 133-34.

¶ 104 In the present case, defendant contends that, pursuant to *Wozniak*, we must assess the *kind* of statement she made, not its truth or falsity, in deciding if it was made within the scope of employment. Defendant argues that the kind of statement at issue here was an employment reference made by defendant to Mr. Munoz, and that such a statement is routinely made in the course of her employment such that section 2-210 tort immunity applies.

¶ 105 We disagree. *Wozniak* is inapposite, as it involved an issue of sovereign immunity, not section 2-210 tort immunity. In *Wozniak*, the appellate court was considering the test to determine whether a suit against a State employee controls the State's actions such that sovereign immunity would apply. *Id*. at 133. The *Wozniak* court never considered the Restatement criteria for determining whether a servant was acting in the course of employment, which criteria was

expressly adopted by the supreme court in *Adames*, and which must be considered in determining whether section 2-210 tort immunity applies. As discussed, one of the Restatement criteria for determining whether the conduct of a servant is within the scope of employment is that the conduct must be actuated, at least in part, by a purpose to serve the master. Restatement (Second) of Agency § 228 (1958). Here, the jury could find that defendant's statement to Mr. Munoz was not actuated to serve the Board (her "master") but, rather, was made solely in retaliation for plaintiff's publicly speaking out against her alleged racial discrimination and her discrimination against special needs students. As such, section 2-210 tort immunity does not apply.

¶ 106 Defendant next contends she was entitled to immunity for her defamatory statement to Mr. Munoz pursuant to section 2-201 of the Tort Immunity Act. Section 2-201 states:

> "Except as otherwise provided by Statute, a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused." 745 ILCS 10/2-201 (West 2010).

¶ 107 Defendant contends section 2-201 immunity applies here because she made a policy decision to speak candidly with her fellow principal about her opinion of a former teacher's performance.

¶ 108 *Stratman v. Brent*, 291 Ill. App. 3d 123 (1997), is dispositive. In *Stratman*, a former police officer brought a slander action against the police chief, alleging that the police chief defamed him by making certain unflattering statements to prospective employers regarding his conduct, behavior, and performance. *Id*. at 126-28. In pertinent part, the trial court granted the police chief's motion to dismiss pursuant to section 2-201 of the Tort Immunity Act. *Id*. at 129.

¶ 109 On appeal, the appellate court noted:

> "Section 2-201 codifies the common-law distinction between discretionary acts and ministerial duties. Thus, a public official is immune from liability for injuries caused by discretionary acts, but not from those caused by ministerial acts. While the distinction between discretionary and ministerial acts has evaded precise formulation, it is well settled that an act will not be held to be discretionary unless it is unique to a particular public office. Further, a public official's discretionary act will not be shielded by section 2-201 immunity unless the discretionary act is made in furtherance of a governmental policy." (Internal quotation marks and citations omitted.) *Id*. at 130.

¶ 110 The appellate court then held that the police chief's decision regarding the information he chose to provide about his former employee was not unique to his position as police chief, as "decisions regarding what to tell prospective employers are made by *all* past employers." (Emphasis added.) *Id*. at 131. The appellate court also held that the police chief's decision regarding the information he chose to provide about his former employee did not constitute a policy determination. *Id*. at 132. The court concluded "because the [police chief's] statements were not discretionary and were not policy determinations, [he] is not entitled to immunity from suit under section 2-201 of the Tort Immunity Act." *Id*.

¶ 111 Similarly, defendant's decision regarding the information she chose to provide about plaintiff, one of her former teachers to a prospective employer, was not unique to her position as principal, nor did it constitute a policy determination. Accordingly, defendant was not entitled to section 2-201 immunity.

¶ 112 In conclusion, plaintiff argued four theories of recovery to the jury, defamation, republication of defamation, tortious interference with a prospective contractual relationship, and

violation of the Whistleblower Act. As the defamation theory of recovery was supported by plaintiff's trial testimony, we cannot say that the evidence so overwhelmingly favors defendant that no contrary verdict based on that evidence could stand, and so we affirm the denial of the JNOV motion as to that theory. Because we have concluded that there was sufficient evidence in support of the defamation allegation, there is one good cause of action on which to sustain the jury's general verdict in favor of plaintiff, and we need not consider defendant's arguments regarding the other theories. See *Hansen*, 309 Ill. App. 3d at 883; *Bandura v. Orkin Exterminating Co.*, 865 F.2d 816, 821-22 (7th Cir. 1988).

¶ 113 Next, defendant contends the trial court erred in denying her motion for a new trial based on the improper admission of irrelevant and racially inflammatory testimony. Defendant waived review by failing to object at trial on prejudice or relevance grounds to any of this testimony. *Simmons v. Garces,* 198 Ill. 2d 541, 569 (2002).

¶ 114 Defendant argues for plain-error review. Although typically raised in criminal matters, the plain-error doctrine has been applied in limited circumstances in civil cases. *Gillespie v. Chrysler Motors Corp*., 135 Ill. 2d 363, 375 (1990). In light of the plain-error doctrine's limited applicability to civil cases, waiver principles must be strictly applied unless "the prejudicial error involves flagrant misconduct or behavior so inflammatory that the jury verdict is a product of biased passion, rather than an impartial consideration of the evidence." *Id*. at 375-76. Further, it must be shown that "the prejudicial error was so egregious that it deprived the complaining party of a fair trial *and* substantially impaired the integrity of the judicial process itself." (Emphasis in original.) *Id*. at 377.

¶ 115 The admission of the evidence of defendant's alleged racial hostility and discriminatory treatment of African-American students and teachers did not constitute prejudicial error so

egregious that it deprived her of a fair trial and substantially impaired the integrity of the judicial process itself. This case centered on defendant's actions in allegedly discriminating against the African-American student population at George Washington High School, and how she retaliated against plaintiff, who voiced her complaints about defendant's conduct at the April 2008 LSC meeting. The testimony about defendant's alleged racial hostility and discriminatory treatment of African-American students and teachers explained why plaintiff complained about defendant at the April 2008 LSC meeting. In turn, plaintiff's complaints about defendant allegedly led defendant to retaliate by defaming plaintiff to Mr. Munoz, costing her a job at Amundsen High School, and by republishing her defamatory statement to AIO Jones. As the testimony about defendant's alleged racial hostility and discriminatory treatment of African-American students and teachers was relevant to plaintiff's causes of action against defendant, its admission did not constitute egregious, prejudicial error and, accordingly, defendant's plain-error argument fails.

¶ 116 Defendant also contends the trial court erred in denying her motion for a new trial based on the court's refusal to allow her to introduce the minutes from an LSC meeting showing, contrary to the testimony of several of plaintiff's witnesses, that the Options for Knowledge Program was discontinued *before* she became principal. The trial court found that the LSC minutes were never produced to plaintiff during discovery, and that the introduction of the LSC minutes at trial would be prejudicial to plaintiff. Defendant makes no argument on appeal that the trial court erred in finding that her failure to produce the LSC minutes to plaintiff constituted a discovery violation, and that the introduction of the LSC minutes into evidence would be unfairly prejudicial given the discovery violation. Accordingly, we find no basis for reversing the jury verdict based on the court's refusal to allow her to introduce the LSC minutes into evidence at trial.

¶ 117 After the trial court refused to substantively admit the LSC minutes into evidence, defendant took the stand and testified on direct examination that George Washington High School had discontinued participation in the Options for Knowledge Program prior to her arrival there. Defense counsel inquired as to the exact date when the high school had discontinued participation, but defendant was unsure of the date. Defense counsel then sought to use the LSC minutes to refresh defendant's recollection at trial as to the exact date that George Washington High School discontinued its participation in the Options for Knowledge Program. The trial court refused to allow the LSC minutes to be used to refresh defendant's recollection because the LSC minutes had not been created by defendant and could not be authenticated by her.

¶ 118 On appeal, defendant contends the trial court erred in refusing to allow the LSC minutes to be used to refresh her recollection regarding the date when the high school discontinued its participation in the Options for Knowledge Program. Defendant cites *People v. Griswold*, 405 Ill. 533 (1950), in which our supreme court stated that a witness is "allowed to refresh and assist his memory by the use of a written instrument, memorandum, or entry in a book. The writing need not be made by the witness himself, and it need not be an original writing; he need only inspect what is recorded, so he can speak to the facts from his own recollection." *Id*. at 541-42.

¶ 119 We agree with defendant that the trial court erred in finding that she could not use the LSC minutes to refresh her recollection because they were not made by her. However, the error was not prejudicial. Had the trial court allowed defendant's recollection to be refreshed with the LSC minutes, she would have testified to the exact date that the program was discontinued. However, the exact date the program was discontinued was not relevant to any of the issues to be decided by the jury, as none of plaintiff's claims against defendant centered on the program's discontinuance. Rather, as discussed, plaintiff's claims centered around the allegations that

defendant defamed her to Mr. Munoz in retaliation for her speaking out at the April 2008 LSC meeting against defendant's allegedly discriminatory treatment of African-American and special needs students by disciplining them more harshly than other students. Defendant's alleged discontinuance of the Options for Knowledge Program, and the date it was actually discontinued, had no bearing on the truth or falsity of plaintiff's claims against defendant.

¶ 120 Defendant also argues for a new trial because the verdict was against the manifest weight of the evidence. As we discussed earlier in this order, there was sufficient evidence at trial supporting plaintiff's defamation allegation and, therefore we uphold the general verdict and affirm the denial of defendant's motion for a new trial.

¶ 121 Next, defendant argues that the trial court erred by awarding plaintiff attorney fees in the amount of $144,258 on June 10, 2013, and in the amount of $21,294 on October 21, 2013, pursuant to section 30 of the Whistleblower Act (740 ILCS 174/30 (West 2010)). Section 30 states in pertinent part:

> "If an *employer* takes any action against an employee in violation of Section 15 [*i.e.*, by retaliating against an employee for making certain disclosures], the employee may bring a civil action *against the employer* for *** reasonable attorney's fees." (Emphasis added.) 740 ILCS 174/30 (West 2010).

¶ 122 The Whistleblower Act defines "employer" as:

> "[A]n individual, sole proprietorship, partnership, firm, corporation, association, and any other entity that has one or more employees in this State, including *** a school district *** and any person acting within the scope of his or her authority express or implied on behalf of those entities in dealing with its employees." 740 ILCS 174/5 (West 2010).

¶ 123 In the present case, plaintiff brought her action for defamation, republication of defamation, retaliation under section 15 of the Whistleblower Act, and tortious interference with a prospective contractual relationship against only defendant, and not the Board. The jury returned a general verdict in favor of plaintiff which, as discussed, we are affirming. For attorney fees to be awarded against defendant under section 30 of the Whistleblower Act, she must have been an "employer" at the time she retaliated against plaintiff; meaning, under the definition of "employer" in section 5 of the Whistleblower Act, she must have been acting within the scope of her authority on behalf of the Board at the time she retaliated (*i.e.*, at the time she made the allegedly defamatory statement to Mr. Munoz).

¶ 124 However, the jury specifically found, in answer to a special interrogatory, that defendant was *not* acting within the scope of her employment when she made the defamatory statement to Mr. Munoz, *i.e.*, that she was not authorized by the Board to make this statement. Given the jury's finding (which, as discussed, we are affirming on appeal as it is not against the manifest weight of the evidence), defendant cannot be considered an "employer" under section 5 of the Whistleblower Act and, therefore, plaintiff is not entitled to attorney fees under section 30. Accordingly, we reverse the June 10 and October 21 orders awarding plaintiff attorney fees.

¶ 125 For the foregoing reasons, we affirm the order denying defendant's JNOV motion or a new trial and we reverse the June 10 and October 21 orders awarding plaintiff attorney fees.

¶ 126 Affirmed in part; reversed in part.