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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

REBECCA E. KASTL,

Plaintiff - Appellant,

v.

MARICOPA COUNTY COMMUNITY
COLLEGE DISTRICT,

Defendant - Appellee.

No. 06-16907

D.C. No. CV-02-01531-SRB

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Susan R. Bolton, District Judge, Presiding

Argued and Submitted December 11, 2008
San Francisco, California

Before: B. FLETCHER, McKEOWN, and GORSUCH,** Circuit Judges.

Rebecca Kastl appeals from the district court's grant of summary judgment to Maricopa County Community College District ("MCCCD") on her gender discrimination claims brought under Title VII and Title IX and her constitutional

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The Honorable Neil M. Gorsuch, United States Circuit Judge for the Tenth Circuit, sitting by designation.

claims brought under 42 U.S.C. § 1983. Kastl was an instructor for and a student of MCCCDC. Following complaints that a man was using the women's restroom, MCCCDC banned Kastl, who is transsexual, from using the women's restroom until she could prove completion of sex reassignment surgery.¹ Kastl's contract was subsequently not renewed by MCCCDC. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

In Price Waterhouse v. Hopkins, 490 U.S. 228, 251 (1989), the Supreme Court explained that gender stereotyping is direct evidence of sex discrimination prohibited by Title VII. Relying on Hopkins, in Schwenk v. Hartford, 204 F.3d 1187, 1201-02 (9th Cir. 2000), we held, in the context of the Gender Motivated Violence Act, that transgender individuals may state viable sex discrimination claims on the theory that the perpetrator was motivated by the victim's real or perceived non-conformance to socially-constructed gender norms. After Hopkins and Schwenk, it is unlawful to discriminate against a transgender (or any other) person because he or she does not behave in accordance with an employer's expectations for men or women. Accord Smith v. City of Salem, Ohio, 378 F.3d

¹We note that the parties do not appear to have considered any type of accommodation that would have permitted Kastl to use a restroom other than those dedicated to men. After all, Kastl identified and presented full-time as female, and she argued to MCCCDC that the men's restroom was not only inappropriate for but also potentially dangerous to her.

566, 575 (6th Cir. 2004). Thus, Kastl states a prima facie case of gender discrimination under Title VII on the theory that impermissible gender stereotypes were a motivating factor in MCCCCD's actions against her. MCCCCD satisfied its burden of production under the second stage of the analysis set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), when it proffered evidence that it banned Kastl from using the women's restroom for safety reasons. Because Kastl did not put forward sufficient evidence demonstrating that MCCCCD was motivated by Kastl's gender, her claim is doomed at the third McDonnell Douglas stage. See Lindahl v. Air France, 930 F.2d 1434, 1437 (9th Cir. 1991) (“[A Title VII] plaintiff cannot defeat summary judgment simply by making out a prima facie case.”).

Kastl's Title IX and Equal Protection claims fall with her Title VII claim. See Oona R.-S.- by Kate S. v. McCaffrey, 143 F.3d 473, 477 (9th Cir. 1998) (Title IX); Sischo-Nownejad v. Merced Cmty. Coll. Dist., 934 F.2d 1104, 1112-13 (9th Cir. 1991) (Equal Protection Clause). MCCCCD was entitled to summary judgment on Kastl's constitutional privacy and expression claims also due to insufficient evidence. See Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). Kastl's other challenges to the district court's decision also fail.

AFFIRMED.