Filed 8/14/17 Druez v. Woodland Hills Private School CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

JESSICA J. DRUEZ, Plaintiff and Appellant, v. WOODLAND HILLS PRIVATE SCHOOL, Defendant and Respondent.	B268526 (Los Angeles County Super. Ct. No. BC549781)

APPEAL from a judgment of the Superior Court of Los Angeles County, Frederick C. Shaller, Judge. Affirmed.

Law Offices of John J. Jackman and John J. Jackman for Plaintiff and Appellant.

Fisher & Phillips, Todd B. Scherwin, Wendy McGuire Coats, and Nathan V. Okelberry for Defendant and Respondent.

INTRODUCTION

Jessica Druez was a kindergarten teacher at a private school. While she was out on leave after giving birth, the school attempted to hire her for the coming year. After Druez refused to accept and return the school's proposed written contract, it withdrew its employment offer. In response, Druez sued the school[1] for wrongful termination and failure to engage in the interactive process. Druez appeals from the trial court's summary judgment in favor of defendant.

We conclude that Druez forfeited her claim of evidentiary error. We also conclude that the court properly granted summary judgment because defendant presented substantial evidence of a nondiscriminatory and nonretaliatory basis for its decision—Druez refused to accept and return an employment contract for the coming school year—and Druez did not meet her burden to show defendant's stated reason was pretextual. Finally, defendant accommodated Druez's pregnancy, and any breakdown in the interactive process is attributable to Druez. Accordingly, we affirm the judgment.

FACTS AND PROCEDURAL BACKGROUND

1. Druez's Employment and Termination

Defendant WTK School Corporation owns and operates Woodland Hills Private School, an elementary school with an enrollment of approximately 500 students. The school is in session from August through June during the school year. Each

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[1] Druez erroneously sued Woodland Hills Private School instead of WTK School Corporation. Judgment was entered in favor WTK School Corporation (defendant).

classroom is staffed by two teachers: a lead teacher, and a co-teacher or an associate teacher. All of the lead teachers and co-teachers have teaching credentials and hold salaried positions. Associate teachers are paid hourly and do not have teaching credentials; they are expected, however, to be pursuing their teaching credentials in order to become lead teachers or co-teachers.

In 2008, defendant hired Druez as a pre-school teacher. Shortly after she was hired, Druez was moved to an associate teacher position in the kindergarten class where she remained until her employment ended in 2013.

In late October 2012, Druez notified Ann Herman, the school's principal, that she was pregnant. Druez and Herman discussed Druez's anticipated due date, her leave following the baby's birth, and her expected return to work date of September 17, 2013. Shortly after meeting with Herman, however, Druez experienced complications with her pregnancy. As a result, her doctor placed her on bed rest and gave her a note stating that she would not be able to continue working during her pregnancy. Druez then requested a leave of absence. The school accommodated Druez's request and, starting on October 30, 2012, Druez began a leave of absence that was scheduled to end on September 17, 2013. Druez gave birth to a daughter on June 12, 2013. Although her baby was delivered by c-section, Druez felt "pretty good" and thought she could return to work three to four weeks after giving birth.

While Druez was on leave, Herman announced her retirement and the school hired a new principal, Sossi Shanlian. After reviewing defendant's existing policies and procedures, Shanlian decided that all teachers, including associate teachers,

should sign annual contracts for the 2013-2014 school year. In the past, only lead teachers and co-teachers had written employment contracts with the school. As a result of the new policy, all teachers, except for Druez, signed written contracts in May 2013 for the upcoming school year.

If defendant did not plan to retain a particular teacher for the next school year, it notified the teacher during his or her performance review. Because Druez was on leave in May 2013, she did not receive a performance review and was not asked to sign a contract at that time. Instead, defendant waited until Druez gave birth before sending her an offer letter and proposed contract.

Lynn Kuo, the school's founding director, was responsible for overall administration and operation of the school. On June 17, 2013, she wrote[2] to Druez congratulating her on the birth of her daughter. In that communication, Kuo stated the following: "The 2012-13 school year has already ended, so I do need to talk to you about the coming school year and all the necessary processes and procedures that must be completed. All the other elementary staff members have already signed their contracts, including the associate teachers." As for the enclosed contract, Kuo asked Druez to review it and return the signed agreement by June 26, 2013. The contract stated, among other things, that "[w]e would like to confirm your employment for the position of Kindergarten Associate Teacher at Woodland Hills Private School . . . for the school year of 9/17/2013 - 6/06/2014." On June 24, 2013, Kuo sent Druez a follow-up email reminding her that defendant's offer would expire on June 26, 2013.

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[2] Kuo sent Druez the same letter by email.

On June 26, 2013, Druez responded that she was "still on disability recovering from [her] c-section and bonding with [her] baby." Druez stated that she had never signed a contract before and that she was not going to discuss the contract until after she returned to work on September 17, 2013. Druez also stated that she felt stressed and threatened by Kuo's insistence that Druez sign the contract while she was out on leave.

Later on June 26, 2013, Kuo responded to Druez's email by advising Druez that Shanlian had taken over as the school's principal and that all school staff, including associate teachers, had been asked to sign contracts for the 2013-2014 school year. Kuo noted that all of the contracts had been signed in May 2013, except that defendant waited to contact Druez until she gave birth in early June. Kuo explained that because the contract "involves both parties, [it] certainly can be discussed." Kuo also explained that she needed a response to the proposed contract to "make sure children will have their teachers for sure for the new school year."

On July 3, 2013, Kuo sent Druez another email confirming that defendant was honoring Druez's return to work date of September 17, 2013, but still needed Druez to sign the contract for the upcoming school year. However, Kuo extended the time period for Druez to consider and sign the contract to July 10, 2013. Kuo cautioned Druez that if she did not sign and return the contract by July 10, 2013, defendant "will consider that a decline of the position."

On July 10, 2013, Druez responded by email that she was not forfeiting her position but would not discuss defendant's proposed contract until after she returned to work in September. On July 11, 2013, Kuo informed Druez that the employment offer

was withdrawn because Druez "declined to sign the 2013-2014 contract."

2. The Lawsuit and Summary Judgment Proceedings

Druez filed her lawsuit in June 2014. In the operative first amended complaint, Druez asserted causes of action for wrongful termination in violation of public policy,[3] wrongful termination in retaliation for requesting benefits under the California Family Rights Act (CFRA) (Gov. Code, § 12945.2), and failure to engage in the interactive process (Gov. Code, § 12940, subd. (n)). Druez complained that defendant and its owner, Lynn Kuo, wrongfully terminated her employment as a kindergarten teacher.[4] The pleading recounts that Druez was on approved maternity leave and gave birth to a child on June 12, 2013. In mid or late June 2013, Kuo sent Druez a proposed employment contract for the school year starting September 2013. Druez told Kuo she was unable to discuss the proposed contract because she had just given birth. Although Kuo gave Druez an additional week to accept the proposed contract, Druez requested more time "so she could get her new born and herself settled and see her physician for a release to return to work." Druez's employment was summarily terminated on July 11, 2013.

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[3] Although Druez's pleading references the Fair Employment and Housing Act (FEHA), this cause of action is based on common law principles. (See *Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167, 170 [when an employer's discharge of an employee violates fundamental principles of public policy, the discharged employee may maintain a tort action and recover damages traditionally available in such actions].)

[4] Druez also sued Kuo. Kuo is not a party to this appeal.

Defendant moved for summary judgment, or in the alternative, summary adjudication. Defendant contended that Druez's employment was terminated for a nondiscriminatory or nonretaliatory reason: she refused to sign the employment contract which every other teacher at the school had signed. As for the retaliation and failure to engage in the interactive process claims, defendant also asserted that Druez's disability based on her pregnancy had been accommodated through a leave of absence which did not require her to return to work until September 2013.

Although Druez opposed the motion, she did not assert any substantive argument. Instead, she argued that defendant "failed to present [its] defenses in a way that can be understood." She explained that defendant's summary judgment papers did not comply with California Rules of Court, rule 3.1350(d), because its separate statement of material facts did not separately identify "each cause of action, claim, issue of duty, or affirmative defense, and each supporting material fact claimed to be without dispute with respect to the cause of action, claim, issue of duty, or affirmative defense." Druez did not, however, explain how this alleged deficiency impaired her ability to marshal evidence to show that material facts were in dispute. In fact, Druez adopted defendant's separate statement format and responded to all 233 material facts.[5]

The court granted defendant's motion for summary judgment. The court found that defendant established

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[5] We also note that the trial court's power to deny summary judgment on the basis of failure to comply with California Rules of Court, rule 3.1350, is discretionary, not mandatory. (*Truong v. Glasser* (2009) 181 Cal.App.4th 102, 118.)

a legitimate and nondiscriminatory reason for its actions: defendant withdrew its employment offer after Druez failed to accept it by signing and returning the proposed contract. Indeed, the court emphasized that Druez had in fact been offered a teaching position for the 2013-2014 school year. The court also found that Druez's employment was not terminated because she took leave under CFRA. Defendant accommodated Druez's leave requests and even confirmed in the proposed contract that she would not have to return to work until September 17, 2013, as was previously agreed by Druez and Herman.

The court entered judgment in defendant's favor and this timely appeal followed.

CONTENTIONS

Druez contends the court abused its discretion in overruling her evidentiary objections. Druez also contends the court erred by granting summary judgment in favor of defendant because the timing of her dismissal, and the terms in the proposed employment contract, support an inference of discriminatory animus or retaliation.

DISCUSSION

1. Evidentiary Rulings

To ensure that we consider all of the admissible evidence, we first address Druez's contention that the trial court erred in making its evidentiary rulings in connection with the motion for summary judgment. Specifically, Druez argues the court should have sustained her objections 3, 4, 6, and 10 to the Shanlian declaration, and 3, 4, and 6 to the Kuo declaration. We review evidentiary rulings in summary judgment proceedings for abuse

of discretion. (See *Miranda v. Bomel Construction Co., Inc.* (2010) 187 Cal.App.4th 1326, 1335.)

A party challenging evidentiary rulings made in the course of a summary judgment motion has two burdens on appeal—affirmatively show error in the rulings and establish prejudice. (*Truong v. Glasser, supra,* 181 Cal.App.4th at p. 119.) Prejudice is not presumed; the burden is on the appellant to affirmatively demonstrate he or she was prejudiced by the challenged error. (See *Winfred D. v. Michelin North America, Inc.* (2008) 165 Cal.App.4th 1011, 1038.)

Here, even if we were persuaded the court erred by overruling all of Druez's evidentiary objections, she has not demonstrated prejudice.[6] Although Druez repeats the grounds for each evidentiary objection as stated below, there is no analysis in her brief as to why it is reasonably probable the court would have reached a different result had the challenged statements in Shanlian's and Kuo's declarations been excluded. Without a showing that the court's alleged errors were prejudicial, Druez's challenge to the court's evidentiary rulings is forfeited.

2. The court properly granted summary judgment in defendant's favor.

Although her opening brief is not a model of clarity, Druez appears to contend that the court erred in concluding that she had not established any triable issue of fact regarding her claims for wrongful termination in violation of public policy, retaliation for requesting benefits under CFRA, and defendant's failure to

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[6] In fact, the court sustained, in part, objection 3 to the Shanlian and Kuo declarations.

engage in the interactive process to accommodate her purported disability or medical condition. We therefore limit our analysis to those claims.[7]

In Druez's view, the timing of her termination—i.e., shortly after she gave birth and while on leave—and defendant's insistence that she sign a written employment contract, establish pretext. Druez also appears to argue that defendant improperly withdrew its employment offer without engaging in a good faith interactive process.

2.1 Druez's Opening Brief

Before we turn to Druez's contention that defendant's stated rationale for her termination was pretextual, we address the opening brief submitted by her in this appeal.[8] To meet her burden on an appeal from a grant of summary judgment, Druez, as the appellant, must "direct the court to evidence that supports [her] arguments." (*Hodjat v. State Farm Mutual Automobile Ins. Co.* (2012) 211 Cal.App.4th 1, 10.) "Moreover, an appellant is

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[7] In the "Issues Presented" section of her opening brief, Druez appears to challenge the court's summary judgment ruling as to all eight causes of action in her operative pleading. Druez has failed, however, to discuss the elements of the other five causes of action or the evidence in support of those elements. Accordingly, we deem all other challenges to the court's summary judgment ruling forfeited and do not address them. (*Behr v. Redmond* (2011) 193 Cal.App.4th 517, 538 [failure to brief issue constitutes a waiver or abandonment of the issue on appeal]; *In re Marriage of Schroeder* (1987) 192 Cal.App.3d 1154, 1164 ["An appellate brief 'should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration.' [Citation.]"].)

[8] Druez did not file a reply brief.

required to not only cite to valid legal authority, but also explain how it applies in his case. [Citation.] It is not the court's duty to attempt to resurrect an appellant's case or comb through the record for evidentiary items to create a disputed issue of material fact." (*Ibid.*) An appellant who fails to pinpoint evidence in the record indicating the existence of triable issues of fact will be deemed to have waived any claim the lower court erred in granting summary judgment. (See *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115–1116.)

Druez's appellate brief is seriously deficient. First, the brief makes numerous references to facts but often fails to cite to the record, or provides record citations that do not support the facts in the brief. (See California Rules of Court, rule 8.204(a)(1)(C).) For example, although Druez states that the "newly minted agreement contained significant and material changes to the employment relationship," she provides no citation to the record to support this assertion. Similarly, Druez cites to defendant's objections—on the basis of vagueness, ambiguity, and overbreadth—to two requests for production of documents as support for her contention that "[i]t is disputed whether all Associate Teachers were subject to the same agreement."

Second, although Druez argues on appeal that defendant's stated reason for her termination was pretextual, she never mentioned this argument in her opposition to the summary judgment motion. Instead, Druez argued below that the motion for summary judgment should be denied due to an alleged procedural defect: defendant's summary judgment papers did not comply with California Rules of Court, rule 3.1350(d). Ordinarily, the failure to raise a point below constitutes a waiver of the point. (*Menefee v. County of Fresno* (1985) 163 Cal.App.3d

1175, 1182.) "This rule is rooted in the fundamental nature of our adversarial system: The parties must call the court's attention to issues they deem relevant." (*North Coast Business Park v. Nielsen Construction Co.* (1993) 17 Cal.App.4th 22, 28 [plaintiff precluded from raising new argument on appeal that was not discussed in opposition to motion for summary judgment].) As defendant notes, we could disregard all of Druez's arguments on this basis alone because they were never mentioned below.

Based on the state of her opening brief, and her failure to comply with established appellate principles, we could find that Druez failed to meet her burden to demonstrate error and affirm the judgment without further discussion. Nevertheless, because Druez's arguments are easily refuted, we address them briefly.

2.2 Standard of Review; Burden Shifting Analysis Applicable to Wrongful Employment Termination and Retaliation Claims

Code of Civil Procedure section 437c, subdivision (c), provides for the granting of a motion for summary judgment when "all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Consequently, our review focuses on determining whether the defendant has met its burden of showing that "one or more elements of the cause of action . . . cannot be established, or that there is a complete defense to the cause of action." (Code Civ. Proc., § 437c, subd. (p)(2).) The burden then shifts to the plaintiff to present evidence showing a triable issue of fact. (*Ibid.*) A triable issue of material fact exists if the evidence and its reasonable inferences would allow a reasonable juror to resolve the factual contention

in favor of the party opposing summary judgment. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 856.)

We review an order granting summary judgment under the de novo standard of review, considering "all the evidence set forth in the moving and opposition papers except that to which objections have been made and sustained." (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334.) "In performing our de novo review, we must view the evidence in a light favorable to plaintiff as the losing party [citation], liberally construing her [or his] evidentiary submission while strictly scrutinizing defendants' own showing, and resolving any evidentiary doubts or ambiguities in plaintiff's favor." (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768.)

Because employees rarely have direct evidence of an employer's improper intent, California courts have adopted a three part burden-shifting analysis in wrongful employment termination cases. (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1042 (*Yanowitz).*) To establish a prima facie case of wrongful termination in violation of public policy, a plaintiff must show (1) she engaged in a protected activity; (2) the employer subjected the employee to an adverse employment action; and (3) a causal link between the protected activity and the employer's action. (*Id.* at p. 1037.) Similarly, to establish a prima facie case of wrongful termination in retaliation for requesting benefits under CFRA, a plaintiff must show (1) the plaintiff was an employee eligible to take CFRA leave; (2) the plaintiff exercised her right to take leave for a qualifying CFRA purpose; and (3) the plaintiff suffered an adverse employment action, such as termination, fine, or suspension, because of her

exercise of her right to CFRA leave. (*Moore v. Regents of University of California* (2016) 248 Cal.App.4th 216, 248.)

Once the plaintiff establishes a prima facie case, the employer is required to offer a legitimate, nonretaliatory or nondiscriminatory reason for the adverse employment action. (See *Morgan v. Regents of University of California* (2000) 88 Cal.App.4th 52, 68.) When the employer has demonstrated a legitimate reason for an adverse employment action, "an employee seeking to avoid summary judgment cannot simply rest on the prima facie showing, but must adduce *substantial additional evidence* from which a trier of fact could infer the articulated reasons for the adverse employment action were untrue or pretextual." (*Loggins v. Kaiser Permanente Internat.* (2007) 151 Cal.App.4th 1102, 1113, italics added.) Although an employee's evidence submitted in opposition to an employer's motion for summary judgment is construed liberally, it "remains subject to careful scrutiny." (*King v. United Parcel Service, Inc.* (2007) 152 Cal.App.4th 426, 433.) The employee's "subjective beliefs in an employment discrimination case do not create a genuine issue of fact; nor do uncorroborated and self-serving declarations." (*Ibid.*) The employee's evidence must relate to the motivation of the decision makers and prove, by nonspeculative evidence, "an actual causal link between prohibited motivation and termination." (*Id.* at pp. 433–434.)

2.3 Defendant's Justification for Withdrawing its Employment Offer

For purposes of brevity, we assume that Druez established a prima facie case of wrongful employment termination or retaliation, thus shifting the burden to defendant to show a legitimate, nondiscriminatory or nonretalitory justification for

its decision to require Druez to sign an employment contract, and then withdraw its employment offer when she refused to do so.

Defendant explained that during the 2012-2013 school year, the school experienced a change in leadership—Herman retired as the school's principal and Shanlian was hired to replace her. In preparation for her new role, Shanlian reviewed the school's policies and procedures. After conducting her review, Shanlian determined that for the 2013-2014 school year, all teachers, including associate teachers like Druez, should sign annual contracts. Shanlian explained that since lead teachers and associate teachers had equal teaching duties within the classroom, it was "pertinent to apply this policy to all teachers." Shanlian also believed that annual contracts would ensure that students have the same teacher over the course of the entire academic year, thereby fostering a better learning environment by reinforcing a bond between the children and their teachers. Shanlian's views were echoed by Kuo, who stated that "[t]o reassure our parents that all the staff will be in places [sic], we have signed contracts with all the teachers including associates for this coming year." To that end, during the annual review process in the Spring of 2013, defendant offered contracts to all teachers whom the school hoped to retain for the upcoming school year.

With respect to Druez's continued employment with the school, Druez did not receive a performance review and was not asked to sign a contract in May 2013 because she was out on pregnancy leave at that time. Instead, defendant waited until after Druez gave birth to her daughter on June 12, 2013 before contacting her regarding her employment for the following school year. As discussed previously, on June 17, 2013, Kuo wrote to

Druez to congratulate her on the birth of her child, and to offer her a teaching position for the 2013-2014 school year. Consistent with Druez's prior arrangement with Herman, defendant's employment offer made no changes to her leave and allowed Druez to return to school on September 17, 2013, or a month into the new school term. Although defendant initially required Druez to sign and return the employment contract by June 26, 2013, defendant extended the date to July 10, 2013. Even with the extension of time to consider the contract further, however, Druez refused to discuss the contract or return it until after she returned to work in September 2013. Because the time period to accept defendant's offer expired on July 10, 2013, and Druez "declined to sign the 2013-2014 contract," defendant withdrew its employment offer on July 11, 2013.

We conclude defendant offered substantial evidence of a legitimate, nondiscriminatory or nonretaliatory basis for its decision to require Druez to sign an employment contract, and withdraw its employment offer after she refused to return the signed contract.

2.4 Druez's Showing of Pretext

To avoid summary judgment, Druez must offer substantial evidence that defendant's stated rationale for her termination is untrue or pretextual. "The plaintiff's burden is to prove, by competent evidence, that the employer's proffered justification is mere pretext; i.e., that the presumptively valid reason for the employer's action was in fact a coverup. In responding to the employer's showing of a legitimate reason for the complained-of action, the plaintiff cannot ' "simply show the employer's decision was wrong, mistaken, or unwise. Rather, the employee ' "must demonstrate such weaknesses, implausibilities, inconsistencies,

incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder *could* rationally find them 'unworthy of credence,' and hence infer 'that the employer did not act for the [. . . asserted] non-discriminatory reasons.' " ' " ' " (*McRae v. Department of Corrections & Rehabilitation* (2006) 142 Cal.App.4th 377, 388-389, citations omitted.) Druez failed to create a triable issue of fact on this issue.

On appeal, Druez contends that she established pretext based on the timing of her employment termination—i.e., she was fired one month after the birth of her daughter while on leave under CFRA. We disagree. Although the timing of defendant's retraction of its employment offer established Druez's prima facie burden of showing discrimination or retaliation, it does not suffice to also carry her burden of showing pretext after defendant set forth legitimate reasons for its decision. Put another way, after defendant established a legitimate basis for withdrawing its employment offer, Druez could not meet her burden of showing pretext solely by recycling the presumption arising out of the timing of the adverse employment action. To hold otherwise "would eviscerate the *McDonnell Douglas* framework for resolving claims at the demurrer or summary judgment stage, because the same minimal showing required of the plaintiff to raise a prima facie case would also suffice to preclude the employer from obtaining summary judgment notwithstanding otherwise unrebutted proof of articulated legitimate reasons for the employment termination." (*Loggins, supra*, 151 Cal.App.4th at pp. 1112-1113.) As in *Loggins*, Druez's "evidence of a temporal proximity 'only satisfies the plaintiff's *initial* burden.' " (*Id.* at p. 1112, italics added.)

Druez also asserts that the proposed contract contained a purportedly unenforceable liquidated damages provision, a fact she contends raises a reasonable inference of pretext. We reject this contention as well, as it is both factually and legally unsupported. Notably, Druez did not point us to any evidence that the contract that she was asked to sign was different or contained more onerous terms than the contracts that were offered to other teachers that were not out on disability or pregnancy leave. Indeed, Druez acknowledges that all teachers, including those holding the position of associate teacher, were required to sign employment agreements in May 2013. Moreover, Druez also fails to provide relevant legal authority to support her argument that the contract terms established pretext or discriminatory animus. (See, e.g., *Landry v. Berryessa Union School Dist*. (1995) 39 Cal.App.4th 691, 699-700 [issue that is not supported by pertinent or cognizable legal argument may be deemed abandoned].)

In sum, defendant established a legitimate reason for its adverse employment action. As a result, the burden shifted to Druez to establish pretext with additional evidence and she failed to do so.

2.5 Failure to Engage in the Interactive Process

Finally, we turn to Druez's claim that defendant failed to engage in an interactive process with her based on her purported disability or condition. Government Code section 12940, subdivision (m), requires employers to make reasonable accommodation for the known disability of an employee unless doing so would produce undue hardship to the employer's operation. (See also *Nealy v. City of Santa Monica* (2015) 234 Cal.App.4th 359, 373-374.) In addition, "under FEHA, an

employer must engage in a good faith interactive process with the disabled employee to explore the alternatives to accommodate the disability." (*Wysinger v. Automobile Club of Southern California* (2007) 157 Cal.App.4th 413, 424; see Gov. Code, § 12940, subd. (n).)

We begin with an issue central to Druez's claim that defendant failed to engage in an interactive process, namely, whether Druez had a disability under FEHA that prevented her from signing the proposed contract by July 10, 2013. (See CACI No. 2546). In her brief, Druez does not point us to any evidence indicating that she communicated any "postpartum discharge instructions" to defendant, or that she was otherwise mentally or physically incapable of signing the contract as of July 10, 2013, a month after she gave birth, due to a disability. To the contrary, Druez testified that three or four weeks after her daughter's birth, or by July 10, 2013, she felt "pretty good" and was well enough to return to work at that time. That evidence undercuts any suggestion that Druez was suffering from a disability that would have affected her ability to sign the proposed contract. At most, Druez felt pressured or stressed by Kuo's insistence that she sign an employment contract a month after she gave birth. Whether Druez's alleged stress should be considered a disability under FEHA, however, was not raised in connection with the motion for summary judgment and Druez cites no legal authority supporting that proposition on appeal.

Regardless, under FEHA, an employer's duty to reasonably accommodate an employee's disability is not triggered until the employer knows of the disability. (*Avila v. Continental Airlines, Inc.* (2008) 165 Cal.App.4th 1237, 1252–1253.) "While knowledge of the disability can be inferred from the circumstances,

knowledge will only be imputed to the employer when the fact of disability is the *only* reasonable interpretation of the known facts. 'Vague or conclusory statements revealing an unspecified incapacity are not sufficient to put an employer on notice of its obligations under the [FEHA].' " (*Brundage v. Hahn* (1997) 57 Cal.App.4th 228, 237, italics added.) Moreover, not every illness qualifies as a disability. (*Avila*, *supra*, 165 Cal.App.4th at p. 1249.) We conclude that Druez's s statement that she felt stressed by having to sign the contract is insufficient to put defendant on notice that Druez was suffering from a disability under FEHA. (See *Featherstone v. Southern California Permanente Medical Group* (2017) 10 Cal.App.5th 1150, 1168 [summary judgment properly granted because conclusion that employer was on notice of employee's temporary disability is not the only reasonable interpretation of the known and undisputed facts].)

Druez also did not show that she was willing to participate in an interactive process with defendant. (See CACI No. 2546 [plaintiff must prove she was willing to participate in an interactive process to determine whether reasonable accommodation could be made]; *Gelfo v. Lockheed Martin Corp.* (2006) 140 Cal.App.4th 34, 62, fn. 22 ["Each party must participate in good faith, undertake reasonable efforts to communicate its concerns, and make available to the other information which is available, or more accessible, to one party. Liability hinges on the objective circumstances surrounding the parties' breakdown in communication, and responsibility for the breakdown lies with the party who fails to participate in good faith."].) Druez simply refused to discuss defendant's proposed contract until after she returned to work in September 2013. By

unilaterally refusing to discuss defendant's employment contract until a month after the start of the school year, Druez is responsible for any breakdown in the interactive process.

To the extent that Druez is suggesting that her pregnancy was *the* disability, she conceded that defendant accommodated her pregnancy by allowing her to remain on extended leave from her teaching position. In fact, defendant agreed to extend Druez's leave for an additional three months, or through September 17, 2013, after she gave birth. Defendant never required Druez to return to work before the mutually agreed-upon return date of September 17, 2013. We emphasize that July 10, 2013 was the deadline defendant gave Druez to accept its employment offer and return the enclosed contract, not the day Druez was required to return to work.

Given these circumstances, Druez cannot show that defendant failed to engage in an interactive process to accommodate any disability.

DISPOSITION

The judgment is affirmed. Respondent shall recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, J.

WE CONCUR:

EDMON, P. J.

JOHNSON (MICHAEL), J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.