

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

ELIZABETH ANDERSON,	:	CIVIL NO. 3:05CV0167 (VLB)
<i>Plaintiff</i>	:	
	:	
STATE OF CONNECTICUT,	:	
DEPARTMENT OF CHILDREN AND	:	
FAMILIES,	:	
<i>Defendants</i>	:	September 19, 2007

**PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT OF
PLAINTIFF'S CROSS MOTION FOR PARTIAL SUMMARY JUDGMENT**

I. INTRODUCTION

Plaintiff, Elizabeth Anderson, files this Opposition to the Defendant's renewed Motion for Summary Judgment. Additionally, Plaintiff files this Memorandum in Support of her Cross Motion for Partial Summary Judgment on the issue of Defendant's retaliatory demotion of Plaintiff in response to her on-going complaints of discrimination and retaliation and in particular her state court injunction of December 23, 2003 and her CHRO complaint filed on March 2, 2004.

II. STANDARD OF REVIEW

Summary judgment is awarded when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Federal Rule of Civil Procedure 56 (c). In ruling upon a summary judgment motion, the district court must "resolve all ambiguities, and credit all factual inferences that could rationally be drawn, in favor of the party opposing summary judgment" and determine whether there is a

genuine dispute as to a material fact, raising an issue for trial. Kessler v. Westchester County Dep't of Soc. Servs., 461 F.3d 199, 206 (2d Cir. 2006) (quoting Cifra v. Gen. Elec. Co., 252 F.3d 205, 216 (2d Cir. 2001)). A fact is "material" when it "might affect the outcome of the suit under governing law." Jeffreys v. City of N.Y., 426 F.3d 549, 553 (2d Cir. 2005) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). The non-moving party must offer "some hard evidence showing that its version of the events is not wholly fanciful" in order to avoid a grant of summary judgment to the moving party. Id. at 554 (quoting D'Amico v. City of N.Y., 132 F.3d 145, 149 (2d Cir. 1998)). Under F.R.C.P. 56 (c) summary judgment may be rendered in favor of either party on the issue of liability alone even when there is a genuine issue of damages. Cf. Zipes v. Trans World Airlines, 455 U.S. 385 (1982) where the court also granted the plaintiff class' motion for summary judgment on the issue of TWA's liability for violating Title VII. If the evidence produced by the non-moving party is merely colorable or is not significantly probative, summary judgment may be granted. Anderson, Id. at 252.

III. STATEMENT OF THE FACTS

Plaintiff, Elizabeth Anderson, has been a full-time employee of the State of Connecticut Department of Children and Families (DCF) since November 2, 1990 and she was promoted to the position of Social Work Supervisor on July 22, 1994. On several occasions Plaintiff filed administrative complaints alleging racial discrimination and retaliation. The first such complaint was filed with the Connecticut Commission on March 4, 1996. Thereafter, on August 28, 1997 Plaintiff filed a federal lawsuit in the United States District Court for the District of Connecticut claiming race discrimination

in demotion and harassment. On August 19, 2002, Plaintiff filed a second complaint with the CHRO charging DCF management and administration with retaliation. On October 6, 2003 Plaintiff was placed on administrative leave, with a termination date of December 31, 2003. On December 23, 2003 Plaintiff filed an Ex Parte Application for Injunction action in Connecticut State Court in order to enjoin DCF from terminating her. The injunction application alleged racial discrimination and retaliation by Defendant DCF against Plaintiff. A hearing on the injunction was scheduled to be held on January 12, 2004 and was resolved by the agreement of DCF to return Plaintiff to work from the administrative leave as of March 12, 2004.

Between the time of DCF's decision to return Plaintiff to work and her actual return to work, Plaintiff filed a new CHRO complaint on March 2, 2004. Notice of this new complaint was provided to Defendant on or about March 9, 2004.

Upon her return to work after filing the state court injunction action, Plaintiff was placed in the *newly created position* of Social Work Supervisor of Quality Assurance. In late March or early April 2004 Plaintiff was notified of her assignment to the position of Court Liaison. On April 23, 2004 Plaintiff was given a memorandum outlining the job responsibilities by DCF Attorney, Mark Feller. While Plaintiff holds the title of Social Work Supervisor of Quality Assurance, Plaintiff does not actually supervise the work of anyone who performs Quality Assurance functions. Since March 12, 2004 Plaintiff's responsibilities have been limited to: reminding workers of court hearings; making certain that social workers appear in court at the appointed times; covering hearings by taking notes and relaying information to the social workers; informing the court of information from the treatment team when social workers are not able to appear in court;

determining any needs that the court desires from DCF; performing court “roll calls” from 8:00 to 9:30 a.m. each day; assigning cases to case “aides” from 3:30 to 5:00 p.m.; coordinating DCF internships for area college level students; and supervising the transportation related to the cases of social work case aides.

Since returning to work from administrative leave and settlement of the injunction action, Plaintiff has been demoted. Not until on or about May 2007, subsequent to mediation in this matter, did Defendant attempt to add some substance to Plaintiff’s “social work supervisor” role. Plaintiff was removed from the Court Liaison role and assigned two social workers to supervise. Social Work Supervisors are normally assigned five (5) to six (6) social workers to supervise. Additionally, Plaintiff continues to supervise the case aides (i.e. the transportation related to the cases of social work case aides).

On June 25, 2007 the Court overruled Defendant’s objection to Plaintiff’s Amended Complaint alleging that she had been demoted in retaliation for her protected activity. The evidence establishes that there is no genuine issue of material fact regarding Defendant’s demotion of Plaintiff when it placed her in the Court Liaison role.

IV. ARGUMENT

A. Plaintiff Has Established the Prima Facie Elements of Retaliation

Evidence sufficient to establish retaliation under Title VII requires a demonstration that (1) Plaintiff engaged in statutorily protected activity; (2) the employer was aware of plaintiff’s participation in the protected activity; (3) Plaintiff suffered an adverse employment action; and (4) there is a nexus between the protected activity and

the adverse action taken. Wanamaker v. Columbian Rope Co., 108 F.3d 462, 465 (2d Cir. 1997).

1. There is no Genuine Issue of Material Fact that Plaintiff Engaged in Protected Conduct and that Defendant Had Knowledge of it.

Plaintiff clearly challenged DCF employment practices that, if proven, were unlawful under Title VII. On December 23, 2003 Plaintiff filed an Ex Parte Application for Injunction and attached a Verified Complaint alleging violations, inter alia, under Connecticut Fair Employment Practices Act and Title VII of the Civil Rights Act of 1964. Further, on March 2, 2004 Plaintiff filed a complaint of discrimination with CHRO alleging termination, suspension, a poor evaluation, harassment, discrimination in terms and conditions of employment and retaliation in violation of Title VII and CFEPA and for having previously opposed, filed or assisted in a discrimination complaint. Defendant received notice of this charge on or about March 9, 2004. [Exhibit 25, Defendants' Motion for Summary Judgment]

Defendant acknowledges that certain individuals were aware that Plaintiff had previously opposed discrimination. [See page 4 of Defendant's Motion for Summary Judgment] However, Defendant goes to great lengths to claim that the manager responsible for the decision to place Plaintiff in the Court Liaison position had no knowledge of Plaintiff's prior discrimination charges or lawsuit.

Notably, Area Director Maria Brereton states only that she had "no *direct* knowledge of prior CHRO complaints" and "no *independent* knowledge of her previously filed state court injunction action". Brereton admits, however, to having "heard" that Plaintiff had "sued" other employees – both peers and supervisors but had no

knowledge that her complaints were based upon race discrimination. [Exhibit F, Defendant's Motion for Summary Judgment, Brereton Affidavit, ¶¶ 17-18]

Similarly Jayne Guckert, Plaintiff's immediate supervisor, states that she never *discussed* Plaintiff's "litigation" with her or anyone else, never *saw a copy* of the CHRO or federal complaints and was not aware that Plaintiff had previously filed a complaint of discrimination. [Exhibit E, Defendant's Motion for Summary Judgment, Guckert Affidavit, ¶¶ 10-11] These assertions fall far short of establishing a lack of knowledge. Thus, Defendant has failed to establish that its agents had no knowledge of Plaintiff's opposition to discrimination by way of her CHRO charges and lawsuit.

Moreover, even if particular agents of Defendant had no knowledge, "[n]either this nor any other circuit has ever held that, to satisfy the knowledge requirement, anything more is necessary than general corporate knowledge that the plaintiff has engaged in a protected activity." Gordon v. New York City Board of Education, 232 F.3d 111, 116 (2d Cir. 2000).

In Gordon, a strikingly similar case, the black female plaintiff filed a race discrimination case that was dismissed after a bench trial. After dismissal of the case she was removed from her teaching position and assigned to a district office but was *never given any job duties* by her supervisors. Defendants also brought a series of incompetence charges against her in an attempt to strip her of her teaching credentials. Those charges were eventually dismissed. She then filed a second lawsuit alleging retaliation for having filed the first lawsuit.

The Second Circuit Court of Appeals rejected Defendants' claim that specific agents of the Board were unaware of plaintiff's lawsuits. See also Reed v. A.W.

Lawrence & Co., Inc., 95 F.3d 1170, 1178 (2d Cir. 1996) (finding knowledge requirement "easily proved" because the corporate entity was aware of plaintiff's complaints); See also Alston v. New York City Transit Auth., 14 F. Supp.2d 308, 311 (S.D.N.Y. 1998) ("In order to satisfy the second prong of her retaliation claim, plaintiff need not show that individual decision-makers within the NYCTA knew that she had filed. . . . [an] EEOC complaint."). This is true whether knowledge is viewed from the context of whether Plaintiff meets her burden of a prima facie case of retaliation or whether the context is whether Defendant has established a legitimate non-discriminatory basis for its actions. It is useful to set forth at length the Court's reasoning in Gordon.

"The lack of knowledge on the part of particular *individual agents* is admissible as some evidence of a lack of a causal connection, countering plaintiff's circumstantial evidence of proximity or disparate treatment. See Alston, 14 F. Supp2d at 312-13. A jury, however, can find retaliation even if the agent denies direct knowledge of a plaintiff's protected activities, for example, so long as the jury finds that the circumstances evidence knowledge of the protected activities or the jury concludes that an agent is acting explicitly or implicit upon the orders of a superior who has the requisite knowledge. See *id.* at 311. This is so, moreover, regardless of whether the issue of causation arises in the context of plaintiff's satisfaction of her *prima facie* case or as part of her ultimate burden of proving that retaliation "played a motivating role in, or contributed to, the employer's decision." Renz v. Grey Advertising, Inc., 135 F.3d 217, 222 (2d Cir. 1997)."

Thus Defendant cannot avoid the inescapable fact that the knowledge of DCF management was sufficient for purposes of establishing knowledge of Plaintiff's protected activity.

2. There is No Genuine Issue of Fact Regarding the Protected Nature of Plaintiff's Conduct

The Second Circuit has adhered to the principle that an employee “need not establish that the conduct they opposed was in fact a violation of Title VII”, but rather only that she had a “good faith reasonable belief” that the underlying employment practice was unlawful. Manoharan v. Columbia College of Physicians & Surgeons, 842 F.2d 590, 593 (2d Cir. 1988) (holding that to prove that she was engaged in “protected activity,” an employee need only have a good faith reasonable belief that the underlying challenged actions of the employer violated the law); Reed v. A. W. Lawrence Co., 95 F.3d 1170 (2d Cir. 1996); Davis v. State University of New York, 802 F.2d 638, 642 (1986)¹. Indeed, opposition conduct does not lose protection even when the allegedly unlawful employment practice was later determined not to be in violation of Title VII. Hearth v. Metropolitan Transit Commission, 436 F. Supp. 635 (D. Minn. 1977).

Therefore, Plaintiff is not required to prove that her CHRO charges of race discrimination were valid. Nor is she required to prove that her state court injunction action claiming race discrimination was valid. All that is necessary is a good faith reasonable belief that her claims regarding Defendant’s employment practices were in violation of Title VII and/or CFEPA. [Exhibit B, Plaintiff’s Supplemental Affidavit, ¶ 11] Defendant has made no showing that Plaintiff’s claims of race discrimination were not genuinely or reasonably held.

3. There is no Genuine Issue of Fact that Plaintiff Has Suffered an Adverse Employment Action.

¹ Every circuit that has considered the issue has concluded that opposition conduct is protected even when based upon a good faith mistaken belief that Title VII has been violated. See e.g. Rucker v. Higher Educational Aids Board, 669 F.2d 1179, 1182 (7th Cir. 1982); Sisco v. J. S. Alberici Construction Co., 655 F.2d 146, 150 (8th Cir. 1981); Payne v. McLemore’s Retail Wholesale Stores, 654 F.2d 1130, 1137-40 (5th Cir. 1981); Parker v. Baltimore & Ohio Railroad Co., 652 F.2d 1012, 1019 (D.C. Cir. 1981); Monteiro v. Poole Silver Co., 615 F.2d 4, 8 (1st Cir. 1980); Sias c. City Demonstration Agency, 588 F.2d 692, 695 (9th Cir. 1978).

The Second Circuit Court of Appeals has broadly defined “adverse employment action” to include actions short of ultimate employment actions such as termination. Wanamaker v. Columbian Rope Co., 108 F.3d 462, 466 (2d Cir. 1997). Particularly instructive to the facts of the instant case is the decision of the Seventh Circuit Court of Appeals in Hilt-Dyson v. City of Chicago, 282 F.3d 456, 465 (7th Cir. 2002) which noted one category of adverse employment action as “cases in which a nominally lateral transfer with no change in financial terms *significantly reduces the employee’s career prospects by preventing her from using her skills and experience, so that the skills are likely to atrophy and her career is likely to be stunted*”.

The record evidence establishes that Plaintiff in the instant case retained her title supervisor after her return to work from Administrative Leave. However, despite maintaining the same title, pay and benefits, Plaintiff’s career prospects have been significantly reduced. For the past three years Plaintiff has been prevented from utilizing skills in social work that she was educated for, trained for and which she has been performing since 1990. Defendants have placed Plaintiff in a position that is largely clerical and/or administrative, provides no substantive social work skill, and is demeaning and humiliating.

Plaintiff has significant educational background in the field of social work. She has a Masters degree in social work from Springfield College in Massachusetts, and a Bachelors degree in administration of justice from Pennsylvania State in Pittsburgh, Pennsylvania (Exhibit A, Defendant’s Motion for Summary Judgment, Plaintiff’s Deposition p. 8, lines 9-21); she has been employed for seventeen (17) years by DCF and worked as a Social Work Supervisor for fourteen (14) years prior to being placed on

Administrative Leave (Exhibit A, Defendant's Motion for Summary Judgment Plaintiff's Deposition p.8, lines 24-25).

An adverse employment action “might be indicated by a termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices...unique to a particular situation.” Hilt-Dyson, supra at p. 465-466. See also de la Cruz v. New York City Human Resources Administration Department of Social Services, 82 F.3d 16, 21 (2d Cir. 1996) where a transfer to “less prestigious” unit of social services department with reduced opportunities for professional growth was found to be an adverse employment action.

Upon her return from Administrative Leave Plaintiff was transferred from the Probate Unit which she had supervised since 1999 and made “supervisor” of a newly established Quality Assurance Unit. Plaintiff was transferred with no explanation given for the transfer. Defendant is disingenuous in its assertion that Plaintiff has not suffered an adverse change in her employment status.

Defendant misses the mark when it presents the statement of Jayne Guckert that the “failure to supervise cases and/or staff never affected [her] “career path”. [Exhibit E, Defendant's Motion for Summary Judgment, ¶ 17] There is no evidence that Guckert sustained a three year period of time when she was disengaged from performing any substantive social work matters. Plaintiff was recently informed that she should undergo re-training in order to resume social work case supervision. Thus DCF recognizes that a hiatus in performance of social work tasks can result in a negative impact on skill level.

Upon her return from administrative leave, Plaintiff and Guckert were peers in the newly created Quality Assurance Unit. Yet, Guckert was selected for promotion but not Plaintiff. Defendant offers no reason why Guckert was selected for promotion to Program Supervisor rather than Plaintiff.

4. There is no Genuine Issue of Material Fact Regarding Defendant's Demotion of Plaintiff

No reasonable jury could find that the content of Plaintiff's job subsequent to her return to work from administrative leave was anything less than a demotion. No matter how one parses the term "Social Work Supervisor of Quality Assurance" or "Court Liaison", it is clear that substantively the job functions that Plaintiff has performed since her return to work are not "supervisory", are far below that of any other DCF Social Work Supervisor, are little more than "clerical", and would be deemed to be humiliating under the reasonable person standard.

The Second Circuit Court of Appeals has recently affirmed that a materially adverse change in the terms and conditions of employment may include "termination of employment, a *demotion* evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices unique to a particular situation." Zelink v. Fashion Institute, 464 F.3d 217 (2nd Cir. 2006) citing Galabya v. New York City Board of Education, 202 F.3d 636, 640 (2d Cir 2000).

Moreover, the Second Circuit has affirmed the recent holding of the Supreme Court in Burlington Northern and Santa Fe Ry. Co. v. White, ___ U.S. ___, 126 S.Ct. 2405 (2006). In Burlington Northern the Court held that "the anti-retaliation provision" of Title VII "is not limited to discriminatory actions that affect the terms and conditions

of employment." *Id.* at 2412-13. Instead, the Court held that "actionable retaliation" was that which "well might have dissuaded a reasonable worker from making or supporting a charge of discrimination." *Id.* at 2415 Zelink, *Id.* at 227. The decision of DCF to effectively demote Plaintiff is the very kind of action that would persuade a reasonable employee to refrain from opposing discrimination out of fear of retaliation.

In any summary judgment consideration the court must resolve all ambiguities, and credit all factual inferences that could rationally be drawn, in favor of the party opposing summary judgment." *Cifra*, 252 F.3d at 216. "[A]t the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986).

In the instant case there are no ambiguities or inferences to be resolved in favor of Defendant DCF. No reasonable juror would find that Defendant DCF's action to strip Plaintiff of her former job duties and responsibilities of supervising Social Workers and the Probate Unit and then relegating her to the *clerical role* of taking roll call at the Juvenile Court was anything less than a demotion. Further, Defendant DCF took the extraordinary step to humiliate Plaintiff by refusing to allow her even to fill in at court when Social Workers were not present. This conduct was punitive and retaliatory. Plaintiff attests that even this semblance of participation in the Social Worker aspect of the Court Liaison position was denied to her by the Attorney General's Office. [Exhibit B, Plaintiff Supplemental Affidavit, ¶ 3] Moreover, Plaintiff has been disallowed the opportunity to fulfill the same functions of the Court Liaison role that are allowed by her white male counterpart, Arthur Penna. [Exhibit B, Plaintiff Supplemental Affidavit, ¶ 7]

In de la Cruz v. New York City Human Resources Administration Department of Social Services, supra at 20, the court stated that "a transfer is an adverse employment action if it results in a change in responsibilities so significant as to constitute a setback to the plaintiff's career." An adverse employment action has also been found where the plaintiff was transferred from an "elite" unit to one that was "less prestigious," de la Cruz, supra at 21, or where the transfer effected a "radical change in nature of the [plaintiff's] work," See also Galabya v. New York City Board of Education, 202 F.3d 636, 641 (2d Cir. 2000); Rodriguez v. Board of Education of Eastchester Union Free School District, 620 F.2d 362, 366 (2d Cir. 1980).

In Rodriguez v. Board of Education, where an experienced middle school art teacher was transferred to an elementary school, the court found an adverse action. The transfer was found to be "in effect a demotion that would constitute a serious professional setback and stigma to [plaintiff's] career." Id. 365. Indeed, the court found the transfer to be a "radical change in the nature of the work" which constituted "interference with a condition or privilege of employment". Id. 366.

Plaintiff in the instant case has presented evidence that not only did she suffer the indignity of being removed from child protection case supervision, but professional colleagues mocked her as "the supervisor who gets all the trash" [Exhibit A, Plaintiff's Affidavit, ¶ 10]. In Galabya v. New York City Board of Education, while not finding an adverse employment action, the court elaborated upon the circumstances under which a transfer may meet the standard of materially adverse action.

An adverse employment action could be found by a showing of evidence that "the transfer was to an assignment that was materially less prestigious, materially less

suites to his skills and expertise, or materially less conducive to career advancement”. Id. at 641. At one time after being transferred to the Court Liaison position, Plaintiff was required to collect paperwork required by the federal government from the social workers. This work was so clearly clerical/administrative that the supervisor, Jayne Guckert, ultimately decided that Plaintiff should be removed from such demeaning tasks . The work was then re-assigned to a clerical worker. [Exhibit A, Plaintiff’s Affidavit ¶ 9].

See also Collins v. State of Illinois, 830 F.2d 692, 703 (7th Cir. 1987) (in Title VII case, employer can make job undesirable or even unbearable without affecting money or benefits). In Collins the employee’s loss of a phone and office was accompanied by a loss of status, a clouding of job responsibilities, and a diminution in authority. “[A]dverse job action is not limited solely to loss or reduction of pay or monetary benefits. It can encompass other forms of adversity as well.” Id. 703. In Collins the employee was placed in a new department where her supervisors did not even know what her job entailed. Her office was taken away from her, and she was assigned to a desk outside her supervisor’s office, where a receptionist would typically sit. She also lost her phone, business cards, and listing in professional directories and publications. These changes were found to constitute adverse employment action. Plaintiff has attested that even in the Court Liaison role she has been refused even access to the department’s Link system at court even though the other Court Liaison has such access, as well as another employee. [Exhibit B, Plaintiff’s Supplemental Affidavit, ¶ 7] Likewise, in Dahm v. Flynn, 60 F.3d 253 (7th Cir. 1994) the court found that “a dramatic downward shift in skill level required to perform job responsibilities can rise to the level of an adverse employment action....” Id. at 257.

The facts of the instant case are strikingly similar to those in Kessler v. Westchester Department of Social Services, 461 F.3d 199 (2nd Cir. 2006). Prior to his transfer to Yonkers, Kessler had responsibilities and performed functions as set out in the official DSS description of the job of an Assistant Commissioner. Upon his transfer, although he retained the title of Assistant Commissioner, he was stripped of those responsibilities and not allowed to perform those functions. Whereas he previously had overall responsibility for policy formulation, resource allocation, planning and evaluation of programs and procedures, financial and personnel management, he no longer had any such responsibilities. Whereas he had been under the general direction of the Commissioner of Social Services or Deputy Commissioner, he no longer reported to them but instead reported to a supervisor whose grade level was no higher than his. Whereas his job had been to function as part of the top management of the Department, he was no longer given any managerial assignments and was not even allowed to attend meetings of lower-level managers. Whereas he had supervised a large number of managerial, professional and clerical support staff, upon his transfer he was not allowed to supervise anyone. He was required to undertake clerical tasks and to perform data entry alongside employees several grades below him.

On such facts the court had no trouble concluding that under the Burlington Northern rationale, the reassignment to which Kessler was subjected could well have dissuaded a reasonable employee in his position from complaining of unlawful discrimination. The same reasoning is true with respect to Plaintiff in the instant case.

It cannot be honestly argued that Plaintiff's supervision of the Probate Unit was

faulty. In fact, statistical evidence establishes that under Plaintiff's supervision the Probate Unit between September 1, 2002 and September 30, 2003 regularly and consistently carried the highest number of cases and had the highest percentage utilization of any other unit within the Bridgeport office of DCF. Even the Program Supervisor, Malcolm Blue, acknowledged in writing that "under Liz's fine leadership, the Probate unit continues to be one of the most effective and efficient groups in DCF that services children". [Exhibit A, Plaintiff's Affidavit, ¶ 12; Exhibits A-2, A-3, A-4].

In her job as Court Liaison, Plaintiff had significantly diminished job responsibilities that are largely clerical in nature. These duties include: spending most of her day in Juvenile Court taking "roll" to ensure that social workers are present when needed on court cases; arranging for transportation for social work case aides; and coordinating internships for schools in the Bridgeport area. Plaintiff has been prevented from exercising any substantive social work skills, her area of expertise. [Exhibit A, Plaintiff's Affidavit, ¶ 6, 7, 8, 9, 11, 22].

Even in response to Plaintiff's Opposition to Defendants' Motion for Summary Judgment, Defendants offered no evidence that Plaintiff has not been demoted. Instead, Defendants moved to strike the affidavit of Plaintiff. [See Docket Entry #28] If indeed, Plaintiff's affidavit had contained factually inaccurate information, Defendant could simply have provided affidavits refuting the facts as stated. It is telling that Defendant did not attempt to refute the facts for the simple reason that the facts as stated by Plaintiff regarding her current job responsibilities are accurate. Furthermore, by Order dated June 25, 2007 Defendant was granted their requested extension of time through August 10 within which to engage in further discovery on the issue of Plaintiff's demotion. See

Docket Entry #58]. Despite the opportunity to do so, Defendant wholly failed to take a single deposition, failed to re-depose Plaintiff, and failed to present any further interrogatories or document requests. Thus, the facts presented by Plaintiff regarding her demotion and the substantive change in her job duties must be taken as true.

Plaintiff had a good faith, reasonable belief that she was opposing an employment practice made unlawful by Title VII when she filed the injunction action on December 22, 2003 alleging racial discrimination and retaliation and when she filed her March 2, 2004 CHRO charge. Her good faith, reasonable belief is all that was necessary under the law of this circuit. McMenemy v. City of Rochester, 241 F.3d 279, 285 (2d Cir. 2001)

Defendant misperceives the gravamen of its offense when it focuses on other Social Work Supervisors who do not oversee cases or supervise other social workers. It is rather the *content* of the job that is the proper focus. While Melanie Kmetz and Zoe Curtin do not supervise social work staff or cases, the substantive content of their work requires the application of their social work skills. They are responsible for making certain that there are treatment plans written for children in placement. DCF receives federal funds related to how effectively they carry out this treatment plan function. [Exhibit B, Plaintiff's Supplemental Affidavit, ¶ 6 and attached Exhibit 1]

Even with regard to the Department's only other "Court Liaison", it is apparent that Defendant has deliberately varied the content of Plaintiff's responsibilities. Arthur Penna is permitted to engage in presentation of case information to the court when the social worker is not present, he is permitted access to the DCF Link system while at court, he is permitted keep logs of all cases in which DCF had filed petitions in court in

order that he could monitor the workers' timely submission of court paperwork. [Exhibit B, Plaintiff's Supplemental Affidavit, ¶ 7] When compared with every other Social Work Supervisor, Plaintiff has suffered a significant diminution in job duties and responsibilities, resulting in an adverse employment action.

5. There is no Genuine Issue of Material Fact Regarding Defendant's Unlawful and Retaliatory Motivation in Demoting Plaintiff

As noted previously, Plaintiff has significant educational background in the field of social work. She has been employed for seventeen (17) years by DCF and worked as a Social Work Supervisor for fourteen (14) years prior to being placed on Administrative Leave (Exhibit A, Defendants' Motion for Summary Judgment, Plaintiff's Deposition p.8, lines 24-25).

Defendant was well aware of Plaintiff's excellent case supervision skills, as established by the performance evaluations received by her prior to 2003. Further, DCF was aware of the excellent statistical results achieved by the Probate Unit when it was supervised by Plaintiff even as compared to other such units in various regional offices. Defendant admitted that Plaintiff was "both experienced and knowledgeable". [Exhibit F, Defendant's Motion for Summary Judgment, ¶ 15]

At a time when DCF has been under court scrutiny, including a Consent Decree regarding its handling of child welfare/child protection cases, it is inconceivable that the agency would fail to fully utilize the skills of such a promising, intelligent and hardworking supervisor as Plaintiff. The court may take judicial notice of the fact that DCF has been under the Juan F. federal court Consent Decree by which it has been required to maintain some twenty-two (22) performance measures in order to exit from federal court oversight. Further, it is incomprehensible that Defendant would waste

\$80,000 of taxpayer dollars by assigning Plaintiff to duties that could be handled by the lowest level clerical employee. These facts, viewed in the total circumstances of this case leads to the inescapable conclusion that Defendant wished to retaliate against Plaintiff by demoting her, perhaps with the intent to force her to voluntarily quit.

A. The timing of Defendant's Demotion of Plaintiff

The demotion of Plaintiff came close on the heels of her filing the injunction action that alleged racial discrimination and retaliation. Plaintiff filed the Ex Parte Injunction on December 23, 2003. The injunction hearing was scheduled for January 12, 2004. However, the matter was settled at that time because of Defendant's agreement to rescind the termination decision. Plaintiff further filed a CHRO claim regarding the events leading to her administrative leave on March 2, 2004. Defendant received notice of the new CHRO complaint on or about March 9. Plaintiff was not returned to work from administrative leave until March 12, 2004. Thus there was close temporal proximity to Plaintiff's demotion upon her return to work from administrative leave.

Whether the court looks to the filing of the injunction action with its accompanying complaint of discrimination or the filing of the new CHRO charger, there is a close nexus between the protected activity and the adverse employment action. There is a mere four (4) month lapse between the time of the filing of the injunction and the demotion, a three (3) month lapse between the scheduled injunction hearing and the demotion, and a scant five (5) weeks between Defendant's knowledge of the CHRO charge filing and the actual demotion of Plaintiff on April 23.

Even if the court examines the time between the injunction action and the actual demotion the causal connection is close. Some courts have held that an "intervening

pattern of antagonism is sufficient to support a claim of retaliation”. Robinson v. S.E. Pennsylvania Transportation Authority, 982 F.2d 892, 894 (3rd Cir. 1993); Kachmar v. Sungard Data Systems, Inc., 109 F.3d 173 (3rd Cir. 1997). Defendant delayed from January 12 until two months later before returning Plaintiff to work.

When Defendant agreed on January 12 to return Plaintiff from administrative leave, it made no mention of her being demoted or placed in the Court Liaison position. At the time of Plaintiff’s actual return from administrative leave on March 12, Defendant again made no mention of a demotion. Defendant received notice of Plaintiff’s newly filed CHRO charge on or about March 9. Area Director Maria Brereton admits that she informed Plaintiff in late March to early April 2004 that she would be assigned to the Court Liaison position. [Exhibit F, ¶ 14, Defendant’s Motion for Summary Judgment] Thus, the decision to demote Plaintiff and place her in the Court Liaison position appears to have come a scant *one to two weeks* after Defendant learned that Plaintiff was not “content” with merely being brought back to work but rather intended to challenge what she deemed to be discriminatory and retaliatory action against her. The close temporal proximity between the protected activity and the adverse employment action is inescapable.

B. The lack of legitimate business justification

Defendant cannot establish a legitimate business justification or non-discriminatory or retaliatory basis for its decision to gut Plaintiff’s Social Work Supervisor position of all reasonable supervisory functions and responsibilities. Three years have now elapsed since Plaintiff was placed in the pseudo-supervisory position of Supervisor of Quality Assurance/Court Liaison.

While the agency still struggles to meet requirements of timetables and measurable goals under the Consent Decree, it is unthinkable that a supervisor of the caliber of Plaintiff would be relegated to an essentially clerical role. It is further unthinkable, and a terrible waste of taxpayer dollars to relegate a competent and skilled Social Work Supervisor to a clerical role, particularly when she is being paid \$80,000 per year to be a roll taker.

Indeed, the gross underutilization of a highly effective and skilled social worker such as Plaintiff is so bizarre that it can only be explained in terms of retaliation and deterrence. As noted by Plaintiff, after her demotion to the Court Liaison position, she was introduced as the Supervisor who “gets all the trash”. [Exhibit A, Plaintiff Affidavit, ¶ 10]

A powerful message has been sent to employees of DCF that engaging in protected activity, complaining of discrimination and retaliation, will result in the wrath of the agency being brought down upon the heads of anyone who would follow in the path of Plaintiff. Defendant’s actions would dissuade a reasonable employee from making or supporting a charge of discrimination. Thus, their action interferes not only with the rights of Plaintiff but also interferes with the “unfettered access” of others to Title VII’s remedial mechanism. See Burlington Northern, Id. Defendant’s actions make sense only when viewed from the context of a desire to control and deter all employees in its workplace from complaining of discrimination. This cannot be a legitimate business justification.

As noted by the concurrence “ ...[a] substantial reduction in duties and responsibilities can in itself be painful and humiliating for a productive person”. Joseph

v. Leavitt, 465 F.3d 87, 95 (2nd Cir. 2006) citing Burlington Northern & Santa Fe Ry. v. White. This humiliation of Plaintiff and the apparent desire to deter others from complaining of discrimination and retaliation are the only logical reasons for the demotion. This motivation cannot provide legitimate business justifications for Defendant's action.

C. Plaintiff's Claim of Demotion is not Time-barred.

As noted in Plaintiff's Opposition to Defendant's Motion to Strike Affidavit, and as maintained at the time of the oral argument in this matter, the demotion claim must be permitted because it is reasonably related to matters that were alleged in the CHRO complaint. Second Circuit precedent in Butts v. City of New York Department of Housing, 990 F.2d 1397 (2d Cir. 1993), holds that the requirement of exhaustion is relaxed where there is "reasonable relationship" between the EEOC charge and retaliatory acts. Exhaustion is not required in circumstances such as the present one where the claimed "new" allegation is reasonably related to the allegations that were investigated. Moreover, it would have likely been a futile act for Plaintiff to file a new CHRO claim when her earlier claims of retaliation had already been rejected by CHRO. Defendants cannot credibly claim prejudice, surprise or any lack of ability to defend against the claim of demotion. Defendant was in no way prevented from conducting complete discovery regarding the facts and circumstances of Plaintiff's current job duties and responsibilities. Indeed, it was legal counsel for Defendant DCF that was responsible for drafting the memorandum informing Plaintiff and others of her new job duties upon her return from administrative leave.

In her CHRO complaint, Plaintiff had alleged retaliation generally in Defendants' treatment of her. Moreover, Plaintiff had noted in discovery responses an ongoing course of conduct by Defendants removing her from supervision of child protection cases and prevented from following her usual occupation subsequent to the filing of her CHRO complaints. In her CHRO complaint Plaintiff made broad allegations of discriminatory and retaliatory treatment by Defendants, allegations that were broad enough to include the current demotion. Under the holding of Butts, Plaintiff's claim of demotion is not time-barred. The Court's earlier decision to deny Defendant's objection to Plaintiff's Amended Complaint must be upheld.

D. Defendant's Shifting Defenses Establishes the Pretextual Nature of its Decision to Demote Plaintiff.

At the oral argument in this matter, Defendants' counsel raised the claim that additional discovery was required because of a claimed agreement on January 12, 2004 with Plaintiff's then counsel that Plaintiff was in agreement with return to work from administrative leave under the conditions of a demotion. Despite the opportunity to do so, Defendant's counsel has failed to take additional depositions, to present interrogatories, or take any additional discovery.

Instead, unable to prove that Plaintiff was in agreement with the demotion, Defendant now shifts its defense to a claim that Plaintiff has acquiesced in the demotion by failing to complain about it. Plaintiff denies that she acquiesced in the demotion. Because she was informed by DCF in-house counsel, Mark Feller, that the job duties would not be changed and because the transfer of job was not grievable under the collective bargaining agreement, Plaintiff had no real choice except to pursue the matter

through litigation. [Exhibit A, Plaintiff's Affidavit, ¶ 6; Exhibit B, Plaintiff's Supplemental Affidavit, ¶ 18]

Further, Defendant now makes the incredible plea that two supervisors expressed their desire to not supervise Plaintiff upon her return from administrative leave purportedly because she had previously filed grievances or complaints against them. [Exhibit D, Affidavits of Malcolm Blue ¶ 6, Affidavit of Albert Cagganello ¶ 7, Defendant's Motion for Summary Judgment] This court is not being asked to act as a "super personnel administrator" as Defendants suggest. However, it is absurd for Defendants to contend that it makes decisions on job assignments based upon an employee's expressed preferences or based upon the preferences of supervisors.

Plaintiff had been a union steward for many years and thus had many occasions to make complaints regarding supervisors, on her own behalf as well as on behalf of other employees. Management could ill afford to transfers or changes of employee assignments on this basis because of the inevitable instability that would thereby be created. Even the option presented to Plaintiff to transfer to another regional office appears designed more to send a message to employees that those who dare to oppose discrimination in the workplace will be banished. These varied and shifting reasons for the demotion of Plaintiff establishes the pretextual nature of Defendant's motivation.

When an employer offers inconsistent and shifting reasons for its own actions, a permissible inference may be made that the proffered reasons are false. "We agree that a jury issue on the question of pretext may be created when an employer offers inconsistent and varying explanations for a decision to terminate a plaintiff". See Norville v. Staten

Island Univ. Hosp., 196 F.3d 89, 97-98 (2d Cir. 1999); EEOC v. Ethan Allen, Inc., 44 F.3d 116, 120 (2d Cir. 1994).

V. CONCLUSION

More than ample evidence exists in the record for the court to determine that not only is Defendant's Motion for Summary Judgment unfounded, but rather the court should grant Plaintiff's Cross Motion for Partial Summary Judgment on the issue of Plaintiff's retaliatory demotion. There are no genuine issues of material fact regarding the fact that Plaintiff engaged in protected activity, there is no question that Defendant was aware of the activity, there is no question that any reasonable juror would find that Plaintiff suffered an adverse employment action and that the adverse action was taken for purposes of retaliating against Plaintiff.

Plaintiff's Cross Motion for Partial Summary Judgment should be granted.

FOR THE PLAINTIFF
ELIZABETH ANDERSON

By: /s/
Josephine Smalls Miller, Fed. Bar # ct27039
130 Deer Hill Avenue, Suite #13
Danbury, CT 06810-7773
Tel: (203) 730-9184
Fax: (203) 748-6449
Email: jmillerlaw@sbcglobal.net

CERTIFICATION

I hereby certify that on September 19, 2007, a copy of the foregoing Plaintiff's Opposition to Defendant's Motion for Summary Judgment and Plaintiff's Cross Motion for Partial Summary Judgment was filed electronically. Notice of this filing was sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/

Josephine S. Miller

