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STATE OF MICHIGAN

COURT OF APPEALS

BRENEE JONES,

Plaintiff-Appellant,

V

CITY OF FLAT ROCK,

Defendant-Appellee.

UNPUBLISHED
August 31, 2026
11:43 AM

No. 373683
Wayne Circuit Court
LC No. 23-005572-CD

Before: ACKERMAN, P.J., and BAZZI and LIEVENSE, JJ.

LIEVENSE, J. (*concurring in part, dissenting in part*).

I agree with Part IV of the majority opinion to affirm the dismissal of plaintiff's hostile work environment claim because she has not shown that she is a member of a protected class under the CRA, MCL 37.2101 *et seq*.

I concur in part and dissent in part, however, with Part III of the majority opinion that affirms the trial court's dismissal of plaintiff's retaliation claims on the grounds that she failed to establish causation for a prima facie claim under the WPA, MCL 15.361 *et seq*., and the CRA.

The majority focuses its analysis on the WPA and CRA's requirements that, to establish a prima facie case, plaintiff must show a causal connection between her protected activity and the adverse employment actions. Thus, the majority appears to assume without deciding that plaintiff engaged in protected activity under the acts. For both retaliation claims, I believe plaintiff proffered evidence that she engaged in protected activity. In April 2022, when plaintiff was employed by the Flat Rock Community Center, she filed a complaint with her superiors that City Councilmember Bergeron made racially charged statements to her during a meeting at the Community Center. The complaint prompted an investigation that Bergeron knew about.

Next, in the analysis, the majority appears to again assume without deciding that plaintiff experienced adverse employment actions under the acts. I agree. Plaintiff identified two categories of alleged retaliatory adverse actions: (1) Bergeron's votes against the Flat Rock Community Center's interests and (2) her suspension and termination in late March/early April 2023. More specifically as to the first category, Bergeron voted against plaintiff's promotion at the Community Center (first in September 2022 and then in February 2023) and voted against the

Community Center's interests in other ways over several months. Also, as for the second category, after she was promoted in late February 2023 when the city council no longer could stop her promotion, her supervisor suspended and then terminated her in late March/early April 2023.

To establish a prima facie case of retaliation under both the WPA and CRA, however, plaintiff also had to establish a causal connection between her protected activity and the adverse actions. *Whitman v City of Burton*, 493 Mich 303, 320; 831 NW2d 223 (2013); *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 161; 934 NW2d 665 (2019). I agree with the majority opinion that plaintiff has failed to provide evidence creating a genuine issue of material of fact of a causal connection between her protected activity and her suspension and termination. After months of the Community Center attempting to promote plaintiff, in February 2023 the Community Center received the authority to promote her without the City Council and Bergeron's approval, and plaintiff's supervisor did so. Some weeks later, plaintiff's supervisor terminated her employment. Plaintiff has not proffered evidence of a causal connection between her protected activity in April 2022 and her suspension or termination in late March/early April 2023. Plaintiff argues that defendant's purported legitimate, nonretaliatory reasons for terminating her employment are pretextual, but under the applicable burden-shifting analysis we do not consider possible pretext until after plaintiff establishes a prima facia case, which I agree with the majority she has not done. *Debano-Griffin v Lake Co*, 493 Mich 167, 176, 828 NW2d 634, 639 (2013).

However, viewing the evidence in the light most favorable to the plaintiff as required, *id* at 175, I have a different opinion regarding Bergeron's votes, especially his votes against plaintiff's promotion. I believe genuine issues of material fact exist as to whether there is a causal connection between plaintiff's protected activity and Bergeron's votes, and that there are genuine issues of material fact as to whether defendant's proffered legitimate, non-retaliatory reasons for Bergeron's votes are pretextual. The majority opinion suggests that plaintiff relies on the timing of Bergeron's votes as evidence of causation. But the record reveals other circumstantial evidence from which, if proven, a factfinder could reasonably infer causation, including:

- Bergeron did not participate in the spring 2022 investigation of plaintiff's complaint;

- In May 2022, Bergeron reportedly felt that he could not go to the Community Center without an escort, and a city employee raised with defendant's legal counsel a concern that Bergeron should recuse himself from council votes about the Community Center due to a concern that he could not vote on such matters without bias, but Bergeron did not recuse himself from votes about the Community Center or plaintiff;

- Bergeron regularly cast the deciding vote regarding the Community Center, meaning his recusal or change in vote would have led to the opposite result, including on the two votes to approve plaintiff's promotion, which both failed by a vote of 3-3;

- On August 1, 2022, Bergeron cast the deciding vote (3-4) against convening a closed session to discuss the report summarizing the investigation of the incident;

- Bergeron then participated in the council's August 1, 2022 vote "to accept the Police and City Attorney findings regarding the City Attorney's legal opinion [that] no further action [was] required" following the investigation into his alleged statements;

- Bergeron's reasons for his votes and decision not to recuse himself are not known because he did not appear for a deposition; and

- The deposition testimony of then-Community Center employee and plaintiff's coworker Heather Beitler, who explained how the Community Center operated and about Bergeron's hostility toward the Community Center and Jones in 2022-23 that she believed was in part connected to plaintiff's complaint, including her belief that Bergeron attempted to fire plaintiff after she made the complaint.

Next, the majority opinion relies on the fact that the Community Center had preexisting financial troubles and that Bergeron voted against the Community Center's requests before plaintiff's protected activity, and so his subsequent votes to deny plaintiff a promotion and other votes cannot be connected to plaintiff's protected activity and therefore are not pretextual. Respectfully, I disagree and believe that, based on the circumstantial evidence outlined above, genuine issues of material fact exist as to pretext such that I would reverse in part the trial court's decision to grant summary disposition in favor of defendant on plaintiff's retaliation claims with respect to Bergeron's votes. See *Rymal v Baergen*, 262 Mich App 274, 303; 686 NW2d 241 (2004) ("A causal connection can be established through circumstantial evidence, such as close temporal proximity between the protected activity and adverse actions, as long as the evidence would enable a reasonable fact-finder to infer that an action had a discriminatory or retaliatory basis.").

/s/ Andrew J. Lievense