STATE OF MICHIGAN

COURT OF APPEALS

CHAPTER 7 BANKRUPTCY ESTATE OF DAVID B. ABU, by K. JIN LIM, Trustee, Plaintiff-Appellant, v CITY OF ANN ARBOR, Defendant-Appellee.	UNPUBLISHED January 11, 2024 No. 363487 Washtenaw Circuit Court LC No. 21-000107-CD

Before: K. F. KELLY, P.J., and JANSEN and HOOD, JJ.

PER CURIAM.

In this employment discrimination and hostile work environment case, plaintiff appeals by right the trial court's order and opinion granting defendant's motion for summary disposition under MCR 2.116(C)(7) and (C)(10). Finding no errors warranting reversal, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

Plaintiff is the trustee for the bankruptcy estate of David B. Abu, the individual who worked for defendant and who was the subject of the alleged workplace discrimination.[1] According to Abu, he is a practicing Muslim from Palestine. On March 3, 2017, Abu applied with defendant for employment as a temporary construction inspector. Defendant hired Abu for the position on March 8, 2017, as a temporary employee with an employment term of no more than six months. Abu was supervised by Gary Shivley, who was employed in defendant's Department of Public Works.

On May 3, 2017, Abu submitted an application for a permanent construction inspector job with defendant. Abu did not receive the job, which was instead given to Carl Emmons, another

[1] Abu's Chapter 7 bankruptcy petition was filed on May 15, 2019, in the Eastern District of Michigan.

applicant with more years of experience working with defendant, on June 8, 2017.[2] According to defendant, he was "told by an unnamed individual on Defendant's inter-office phone line, that [he] should not apply to [sic] position."

Abu submitted a second application for a permanent position on May 25, 2017. Abu was interviewed twice for this position. However, as with the first application, the job went to another applicant, Leandra Zander, who scored higher during defendant's panel interview of candidates. Abu claimed that Zander told him that his "age contributed to the City's decision not to select [him] for the position . . . ." Abu also claimed that Shively once "flexed his muscles saying 'white power' " and told Abu that "discrimination is high against Blacks, Arabs, and Mexicans."

On April 15, 2019, Abu, through his attorneys, sent a letter to defendant seeking copies of his personnel file under the Bullard-Plawecki Employee Right-to-Know Act ("Right to Know Act"), MCL 423.501 *et seq*. After responding, defendant received a draft complaint from Abu's attorneys alleging workplace discrimination concerning hostile statements regarding his nationality and religion, which prompted defendant to conduct an investigation into Abu's claims. Defendant was unable to substantiate the claims in its investigation.

Two years later, after Abu filed for Chapter 7 bankruptcy in the Eastern District of Michigan, plaintiff, the trustee of Abu's bankruptcy estate, filed a complaint asserting claims of discrimination on the basis of age, religion, and national origin under the Elliot-Larsen Civil Rights Act ("ELCRA"), MCL 37.2101 *et seq*.. Plaintiff also asserted a claim for (1) wrongful discharge, (2) violation of the Right-to-Know Act; and (3) violation of defendant's local ordinance against discrimination. Defendant answered the complaint.

On May 12, 2022, defendant moved for summary disposition under MCR 2.116(C)(7) and (C)(10). Concerning plaintiff's discrimination claims, defendant argued that plaintiff failed to present direct evidence of discrimination because all of the allegedly discriminatory statements made to Abu were not made by persons with decisionmaking authority in the hiring process and were, at best, "stray remarks." Defendant also argued that plaintiff failed to demonstrate any circumstantial evidence of discrimination. Specifically, defendant argued that under the *McDonnell-Douglas* burden-shifting framework,[3] plaintiff failed to establish a prima facie case of discrimination because the only record evidence was that defendant selected two qualified candidates for the roles. But even if plaintiff could make such a showing, defendant argued it had "legitimate, non-discriminatory" reasons for making the hiring decisions they made: "The City selected Emmons and Zander because Emmons had more seniority with the City and both Emmons and Zander had more construction inspection experience than Abu." Defendant also argued that plaintiff could offer no evidence that its offered reasons for its hiring decisions were pretextual.

[2] Although plaintiff's complaint asserted claims against defendant arising out of the failure to hire plaintiff for this opening, plaintiff conceded at oral argument in this Court that those claims have been abandoned.

[3] *McDonnell Douglas Corp v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973).

With respect to plaintiff's hostile work environment claim, defendant argued that the statements allegedly made to Abu were insufficient to constitute a hostile work environment, were "isolated occurrences," "mere offensive utterances," and were not "extreme." Defendant argued that plaintiff's claim concerning the Right-to-Know Act was meritless because defendant produced the personnel file to Abu, and his complaints about what should have been in the file were not supported by the requirements of the statute.

Lastly, defendant argued that it was entitled to summary disposition of plaintiff's wrongful discharge and ordinance violation claims under MCR 2.116(C)(7). Specifically, defendant argued that it was immune to tort liability except under enumerated exceptions, which were not present in the case. In addition, defendant argued that the ELCRA was the exclusive remedy for wrongful discharge.

Plaintiff responded in opposition on June 3, 2022. Plaintiff argued that Abu's age discrimination claim was not subject to summary disposition because he presented evidence that Zander said age was a factor when Abu was not hired for the second open position in 2017. Defendant also admitted that overqualification was a possible reason Abu was not hired. Similarly, plaintiff argued that the national origin and religion claims should not be dismissed because he presented evidence in the form of statements made by Shively regarding discrimination against "Arabs" and exclaiming "white power."

Concerning the hostile work environment claim, plaintiff argued that defendant's treatment of Abu interfered with his job because he was passed for the permanent positions as a result of the hostile attitude. Plaintiff asserted that defendant conducted an insufficient investigation in which defendant admitted that the alleged conduct had the "potential" for harassment. Thus, plaintiff argued there was a question of fact for trial.

Plaintiff also argued that the claim for violation of the Right-to-Know Act should not be dismissed because plaintiff believed there were documents missing from the file, which prejudiced plaintiff's litigation. Concerning defendant's claims of immunity, plaintiff argued that it did not have tort claims outside of the ELCRA, thus immunity was inapplicable. Lastly, plaintiff argued that the ELCRA was not the exclusive remedy for the wrongful discharge claim.

The trial court held a hearing on defendant's motion for summary disposition on June 15, 2022. The trial court took the matter under advisement and, on September 29, 2022, issued an opinion and order granting defendant's motion under MCR 2.116(C)(7) and (C)(10). The court first rejected the argument that plaintiff submitted sufficient direct evidence of discrimination to survive summary disposition:

> Plaintiff has not identified any "direct" evidence that the City's hiring decision was based on Abu's religious beliefs, age, or national origin. Moreover, even in cases involving direct evidence of discrimination, a plaintiff must establish evidence that the "discriminatory animus was causally related to the *decisionmaker's* action." *Harrison v Olde Financial Corp*, 225 Mich App 601, 613[; 572 NW2d 679] (1997) (emphasis added). The record before the Court indicates the individuals identified in Abu's declaration (i.e., the coworker who stated, "white power," and Zander) were not involved in the City's decision to offer

> the June position to a different applicant. Nor has Plaintiff identified any evidence that would support a "cat's paw" theory of discrimination. See *Jewett v Mesick Consol Sch Dist*, 332 Mich App 462, 473[; 957 NW2d 377] (2020) ("Under the 'cat's paw' theory of employer liability, discriminatory animus held by a supervisor with no decision-making authority over an affected employee can be attributed to the employer if the biased supervisor's conduct is nevertheless a proximate cause of the adverse employment action against the employee.").

Turning next to whether plaintiff instead satisfied the *McDonnell-Douglas* framework, the court presumed plaintiff established a prima facie case for discrimination and analyzed the case to determine whether defendant "proffered a legitimate, non-discriminatory reason" for its hiring decisions and whether plaintiff "carried its [sic] burden of presenting evidence of pretext." Concerning the first position Abu was not hired for, the court found dispositive the fact that defendant already identified Emmons as a good candidate before Abu applied. In addition, the court found that it was reasonable for defendant to consider Emmons more qualified because he worked for defendant for a longer time and had more experience as a construction inspector.

With respect to the second job Abu was not hired for, the court noted that plaintiff never provided a sworn declaration of any declarant, including Zander, but rather relied on Abu's hearsay in his declaration concerning those statements. The court concluded these statements were not admissible under any relevant exception to the rule against hearsay. In addition, the court determined that plaintiff failed to present evidence that Abu was more qualified than Zander for the job.

The court next addressed plaintiff's hostile work environment claim. The court concluded that plaintiff failed to present evidence of "ethnic, sexist, or ageist remarks hostile to a protected class from which an interference of hostile work environment could be drawn." "Further, Plaintiff has also presented no evidence that the offensive remarks were frequent or constant in nature, nor has Plaintiff presented any evidence indicating the conduct substantially interfered with Abu's employment." The court also found that plaintiff failed to present evidence that defendant was aware of the alleged hostility and that defendant took remedial actions once it was made aware of Abu's complaints.

The court also concluded that plaintiff's wrongful discharge was subject to summary disposition because the ELCRA was the exclusive remedy for adverse employment actions. In addition, Abu was hired as a temporary employee and there was no evidence his employment ended except on its own terms. With respect to plaintiff's claim under the Right-to-Know Act, the court stated the Act "does not set forth what documents *must* be included in a personnel record," and that the Right-to-Know Act "does not create a statutory cause of action for failing to include documents in a personnel record." Lastly, the court concluded that plaintiff's claim that defendant violated its own antidiscrimination ordinance was subject to summary disposition because defendant was immune from suit from such a claim. This appeal followed.

II. STANDARDS OF REVIEW

The trial court granted summary disposition in defendant's favor under MCR 2.116(C)(7) and (C)(10). This Court reviews de novo a trial court's decision on a motion for summary

disposition. *Dextrom v Wexford Co*, 287 Mich App 406, 416; 789 NW2d 211 (2010). Under MCR 2.116(C)(7),

> a motion for summary disposition may be raised on the ground that a claim is barred because of immunity granted by law. When reviewing a motion under MCR 2.116(C)(7), this Court must accept all well-pleaded factual allegations as true and construe them in favor of the plaintiff, unless other evidence contradicts them. If any affidavits, depositions, admissions, or other documentary evidence are submitted, the court must consider them to determine whether there is a genuine issue of material fact. If no facts are in dispute, and if reasonable minds could not differ regarding the legal effect of those facts, the question whether the claim is barred is an issue of law for the court. However, if a question of fact exists to the extent that factual development could provide a basis for recovery, dismissal is inappropriate. [*Dextrom*, 287 Mich App at 428-429 (citations omitted).]

A motion under MCR 2.116(C)(10) may be granted "when the affidavits or other documentary evidence, viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and the moving party is therefore entitled to judgment as a matter of law." *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 5; 890 NW2d 344 (2016). "Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists." *Id*. at 7 (quotation marks and citation omitted). "If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted." *Id*. (quotation marks and citation omitted).

III. ANALYSIS

A. ELLIOT-LARSEN CIVIL RIGHTS ACT CLAIMS

In his first set of arguments on appeal, plaintiff contends the trial court erred when it granted defendant's motion for summary disposition of the ELCRA claims because plaintiff established that defendant's reasons for Abu's failure to be promoted were merely pretextual. Plaintiff argues that the statements in Abu's declaration were admissible under MCR 803(24) and were probative to show that he was discriminated against on the basis of his age, nationality, and religion. Plaintiff also contends that the hostile work environment claim should not have been dismissed because plaintiff presented evidence that the alleged conduct substantially interfered with his employment. We disagree.

The ELCRA prohibits employers from discriminating "against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, because of religion, race, color, national origin, age, sex, height, weight, or marital status." MCL 37.2202(1)(a). "Proof of discriminatory treatment in violation of the CRA may be established by direct evidence or by indirect or circumstantial evidence." *Major v Village of Newberry*, 316 Mich App 527, 540; 892 NW2d 402 (2016) (quotation marks and citation omitted). "In cases involving direct evidence of discrimination, a plaintiff may prove unlawful discrimination in the same manner as a plaintiff would prove any other civil case." *Id*. (quotation marks and citation omitted).

Where no direct evidence is available, the plaintiff may "present a rebuttable prima facie case on the basis of proofs from which a factfinder could infer that the plaintiff was the victim of unlawful discrimination." *Hazel v Ford Motor Co*, 464 Mich 456, 462; 628 NW2d 515 (2001) (quotation marks and citation omitted). Thus, to establish a prima facie case, the plaintiff must "present evidence that (1) she belongs to a protected class, (2) she suffered an adverse employment action, (3) she was qualified for the position, and (4) the job was given to another person under circumstances giving rise to an inference of unlawful discrimination." *Id*. at 463.

If the plaintiff is able to establish a prima facie case of unlawful discrimination, "the defendant has the opportunity to articulate a legitimate, nondiscriminatory reason for its employment decision in an effort to rebut the presumption created by the plaintiff's prima facie case." *Id*. at 464. "The articulation requirement means that the defendant has the burden of producing evidence that its employment actions were taken for a legitimate, nondiscriminatory reason." *Id*. "At that point, in order to survive a motion for summary disposition, the plaintiff must demonstrate that the evidence in the case, when construed in the plaintiff's favor, is sufficient to permit a reasonable trier of fact to conclude that discrimination was a motivating factor for the adverse action taken by the employer toward the plaintiff." *Id*. at 465 (quotation marks and citation omitted).

Plaintiff first contends that the trial court erred because it did not consider the hearsay statements made by Zander concerning the purported age-related reason that Abu was not hired. Plaintiff asserts that the statement was admissible under MRE 803(24), which states:

> (24) Other Exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact, (B) the statement is more probative on the point for which it is offered than any other evidence that the proponent can procure through reasonable efforts, and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of the statement makes known to the adverse party, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

See also *Augustine v Allstate Ins Co*, 292 Mich App 408, 430; 807 NW2d 77 (2011) (stating that in order for a hearsay statement to be admissible under MRE 803(24), the statement must: "(1) demonstrate circumstantial guarantees of trustworthiness equivalent to the categorical exceptions, (2) be relevant to a material fact, (3) be the most probative evidence of that fact reasonably available, and (4) serve the interests of justice by its admission.").

Zander's purported statement to Abu that he was not hired because of his age is certainly relevant to a material fact, i.e., whether Abu was discriminated against because of his age when defendant made hiring decisions for the construction inspector job. However, in our view, the statement does not meet any of the other requirements for admissibility under MRE 803(24). First, the statement, as provided in Abu's declaration, does not "demonstrate circumstantial guarantees

of trustworthiness equivalent to the categorical exceptions." See *id*. Neither the declaration nor the other evidence submitted by plaintiff contained other information concerning the circumstances of the statement to determine whether it was otherwise reliable or trustworthy. Nor is it discernable from the statement how Zander came to learn of the information or that it is the "most probative evidence of that fact reasonably available." See *id*. Plaintiff could have obtained a statement from Zander directly or from the person who allegedly told Zander this information, but did not. Accordingly, the trial court did not err when it failed to admit the statement under MRE 803(24).

Next, plaintiff argues that the trial court erred when it concluded that he failed to show that Abu was discriminated on the basis of his nationality or religion. For this claim, plaintiff relied on Abu's declaration in which he asserted that Shively said that discrimination was high against "Arabs," "Blacks, and "Mexicans." Plaintiff also relied on the statement in Abu's declaration that Shively said "white power" while flexing his muscles.

We agree with the trial court that the purported statements made by Shively do not amount to direct evidence that Abu was discriminated against on the basis of his nationality or religion. While there was evidence that Shively was Abu's direct supervisor, plaintiff did not present any evidence that Shively had *any* influence in the decision whether defendant would hire Abu to a permanent position. But even if plaintiff, through Abu's declaration, could demonstrate that Shively's statements were circumstantial evidence of discrimination that established a prima facie case, defendant sufficiently rebutted plaintiff's evidence to show that there were legitimate, nondiscriminatory reasons for its hiring decisions. With respect to the second job Abu applied for, and for which Zander was eventually hired, both Abu and Zander were of similar age when they applied for the job and, on the basis of a scoring rubric tallying the scores of five separate interviewers, Zander (and other applicants) scored higher during her interview than Abu did. In other words, defendant adequately rebutted any prima facie case by plaintiff of discrimination, and it was not error for the trial court to dismiss these claims.

Turning next to plaintiff's hostile workplace claim, in order to survive summary disposition, plaintiff was required to show:

> (1) the employee belonged to a protected group; (2) the employee was subjected to communication or conduct on the basis of the protected status; (3) the employee was subjected to unwelcome conduct or communication on the basis of the protected status; (4) the unwelcome conduct or communication was intended to, or in fact did, interfere substantially with the employee's employment or created an intimidating, hostile, or offensive work environment; and (5) respondeat superior. [*Major*, 316 Mich App at 550 (quotation marks and citation omitted).]

"[W]hether a hostile work environment was created by the unwelcome conduct [is] determined by whether a reasonable person, in the totality of circumstances, would have perceived the conduct at issue as substantially interfering with the plaintiff's employment or having the purpose or effect of creating an intimidating, hostile, or offensive employment environment." *Id*. (quotation marks and citation omitted; alteration in original). "Conclusory allegations devoid of detail are not sufficient [to] permit the conclusion that there was such conduct or communication of a type or

severity that a reasonable person could find that a hostile work environment existed." *Id*. (quotation marks and citation omitted; alteration in original).

We agree with the trial court that plaintiff failed to establish the fourth and fifth factors above. Abu's declaration does not contain "specific instances of ethnic, sexist, or 'ageist' remarks hostile to a protected class from which an inference of hostile work environment could be drawn." See *Quinto v Cross & Peters Co*, 451 Mich 358, 370; 547 NW2d 314 (1996). The closest that Abu's declaration comes to satisfying this element is the assertion that during one site inspection, Abu was "criticized" and "teased" by Shively for walking slowly and being unable to "go door-to-door." According to Abu, another individual "laughed with Shively at [his] expense." We are not convinced that one vague and ambiguous example of being "harassed" at work satisfies plaintiff's burden. Abu's declaration does not state what was said by Shively, only that he was criticized and teased. Nor does the declaration explain how Shively's conduct substantially interfered with Abu's employment. See *Major*, 316 Mich App at 550. Accordingly, the declaration was insufficient to create a material issue of fact whether plaintiff was subject to a hostile work environment, and the trial court did not err when it granted summary disposition in defendant's favor.

B. RIGHT-TO-KNOW ACT

Next, plaintiff argues that the trial court erred when it granted summary disposition in defendant's favor with respect to plaintiff's claim that defendant violated the Right-to-Know Act. Plaintiff claims, on the basis of his subjective "belief," that Abu's personnel file was missing certain documents relevant to his lawsuit. Plaintiff claims that as a result, he was unable to adequately respond to defendant's motion for summary disposition. We disagree.

Under the Right-to-Know Act, "[a]n employer, upon written request which describes the personnel record, shall provide the employee with an opportunity to periodically review . . . the employee's personnel record if the employer has a personnel record for that employee." MCL 423.503. The Act defines a "personnel record" as "a record kept by the employer that identifies the employee, to the extent that the record is used or has been used, or may affect or be used relative to that employee's qualifications for employment, promotion, transfer, additional compensation, or disciplinary action." MCL 423.501(2)(c).

Plaintiff claims that certain documents are missing from his personnel file but does not identify what those documents are or how or why they are relevant to this case. Similarly, plaintiff offers no authority for the proposition that a particular employer's personnel file must include certain enumerations of documents. Consequently, plaintiff has waived this issue on appeal. It is not this Court's responsibility to find factual support for plaintiff's arguments, nor is it the Court's responsibility to search for legal authority to support them. See *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998) ("It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.") (quotation marks and citation omitted).

Moreover, plaintiff's argument that he was somehow prejudiced in the lawsuit because of defendant's purported failure to disclose Abu's personnel file in 2019 is meritless. Plaintiff filed

this lawsuit in 2021 and, once so doing, had available the ability to discover "any non-privileged matter that is relevant to any party's claims or defenses . . . ." MCR 2.302(B)(1). In other words, once plaintiff initiated this lawsuit, he had the ability to seek the documents he now claims were not produced. Thus, plaintiff cannot now be heard to complain that he was unable to adequately respond to defendant's motion for summary disposition because he was not given presuit documents in 2019. Accordingly, the trial court did not err when it granted summary disposition in defendant's favor with respect to plaintiff's Right-to-Know Act claim.

C. WRONGFUL DISCHARGE

Plaintiff also argues that the trial court erred when it dismissed his wrongful discharge claim. Plaintiff contends that the ELCRA is not the exclusive remedy for his wrongful discharge claim, which can be established if the alleged conduct contravenes public policy. We disagree.

Abu was hired as a temporary, at-will employee. "Consequently, his employment was terminable at any time and for any—or no—reason, unless that termination was contrary to public policy." *Kimmelman v Heather Downs Mgt Ltd*, 278 Mich App 569, 572-573; 753 NW2d 265 (2008). "Public policy proscribing termination of at-will employment is most often used in three situations: (1) adverse treatment of employees who act in accordance with a statutory right or duty, (2) an employee's failure or refusal to violate a law in the course of employment, or (3) an employee's exercise of a right conferred by a well-established legislative enactment." *Id*. at 573 (quotation marks and citation omitted). However, "where there exists a statute explicitly proscribing a particular adverse employment action, that statute is the exclusive remedy, and no other 'public policy' claim for wrongful discharge can be maintained." *Id*.

In plaintiff's complaint, he alleges Abu was wrongfully discharged because of his age, nationality, and religion. There is no question that all three alleged reasons for terminating Abu's employment contravene public policy. However, the "public policy" was established through the enactment of the ELCRA, which is the exclusive remedy for such a violation. See *id*.; MCL 37.2202(1)(a) (prohibiting an employer from "discharg[ing]" an employee on the basis of "religion, race, color, national origin, age, sex, height, weight, or marital status."). Moreover, beyond the conclusory allegations in the complaint, plaintiff offered no evidence in response to defendant's motion for summary disposition that he was discharged for an unlawful reason. Accordingly, the trial court did not err when it granted summary disposition in defendant's favor with respect to plaintiff's wrongful discharge claim.

D. ANTIDISCRIMINATION ORDINANCE

In his last argument on appeal, plaintiff argues that the trial court erred when it dismissed his claim that defendant violated defendant's ordinance against discrimination. Plaintiff asserts that because he "has no tort claims against Defendant," governmental immunity is inapplicable. Plaintiff also argues that governmental immunity is waived under the ELCRA. To the extent this Court understands plaintiff's argument, we disagree.

Initially, plaintiff has waived this issue on appeal. The trial court concluded that defendant's antidiscrimination ordinance was subject to governmental immunity, which plaintiff does not address on appeal. Instead, plaintiff's arguments concern why the ELCRA claims are not

subject to immunity, a proposition which was not in dispute and was not put forth by the trial court. By failing to address the merits of his own position and by failing to address the basis for the trial court's decision, plaintiff has waived the argument on appeal. See *Eldred v Ziny*, 246 Mich App 142, 150; 631 NW2d 748 (2001) ("[T]his Court need not address an issue that is given only cursory consideration by a party on appeal"); *Joerger v Gordon Food Serv, Inc*, 224 Mich App 167, 175; 568 NW2d 365 (1997) (stating that the plaintiffs waived their argument on appeal by "fail[ing] to address the basis of the trial court's decision").

Even if the issue were not waived, the trial court did not err when it granted summary disposition in defendant's favor with respect to this issue. Under the governmental tort liability act ("GTLA"), MCL 691.1401 *et seq.*, "[e]xcept as otherwise provided in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function." See also *Mack v Detroit*, 467 Mich 186, 195; 649 NW2d 47 (2002) ("[A] governmental agency is immune unless the Legislature has pulled back the veil of immunity and allowed suit by citizens against the government."). Under the GTLA, the government has removed immunity in five categories of areas, none of which are relevant here. In addition, "there are other areas outside the GTLA where the Legislature has allowed specific actions against the government to stand, such as the Civil Rights Act. Further, municipalities may be liable pursuant to 42 USC 1983." *Mack*, 467 Mich at 195.

Plaintiff has not identified any legislative enactment that would permit suit against defendant on the basis of its own ordinance in the face of governmental immunity. The ELCRA is the exclusive remedy for the conduct plaintiff complains of, and that statute does not grant the authority for defendant to create an exception to it. See *Mack*, 467 Mich at 196 n 10 (stating that "exceptions to governmental immunity are narrowly construed"). Thus, the trial court did not err when it granted defendant's motion for summary disposition.

Affirmed. Defendant, as the prevailing party, may tax costs. MCR 7.219(A).

/s/ Kirsten Frank Kelly
/s/ Kathleen Jansen
/s/ Noah P. Hood