STATE OF MICHIGAN

COURT OF CLAIMS

KRISTY KLENKE,

Plaintiff,

v

Case No. 23-000179-MZ

MICHIGAN DEPARTMENT OF CORRECTIONS,

Hon. Sima G. Patel

Defendant.
_____ /

OPINION AND ORDER DENYING DEFENDANT'S JANUARY 13, 2025 MOTION FOR SUMMARY DISPOSITION

Defendant, Michigan Department of Corrections (MDOC), seeks summary disposition under MCR 2.116(C)(10), of plaintiff, Kristy Klenke's, complaint of employment discrimination under the Elliot Larsen Civil Rights Act (ELCRA). MCL 37.2101 *et seq*. Plaintiff created genuine issues of material fact that she suffered disparate treatment, retaliation, and a hostile work environment based on her sex. Accordingly, the Court DENIES defendant's motion.

I. BACKGROUND

As defendant seeks summary disposition under MCR 2.116(C)(10), the Court will summarize the background of this case while considering the evidence in the light most favorable to plaintiff.

Plaintiff began working as a corrections officer for defendant in 2018. During her time at the Michigan Reformatory, plaintiff developed a personal relationship with a supervisor, Mario Cunningham. Plaintiff ended the relationship when she learned that Cunningham was married, but Cunningham continued to contact her, make unwanted advances, and change plaintiff's work assignments. Plaintiff made internal complaints and ultimately filed suit based on Cunningham's actions and her employer's responses in the Western District of Michigan, Docket No. 1:21-cv-00193-PLM-MV. The named defendants sought summary judgment of the federal case on May 20, 2022. The federal court has yet to address that motion and the suit remains pending. At some point, Cunningham was transferred to Bellamy Creek Correctional Facility to separate him from plaintiff.

When the Michigan Reformatory closed its doors, its employees were transferred to nearby facilities. Many employees were transferred to Bellamy Creek, but plaintiff could not be sent there because of Cunningham's presence. Instead, defendant transferred plaintiff to Ionia Correctional Facility (ICF). Plaintiff alleged that this led to anger and gossip around the prison, led by individuals with higher seniority who wished to be assigned to ICF but could not be.

Things were not ideal at ICF, plaintiff testified, because many officers at the prison were friendly with Cunningham. She faced continued harassment and gossip from her coworkers. Plaintiff was placed on the second shift and the shift commander was Lieutenant John Jaramillo. Plaintiff testified that Jaramillo and Cunningham were friends.[1] Jaramillo advised the newly transferred employees that they would be rotated through different positions for four to six weeks

[1] Jaramillo testified that he and Cunningham are only business acquaintances.

to become acquainted with the facility. The transferees could then ask for a regular assignment, coveted by employees for stability and safety reasons.

Plaintiff asserted that she asked Jaramillo for a regular assignment on several occasions in December 2022, and January 2023, but was denied.[2] Plaintiff also alleged that every male officer transferred from the Michigan Reformatory was given a regular assignment, as well as female officers who were assigned to other shifts with different shift commanders. Plaintiff asked Jaramillo if she was denied a regular assignment due to her gender. Jaramillo allegedly responded, "Did you just say that to me?" and "I'm not going to compare dicks with you." This conversation happened in the control center in front of Captain Rawle Henry, who laughed at the conversation. Plaintiff described that the comment "made me feel as if I was a woman asking for something that, you know, the men do," and it was a "stay in your place" type of comment.[3] In the meantime, Jaramillo repeatedly assigned plaintiff to the control center. Plaintiff asserted that this was a discriminatory assignment because the male officers liked females assigned to that post as "eye candy."

While awaiting a regular assignment, plaintiff learned from other female officers that women were often passed over for regular assignments at ICF. Officer Tracy Harrell told plaintiff "to not ask for a regular assignment because they don't give women regular assignments there." Officer Sara Butler told plaintiff that "she had asked to work in a particular unit and they . . .

[2] Jaramillo denied that plaintiff ever asked him for a regular position.

[3] Jaramillo denied that this conversation happened.

refused to put her in there." Butler grew tired of asking and "chose to just stop bringing it up to them."

Officer Beth DeBoer provided an affidavit attesting that Jaramillo talked to her about plaintiff on more than one occasion. DeBoer witnessed Jaramillo read an article about plaintiff's federal lawsuit and heard him make "derogatory comments such as, 'Look at this convict-loving bitch.' "[4] DeBoer heard Jaramillo refer to plaintiff as a "fucking slut" and advise others "stay away from that bitch." DeBoer further attested that Jaramillo demeaned plaintiff, who is white, for her involvement with Cunningham, who is African-American, saying, "Look at that bitch. She is obsessed with the color black. She colors her hair black, drives a black vehicle with black tint on the windows, dresses in all black, and dates black guys." DeBoer also witnessed Jaramillo spy on plaintiff during her lunch break. Jaramillo denied these conversations, but testified at his deposition that plaintiff was part of a clique of about seven officers who were all black.

Plaintiff also learned that "Lieutenant Bennett" questioned why "someone" was moving plaintiff's name on the master schedule after it had been completed. Lieutenant Bennett was briefly in charge of the master schedule and had allegedly scheduled plaintiff in Unit 4, her requested position, but her name was moved. Sergeant Benjamin Moore admitted to plaintiff that he had moved her name because "some people just work better together." Plaintiff believed Officer Kendrick Warren had asked that she be moved out of Unit 4. Plaintiff had worked with Warren at Michigan Reformatory and he was friends with Cunningham. Following plaintiff

[4] Jaramillo denied any direct knowledge of plaintiff's lawsuit against Cunningham, but admitted he heard "talk."

ending her relationship with Cunningham, Warren exhibited hostility toward her. Plaintiff testified that Warren spread gossip about her at ICF.

Plaintiff went over Jaramillo's head and asked Deputy Warden Dale Bonn for an assignment. Bonn described plaintiff as a "really good worker, strong officer, made good decisions, and just the type where we really didn't have to worry about" her behavior. Bonn would not describe plaintiff as a "complainer." Bonn found plaintiff to be believable and "a pretty straight shooter," who was "not prone to exaggeration." Plaintiff told Bonn that someone had been altering her assignments on the master schedule. She also told Bonn that she did not like being repeatedly assigned to the control center, because so much gossip happened there.[5] Bonn ordered Jaramillo to give plaintiff a regular assignment because he "knew she was being treated unfairly" and was just as qualified as the officers being given regular assignments. Jaramillo claimed that Bonn told him plaintiff wanted a regular assignment because she was "bored," but Bonn denied making that statement. Plaintiff also reported Jaramillo's comment about "comparing dicks" to Bonn, but the internal investigation found insufficient evidence to take any action.

Jaramillo gave plaintiff a regular assignment in a four-officer unit on February 8, 2023—Unit 4—where Warren was also assigned. Although he was not a supervisor, Warren altered the unit schedule repeatedly to place plaintiff in the least desirable position—working "the panel." When plaintiff confronted Warren, he responded, "Cry me a river." Jaramillo asserted that he

[5] Jaramillo asserted that employees generally like working in the control center, and plaintiff was the first to complain.

heard about the lack of rotation in Unit 4 and ordered the officers not to change his shift assignments.

Plaintiff requested a transfer to another unit several times, citing the hostile work environment in her current unit. After a verbal altercation with Officer Warren, plaintiff called the control center and asked to be sent home. After that, plaintiff testified, a captain agreed to move plaintiff to a different unit. Jaramillo, on the other hand, testified that *he* moved plaintiff to Unit 3 on March 6, 2023, to honor her request to not work with Warren. Once moved, Jaramillo testified that two officers in Unit 3 complained that plaintiff was "anti-social" and "only talked to the prisoners."

In June 2023, plaintiff filed an "Article 24" complaint alleging a hostile work environment. The investigation was extended more than once. Plaintiff spoke to a discriminatory harassment counselor—Sergeant Jill Kerr. Kerr used the phrase "possible sexual harassment" in her report. Kerr later told plaintiff, "Hey, I just wanted to let you know that I got my butt chewed for what I put on your . . . complaint." The warden forced Kerr to remove that language. Plaintiff took a leave of absence due to stress in June 2023. While she was on leave, a male officer wrote "bitch" next to her name on a master schedule. In August 2023, when the Article 24 investigation still had not been completed, plaintiff "was forced to resign from her position as an officer with" defendant. The only remedy that could have solved her issues at that point, plaintiff asserted, was being transferred out of Ionia County to a location where the officers were not familiar with Cunningham. Plaintiff believed individuals in Lansing were blocking such a transfer.

Jaramillo testified that other officers who transferred from Michigan Reformatory with plaintiff described her as anti-social. Other officers reported that plaintiff did not interact with

them and so they felt like they would not be able to depend on her in a dangerous situation. Officer Nicholas Hoff complained that plaintiff talked to the prisoners more than her fellow officers. Jaramillo described this as "a red flag." The other officers did not want to work with plaintiff because "she was not an easy person to be around." Indeed, Jaramillo felt plaintiff "always seemed like she had a chip on her shoulder." Jaramillo heard from both Warren and plaintiff that they "did not get along" and they no longer wanted to work together. Jaramillo heard rumors about plaintiff's federal lawsuit, but claimed that most information did not find its way to his level of command. Had Jaramillo heard such rumors or negative comments, he asserted, he would have been required to report individuals.

II. PLEADINGS

Plaintiff filed suit in the circuit court on October 23, 2023, and defendant transferred several counts to this Court. Plaintiff contended defendant violated the ELCRA in several ways: (1) disparate treatment, (2) retaliation, and (3) hostile work environment.

Defendant seeks summary disposition under MCR 2.116(C)(10). Defendant contends plaintiff failed to create a genuine issue of material fact that she was subjected to disparate treatment. She was given a regular assignment and was not treated differently based on her sex. In this regard, defendant identifies another female employee who was given a regular assignment during this time. Accordingly, if plaintiff was treated differently, she could not show it was based on sex. Defendant further contends that being denied a regular assignment was not an adverse employment action recognized under the ELCRA. Defendant challenges plaintiff's credibility, emphasizing Jaramillo's deposition testimony that plaintiff never asked him for a regular

assignment. Absent any request, defendant had no reason to give plaintiff a regular assignment and plaintiff could not establish pretext.

In relation to plaintiff's retaliation claim, defendant concedes that plaintiff engaged in protected activity by filing complaints and a lawsuit against Cunningham. However, defendant asserts there was no evidence of a causal connection between those actions and defendant's delay in providing a regular assignment. Jaramillo testified that he did not know about this history. Although he knew Cunningham, Jaramillo claimed the two were not friends and he had no reason to retaliate against plaintiff.

Defendant describes plaintiff's hostile work environment claim as being based on two alleged incidents of sexual harassment. The first was Jaramillo's alleged comment about "not comparing dicks." However, defendant investigated that claim and found insufficient evidence of a work-rule violation. The second incident occurred while plaintiff was off on stress leave and was not actually witnessed by plaintiff. This involved someone handwriting negative comments next to several individuals' names on a schedule. The word "bitch" was written next to plaintiff's name. The individual who made these comments was swiftly found and punished.

Plaintiff responds that she was already concerned about how she would be treated before her transfer to ICF because Warren gossiped about her and many individuals at ICF were personally connected with Cunningham. Plaintiff contends she presented direct evidence of discrimination—Jaramillo's comment about "not comparing dicks"—and therefore did not need to meet the burden-shifting analysis of *McDonnell Douglas Corp v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973). Plaintiff cites DeBoer's affidavit attesting that Jaramillo made disparaging comments about her. Defendant contends that this affidavit must be struck because

plaintiff did not identify this witness in her initial disclosures and never sought to amend her disclosures. Defendant further contends that this affidavit is not credible because DeBoer did not support plaintiff's claim until defendant was forced to terminate DeBoer's employment for having an inappropriate relationship with a prisoner.

Even if plaintiff had not provided admissible direct evidence, plaintiff asserts she met her burden in avoidance of summary disposition under *McDonell Douglas*. Federal courts have expanded the field of adverse employment actions to include shift changes and reassignments. See *Threat v Cleveland*, 6 F4th 672 (CA 6, 2021). Further, there was evidence that plaintiff's resignation was actually a constructive discharge. Plaintiff was subjected to repeated schedule and assignment changes, and she felt like her coworkers would not back her up which made her feel unsafe in her prison employment.

Plaintiff asserts that she provided evidence that other similarly situated employees were treated differently. The defense cited only one female officer who was given a permanent assignment in arguing that plaintiff was treated differently from other female officers, as well as male officers. That female officer, however, was assigned to the control center for discriminatory reasons based on her sex. Accordingly, defendant's evidence did not negate plaintiff's.

Plaintiff contends that defendant's reasons for not giving her a regular assignment are pretext. First, there remains a credibility contest regarding whether plaintiff requested an assignment from Jaramillo. Second, plaintiff declares that she is a hardworking employee and defendant had no legitimate reason to deny her a regular assignment and then mistreat her once an assignment was given.

In support of her claim for retaliation, plaintiff notes that her federal lawsuit remains pending and that her coworkers were aware of it. Indeed, plaintiff spoke to two news sources who published stories her coworkers saw. Despite that Jaramillo claimed to have no knowledge of the lawsuit, he discussed it with others in the prison. And plaintiff was treated differently by her coworkers after filing the suit and making internal complaints.

In relation to the hostile work environment claim, plaintiff asserts that the egregious acts of her supervisors and coworkers taken together caused so much stress and anxiety that she had to take a leave of absence.

III. APPLICABLE LAW

Defendant seeks summary disposition under MCR 2.116(C)(10), which "tests the *factual sufficiency* of a claim." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 160; 934 NW2d 665 (2019). The Court must review the evidence "in the light most favorable to the party opposing the motion," here plaintiff, to determine if there are any triable, genuine issues of material fact. *Id*. The Court "may not weigh evidence, make determinations of credibility, or otherwise decide questions of fact." *Sabbagh v Hamilton Psychological Servs, PLLC*, 329 Mich App 324, 346; 941 NW2d 685 (2019). "[I]f material evidence conflicts, it is not appropriate to grant a motion for summary disposition under MCR 2.116(C)(10)." *Pioneer State Mut Ins Co v Dells*, 301 Mich App 368, 377; 836 NW2d 257 (2013). In conducting this review, the Court "may only consider substantively admissible evidence actually proffered relative to a motion for summary disposition." *Id*. (cleaned up).

MCL 37.2202(1)(a) provides that "an employer shall not . . . [f]ail or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment,

compensation, or a term, condition, or privilege of employment, because of . . .sex. . . ." A plaintiff may establish discrimination under the ELCRA by direct or indirect evidence. *Sniecinski v Blue Cross & Blue Shield of Mich*, 469 Mich 124, 132; 666 NW2d 186 (2003). Direct evidence is "evidence which, if believed, requires the conclusion that unlawful discrimination was at least a motivating factor in the employer's actions." *Hazle v Ford Motor Co*, 464 Mich 456, 462; 628 NW2d 515 (2001) (cleaned up). Where a plaintiff shows direct evidence of discrimination, they may prove their discrimination allegation in the same manner as any other case. *Id*.

In the absence of direct evidence, a plaintiff must rely on circumstantial evidence to make a prima facie case of discrimination under *McDonnell Douglas*. *Hazle*, 464 Mich at 462-463. If the plaintiff is successful, the burden shifts to the defense "to articulate a legitimate, nondiscriminatory reason for its employment decision" to rebut the prima facie case of discrimination. *Id*. at 464. The burden then shifts back to plaintiff to demonstrate that discrimination was a motivating factor in the employment decision and that the employer's cited decision was mere pretext. *Id*. at 465.

IV. ANALYSIS

A. DEBOER'S AFFIDAVIT

At the outset, the Court must address defendant's claim that the Court may not consider DeBoer's affidavit which was submitted with plaintiff's response to the summary disposition motion. Defendant contends that plaintiff failed to identify DeBoer as a potential witness in her initial disclosures and then failed to supplement those disclosures before providing the affidavit. This prevented defendant from deposing DeBoer, defendant claims.

MCR 2.302(A)(1)(c) requires a plaintiff to include in the initial disclosures the identity "of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment." MCR 2.302(E)(1)(a)(*i*) provides that a party "must supplement or correct its disclosure . . . in a timely manner" upon learning that the information was incomplete, such as when discovering a new witness. If a party fails to supplement its initial disclosures, "the court may enter an order as is just, including an order providing the sanctions stated in MCR 2.313(B), and, in particular, MCR 2.313(B)(2)(b)." MCR 2.302(E)(2). MCR 2.313(C)(1) permits a court to exclude evidence provided by a witness who was not identified as required.

The parties stipulated for initial disclosures to be made by February 16, 2024, witness lists by April 5, 2024, and for discovery to be complete by November 12, 2024. Plaintiff submitted an amended preliminary witness list without objection on October 29, 2024, and identified DeBoer as a witness. Defendant did not seek to depose DeBoer or to extend the period of discovery to question this newly identified witness. Given these circumstances, the Court will not exclude DeBoer's affidavit from consideration at the summary disposition phase. Ultimately, defendant will have the opportunity to challenge DeBoer's credibility at trial.

B. DIRECT V CIRCUMSTANTIAL EVIDENCE

Plaintiff contends that Jaramillo's comment about "not comparing dicks" provides direct evidence that the actions taken against her at ICF were discriminatory based on her sex or gender. "Direct evidence is that which, if believed, requires the conclusion that the plaintiff's protected activity [or status] was at least a motivating factor in the employer's actions." *Shaw v Ecorse*, 283 Mich App 1, 14; 770 NW2d 31 (2009); *Hazle*, 464 Mich at 462. Circumstantial evidence is

evidence from which inferences can be drawn to support a cause of action. "To be adequate, a plaintiff's circumstantial proof must facilitate reasonable inferences of causation, not mere speculation." *Skinner v Square D Co*, 445 Mich 153, 164; 516 NW2d 475 (1994).

Plaintiff cites a single statement as amounting to direct evidence. When plaintiff asked Jaramillo if he had not given her a regular assignment because of her gender, Jaramillo responded, "I'm not going to compare dicks with you." Although inappropriate, this statement is not direct evidence that defendant discriminated against plaintiff on the basis of her gender or sex. Jaramillo did not indicate that plaintiff's lack of the male sexual organ was the reason she was passed over. Rather, Jaramillo used a phrase including a term for the male sexual organ when refusing to discuss the discrimination issue with plaintiff. His response could be interpreted as one of frustration and not evidence that Jaramillo intended to discriminate.

Absent direct evidence, plaintiff must support her claim under the burden-shifting analysis of *McDonnell-Douglas*.

C. DISPARATE TREATMENT

To establish a prima facie case of discrimination, a plaintiff must show that he or she "was (1) a member of a protected class, (2) subject to an adverse employment action, (3) qualified for the position, and that (4) others, similarly situated and outside the protected class, were unaffected by the employer's adverse conduct." *Town v Mich Bell Tel Co*, 455 Mich 688, 695; 568 NW2d 64 (1997).

1. Member of a Protected Class

As a female claiming she was discriminated against based on her sex, plaintiff is part of a protected class.

2. Adverse Employment Action

Defendant contends that plaintiff did not suffer an adverse employment action.

> There is no exhaustive list of what constitutes adverse employment actions. And what might constitute an adverse employment action in one employment context might not be actionable in another employment context. . . . Nevertheless, regardless of the employment context, in order to be actionable, an employment action must be materially adverse to the employee—that is, it must be more than a mere inconvenience or minor alteration of job responsibilities. In addition, there must be an objective basis for demonstrating that the employment action is adverse because a plaintiff's subjective impressions are not controlling. Materially adverse employment actions are akin to 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 that might be unique to a particular situation. [*Chen v Wayne State Univ*, 284 Mich App 172, 201-202; 771 NW2d 820 (2009) (cleaned up).]

Title VII of the federal Civil Rights Act of 1964 similarly prohibits employers from discriminating "with respect to his compensation, terms, conditions, or privileges of employment" on the basis of sex. 42 USC 2000e-2(a)(1). In *Threat*, 6 F4th at 677, the Sixth Circuit Court of Appeals held that a shift schedule is a "term" of employment. The Sixth Circuit reasoned that the timing of a person's shift—first, second or third shift—was based on seniority under the applicable employment contracts. "Benefits that come with seniority may count as privileges of employment. And losing out on a preferred shift may diminish benefits that a senior employee has earned," the court held. *Id*.

Plaintiff compares that conclusion with the terms of employment at issue in this case—being given or denied a regular position assignment; once given a regular assignment, being denied a regular rotation; and being denied a transfer to a new location, resulting in plaintiff resigning (constructive discharge). The Court agrees that having a regular work assignment, especially in a high stress and dangerous workplace like a prison, is more than a mere convenience. It is an integral part of and privilege of employment. Evidence supports that regular assignments come with seniority, and that plaintiff was denied those benefits.

3. Qualifications

Plaintiff presented evidence that she was well qualified for the corrections officer positions in question. Bonn testified that plaintiff was a good worker who could be relied upon. She was a "straight shooter" who completed her work without difficulty. Bonn specifically testified that plaintiff was just as qualified as her male counterparts and that it was unfair for Jaramillo to withhold a regular position from her.

4. Similarly Situated Employees

And plaintiff created a genuine issue of material fact that other similarly situated male employees were not so discriminated against. Plaintiff presented evidence to support that her male counterparts all received regular assignments without delay. Defendant contends that plaintiff was also treated differently from at least one other female corrections officer, Karisma Chevette. Chevette was assigned to the control center. However, plaintiff's claims were focused on Jaramillo's actions in relation to the second shift. Plaintiff testified that Chevette was on the third shift and, therefore, was under a different shift commander's authority. Chevette's assignment does not negate the question of fact created by plaintiff.

Accordingly, plaintiff established a prima facie claim of disparate treatment.

D. RETALIATION

> To establish a prima facie case of unlawful retaliation under the Civil Rights Act, a plaintiff must show (1) that he [or she] engaged in a protected activity; (2) that this was known by the defendant; (3) that the defendant took an employment action adverse to the plaintiff; and (4) that there was a causal connection between the protected activity and the adverse employment action. [*El-Khalil*, 504 Mich at 161 (cleaned up).]

1. and 2. Protected Activity of Which Defendant was Aware

Defendant concedes that plaintiff engaged in a protected activity, specifically, filing a federal lawsuit and internal complaints regarding sexual harassment and discrimination. Defendant, the DOC, was well aware of these activities. Jaramillo was the individual who allegedly retaliated against plaintiff. And plaintiff presented evidence that Jaramillo was personally aware of her protected activities despite his insistence to the contrary. Jaramillo worked in the control center during the events in question. Plaintiff testified that the control center was the hub of significant gossip at the prison. Jaramillo also testified that "[p]eople talk" and admitted that "word spreads pretty quick among people who work in the MDOC." Jaramillo admitted he knew Cunningham was moved from Michigan Reformatory to Bellamy Creek, but claimed he knew no other details. Yet, DeBoer attested that Jaramillo read an article about plaintiff's lawsuit in front of her and made disparaging comments. Ultimately, this is a question of fact that cannot be resolved at the summary disposition stage.

3. and 4. Adverse Employment Action and Causal Connection

The Court has already concluded that plaintiff created a genuine issue of material fact that she suffered an adverse employment action. Plaintiff also presented sufficient evidence to

establish that defendant's actions were taken in retaliation for her protected activities. DeBoer attested that after reading an article about plaintiff's federal lawsuit against Cunningham, Jaramillo made several derogatory comments and told other officers "to stay away from that bitch." Jaramillo was in control of the master schedule for the second shift and did not give plaintiff a regular assignment until ordered to do so by a superior officer. There is sufficient evidence to infer that Jaramillo acted in retaliation against plaintiff for her protected activity.

Accordingly, plaintiff also established a prima facie case of retaliation.

E. HOSTILE WORK ENVIRONMENT

> To prevail on [a] claim of hostile work environment, [a] plaintiff must establish five elements: (1) plaintiff belonged to a protected group; (2) plaintiff was subjected to communication or conduct on the basis of sex; (3) plaintiff was subjected to unwelcome sexual conduct or communication; (4) the unwelcome sexual conduct or communication was intended to or in fact did substantially interfere with plaintiff's employment or created an intimidating, hostile, or offensive work environment; and (5) respondeat superior. [*Hamood v Trinity Health Corp*, ___ Mich App ___; ___ NW3d ___ (2024) (Docket No. 364627), slip op at 8.]

1. Protected Class

As noted, plaintiff is the member of a protected class based on sex or gender.

2. and 3. Subject to Unwanted Communication and Conduct Based on Sex

Plaintiff's hostile work environment claim is not as limited as defendant suggests. Plaintiff described a culture of hostility directed at her from many coworkers. Warren began exhibiting hostility toward plaintiff at Michigan Reformatory after plaintiff reported Cunningham's harassment. Once in the same unit with Warren, Warren altered the unit schedule without authority to force plaintiff to work in the least desired position and engaged in a verbal altercation with

plaintiff when she confronted him. At ICF, plaintiff's coworkers gossiped about her and spread rumors about her relationship with Cunningham. Jaramillo, her supervisor, allegedly referred to her as a "bitch" and a "slut" and made derogatory comments about his perception that plaintiff was attracted to African-American men. When plaintiff asked if she was being denied a regular assignment based on her sex, Jaramillo responded that he would not "compare dicks" with plaintiff. Plaintiff also experienced other employees changing the master schedule to avoid working with her and writing disparaging comments about her on the schedule. Plaintiff provided more than adequate evidence to support that she was subjected to unwanted communication and conduct based on her sex.

5. Effect of Unwanted Communication and Conduct

Plaintiff testified that the hostility she experienced at ICF caused her severe stress and anxiety. As a result, plaintiff took a leave of absence due to stress and ultimately resigned. Further, while working in the housing units of the prison, plaintiff feared that her coworkers would not support her in a dangerous situation.

5. Respondeat Superior

All individuals who contributed to the hostile work environment were employees of defendant. Plaintiff filed internal complaints that were investigated. And Kerr advised plaintiff that she was punished by superior officers for simply using the phrase "alleged sexual harassment" in her report. This was sufficient to support that defendant was vicariously liable for the employees' actions.

Accordingly, plaintiff also established a prima facie claim of hostile work environment.

F. NONDISCRIMINATORY REASON

As plaintiff established prima facie claims of discrimination, the burden shifts to defendant to establish a nondiscriminatory reason for the adverse employment action. Defendant contends that it had a nondiscriminatory reason for denying plaintiff a permanent assignment—plaintiff did not request an assignment from Jaramillo. However, plaintiff testified that she requested a permanent position from Jaramillo on multiple occasions. This is an issue of credibility that the Court may not resolve at the summary disposition phase.

Defendant also contends that plaintiff was not constructively discharged; she voluntarily resigned to take another job.

> A constructive discharge is established where an employer deliberately makes an employee's working conditions so intolerable that the employee is forced into an involuntary resignation or, stated differently, when working conditions become so difficult or unpleasant that a reasonable person in the employee's shoes would feel compelled to resign. Where reasonable persons could reach different conclusions regarding whether these elements are established, the issue becomes a question of fact for the jury and not one properly decided by the trial court. [*Vagts v Perry Drug Stores*, 204 Mich App 481, 487-488; 516 NW2d 102 (1994) (cleaned up).]

Plaintiff conceded that she took another job upon her resignation, but at a $13 an hour pay cut. Plaintiff testified that the stress of working under such hostile conditions was overwhelming and that she did not feel safe in her role as a corrections officer in a prison without her coworkers' support.

G. PRETEXT

Finally, plaintiff created a genuine issue of material fact that defendant's cited reasons for its actions were mere pretext.

As noted, whether plaintiff asked Jaramillo for a permanent assignment is a question of fact that cannot be resolved at the summary disposition stage. And plaintiff created a question of fact that her resignation was actually a constructive discharge.

V. CONCLUSION

Ultimately, plaintiff overcame her burden in challenging defendant's motion for summary disposition under MCR 2.116(C)(10). Plaintiff created genuine issues of material fact that defendant violated the ELCRA by discriminating against her based on her sex. Accordingly:

1. The Court DENIES defendant's motion for summary disposition.

2. The Court directs the parties to appear via Zoom for a scheduling conference on Tuesday, November 4, 2025, at noon.

3. The parties are encouraged to consider mediation or a settlement conference in the meantime.

4. This is not a final order.

IT IS ORDERED.

Date: October 21, 2025

Sima G. Patel
Judge, Court of Claims