# STATE OF MICHIGAN

# COURT OF APPEALS

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| YOLANDA CARR,<br><br>Plaintiff-Appellee,<br><br>v<br><br>FORD MOTOR COMPANY,<br><br>Defendant-Appellant. | UNPUBLISHED<br>April 24, 2008<br><br>No. 273675<br>Wayne Circuit Court<br>LC No. 04-426910-CD |
| YOLANDA CARR,<br><br>Plaintiff-Appellee,<br><br>v<br><br>FORD MOTOR COMPANY,<br><br>Defendant-Appellant. | No. 274251<br>Wayne Circuit Court<br>LC No. 04-426910-CD |

Before: Murray, P.J., and Hoekstra and Wilder, JJ.

PER CURIAM.

In these consolidated appeals, defendant, Ford Motor Company, appeals by leave granted the trial court's October 11, 2006, orders denying its motion for summary disposition, and alternative motion for partial summary disposition, as well as the trial court's November 3, 2006, order denying its motion in limine to exclude "me too" evidence. We reverse the trial court's order denying Ford's motion for summary disposition.

## Background

Plaintiff, an African American female, began working at Ford's Wixom plant as an hourly employee in 1992. Although plaintiff was discharged in 2000, she sued Ford and was

later reinstated in 2001 as a part of a settlement.[1] In December 2001, Ishmael Graham, an African American hourly employee at the Wixom plant, approached plaintiff at a union meeting and asked how she was doing and wished her a happy new year.[2] On January 10, 2002, Graham again approached plaintiff in the cafeteria and told her "the only thing I was trying to do was apologize." After walking away, Graham came back, got "everybody's attention" and stated, "oh, by the way I love her." Plaintiff filed a complaint with labor relations, which led to Graham being disciplined.

On March 12, 2002, plaintiff was walking to her car when Graham pulled up, rolled down his window and said "something" to her before driving away. Plaintiff filed another complaint with labor relations, which led to further disciplinary actions against Graham, including stern instructions not to have any further contact with plaintiff. Although plaintiff never had any further direct contact with Graham, he had his friend "Darryl" approach her on June 27, 2002, and convey a message to her inquiring whether she would accept Graham's phone number and give him a call. Finally, on December 13, 2002, Graham sent plaintiff a bottle of perfume along with a note stating, "Yolanda Carr please accept," "can you forgive a person at this time of love and peace," and "Merry Christmas I love you." Plaintiff filed another complaint and Graham was terminated.

Graham appealed his termination and was eventually reinstated in July of 2003 as part of an agreement between Ford and the United Auto Workers Union (UAW) resolving the grievance.[3] Before reinstating Graham, Ford took measures to ensure that Graham was not a risk. Specifically, Ford had Graham evaluated by an outside psychiatrist, who concluded that Graham was not angry about being terminated, was remorseful for his actions that led to his termination, and would not be a threat to plaintiff. Ford subsequently had a meeting with plaintiff and informed her that although Graham was going to be reinstated, he had been in therapy, would not be allowed in the front of the plant where she worked and would not be a threat to her. Plaintiff was also informed that Ford would look into her ongoing request to be transferred.

Graham was never a problem to plaintiff after he was reinstated. Plaintiff admitted that Graham never attempted to contact her after he was terminated.[4] However, even though Graham

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[1] The trial court barred plaintiff from relying on any alleged incidents predating plaintiff's July 2, 2001, settlement. The trial court also ruled that evidence of incidents that occurred prior to August 27, 2001, a date beyond the statute of limitations, could not be presented as substantive evidence, though it could be used to establish a "historical context."

[2] Graham had been previously instructed in 1998 not to contact plaintiff because she had complained about him to labor relations.

[3] Although Graham was brought back to the Wixom plant because there was no room for him at any other plant, he was eventually transferred to Ford's Dearborn plant in November 2003 under Ford's "return home provision."

[4] However, plaintiff did file another complaint with labor relations regarding a November 11, 2003, incident where a co-worker informed her that she saw Graham near "K1 canteen," an area

(continued…)

had never touched plaintiff, never used threatening words, had no contact with plaintiff since his termination, and was transferred to Dearborn, plaintiff still felt threatened by Graham, describing herself as a "sitting duck" because Graham knew where she worked.[5]

In 2003, Ford's Thunderbird production line, which plaintiff was a part of, closed down, resulting in "substantial displacement of hourly workers." Because plaintiff had seniority over many other workers, she was not laid off; rather, she was integrated into the main "trim" line at the Wixom plant.[6] Indeed, many of plaintiff's fellow Thunderbird chassis department members were also integrated to the main "trim" line. Matthew Swift, a Ford manufacturing-planning specialist, was assigned the task of integrating 350 workers from the Thunderbird line to the main line. Swift placed workers based on production needs, and could not grant most preference requests. In relevant part, Swift placed 70 workers in the chassis department, and 80 workers in the trim department. An individual's race or gender was not used as a factor in the placement of the displaced workers, as male and females of all ethnic backgrounds were placed in various departments.

Greg Lemanski, a white male who worked with plaintiff in the Thunderbird line chassis department, was placed in "chassis" because Swift felt that he had prior experience that translated well to chassis. Plaintiff did not initially show any preference regarding where she was assigned prior to her assignment to trim, but did request a move to chassis after she had been placed in trim. As a result, Ann Dye asked plaintiff if she wanted to be placed in the pool of those wanting to transfer to chassis. Plaintiff declined Dye's offer, stating that although she was more familiar with chassis, she did not see chassis as more preferable.

Sherrie Winfield, the human resources (HR) manager at the Wixom plant, testified that "substantially increased economic pressures caused greater scrutiny of all employees and a renewed emphasis on accountability." As a result, unexcused absences were coded as "AWOL," and were to be reviewed by labor relations or management if they reached a certain level. The Wixom plant kept a top 50 AWOL list to monitor and control unexcused absences, and anyone who was on the list was denied "go home" time privileges[7] and the use of unpaid personal days. Plaintiff was on the top 50 AWOL list in 2002, 2004 and 2005, as well as the 2003 employee follow up checklist, which was a temporary replacement to the AWOL list in 2003. As a result, plaintiff was monitored by management and was not allowed "go home" time unless her union representative spoke with her supervisor. Plaintiff filed an internal complaint over this practice, which resulted in an investigation and finding that plaintiff was not being retaliated or

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where Graham was not supposed to be. This complaint led to an email authored by labor relation's supervisor, Brian Hinton, where he referred to plaintiff as the "scared rabbit."

[5] Apparently, in 1996 a man entered the Wixom plant and shot a woman with whom he had been infatuated.

[6] Plaintiff's job classification did not change.

[7] "Go home" privileges allowed eligible employees to go home without pay if their shift had excess manpower.

discriminated against. Nevertheless, she was subsequently allowed go-home time without having to go through any special procedures.

Plant medical staff also watched plaintiff closely. Ford physician Dr. Golicz, who plaintiff was generally required to see before taking a medical leave, consistently denied her medical leave on the grounds that she was healthy, while also opining that plaintiff should stop attempting to abuse medical privileges.[8] Golicz disagreed with Dr. Fergusson's (plaintiff's psychiatrist) assessment that plaintiff had "adjustment disorder mixed." As a result, and according to the terms of the collective bargaining agreement, Golicz ordered that plaintiff see an independent third party psychologist, who would break the "tie" and determine whether plaintiff, depending on the situation, could go on medical leave (or continue medical leave). The third party doctor generally agreed with Golicz's assessment, and depending on the situation, plaintiff was either denied medical leave or ordered to return from medical leave. Plaintiff admitted that other employees were also sent back to work after seeing a third party doctor.

Plaintiff also saw her name on what she referred to as a "hit list" on a post it note at the Wixom medical center. Of the nine employees on the list, eight of them were African American. Plaintiff filed an internal complaint about the list. Hinton performed an investigation and determined that the list existed so that medical staff would know who was supposed to be closely monitored. Plaintiff additionally complained about an incident where she brought a doctor's excuse in after she had been AWOL, and the nurse warned her that the next time she was AWOL she would have to bring in a medical certification form to justify being AWOL, even though "Kim" (an African American female) was not required to bring in the same form when she was AWOL.

Plaintiff generally attended physical therapy sessions during her work shift. Because of reduced manpower and production demands, it became hard to relieve hourly employees so that they could attend physical therapy during their respective shifts. Therefore, a policy was implemented at Wixom providing that if no relief were available, workers would have to attend physical therapy at the end of their respective shifts, and would receive overtime pay for doing so. Employees' physical therapy attendance was monitored closely so that employees did not inadvertently get paid overtime for a rescheduled therapy session that they never attended. Supervisors were instructed to discipline hourly employees who did not show up for physical therapy sessions and/or call to cancel or reschedule the therapy sessions. As a result, plaintiff's supervisor, Brian Ridley, suspended plaintiff from one day of work after she missed two scheduled therapy sessions without calling to cancel the sessions and/or reschedule.[9] Plaintiff unsuccessfully appealed her suspension through the internal grievance procedure.

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[8] Faye Green, a staff member at the Wixom medical center, stated that Golicz did what HR told him to do, and would send employees back to work even if they were not better.

[9] Chadd Howard, the manufacturing planning specialist at the Wixom plant, stated that Caucasians were similarly disciplined for the same actions.

According to Plaintiff, Ridley, who she admitted was known as a tough supervisor, harassed her by pulling her off the line to have discussions with her, making her use a heavier air gun that affected her speed, and threatening to write her up for poor work performance for not keeping up and dropping screws. Plaintiff, however, admitted that others were also pulled off the line and threatened to be written up for poor work performance, that she did drop screws, had trouble keeping up because of the heavier gun, was only issued a heavier gun when her lighter gun broke down and was being repaired, and that she was even provided with a helper when her gun was being repaired. Plaintiff filed an internal complaint about Ridley with plant manager Patricia Reid in March 2004, and admittedly has not had any problems with Ridley since doing so.

On January 13, 2004, plaintiff and six other individuals sent a letter to labor relations alleging that they had been discriminated against on the basis of their race and gender, as well as sexually harassed. Ford conducted a separate investigation for each individual, which consisted of interviewing each individual to find out about their specific allegations, and interviewing other plant workers, supervisors, managers, etc.. Ford's investigation led them to conclude that all of the complaints were unsubstantiated.

Shortly after returning to work from a medical leave on April 25, 2005, plaintiff saw a picture of a vagina on a bulletin board in the rail area with "this is where we all come from" written by it in chalk. Plaintiff filed an internal complaint, which resulted in the graffiti being removed. Plaintiff was AWOL on August 15, 2005. The day after, hourly worker Joe Camarelli told plaintiff "How do you know you're free? Do you have a price tag on your back?" and "Are you for sale?" Plaintiff filed another complaint the next day, which labor relations investigated. Although labor relations could not substantiate plaintiff's claim, plaintiff admittedly had no subsequent problems with Camarelli (and had none previous to this either).

On August 27, 2004, plaintiff and six co-plaintiffs filed a complaint.[10] In relevant part, plaintiff alleged that she was subjected to a race, gender and sexually hostile work environment, was discriminated against based on her race and gender, and was retaliated against for partaking in a protected activity. Ford subsequently filed a motion for summary disposition, a motion for partial summary disposition and a motion in limine to exclude "me too" evidence, all of which were denied. We granted Ford's applications for leave to appeal the respective orders denying its motions.

## Analysis

Ford argues that the trial court should have granted its motion for summary disposition because plaintiff did not present any admissible evidence establishing a genuine issue of material fact regarding any of her claims. We review a trial court's decision to grant or deny a motion for summary disposition de novo, *Dressel v Ameribank,* 468 Mich 557, 561; 664 NW2d 151 (2003), viewing the pleadings, affidavits, depositions, admissions and other documentary evidence

[10] The trial court subsequently granted Ford's motion to sever the seven plaintiffs' cases and try them separately.

submitted in a light most favorable to the nonmoving party, *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). Summary disposition is proper under MCR 2.116(C)(10) if the documentary evidence shows that there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 164; 645 NW2d 643 (2002).

Hostile Work Environment Claims

To establish a prima facie case of a hostile work environment,[11] a plaintiff must establish (1) that she belonged to a protected group;[12] (2) that she was subjected to unwelcome communication or conduct on the basis of her protected status; (3) the unwelcome conduct or communication was intended to, or in fact did, substantially interfere with the employee's employment or created an intimidating, hostile or offensive work environment, and (4) respondeat superior. *Radtke v Everett*, 442 Mich 368, 382-383; 501 NW2d 155 (1993). To establish a hostile work environment claim based on sex, the complained of conduct or communication must be "inherently" sexual, *Corley*, *supra* at 279-280, as sexual harassment is defined as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature." MCL 37.2103(i). See, also, *Robinson v Ford Motor Co*, 277 Mich App 146, 154; 744 NW2d 363 (2007) (recognizing a sexual harassment claim must be based on either (1) unwelcome sexual advances, (2) requests for sexual favors, or (3) other verbal or physical conduct of a sexual nature).

A determination whether an employer's conduct created a sexually hostile work environment involves an examination of whether, in the totality of the circumstances, the work place is so tainted by sexual harassment that a reasonable person 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. *Radtke*, *supra* at 382-383. Under the respondeat superior element, an employer may avoid liability if it adequately investigated and took prompt and appropriate remedial action upon notice of the alleged hostile work environment. *Sheridan v Forest Public Schools*, 247 Mich App 611, 622; 637 NW2d 536 (2001).

Plaintiff contends that she established a prima facie case of sexual harassment by presenting evidence that she saw a picture of a vagina in the rail area, and evidence that Graham stalked her. We first note that Graham's behavior was neither a sexual advance nor a request for sexual favors, and did not include any physical conduct. *Robinson*, *supra*. Thus, if his conduct is actionable, it must be, inter alia, "verbal conduct of a sexual nature." *Id*. See, also, *Corley*, *supra* at 279-280. Assuming that it was, Graham's behavior was sporadic, never occurred in plaintiff's work area, involved few verbal exchanges, and as noted did not involve any

[11] Michigan recognizes hostile work environment claims based on sexual or racial harassment. *Malan v General Dynamics*, 212 Mich App 585, 587; 538 NW2d 76 (1995).

[12] All employees are inherently members of a protected class in hostile work environment cases because all persons may be discriminated against. *Haynie v Department of State Police*, 468 Mich 302, 308; 664 NW2d 129 (2003).

threatening or sexual words. We therefore hold, as have countless other courts addressing similar facts, that although Graham's romantic interest in plaintiff was clearly unwelcome, it was not objectively severe or pervasive conduct of a sexual nature, and thus, the complained of conduct did not rise to the level of a sexually hostile work environment. See, e.g., *Henthorn v Capital Communications, Inc*, 359 F3d 1021, 1027-1028 (CA 8, 2004) (holding that repetitive requests for a date, in the absence of any sexual comments or touching, did not create a sexually hostile environment); *Algana v Smithville R-II School Dist*, 324 F3d 975, 980 (CA 8, 2003) (same); *Clark v United Parcel Service Inc*, 400 F3d 341, 351-352 (CA6, 2005). Moreover, Ford investigated plaintiff's graffiti complaint, and promptly had the offensive graffiti, which was not directed at plaintiff, removed. *Sheridan, supra*.

We point out that we have considered these allegations collectively, rather than individually. However, what the evidence presents is that plaintiff was subjected to unwanted and annoying attention from Graham, and viewed one unrelated sexually graphic drawing, and nothing more. That is said not to discount the unpleasantness of the situation, but to instead point out that plaintiff's workplace was not "permeated" with discriminatory intimidation, ridicule or insults based on her sex. *Harris v Forklift Systems Inc*, 510 US 17, 21; 114 S Ct 367; 126 L Ed 2d 295 (1993).

Additionally, none of the co-worker's affidavits[13] contain any evidentiary support that plaintiff was subjected to a sexually or racially hostile work environment. Andrina Spencer's affidavit does not suggest that Ridley's action towards plaintiff was racially motivated, while Dorius Reynolds' and Brian Allen's affidavits contain short conclusory statements that do not provide evidence of discrimination. *Quinto v Cross and Peters Co*, 451 Mich 358, 370-371; 547 NW2d 314 (1996). Similarly, Joe Badalamenti's testimony cited to the trial court does not at all detail what foremen said what, to whom anything was said, or when any utterances occurred. *Id*. Beth Murphy's brief testimony established only that the "list" contained both Caucasians and African Americans. These affidavits therefore do not provide evidence that plaintiff was subject to a racially or sexually hostile work environment.

Ford also promptly investigated each complaint that was made regarding Graham, and progressively disciplined Graham until his employment was terminated. And, although Ford eventually reinstated Graham by resolving his grievance through the cba, Graham never made any further contact with plaintiff after he was reinstated, and he was eventually moved to a different plant. We therefore further conclude that even if it were found that the complained of graffiti and conduct constituted sexual harassment, the claim would still fail on the ground of respondeat superior. *Sheridan, supra* at 622; See also *Knabe v. Boury Corp*, 114 F3d 407, 412 (CA 3, 1997).

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[13] The affidavits of Spencer, Reynolds and Murphy were attached to plaintiff's appeal brief. The affidavits of Allen and Badalamenti were not, nor were they contained in the lower court record. For those two, we relied on the testimony quoted in plaintiff's response to Ford's motion for summary disposition.

Plaintiff next contends that she established a prima facie case of racial harassment by presenting evidence that Camerelli stated "are you for sale?" and "how do you know you're free. Is there a price tag on your back," as well as evidence that Ridley yelled at and disciplined her, and that Golicz denied her medical leave. In regard to Ridley's and Golicz's complained of actions, plaintiff has presented no evidence, direct or circumstantial, that any of the actions were linked to her status as an African American female. The evidence established that Golicz would send employees back to work who were African American, Caucasian, and men and women. Likewise, evidence was presented that Ridley was tough on all of his employees. Therefore, in regard to plaintiff's claim that Ridley and Golicz racially harassed her, we conclude that she has failed to establish a genuine issue of material fact that she was subjected to unwelcome communication or conduct on the basis of her protected status.

In regard to Camerelli's alleged statements, even assuming the comments could be interpreted as unwelcome communication on the basis of plaintiff's status as an African American, we conclude that these isolated comments[14] by a co-worker would not have substantially interfered with a reasonable person's employment or created an intimidating, hostile or offensive work environment. *Radtke, supra* at 382-383.[15] Significantly, plaintiff reported the comments and admittedly never had another problem with Camarelli. *Sheridan, supra*.

Discrimination Claim

Under the Civil Rights Act (CRA), an employer may not discriminate against an individual with respect to employment, compensation, or a term, condition or privilege of employment because of that individual's race or sex. MCL 37.2202(1)(a); *Veenstra, supra* at 160. To establish a prima facie case of discrimination, a plaintiff must establish (1) that she is a member of a protected class, (2) was subjected to an adverse employment action, and (3) others, similarly situated and outside the protected class, were unaffected by the employer's adverse conduct. *Town v Michigan Bell*, 455 Mich 688, 695; 568 NW2d 64 (1997). If a plaintiff establishes a prima facie case, the employer must articulate a nondiscriminatory reason for the adverse employment action. *Id*. If the defendant asserts legitimate, nondiscriminatory reasons for its actions, the presumption of discrimination created by the prima facie showing is eliminated, and the plaintiff must then produce evidence that the reasons asserted were a mere pretext for discrimination, and that discrimination was the defendant's true motive in making the adverse employment decision. *Id*. at 696-697.

Ford argues that plaintiff did not present evidence showing that she suffered an adverse employment action and dissimilar treatment based on her race or gender. For purposes of a retaliation claim under the CRA, an adverse employment action has been defined as an

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[14] Plaintiff admitted that she was never subjected to any other racial or gender slurs.

[15] We further note that the "scared rabbit" email is irrelevant to plaintiff's hostile environment claims because although insensitive to plaintiff's situation, it does not make a sexual reference, nor does it otherwise reveal any link to plaintiff's status as an African American female.

employment decision that is materially adverse in that it is more than a mere inconvenience or an alteration of job responsibilities. *Peña v Ingham Co Road Comm*, 255 Mich App 299, 311-312; 660 NW2d 351 (2003). Typically, there must be some ultimate employment decision, such as a termination in 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 which might be unique to a particular situation. *Id*. at 312.

Here, adverse employment actions can result from an alleged denial of her request to transfer to another plant, see *Randlett v Shalala*, 118 F3d 857, 862 (CA 1, 1997), and her one-day suspension without pay, *Page v Connecticut Dep't of Public Safety*, 185 F Supp 2d 149, 557 (D Conn, 2002). However, plaintiff's allegation of being closely monitored by the plant's medical staff[16] and being placed on the trim line do not constitute adverse employment actions. Despite these two acts, plaintiff remained employed with full benefits and no diminished job responsibilities, has the same job classification/title, and admitted that the trim line was not less desirable than chassis. *Peña, supra* at 311-312.

Furthermore, and setting aside for the moment the alleged denial of a transfer and one day unpaid suspension, even if it were found that plaintiff suffered an adverse employment action, she has still failed to establish that other employees, outside of her protected class, were treated more favorably under similar circumstances. *Town, supra*. Plaintiff provided no evidence regarding the racial composition of the AWOL list, and all individuals on the top 50 AWOL list were closely monitored by medical staff, and required to see Golicz before taking medical leave. Additionally, the post-it note list found on a computer in the medical center contained the names of both African Americans and Caucasians, and the only individual plaintiff complained of that was not required to bring in a medical certification form after being AWOL was also an African American female. And, all employees who missed a physical therapy session and failed to cancel or reschedule the appointment were disciplined.

Plaintiff also failed to submit evidence that race or gender was a factor in determining where Thunderbird line employees were placed when the line was shut down. Plaintiff admitted that she could not give an example of a situation were another employee was ever treated more favorably than her under similar circumstances, including an example of where another employee was treated more favorably under similar circumstances regarding a transfer opportunity. In fact, the only example plaintiff presented regarding an individual who was transferred involved dissimilar circumstances. Specifically, Dennis Morton (a Caucasian male) voluntarily transferred (while giving up his seniority) to a plant in Atlanta, Georgia, which had openings for 55 hourly employees, only 47 of which were filled. The identified transfer took place months before plaintiff ever requested a transfer, of any sort, and plaintiff's transfer request was limited to plants near her home and was made at time when there were no openings. Finally, as to the one-day suspension without pay, plaintiff admitted that she missed the therapy session and did not cancel it.

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[16] Plaintiff was required to see Dr. Golicz before taking medical leave, was placed on a list and was required to bring in a medical certification form to justify being AWOL.

Moreover, Ford presented non-discriminatory reasons to justify its actions, and plaintiff has failed to present any evidence creating a genuine issue of material fact regarding whether Ford's stated reasons were pretext. Ford produced evidence that it required all employees to see Golicz before taking medical leave, closely monitored employees' attendance if they had a history of consistently being AWOL, and disciplined all employees for missing scheduled therapy sessions because employees were paid overtime for attending the sessions and Ford did not want to pay overtime to employees who were not attending scheduled sessions. It further established that it had to close down its Thunderbird line because of production needs, and integrated as many Thunderbird workers as possible, including plaintiff, to main line trim or chassis based on the plants needs. Finally, Ford submitted evidence that it inquired into transfer opportunities for plaintiff, but none were available due to Ford's economic situation and current downsizing of most local plants. We therefore conclude that plaintiff failed to establish a discrimination claim. *Town, supra* at 695-697.

Retaliation Claim

The CRA prohibits an employer from retaliating against an employee for making a charge, filing a complaint, testifying, assisting, or participating in an investigation, proceeding or hearing under the act. *Feick v Monroe County*, 229 Mich App 335, 344; 582 NW2d 207 (1998). The Worker's Disability Compensation Act (WDCA) also prohibits an employer from retaliating against an employee who files a complaint or exercises a right afforded by the Act. MCL 418.301(11). To establish a prima facie case of retaliation under either the CRA or WDCA, a plaintiff must establish "(1) that [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." *DeFlaviis v Lord & Taylor Inc*, 223 Mich App 432, 436; 566 NW2d 661 (1997). To establish causation in a retaliation claim, a plaintiff must show that her participation in protected activity was a significant factor in the employer's adverse employment action. *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, if such evidence would enable a reasonable factfinder to infer that an action had a discriminatory or retaliatory basis. *Id*.

After review of the evidence cited by plaintiff, we hold that she failed to create a genuine issue of material fact that there was any causal connection between her engagement in a protected activity and the subsequent adverse actions she complains of, *Rymal*, *supra* at 303. Instead, plaintiff has merely established that she engaged in a protected activity by filing a discrimination and harassment complaint with human resources on January 13, 2004, and that she was subsequently integrated to the main line trim department. However, plaintiff admitted the position was no less desirable than her previous position in the chassis department, and the integration affected 350 other workers. Furthermore, although her new supervisor, Ridley, subsequently disciplined plaintiff, it was for an admitted violation of plant policy when she (on more than one occasion) skipped a scheduled physical therapy session without canceling or

rescheduling the session. We therefore conclude that plaintiff failed to establish a genuine issue of material fact on her retaliation claims. *DeFlaviis, supra* at 436.[17]

We reverse the trial court's order denying Ford's motion for summary disposition, and remand for entry of a judgment in favor of defendant. All other issues raised on appeal are therefore moot.

/s/ Christopher M. Murray
/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder

[17] Although plaintiff did not counter Ford's argument that all of plaintiff's claims under the Michigan Persons With Disabilities Act (MPWDA) should have been dismissed, we will still briefly address Ford's argument. The MPWDA only protects employees who are disabled, which is defined in pertinent part as individuals having a determinable physical or mental characteristic that substantially limits a major life activity and is unrelated to her ability to perform the duties of a particular job or position. *Peden v Detroit*, 470 Mich 195, 202; 680 NW2d 857 (2004). A major life activity has been defined as a basic activity which the average person in the general population can perform with little or no difficulty, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, sitting, standing, lifting and reaching. *Lown v JJ Eaton Place*, 235 Mich App 721, 728; 598 NW2d 633 (1999). Here, plaintiff has not presented any evidence that she was disabled, and thus, she is not protected under the MPWDA.