STATE OF MICHIGAN

COURT OF APPEALS

MAUREEN JOHNSON,

Plaintiff-Appellee/Cross-Appellant,

v

UNIVERSITY OF MICHIGAN REGENTS,

Defendant-Appellant/Cross-Appellee,

and

PAUL BOYLAN and PIERRE CALABRIA,

Defendants.

UNPUBLISHED
December 14, 2004

No. 247975
Washtenaw Circuit Court
LC No. 99-010505-CZ

Before: Whitbeck, C.J., Jansen and Bandstra, JJ.

PER CURIAM.

Defendant,[1] University of Michigan Regents, appeals as of right from a trial court judgment entered, on a jury verdict, in favor of plaintiff with regard to her claim of hostile environment sexual harassment pursuant to the Elliot Larsen Civil Rights Act (hereinafter "CRA").[2] Plaintiff filed a claim of cross appeal challenging the trial court's denial of her

[1] The singular use of "defendant" refers to the University of Michigan Regents, who is the appellant, and use of the term "defendants" refers to the University of Michigan Regents plus Paul Boylan and Pierre Calabria, who were dismissed. The claim against Calabria was dismissed without prejudice as he was not timely served with process pursuant to MCR 2.102(E)(2). After a directed verdict motion and stipulation by plaintiff, the trial court dismissed Boylan as an individual defendant.

[2] The trial court entered a judgment on the verdict in favor of plaintiff on the claim of hostile environment sexual harassment for $304,927.17 plus interest, dismissing all claims against Boylan and the retaliation claim against defendant based on the directed verdict motion ruling, and dismissing the quid pro quo claim against defendant based on the verdict.

attempts to compel discovery regarding her race discrimination claim and the order granting summary disposition on this claim. We reverse and remand.

I

Plaintiff, an oboist, entered the Master's Performance Program at the University of Michigan School of Music for the 1997-1998 academic year. Plaintiff auditioned and was placed in the University Philharmonic Orchestra (hereinafter "UPO").[3] Professor Pierre Calabria, an Assistant Professor of Music, was the conductor for the UPO.

Around November 14, 1997, plaintiff went to Richard Beene, her bassoon teacher, and told him she was having problems with Calabria harassing her, and plaintiff was taken to the Dean of the School of Music, Paul Boylan. Dean Boylan referred plaintiff to the Associate Dean of Academic and Student Affairs and the Affirmative Action Officer for the School of Music, Willis Patterson. Associate Dean Patterson asked plaintiff to write a formal complaint and to get other students to come forward. Plaintiff, Arianna Smith, and an anonymous female student submitted letters regarding Calabria's behavior. Plaintiff submitted her letter to the School of Music on November 17, 1997, complaining that the harassment from Calabria was on a regular basis and providing the following examples: (1) sexual comments, related to the music, were made to the whole orchestra; (2) Calabria came to plaintiff's job and harassed her by making comments about her clothing; (3) Calabria mentioned a romance in the making between the two of them; (4) Calabria asked if plaintiff was a massage therapist who could massage him; (5) Calabria offered to buy plaintiff wine on numerous occasions; and (6) Calabria would berate and yell at plaintiff, which she thinks was because she did not respond to his sexual advances. The anonymous female presented a letter alleging that she was the subject of several unsolicited advances by Calabria, including that he kissed her four or five times on the cheek and the head, he asked her out to dinner, and put his arm around her. In Smith's letter she alleged that Calabria had commented on how sexy it was when she was showing stomach, asked her if she was tan all over, and asked if he could buy her books and flowers because he was appreciative of her work.

On November 19, 1997, Associate Dean Patterson met with Calabria, explained the allegations, and told him that the University took the allegations seriously. According to Associate Dean Patterson, Calabria basically admitted to the allegations contained in the letters from Smith and the anonymous female, but denied most of the allegations from plaintiff, claiming that this was her reaction to his being severely critical of her play and voicing his dissatisfaction with her play in front of the orchestra. Associate Dean Patterson read a statement to Calabria from Dean Boylan which provided that either a reprimand would be placed in his file or he could resign and be relieved of his teaching responsibilities for the academic year. Calabria refused to resign, and Associate Dean Patterson informed Calabria of the possible ramifications of a reprimand letter being filed and further informed him that it was important that he modify his behavior. Associate Dean Patterson also warned Calabria not to give the three students any reason to believe he was being vengeful. Associate Dean Patterson submitted a

[3] The UPO was the lesser orchestra, as compared to the University Symphony Orchestra (hereinafter "USO").

letter to Dean Boylan regarding his investigation. Associate Dean Patterson also wrote a letter to plaintiff regarding his meeting with Calabria and informed her that Calabria understood the problem, and that she should not to hesitate to call him if she had any further problems.

Dean Boylan placed the students' letters and Associate Dean Patterson's letter in the file; however, he did not write a letter of reprimand. Dean Boylan explained that he was advised by General Counsel that having Associate Dean Patterson's letter and the students' complaint letters as a permanent part of Calabria's faculty record would keep Calabria from working in the United States. Dean Boylan met with Calabria and spoke to him about his behavior, gave him a "stiff" verbal warning, and threatened him with regard to not teaching the next term. Dean Boylan testified that he monitored Calabria's behavior following plaintiff's complaint. Dean Boylan told plaintiff that there had been a discussion with Calabria, and that Calabria had been advised that he needed to alter his behavior.

After reporting Calabria, plaintiff avoided Calabria, and never again had any contact or further problems with him. Plaintiff did not want to continue in the UPO for the remainder of the semester, and she was excused from the UPO for the duration of the term, and given an A in the class for the fall semester. Plaintiff did not enroll for the winter semester of the 1997-1998 academic year. On May 1, 1998, a letter was sent to Calabria informing him that for the 1998-1999 academic year he would have no teaching assignments and no office space. Calabria did not return for the 1998–1999 school year. For the academic year of 1998-1999, plaintiff went to Southern Illinois, where she was promised an oboe assistantship, a full tuition stipend, an opportunity to study with the principal oboist in the St. Louis symphony, and an opportunity to play in other graduate ensembles.

As a result of the above discussed events, plaintiff filed a complaint against defendants alleging sexual harassment, retaliation, race discrimination, and discrimination based on harasser status. Defendants filed a motion for summary disposition, which the trial court denied with regard to the hostile environment sexual harassment claim, the quid pro quo claim, and the retaliation claim. An order was entered dismissing plaintiff's racial discrimination and "harasser status" claims with prejudice, and later a directed verdict was entered on the retaliation claim. A jury found defendant not liable for quid pro quo sexual harassment, liable for hostile environment sexual harassment, and found damages in the amount of $250,000. Subsequently, plaintiff filed a motion for an award of attorneys' fees and costs pursuant to MCL 37.2802. The trial court entered an opinion and order granting plaintiff's motion for costs and attorney fees in the amount of $184,656.25 for attorney fees and $12,563 for costs.

II

Defendant contends that the trial court erred in denying its motion for summary disposition with regard to plaintiff's hostile environment sexual harassment claim. We agree.

A. Standard of Review

On appeal, a trial court's decision on a motion for summary disposition is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). This Court must review the record in the same manner as must the trial court to determine whether the movant was entitled to judgment as a matter of law. *Morales v Auto-Owners Ins*, 458 Mich 288, 294;

582 NW2d 776 (1998); *Michigan Educational Employees Mutual Ins Co v Turow*, 242 Mich App 112, 114-115; 617 NW2d 725 (2000). A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998); *Mino v Clio School District*, 255 Mich App 60, 67; 661 NW2d 586 (2003). When deciding a motion for summary disposition, a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999). A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds could differ. *Allstate Ins Co v State*, 259 Mich App 705, 709-710; 675 NW2d 857 (2003).

B. Hostile Environment Claim

Defendant contends that its motion for summary disposition should have been granted with regard to plaintiff's hostile environment sexual harassment claim because plaintiff did not establish that the unwelcome sexual conduct or communication substantially interfered with her education, and also did not establish that defendant failed to take appropriate remedial action upon receiving notice. We find that the trial court erred in denying defendant's motion for summary disposition on plaintiff's hostile environment sexual harassment claim because no genuine issue of material facts exists with regard to whether defendant took appropriate remedial action upon receiving notice of the alleged sexual harassment.

With regard to hostile environment sexual harassment**,** MCL 37.2103(i) provides:

> Discrimination because of sex includes sexual harassment. Sexual harassment means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature under the following conditions:
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> * * *
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> (iii) The conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations or public services, *education*, or housing, or creating an intimidating, hostile, or offensive employment, public accommodations, public services, *educational*, or housing environment. [Emphasis added; see also *Chambers v Trettco*, 463 Mich 297, 310; 614 NW2d 910 (2000).]

To establish a claim of hostile environment sexual harassment, plaintiff must prove the following elements by a preponderance of the evidence: (1) she belonged to a protected group; (2) she was subjected to communication or conduct on the basis of sex; (3) she 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 her education or created an intimidating, hostile, or offensive environment; and (5) respondeat superior. *Chambers, supra* at 311, citing

Radtke v Everett, 442 Mich 368, 382-383; 501 NW2d 155 (1993); see also *Elezovic v Ford Motor Co*, 259 Mich App 187, 192; 673 NW2d 776 (2003).[4]

Defendant claims that plaintiff failed to establish respondeat superior because there is no showing that defendant had notice of Calabria's conduct prior to November 1997 or that it failed to take remedial action upon finding out in November 1997. We agree.

The defendant is liable for hostile environment sexual harassment only if it failed to investigate and take prompt, appropriate remedial action after having been put on notice of the harassment. *Chambers, supra* at 313. A defendant cannot be held liable for a hostile environment unless it received actual or constructive notice of the harassing conduct. *Id*. at 319; *Sheridan v Forest Hills Public Schools*, 247 Mich App 611, 621; 637 NW2d 536 (2001). Notice is considered adequate if, under the totality of the circumstances and viewing the circumstances objectively, a reasonable defendant would have known there was a substantial probability that the plaintiff was being sexually harassed. *Sheridan, supra* at 622.

The first question is whether defendant had notice prior to November 1997 when plaintiff reported Calabria, which was the first time defendant attempted to take remedial action. Defendants asserted that there was no notice until around November 14, 1997, when plaintiff reported to Beene. Plaintiff, in opposition to defendants' motion for summary disposition, contended that defendant had actual or constructive notice because of a memorandum dated September 18, 1995, from Kenneth Kiesler, a professor of conducting, to Dean Boylan. In the memorandum, Kiesler expressed concerns regarding Calabria, because when a female student asked to attend one of Kiesler's conducting seminars, Calabria said "Who wouldn't want a pretty girl like you in his class?" Plaintiff also submitted that the following supported actual notice or constructive notice: (1) on numerous occasions Calabria would speak to Kiesler in a way that made him feel uncomfortable by commenting on women sexually or commenting that he would like to date a female student or faculty member; (2) Kiesler witnessed Calabria, while demonstrating his conducting skills before he was hired, making a female feel uncomfortable while he was teaching her because of the way he stood over her; and (3) Kiesler had heard both men and women comment that they were uncomfortable around Calabria.

Prior to November 1997, when plaintiff reported the sexual harassment, defendant had no actual or constructive notice of the sexual harassment alleged by plaintiff. As noted above, with regard to a hostile environment claim, "an employer may avoid liability for a claim of sexual harassment if it does not have actual or constructive notice *of the alleged harassment*." *Elezovic, supra* at 193 (emphasis added); see also *Radtke, supra* at 396-397 n 44 . "Notice of sexual harassment is adequate if, by an objective standard, the totality of the circumstances were

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[4] We note that the cited cases were decided in the employment context; however, the holdings are applicable in the educational context as well. The CRA is composed of eight articles that serve distinct purposes. The discriminatory actions prohibited by the CRA are set forth in articles 2 through 5: article 2 prohibits employment discrimination, article 3 prohibits discrimination in places of public accommodation, article 4 prohibits discrimination in educational institutions, and article 5 prohibits housing discrimination.

such that a reasonable employer would have been aware of a substantial probability that sexual harassment was occurring." *Chambers, supra* at 319.

"The employee can demonstrate that the employer knew of the harassment by showing that she complained to higher management of the harassment . . . or by showing the pervasiveness of the harassment, which gives rise to the inference of knowledge or constructive knowledge." *McCarthy v State Farm Ins Co*, 170 Mich App 451, 457; 428 NW2d 692 (1988), quoting *Henson v Dundee*, 682 F2d 897, 905 (CA 11, 1982). In the educational context, plaintiff can show the University had notice if she reported to a school administrator or professor; she did not until November 1997.[5] There is no support for plaintiff's contention that defendant had any adequate actual notice that plaintiff was being subjected to sexual harassment by Calabria or to an environment made hostile by sexual harassment, as she reported nothing until November 1997. Plaintiff acknowledged that there were no witnesses to the alleged incidents of sexual harassment against her.

Further, there was no showing that the pervasiveness of Calabria's harassment gave rise to constructive knowledge. See *McCarthy, supra* at 457. Plaintiff has not adduced evidence in opposition to defendant's motion for summary disposition[6] to support the claim that Calabria's conduct was so pervasive that it gives rise to the inference of knowledge or constructive knowledge. *Sheridan, supra* at 627; *McCarthy, supra* at 457. The evidence submitted that Calabria made some women feel uncomfortable in the past, made comments to Kiesler about dating certain female students, and made a comment about a girl being pretty did not establish that there was pervasive sexual harassment such that defendant had constructive notice. See *Elezovic*, *supra* at 196; *McCarthy, supra* at 457. Further, even if Calabria made other students uncomfortable in the past, it cannot be said to establish notice with respect to plaintiff's claim of harassment. See *id.*; *Sheridan, supra* at 627-628.

Viewing the submissions in a light most favorable to plaintiff, we find on review de novo no actual notice or constructive notice because the circumstances were not such that a reasonable university administrator or professor would have been aware of a substantial probability that sexual harassment was occurring. Because plaintiff failed to show that she provided actual notice or that the under the circumstances there was constructive notice to defendant concerning

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[5] We note that there were bulletin boards with the sexual harassment policy posted, which encourage students to report sexual harassment and students were provided the sexual harassment policy in the student handbooks.

[6] Once the moving party has specifically identified the matters which have no disputed factual issues, MCR 2.116(G)(4), *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999), and has supported the position by affidavits, depositions, admissions, or other documentary evidence, *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999), the party opposing the motion then has the burden of showing by evidentiary materials that a genuine issue of disputed fact exists, *Smith*, *supra*. When the burden of proof at trial would rest on the nonmoving party, the nonmovant may not rest upon mere allegations or denials in the pleadings, but must, by documentary evidence, set forth specific facts showing that there is a genuine issue for trial. *Quinto, supra* at 362.

the existence of the alleged sexual hostile environment prior to November 1997, we find on review de novo that defendant cannot be vicariously liable for a hostile environment claim unless it failed to adequately investigate and take prompt and appropriate action upon learning of Calabria's conduct from plaintiff in November 1997. See *Chambers, supra* at 312; *Radtke, supra* at 395 n 41; *Sheridan, supra* at 621.

Defendant, in its motion for summary disposition, contended that plaintiff could not prove that prompt and appropriate remedial action was not taken because as soon as plaintiff complained of the conduct, Associate Dean Patterson commenced an investigation and immediate steps were taken to assure that plaintiff would not be subjected to Calabria's conduct or any form of retaliation. Specifically, defendant asserted that within days of plaintiff's complaint: (1) her allegations had been investigated; (2) Calabria had been reprimanded; (3) plaintiff had been removed from any potential further harassment or retaliation; and (4) plaintiff admitted that she did not have any further problems with Calabria after she complained.

Plaintiff, in opposition to the motion for summary disposition, contended that the defendant's response was inadequate and not appropriate because: (1) a reprimand was not placed in Calabria's file; (2) Associate Dean Patterson did not believe that plaintiff was made to feel comfortable; (3) Dean Boylan incorrectly informed plaintiff that Calabria's contract would be up after the 1997-1998 school year and he would be leaving; (4) Dean Boylan did not make the decision to relieve Calabria of his duties until plaintiff indicated litigation was a possibility;[7] and (5) a similar occurrence happened early in the winter semester in which a female pianist felt uncomfortable and thought Calabria might have been asking her on a date.

Plaintiff does not dispute that defendant took prompt action upon learning of plaintiff's complaint in November 1997. The dispute is with regard to whether the appropriate remedial action was taken. We find, on review de novo, that actions taken by defendant reasonably served to prevent future harassment of plaintiff.

Plaintiff went to Beene around August 14, 1997, and Beene took plaintiff to Dean Boylan, who was concerned by the behavior and urged plaintiff to speak with Associate Dean Patterson, who was the affirmative action officer. At a meeting on November 19, 1997, Associate Dean Patterson explained the seriousness of the investigation, read the complaint letters to Calabria, and read a portion of a message from Dean Boylan, which informed Calabria that he had the option of having a reprimand placed in his file or that he could resign from all

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[7] Plaintiff contends that the decision to release Calabria was not made until April 9, 1998 when Associate Dean Patterson informed Dean Boylan that plaintiff was considering litigation because plaintiff had learned Calabria's contract was not set to end and she would not be able to return to following year. On April 16, 1998, at a School of Music Executive Committee meeting, the committee considered the replacement of Calabria. During the April 30, 1998 meeting it was noted that Calabria had been informed that he would have no teaching assignment for the 1998-1999 school year and that his salary would be paid to complete his contract. Dean Boylan denied that the Executive Committee's decision and discussions were based on his learning from Associate Dean Patterson that plaintiff was considering legal proceedings.

teaching responsibilities for the year with his salary. After Associate Dean Patterson explained the consequences of having a reprimand, Calabria stated he would accept that rather than resign. Associate Dean Patterson explained to Calabria that he needed to modify his behavior and not retaliate. By November 20, 1997, Associate Dean Patterson had issued a report to Dean Boylan with regard to his investigation. The report provided, in part:

> I explained to Prof. Calabria that it was important for him to modify his behavior with students that he give the three students who made the complaints no reason to suspect that he was being vengeful to them for seeking redress and relief from perceived indiscretions by him. I told him I would file this report to you, and would inform the students involved in this matter that our meeting had taken place. I tried to make aware [sic] of the possibility of further action from you, and/or from the students.

On December 2, 1997, Dean Boylan met with Calabria, at which time he orally reprimanded Calabria and advised him to modify his behavior. Dean Boylan also met with Calabria on December 12, 1997, to further discuss the reprimand. In April 1998, Calabria was informed that he would not be assigned to teach or have office space for the 1998-1999 academic year.

Plaintiff contends that appropriate remedial action was not taken because there was not a reprimand placed in Calabria's file. However, defendant warned Calabria through both Dean Boylan and Associate Dean Patterson, and Calabria was informed that a reprimand was going to be placed in his file. Associate Dean Patterson's letter and complaint letters of the student adequately served as a reprimand in Calabria's file. With regard to the reprimand, in his deposition testimony, Dean Boylan testified that the letter from Patterson placed in Calabria's file was "deemed to be the appropriate document to be retained in his file as record of the findings of the affirmative action of the School of Music office." Dean Boylan also testified, in his deposition, that having that letter in Calabria's file was "extremely severe" because it was a part of his permanent record and would keep him from working in the United States. Dean Boylan further testified in his deposition that "he felt confident that [Calabria] would not" sexually harass students in the future because "I thought he was sufficiently warned and in fear that he would be more cautious and modify his behavior."

Regardless, the salient question is not whether the reprimand was actually placed in Calabria's file, but whether the action was reasonable to prevent future harassment of plaintiff. Calabria was warned and thought there was a reprimand placed in his file, which would have the same effect on his behavior towards plaintiff regardless whether the reprimand was ever actually placed in his file. Calabria was concerned enough that he contacted an attorney. There was no further contact between Calabria and plaintiff. In *Chambers, supra*, our Supreme Court emphasized that "the relevant inquiry concerning the adequacy of the employer's remedial action is whether the action reasonably served to prevent future harassment *of the plaintiff*." *Id*. at 319 (emphasis added). There is no support for plaintiff's contention that the documents that were placed in Calabria's file and the verbal reprimands that came with them did not reasonably serve to prevent future harassment of plaintiff.

Plaintiff also contends that defendant's response was not appropriate because Associate Dean Patterson did not think plaintiff was made to feel comfortable and that plaintiff was wrongly informed that Calabria's contract would be up at the end of the 1997-1998 academic

year. Once again, however, these facts have no bearing on the pertinent question, which is whether the actions reasonably served to prevent future harassment of the plaintiff.

Next, plaintiff argues that the response was not appropriate because defendant was not relieved of his teaching responsibilities until plaintiff indicated that litigation was a possibility. The problem with this argument is that defendant was not required to relieve Calabria of his teaching duties in order take appropriate remedial action. And, the plaintiff does not dictate what the appropriate remedial action is; the action does not have to be termination in all circumstances.[8] Thus, even if defendant did not relieve Calabria of his teaching duties until after plaintiff mentioned litigation, this does not support that the action taken does not reasonably serve to prevent future harassment of the plaintiff. See *Chambers, supra* at 319.

Plaintiff further contends that the response was inadequate because a similar incident subsequently occurred in the winter semester. This contention is again without merit because the test for whether an employer's remedy was appropriate is whether it reasonably served to prevent future harassment of the plaintiff, not whether the remedial effort was effective in ending all harassment.[9] See *Knabe v Boury Corp*, 187 F3d 407, 412 (CA 3, 1997) ("[A]n action that proves to be ineffective in stopping the harassment may nevertheless be found reasonably calculated to prevent future harassment and therefore adequate.") The remedial action taken by defendant did serve to prevent future harassment of plaintiff.[10] See *Chambers, supra* at 319.

Lastly, plaintiff contends that the action taken was not appropriate because it resulted in a constructive expulsion of plaintiff. Plaintiff, in her response to defendant's motion for summary disposition, claims that she should have been placed in the USO because there was an opening and that it was unreasonable for anyone to expect her to audition. Dean Boylan excused plaintiff from the UPO for the remainder of the term, and Dean Boylan authorized Associate Dean Patterson to grade plaintiff so she would not be punitively graded; plaintiff received an A for the

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[8] In *Blankenship v Parke Care Centers*, 123 F3d 868, 874 (CA 6, 1997), a Title VII case, the Sixth Circuit indicated that a "harassment victim may not dictate an employer's action against a co-worker." In this case, plaintiff should not dictate the University's actions against Calabria. Further, defendant, in its brief on appeal, cites *Danca v Kmart Corp*, unpublished per curiam opinion of the Court of Appeals, issued August 25, 2000 (Docket No. 208738), where this Court found a response was adequate where harasser was questioned and an employer placed a written report of the incident in his personnel file. It is noted unpublished opinions are not binding precedent, MCR 7.215(C)(1), but we consider the case persuasive.

[9] Defendant, in its brief on appeal, cites *Trebilcott v Digital Equipment Corp*, unpublished per curiam opinion of the Court of Appeals, issued August 7, 1998 (Docket No. 199088), where this Court cited *Knabe, supra*, for the proposition that the test is not whether the remedy was effective but instead whether it was "reasonably calculated to end the harassment.") It is noted unpublished opinions are not binding precedent, MCR 7.215(C)(1), but we consider the case persuasive.

[10] In addition, it is not clear that the individual in the winter semester was sexually harassed. Evidence indicated only that she was made to feel uncomfortable and thought Calabria might ask her on a date.

fall term. Plaintiff was allowed an opportunity to audition for the USO, but did not avail herself of it. A position in the USO was clearly superior to a position in the UPO, and plaintiff wanted to be assigned the position without auditioning. Kiesler, in his deposition, stated that students are to audition for positions, and if plaintiff had not made the USO, there were other major ensembles she could have played in such as the symphony band. Associate Dean Patterson testified in his deposition that there were discussions with Reynolds regarding plaintiff being in the highest wind ensemble if she did not make the USO. Taking appropriate action to prevent further harassment does not require defendant to place plaintiff in a certain orchestra.

Further, plaintiff never even auditioned for any position. Dean Boylan in his deposition testified that he was prepared to speak with Kiesler and give plaintiff access to the UPO, but this situation never arose because she never showed up to audition. This Court cannot speculate as to what would have happened if plaintiff had auditioned. The CRA does not require defendant to discharge the harasser and make sure he and plaintiff never come in contact. Nor is defendant required to assign plaintiff to the higher orchestra to avoid Calabria. Plaintiff was removed from the UPO at her request for the fall semester and she was given an A. For the winter term she was given an opportunity to audition for a USO position that would keep her out of the UPO where Calabria was. In addition, the indication was that if plaintiff had not made the USO and wanted to be in a major ensemble other than the UPO she could have entered the symphony band. But plaintiff did not avail herself of her opportunity. Defendant is not required to make sure plaintiff and Calabria never come in contact, and there is no dispute that once defendant received notice plaintiff never had further contact with Calabria.[11]

There is no genuine issue of material fact with regard to whether defendant took appropriate remedial action to prevent future harassment of plaintiff. Defendant promptly investigated and reprimanded Calabria, and there was no further harassment of plaintiff. Nothing in the CRA dictates the specific action that defendant must take. Again "the relevant inquiry concerning the adequacy of the employer's remedial action is whether the action reasonably served to prevent future harassment of the plaintiff." *Id*. at 319. Accepting plaintiff's allegations that are supported by documentary submissions as true, we find, on review de novo, there is no genuine issue of material fact as to whether defendant's actions reasonably served to prevent future harassment of plaintiff. To hold otherwise would require an employer or university, in this case, to terminate any individual that creates a hostile environment, regardless of the level of the harassment. Viewing the evidence that was before the trial court,[12] plaintiff has not presented a genuine issue of fact because defendant's actions reasonably served to prevent future harassment of the plaintiff, thus, plaintiff has not established the respondeat

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[11] In *Blakenship, supra* at 874-875, a Title VII case, the Sixth Circuit indicated that removal of the harasser was not necessary and the harasser and harassed could continue to work in the same proximity as long as there was no further harassment.

[12] This Court must review the record in the same manner as must the trial court to determine whether the movant was entitled to judgment as a matter of law. *Morales, supra* at 294; *Michigan Ed Employees Mut Ins Co, supra* at 114-115.

superior element of her claim. Therefore, the trial court erred in denying defendant's motion for summary disposition with regard to plaintiff's hostile environment sexual harassment claim.

III

On cross appeal, plaintiff contends that the trial court's refusal to compel discovery that would have permitted plaintiff to show disparate treatment of sexual harassment complaints on a campus wide basis was an abuse of discretion. This issue has been abandoned.

Plaintiff's brief on cross appeal was not filed timely and was not filed in conformance with MCR 7.212(E). Plaintiff received an extension to file her appellee/cross appellant brief by October 11, 2003, but did not file her brief until October 14, 2003. Plaintiff filed a motion to extend, but this Court denied it. Thus, it appears that plaintiff's brief for her cross appeal (same as her appellee brief) was not timely. Further, plaintiff did not state the basis of the jurisdiction for her cross appeal, MCR 7.212(E) and MCR 7.212(C)(4), and did not identify her cross appeal questions in her questions presented, MCR 7.212(E) and MCR 7.212(C)(5), and her argument was not supported by citation to appropriate authority or policy, MCR 7.212(C)(7), (E). In plaintiff's initial brief she does not cite any authority that supports her position and only presents a cursory one paragraph argument.

The appellant may not merely announce her position and leave it to this Court to discover and rationalize the basis for her claims, *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998); *Ambs v Kalamazoo Co Rd Comm,* 255 Mich App 637, 650; 662 NW2d 424 (2003), nor may she give issues cursory treatment with little or no citation of supporting authority, *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984); *Silver Creek Twp v Corso*, 246 Mich App 94, 99; 631 NW2d 346 (2001), or fail to address the basis of the trial court's decision, *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 175; 568 NW2d 365 (1997). Argument must be supported by citation to appropriate authority or policy. MCR 7.212(C)(7), *Peterson Novelties, Inc v City of Berkley,* 259 Mich App 1, 14; 672 NW2d 351 (2003). An appellant's failure to properly address the merits of her assertion of error constitutes abandonment of the issue. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002).[13] Because plaintiff did not present her cross appeal issue in conformance with MCR 7.212(E) and only presented a cursory argument with no citation of authority supporting her position, plaintiff has abandoned her issue raised on cross appeal.

Nonetheless, there was no showing that the trial court abused its discretion in refusing to compel discovery. A motion to compel discovery is a matter within the trial court's discretion, and the court's decision to grant or deny a discovery motion will be reversed only if there has been abuse of that discretion. *Linebaugh v Sheraton Michigan Corp,* 198 Mich App 335, 343; 497 NW2d 585 (1993). In civil cases, an abuse of discretion is found only in extreme cases in

[13] Plaintiff did add some argument and authority in her reply brief. Reply briefs may contain only rebuttal argument, and raising an issue in a reply brief is not sufficient to properly present an issue for appeal. MCR 7.212(G), *Check Reporting Services, Inc v Michigan Nat'l Bank*, 191 Mich App 614, 628; 478 NW2d 893 (1991).

which the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias. *Dep't of Transp v Randolph*, 461 Mich 757, 768; 610 NW2d 893 (2000). Michigan law generally provides for the discovery of any relevant, nonprivileged matter. MCR 2.302(B)(1); *Eyde v Eyde*, 172 Mich App 49, 54-55; 431 NW2d 459 (1988).

Plaintiff contends that Michigan discovery rules mandated production of all sexual harassment claims filed with the central administration of the University of Michigan. However, "a trial court must also protect the interests of the party opposing discovery so as not to subject that party to excessive, abusive, or irrelevant discovery requests." *In re Hammond Estate*, 215 Mich App 379, 386; 547 NW2d 36 (1996). Plaintiff was trying to prove that the School of Music handled plaintiff's claim in a discriminatory manner, not that the Central Administration acted in a discriminatory manner. Plaintiff wanted information regarding all sexual harassment claims filed at the University of Michigan. The trial court was not convinced that the requests for information were reasonably calculated to lead to relevant information, and the trial court did not abuse its discretion in denying plaintiff's motion to compel and in finding that plaintiff's request was overly broad and unduly burdensome. Accordingly, summary disposition was also proper on plaintiff's racial discrimination claim.

IV

We find that the trial court erred in denying defendant's motion for summary disposition with regard to plaintiff's hostile environment sexual harassment claim; thus, reversal is required. Consequently, the trial court's opinion and order granting plaintiff's motion for costs and attorney fees is not proper, and must be reversed, because plaintiff would not be considered a prevailing party. See *Meyer v City of Center Line*, 242 Mich App 560, 576; 619 NW2d 182 (2000).[14] Plaintiff has not properly presented her cross appeal issue for review and, thus, has abandoned the issue.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ Kathleen Jansen
/s/ Richard A. Bandstra

[14] Based on our resolution, it is unnecessary to address the remaining issues defendant raises on appeal.