# STATE OF MICHIGAN

# COURT OF APPEALS

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| PRISCILLA DENNEY, Ph.D.,<br><br>Plaintiff-Appellant, | UNPUBLISHED<br>January 11, 2011 |
| v | No. 294278<br>Saginaw Circuit Court |
| DOW CHEMICAL COMPANY,<br><br>Defendant-Appellee. | LC No. 07-066367-NZ |

Before: MARKEY, P.J., and ZAHRA and DONOFRIO, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's opinion and order granting defendant's motion for summary disposition on plaintiff's claims (1) under the Whistleblowers' Protection Act (WPA), MCL 15.361 *et seq.*, (2) for breach of implied contract based on defendant's non-retaliation policy in its "Code of Business Conduct," and (3) of sex discrimination, MCL 37.2202(1)(a). Defendant brought its motion under MCR 2.116(C)(8) and MCR 2.116(C)(10). The trial court did not specify under which court rule it granted the motion but patently considered evidence outside the pleadings and the fact that plaintiff produced no evidence in support of her claims. Therefore, we review the trial court's decision as one under MCR 2.116(C)(10). *Driver v Hanley (After Remand)*, 226 Mich App 558, 562; 575 NW2d 31 (1997). We affirm.

## I. FACTUAL BACKGROUND

In 2001, Purdue University awarded plaintiff a Ph.D. in civil and environmental engineering; defendant hired her in March 2002. Before being hired, plaintiff signed an employment application that acknowledged, if hired, she "may be terminated by Dow at any time with or without cause, that is, my employment will be at will." Similarly, upon being hired, plaintiff signed an employment agreement that provided: "I have the right to terminate my employment with Dow at will at any time without notice or for any reason. Dow has the same right to terminate my employment at will." In addition, the employment application stated that it and "any other Dow documents are not contracts of employment . . . ." Defendant's "Code of Business Conduct" on which plaintiff bases her breach of implied contract also provides: "Nothing in this document constitutes a contract of employment with any individual."

Before defendant hired plaintiff, allegations arose that defendant's Midland, Michigan operations were the likely source of Dioxin found in soil samples taken near the Tittabawassee

and Saginaw Rivers. See *Henry v Dow Chem Co*, 484 Mich 483, 488-490; 772 NW2d 301 (2009), and *Henry v The Dow Chemical Co*, 473 Mich 63, 69-70; 701 NW2d 684 (2005). In August 2004, plaintiff's work location changed from Texas to Midland. Plaintiff was assigned to a team of Dow employees known as the Michigan Dioxin Initiative (MDI) working on defendant's response to the Michigan Department Environmental Quality (MDEQ) regarding the dioxin pollution. Plaintiff's work included research support on environmental projects, commenting on data submitted to the MDEQ, monitoring the work of some environmental consultants Dow had retained, helping identify laboratories to test environmental samples, and compiling a list of possible chemical waste by-products emanating from Dow's Midland operations. Ben Baker supervised plaintiff; Baker's supervisor was Greg Cochran, the director of defendant's MDI.

In 2005, defendant entered an agreement with the MDEQ to develop a response to the dioxin pollution in the Tittabawassee River and its floodplain, which included measuring the extent of the problem and providing validated data to the MDEQ by February 1, 2007. The purpose of the data was to facilitate proposing response activities to the Dioxin contamination. To fulfill its agreement, defendant hired an environmental consulting firm, Ann Arbor Technical Services (ATS), to investigate the nature and extent of the Dioxin problem in the Upper Tittabawassee River area. ATS and defendant's MDI, including Baker, developed a plan to sample for and analyze the extent of the Dioxin contamination and also developed a quality assurance project plan (QAPP) for the project. The MDEQ approved both of these plans and ATS began its sampling program. ATS also hired TriMatrix Laboratories (TML) to analyze the samples for the presence of other so-called Appendix IX chemicals.[1] Defendant contracted with Performance Enhancement Corporation (PEC), to separately validate the non-dioxin, non-furan data that TML produced. Plaintiff served as PEC's primary contact at defendant.

In November 2006, a dispute arose between PEC and TML when PEC requested certain instrument calibration data the parties refer to as "MDL studies." TML believed the data requested was too voluminous and unnecessary for TML to complete its part of the project. ATS, responsible for submitting validated data to the MDEQ, agreed with TML. Debbie Rosano-Reece, PEC's project manager, contacted plaintiff and informed her that the requested MDL studies were critical to its ability to validate TML's data. On November 15, 2006, plaintiff informed Baker that ATS and TML were not providing PEC with data necessary to the validation process. Baker responded to plaintiff in a November 22, 2006, email that it was ATS's responsibility "to provide high quality, valid data to meet the project requirement." Baker also outlined for plaintiff that PEC should analyze the data they receive and report any perceived problems to Dow, who could then get "responses from ATS on whether the issue is real or not." Baker noted that TML was a subcontractor to ATS and that

> . . . PEC and Dow should not go to the [TML] lab. ATS is responsible for investigation and providing responses and identifying any corrective actions

[1] See 40 CFR Part 264 Appendix IX

> needed. We can then discuss with ATS if we believe the corrective action is appropriate.
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> In addition, I don't want PEC trying to "help" ATS rewrite the QAPP. That is ATS's responsibility and they know it must be updated and will do so. We will review the QAPP when it has been updated.
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> In other words, PEC can identify for Dow potential concerns they have identified, ATS is responsible for providing responses and working with [TML] without Dow's direct involvement in discussing issues with [TML]. If ATS wants Dow or PEC assistance updating the QAPP they can ask for that assistance. They know we will provide that support if needed. We have the right to approve the QAPP.

Plaintiff believed this email ordered her to stop all activities regarding the validation process, i.e., to not do her job.

On December 5, 2006, PEC notified Dow that it could not validate TML's analysis "based on a major technical noncompliance"—the failure of TML to provide PEC with the MDL studies. Plaintiff testified that she also informed Baker on the same day that PEC had "rejected" the TML analysis on the basis of major technical noncompliance. Baker testified that defendant responded to this information by "requir[ing] ATS to evaluate the issues identified by PEC and to verify that the data did or did not meet the requirements under the QAPP." Philip Simon testified that ATS validated TML's data.

About one week later, plaintiff reported her concerns regarding PEC's failure to validate TML's data to several other Dow employees, including Greg Cochran, Baker's supervisor, and David Gustafson. Plaintiff describes Gustafson as Dow's "compliance officer" and contends that reporting to him was tantamount to reporting to a public body under the WPA. Plaintiff admits she did not make a complaint to a government agency, nor did she tell anyone at Dow she was about to make a complaint to a government agency. Gustafson testified that he was Dow's "regulatory affairs leader," that is, "Dow's lead interface regarding regulatory ethicacy." Cochran testified that he investigated plaintiff's concerns by speaking to Baker, contacting ATS, and speaking to a representative of the MDEQ. Cochran learned that PEC was applying a more stringent level of data validation than the MDEQ required.

Plaintiff contends she was thereafter "demoted" because she was relieved of her duties regarding data validation. Defendant notes that plaintiff's part in the project was largely completed because in the same letter that Rosano-Reece advised Baker that PEC could not validate the TML data, PEC also gave notice it was terminating its contract with Dow. Plaintiff testified she was reassigned to act as Dow's liaison with the community and research certain data bases regarding potential environmental projects. Although she had done this work before, plaintiff considered it beneath her educational qualifications. Cochran and Baker testified that the projects assigned to plaintiff were important to Dow because it would help identify projects that would qualify for Natural Resource Damage Assessment (NRDA) credit to offset any future assessment of natural resource damages against Dow.

On January 11, 2007, plaintiff requested in an email to Cochran that she be permitted to work from her home; Cochran approved the request the next day. The trial court in its September 3, 2009, opinion and order granting defendant summary disposition describes the subsequent pertinent events.

> In March 2007, Plaintiff's attorneys sent Defendant a demand letter claiming Defendant had retaliated against Plaintiff by assigning her minor computer tasks because she had raised concerns regarding the validation of ATS and TriMatrix's data. After receiving the demand letter, Cochran contacted the MDEQ to notify them of the concerns raised by Plaintiff. Defendant concluded that the concerns regarding validation, as raised by Plaintiff, were not required by the State of Michigan. The MDEQ agreed with Defendant. Dow retained another laboratory, Environmental Standards, Inc., to review the matter further. After an additional four months of investigation, Dow concluded that the data had been properly submitted to the MDEQ and that Plaintiff had not been retaliated against.
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> In May 2007, Defendant transferred Plaintiff so that she reported directly to Cochran instead of Baker. On July 13, 2007, Plaintiff called into the Michigan Dioxin Initiative team's weekly teleconference for the first time since February 2007. Cochran, aware of the fact that Plaintiff was threatening litigation, asked Plaintiff not to participate in the conference call because of the confidential nature of the conference calls.
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> On August 20, 2007, Plaintiff attended a meeting with Cochran and James Hummel, Defendant's human resource manager for its Midland facilities. Cochran and Hummel detailed Defendant's expectations for Plaintiff's position, which included her new project of assisting Defendant's legal team with responding to information requests from the EPA. Plaintiff characterized the meeting as hostile. In a letter summarizing the meeting, Cochran and Hummel invited Plaintiff to contact Dow's Office of Global Ethics and Compliance if she wished to pursue her concerns. Plaintiff never did.
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> Plaintiff also claimed that over the years, her co-worker, John Musser, said or did things that Plaintiff felt were sexually inappropriate. Of the three incidents stated, Plaintiff only reported one of them to Defendant. Further, Plaintiff claims, without specifics, that Cochran, Baker, and Dennis Mulligan, who was Plaintiff's supervisor in Texas prior to her coming to Michigan, all purportedly singled her out because of her gender.
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> Plaintiff took a paid vacation from mid-December 2007 through the beginning of February 2008. In late February 2008, Plaintiff left work and was on paid medical leave until August 20, 2008. Plaintiff then resigned.

Plaintiff filed the instant lawsuit in November 2007 alleging as her first two counts (1) retaliation in violation of the WPA, MCL 15.361 *et seq.*, and (2) breach of implied contract based on defendant's non-retaliation policy in its "Code of Business Conduct. In an amended complaint filed in March 2008, plaintiff added her claim of sex discrimination in violation of

MCL 37.2202(1)(a). After discovery closed, defendant moved for summary disposition, which the trial court granted.

Regarding plaintiff's WPA claim, the trial court ruled that it failed because plaintiff "did not report her concerns to any public body as defined in the Act; nor did she claim that she was about to make a report to any public body." Further, the court found plaintiff's evidence of an adverse employment action was also lacking, opining that it found:

> Plaintiff did not suffer an adverse employment action. Plaintiff was not discharged, she resigned. . . . Her pay and benefits were not reduced, and her title remained the same. Plaintiff argues that she was forced to work from home, but an email that she sent to Cochran refutes this point and shows that Plaintiff had requested to work from her home.

With respect to plaintiff's implied contract claim, the trial court ruled it failed because plaintiff was an at-will employee, and defendant specifically disclaimed that they created any contract rights. Further, the court found that plaintiff "has not provided evidence that she was retaliated against. Plaintiff argues that having her job duties changed by Defendant was retaliation for her reporting concerns regarding the validity of data." But, the court ruled, "an alteration of job duties generally does not rise to the level of an adverse employment action[,]" citing *Wilcoxon v Minnesota Mining & Mfg Co*, 235 Mich App 347, 364; 597 NW2d 250 (1999).

Finally, with regard to plaintiff's gender discrimination claim, the trial court ruled it failed because plaintiff had not suffered an adverse employment action. Further, plaintiff's testimony regarding three alleged incidents was insufficient to establish a hostile work environment claim. The Court opined:

> The Court finds that under the totality of circumstances that a hostile work environment did not exist in this case. Plaintiff points to three separate, isolated incidents that occurred since she had begun work for Defendant in 2002. The United States Supreme Court has held that "isolated incidents (unless extremely serious) will not create a hostile work environment." *Faragher v City of Boca Raton*, 524 US 775, 787-88[;118 S Ct 2275; 141 L Ed 2d 662] (1998). Further, Plaintiff only reported one of the incidents to Defendant. The Court finds that none of the incidents rise to the level "extremely serious." Plaintiff has presented a book that was taken from the Defendant's employee library. Plaintiff alleges, but offers no other evidence, that the book was a "how-to" manual on dealing with female managers. [3]

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[3] The Court has reviewed the book, *Standard Methods for the Mediocre Science Manager*, by M. B. Ettinger. The Court is not persuaded by Plaintiff's argument regarding this book and its intended use.

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For the reasons discussed, the trial court granted defendant's motion for summary disposition. Plaintiff appeals by right.

## II. STANDARD OF REVIEW

This Court reviews de novo a trial court's decision on a motion for summary disposition. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). Under MCR 2.116(C)(10), such a motion tests the factual sufficiency of a complaint and must be supported by affidavits, depositions, admissions, or other documentary evidence. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). The trial court in deciding the motion and this Court on review must view the substantively admissible evidence submitted up to the time of the motion in a light most favorable to the party opposing the motion. *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999). "Summary disposition is appropriate . . . if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. 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 might differ." *West*, 469 Mich at 183.

We also review de novo issues of statutory construction. *Henry*, 484 Mich at 495; *Ernsting v Ave Maria College*, 274 Mich App 506, 509; 736 NW2d 574 (2007).

## III. ANALYSIS

### A. WPA CLAIM

Pertinent to plaintiff's WPA claim, MCL 15.362 provides:

> An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, a violation or a suspected violation of a law or regulation or rule promulgated pursuant to law of this state, a political subdivision of this state, or the United States to a public body . . . .

MCL 15.361(d) defines "public body" as all of the following:

> (i) A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of state government.
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> (ii) An agency, board, commission, council, member, or employee of the legislative branch of state government.
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> (iii) A county, city, township, village, intercounty, intercity, or regional governing body, a council, school district, special district, or municipal corporation, or a board, department, commission, council, agency, or any member or employee thereof.

> (iv) Any other body which is created by state or local authority or which is primarily funded by or through state or local authority, or any member or employee of that body.
>
> (v) A law enforcement agency or any member or employee of a law enforcement agency.
>
> (vi) The judiciary and any member or employee of the judiciary.

To establish a prima facie case under the WPA, "a plaintiff must show that (1) the plaintiff was engaged in protected activity as defined by the act, (2) the plaintiff was discharged or discriminated against, and (3) a causal connection exists between the protected activity and the discharge or adverse employment action." *West*, 469 Mich 183-184. Here, to establish she was engaged in protected activity, plaintiff must prove she reported or was about to report a violation or suspected violation of a law or regulation to a public body. *Brown v Mayor of Detroit*, 478 Mich 589, 594; 734 NW2d 514 (2007); *Ernsting*, 274 Mich App at 510.[2] We agree with the trial court that plaintiff's report to Gustafson does not constitute protected activity because Gustafson was an employee of a private company. There is no provision within the plain language of the statutory definition of "public body" that includes employees of private companies. Nothing will be read into a clear statute that is not within the manifest intention of the Legislature as derived from the language of the statute itself. *Green v Ziegelman*, 282 Mich App 292, 302; 767 NW2d 660 (2009), citing *Roberts v Mecosta County Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002).

Relying on *Manzo v Petrella*, 261 Mich App 705; 683 NW2d 699 (2004), plaintiff argues that the WPA "covers reports to a private body when the government sets forth directions regarding the private body's implementation, action or reporting." We disagree. Plaintiff does not explain how the plain language of MCL 15.361(d) extends to employees of private companies, even if the company has a duty to report certain matters to the government. We discern none. "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

We also find that *Manzo* does not support plaintiff's expanded reading of the statute. In that case, this Court rejected the plaintiff's argument that a peer review committee of a private hospital was a "public body" for purposes of the WPA. The plaintiff argued that because MCL 333.21513(d) required hospitals to establish such peer review bodies, the peer review committee was a "public body" under MCL 15.361(d)(iv). The *Manzo* Court was not persuaded. Although the private hospital was required by legislative mandate to establish it, the peer review committee was created "by virtue of [the hospitals] own internal bylaws and procedures."

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[2] Though not pertinent to this case, protected activity includes being asked by a public body to participate in an investigation. *Ernsting*, 274 Mich App at 510; MCL 15.362.

*Manzo*, 261 Mich App at 714. Plaintiff apparently seizes on the Court's observation that MCL 333.21513(d) did "not implicate governmental authority" because it "does not provide a legislative scheme or any guidelines whatsoever governing implementation, action, or reporting requirements to any governmental agency." *Manzo*, 261 Mich App at 714. This reasoning, however, cannot expand the language of the MCL 15.361(d) so as to render a private company a "public body." Gustafson was an employee of defendant Dow Chemical Company, a private company, not a "public body" under the WPA. The trial court did not err in granting defendant summary disposition of plaintiff's WPA claim.

B. IMPLIED CONTRACT CLAIM

Plaintiff argues that the trial court erred in granting defendant summary disposition on her implied contract claim. She contends that defendant breached a non-retaliation policy stated in Dow's "Code of Business Conduct." Apparently conceding the undisputed fact that she was an at-will employee, plaintiff argues that she nevertheless may sue for the alleged breach of the non-retaliation policy. We disagree.

Although the basis for plaintiff's argument is not entirely clear, she relies on passages from *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579; 292 NW2d 880 (1980), to argue that an employer's policy may be enforceable although not part of an employment contract. We find that plaintiff's reading of *Toussaint* is misplaced because the rights that case upheld were based on contract implied in law on the basis of the employee's reasonable expectations, *id*. at 598-599, and the employer's actions. "Having announced the policy, presumably with a view to obtaining the benefit of improved employee attitudes and behavior and improved quality of the work force, the employer may not treat its promise as illusory." *Id*. at 619. But an employee's enforcement of a "promise" is enforcement of a contract. Thus, the right *Toussaint* recognized was an employment contract right. "We hold that employer statements of policy . . . can give rise to *contractual rights* in employees without evidence that the parties mutually agreed that the policy statements would create contractual rights in the employee . . . ." *Id*. at 614-615 (emphasis added). But we find it unnecessary to parse *Toussaint* when the Court's decision in *Lytle v Malady (On Rehearing)*, 458 Mich 153; 579 NW2d 906 (1998), on which the trial court relied, applies directly to the undisputed facts of this case.

First we reject plaintiff's effort to distinguish *Lytle* on the basis that it concerned whether the plaintiff's employment contract included a term that discharge could only occur for just cause. The issue in *Lytle* was still whether an employer's policy was elevated to an employment contract term, i.e., an enforceable promise. "The distinction between a mere policy and a promise is evident in this Court's recognition that the very definition of 'policy' negates a legitimate expectation of permanence." *Lytle*, 458 Mich 165 n 11. Thus, "a 'policy' is commonly understood to be a flexible framework for operational guidance, not a perpetually binding contractual obligation." *Id*. Pertinent here, the *Lytle* Court recognized that enforceable contract terms may arise either by express agreement or may be "implied at law, where an employer's policies and procedures instill a 'legitimate expectation' . . . ." *Id*. at 164. The *Lytle* Court went on to hold that an explicit contract disclaimer—such as the one plaintiff signed when she was hired and which was included in defendant's "Code of Business Conduct"—rendered the policy statement "too vague and indefinite to constitute a promise . . . that could form the basis of a legitimate-expectation claim." *Id*. at 166. The *Lytle* Court also stated that its decision

was consistent with *Toussaint*, and that implied contract rights may be avoided by having employees acknowledge no contract rights are created, or by including a specific contractual disclaimer. *Lytle*, 458 Mich 167-168, citing *Toussaint*, 408 Mich at 612.

In this case, plaintiff signed an employment application that stated "any other Dow documents are not contracts of employment." Also, defendant's "Code of Business Conduct" on which plaintiff bases her implied contract claim states that "[n]othing in this document constitutes a contract of employment with any individual." Consequently, the trial court did not err in granting defendant summary disposition on plaintiff's implied contract claim.

C. SEX DISCRIMINATION CLAIM

MCL 37.2202(1) prohibits employers from discriminating "against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, because of . . . sex . . . ." Plaintiff argues that the trial court erred in granting defendant summary disposition because she presented sufficient circumstantial evidence of gender discrimination to raise a question of material fact under the burden-shifting approach of *McDonnell Douglas Corp v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973). See *Sniecinski v Blue Cross & Blue Shield of Michigan*, 469 Mich 124, 133-134; 666 NW2d 186 (2003). We disagree.

Under the *McDonnell Douglas* burden-shifting approach, a plaintiff must establish "'a rebuttable prima facie case on the basis of proofs from which a factfinder could *infer* that the plaintiff was the victim of unlawful discrimination.'" *Sniecinski*, 469 Mich at 134, quoting *DeBrow v Century 21 Great Lakes, Inc (After Remand)*, 463 Mich 534, 538; 620 NW2d 836 (2001) (emphasis in original). "To establish a rebuttable prima facie case of discrimination, a plaintiff must present evidence that (1) she belongs to a protected class, (2) she suffered an adverse employment action, (3) she was qualified for the position, and (4) [the adverse employment action] occurred under circumstances giving rise to an inference of unlawful discrimination." *Sniecinski*, 469 Mich at 134. When a plaintiff presents a prima facie case of discrimination, "the burden then shifts to the defendant to articulate a legitimate, nondiscriminatory reason for the adverse employment action. If a defendant produces such evidence, the presumption is rebutted, and the burden shifts back to the plaintiff to show that the defendant's reasons were not the true reasons, but a mere pretext for discrimination." *Id*. Thus, even if plaintiff circumstantially establishes a prima facie case of sex discrimination, and defendant proffers evidence of non-discriminatory reasons for its actions, plaintiff must still produce direct or circumstantial evidence "sufficient to permit a reasonable trier of fact to conclude that discrimination was a motivating factor for the adverse action taken by the employer toward the plaintiff." *Lytle*, 458 Mich at 175-176.

First, we agree with the trial court that plaintiff did not produce evidence of an adverse employment action. A prima facie case of discrimination requires showing a materially adverse employment action, such as termination of employment, or a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, or significantly diminished material responsibilities. *Wilcoxon*, 235 Mich App at 363. For an employment action to be materially adverse for purposes of a discrimination action it must be (1) more than a mere inconvenience or an alteration of job responsibilities, and (2) it must be objectively adverse because a plaintiff's subjective belief regarding the desirability of one work assignment over

another is not controlling. *Id*. at 364. Consequently, "'the mere fact that an employee is displeased by an employer's act or omission does not elevate that act or omission to the level of a materially adverse employment action.'" *Peña v Ingham Co Rd Comm*, 255 Mich App 299, 312; 660 NW2d 351 (2003), quoting *Blackie v Maine*, 75 F3d 716, 725 (CA 1, 1996). Under these standards, for the reasons stated by the trial court, plaintiff did not present evidence of a materially adverse employment action. At best, plaintiff presented evidence that she disagreed with her supervisors regarding how certain work should be performed, and she believed that she was over-qualified for certain work. In addition, plaintiff requested to work from home and was granted permission to do so. She was not discharged from her position; she resigned. Although she believed she had been demoted, "[p]laintiff's subjective perception that [she] was adversely affected . . . does not rise to the level of an objectively verifiable employment action." *Peña*, 255 Mich App at 314.

Even if we were to assume that plaintiff suffered an adverse employment action, we cannot conclude that the circumstances here create an inference that defendant's actions were motivated by gender animus. *Sniecinski*, 469 Mich at 134; *Wilcoxon*, 235 Mich App at 363. Indeed, plaintiff's first two claims belie her assertion that she suffered an adverse employment action because of her sex. Rather, if she suffered an adverse employment action, it arose from her work performance, not her gender. Plaintiff cites only her own subjective belief and a 1969 tongue-in-cheek spoof, *Standard Methods for the Mediocre Science Manager*, to support her claim of gender discrimination. And, plaintiff presents no evidence to support her assertion that the 1969 satirical work is a "how-to" book for discriminating against women employees. Thus, plaintiff failed to present a prima facie case of sex discrimination because the objective evidence did not demonstrate that "plaintiff suffered an adverse employment action under circumstances giving rise to an inference of discrimination." *Wilcoxon*, 235 Mich App at 359.

Although plaintiff mentions in one paragraph of her amended complaint "a pervasive environment of sexual harassment," on appeal, she does not address the trial court's ruling regarding her hostile work environment claim. "It is axiomatic that where a party fails to brief the merits of an allegation of error, the issue is deemed abandoned by this Court." *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). Therefore, to the extent plaintiff's sex discrimination claim includes a hostile work environment claim, we conclude that plaintiff has abandoned it.

In sum, we find no error warranting reversal in the trial court's granting defendant summary disposition on plaintiff's sex discrimination claim.

## D. CONCLUSION

We affirm the trial court's grant of summary disposition to defendant for the reasons discussed above. Defendant being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Jane E. Markey
/s/ Brian K. Zahra
/s/ Pat M. Donofrio